

**(1999) 12 AP CK 0007**

**Andhra Pradesh High Court**

**Case No:** Criminal Petition No. 5682 of 1998

Potuganti Sreenivas

APPELLANT

Vs

Public Prosecutor and Another

RESPONDENT

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**Date of Decision:** Dec. 15, 1999

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2000) 2 CivCC 226

**Hon'ble Judges:** Vaman Rao, J

**Bench:** Single Bench

**Advocate:** M. Damodar Reddy, for the Appellant; Public Prosecutor for Respondent No. 1 and Mr. K.V. Chalapathi Rao, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Vaman Rao, J.

This petition filed u/s 482 of the Code of Criminal procedure seeks quashing of the proceedings in C.C. No. 120 of 1998 pending on the file of learned Judicial Magistrate of First Class, Gooti of Anantapur District, in which, the petitioner is sought to be prosecuted for an offence punishable u/s 138 of the Negotiable Instruments Act (for short "the Act").

2. The petitioners case is that he has been working as canvasser (middle man) for the business of sale of oil, in which, the second respondent M/s Madhu Solvents Extractions Pvt. Ltd., Gooti, is engaged. In pursuance of the business, the second respondent-Company supplied its products to a firm called as M/s Anuradha and Company, Vijayawada, under the brokerage of the petitioner herein. The said M/s Anuradha and Company fell in arrears of certain amount to the second respondent-Company towards purchase of their products. As they were unable to

pay the amount immediately, they requested the petitioner through their letter dated 14.3.1998 to arrange payment of the said due amount of Rs. 2,96,108.00 to the second respondent-Company. M/s Anuradha and Company promised to repay the amount to the petitioner with interest. In view of this request, the petitioner issued three cheques in question, which are subject matter of prosecution, in favour of the second respondent-Company totally covering an amount of Rs. 2,96,108.00. When the cheques were presented for encasement. they were bounced for want of sufficient funds in the account of the petitioner. In view of this, the second respondent-Company filed a complaint in the Court of concerned Magistrate in C.C. No. 120 of 1998.

3. The contention of the Learned Counsel for the petitioner is that after petitioner gave the cheques to the second respondent-Company, M/s Anuradha and Company, who were liable to pay the amount in question, had separately paid the amounts due to the second respondent-Company. A reference is made to certain letters said to have been written by M/s Anuradha and Company dated 14.3.1998 and 14.5.1998.

4. The contention of the Learned Counsel for the petitioner is that inasmuch as the amounts for which the cheques in question were issued by the petitioner, having already been paid by the firm M/s Anuradha and Company, which in fact owed that amount to the second respondent-Company, the amounts covered by the cheques issued by the petitioner must be deemed to have been paid. These cheques can no longer be considered as having been issued to discharge any debt due within the meaning of Section 138 of the act. Under these grounds. the proceedings are sought to be quashed.

5. Though, in the counter filed in this Court on behalf of the second respondent, there was no specific denial or admission of the fact of subsequent payment of amounts covered by the cheques in question, the second respondent-Company filed an additional counter in which the payment of the amounts covered by these cheques have been specifically denied. It is also asserted that the second respondent-Company has not received any letters or demand drafts as mentioned in the letters referred to-in the petition.

6. Learned Counsel for the respondent Mr. K.V. Chalapathi Rao contends that these are, at any rate, matters which are required to be gone into by the trial Court.

7. From the above it is apparent that the main plea of the petitioner for quashing these proceedings that the amounts represented by these three cheques in question have already been paid by M/s Anuradha and Company to the second respondent-Company/complainant, is specifically denied. In view of this, it is not possible to state that on the basis of admitted facts or on the basis of the contents of the complaint, no case for an offence punishable u/s 138 of the Act is made out. In view of this, there is no ground for quashing the proceedings at this stage.

8. Learned Counsel for the petitioner contends that the counter-affidavit filed on behalf of the second respondent-Company contains false assertions. This again is a question of fact, and before the trial Court if such a plea is taken by the second respondent-Company and found to be false it has to be considered as a serious matter, which will, apart from other consequences, have a bearing on the quantum of sentence to be imposed by the learned Magistrate. At any rate, in view of the disputed facts, the question of quashing these proceedings, at this stage, does not arise.

9. In the result, this petition is dismissed.