

## Priyatam Sen Vs Kanchana Siva Prasad and Another

**Court:** Andhra Pradesh High Court

**Date of Decision:** Oct. 8, 2002

**Acts Referred:** Negotiable Instruments Act, 1881 (NI) â€” Section 138  
Penal Code, 1860 (IPC) â€” Section 420

**Citation:** (2002) 2 ALD(Cri) 841 : (2003) 1 ALT(Cri) 174 : (2002) 3 APLJ 487 : (2004) 3 BC 565

**Hon'ble Judges:** C.Y. Somayajulu, J

**Bench:** Single Bench

**Advocate:** V. Pattabhi, for the Appellant; C.V. Mohan Reddy, for Respondent No.1 and Addl. Public prosecutor for R2, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This is an application to quash the F.I.R. in Crime No. 50 of 2002 of Vellur P.S. of Cuddapah District.

2. Representation dated 12-6-2002 given to the Superintendent of Police, Cuddapah, by the 1st respondent was forwarded to the Deputy

Superintendent of Police, Cuddapah with an endorsement to get a case registered and investigated after perusing the relevant records, which in

turn was sent to the Sub-Inspector of Police, Vellur P.S. with a direction to register a case under the relevant Section of law and to take up

investigation. Consequently the Sub-Inspector of Police, Vellur P.S. registered the said complaint as Crime No. 50 of 2002 u/s 420 I.P.C. read

with Section 138 of Negotiable Instruments Act.

3. The case, in brief, of the 1st respondent is that he and his brother V. Subba Rayudu are carrying on business in Dupion Silk under the name and

style of Krishna Silk Fabrics and have business transactions with the petitioner, who is the proprietor of M/s. Super Exports from five years and

that they, basing on the orders placed by the petitioner, used to prepare cotton material and send the same to Bangalore through Raghavendra

Transport and that the petitioner used to pay cash or send post-dated cheques towards the value of the material supplied to him by them, and on

some occasions the petitioner used to request them not to present the cheques and used to pay the amounts, covered by the cheques, in cash and

take return of those post-dated cheques. As per the order placed by the petitioner, material worth Rs. 12,74,032/- was supplied to him, towards

the value of which petitioner gave eleven cheques for Rs. 1,06,000/- each, six cheques with date 1-9-2001, two cheques with date 20-10-2001,

one cheque with date 17-11-2001 and two cheques with date 18-12-2001. Three cheques i.e., dated 17-11-2001 and 18-12-2001 were

dishonoured on their presentation to bank. Besides the amount covered by those cheques an amount of Rs. 4,26,032/- towards principal and Rs.

2,84,503/- towards interest is still due from the petitioner. Petitioner failed to pay the said amount when demanded by them asserting that he does

not owe any amount to them. Thus the petitioner, who wields considerable influence at Bangalore, cheated him (1st respondent) and other

businessmen at Duggayapally by issuing false cheques.

4. The point for consideration is whether the complaint of the 1st respondent is liable to be quashed.

5. The main contention of Sri Pattabhi, learned counsel for the petitioner is that the averments in the F.I.R. only show that petitioner failed to make

payment for the goods supplied to him by the 1st respondent and his brother, which does not create any criminal liability on the part of the

petitioner and since there is not even a whisper in the complaint that petitioner even harboured an intention to cheat the 1st respondent when he

placed an order for supply of the material with the 1st respondent and since admittedly some of the cheques issued by the petitioner were

honoured, dishonour of some of the cheques issued by the petitioner, if at all, would be an offence u/s 138 of Negotiable Instruments Act, (the

Act) but not an offence u/s 420 I.P.C. It is his contention that an accidental mistake relating to cheque numbers crept into the affidavit of the

petitioner filed along with the petition, and after noticing the said mistake, petitioner with the leave of the Court, filed a fresh affidavit giving correct

number of the cheques and contended that since the bounced cheques were in fact issued in the name of Subba Rayudu, but not in the name of the

1st respondent, finding that there was no scope for the 1st respondent initiating proceedings u/s 138 of the Act, he not being the payee or holder in

due course of the bounced cheques and since the time for initiation of proceedings u/s 138 of the Act also lapsed, 1st respondent with a view to

take a short cut route for recovery of the amount allegedly due to him, by using arm twisting methods, sought police help instead of filing a civil suit

for recovery of the amount allegedly due to him and got registered the F.I.R. against the petitioner. It is also his contention that the material

supplied by the 1st respondent is of inferior variety and so the dispute between the parties can be decided only by a civil Court and since the

complaint is filed only with a view to harass the petitioner and does not spell out an offence u/s 420 I.P.C., the F.I.R. is liable to be quashed. The

contention of Sri Mohan Reddy, learned counsel for 1st respondent is that since the petitioner admitted that there are business dealings between

him and 1st respondent and that he issued cheques in favour of the 1st respondent, petitioner cannot now be heard to say that there are no

business transactions between him and the 1st respondent, and that the petitioner, after obtaining an interim direction from the Court on the basis of

false averments in the affidavit, came up with a version that the averments in the affidavit filed in support of the petitioner were made by mistake,

and the averment in the affidavit of the petitioner that cheques dated 14-9-2001, 15-10-2001, 17-11-2001, 1-9-2001 and 20-10-2001, became

stale cannot be true because they would be valid till February and March, 2002, and since the complaint clearly shows that 1st respondent and his

brother were cheated by issuing false cheques, it cannot be said the averments in the F.I.R. do not disclose the commission of offence u/s 420

I.P.C. and in any event since the 1st respondent is a small businessman from a remote village, he cannot be expected to know the finer aspects of

law and so his not mentioning the minute details in the complaint is not and cannot be a ground for quashing the complaint.

6. In the additional affidavit of the petitioner it is stated that in lieu of the five cheques bearing Nos. 978754 to 978756 dated 1-9-2001, two

cheques bearing Nos. 978766 and 978767 dated 20-10-2001, five cheques bearing Nos. 052790 dated 14-9-2001, cheque bearing No.

058805 dated 15-10-2001, cheque bearing No. 058806 dated 15-10-2001, cheque bearing No. 058851 dated 17-11-2001 and cheque

bearing No. 058852 dated 17-11-2001 were issued in the name of V. Subba Rayudu. A copy of the statement of U. Co. Bank, Bangalore,

produced by the petitioner shows that cheques bearing Nos. 052790, 058805, 058806, 058851 and 058852, each cheque drawn for Rs.

1,06,000/- in favour of V. Subba Rayudu, were encashed. So prima facie it is clear that the first five cheques referred to in the complaint were not

in fact issued in the name of 1st respondent, but were issued in the name of V. Subba Rayudu and were encashed. Therefore there is force in the

contention of the learned counsel for the petitioner that the question of the petitioner having an intention to cheat the 1st respondent at the time of

either at the time of placing the order, or at the time of issuing of those cheques in the name of V. Subba Rayudu, would not arise because if the

transaction was between the petitioner and 1st respondent, the cheques should have been issued in the name of 1st respondent, but not in the name

of V. Subba Rayudu. In any event the averments in the complaint do not show that the petitioner with an intention to cheat the 1st respondent

issued those cheques. No doubt the last sentence in the complaint reads:

(Action may be taken against Preetamsen (petitioner) who without giving the amount due to us gave us fraudulent cheques with a view to cheat us).

The said averment does not show that the petitioner had a dishonest intention at the time of placing the order. It is well known that mere breach of

contract cannot give rise to criminal prosecution u/s 420 I.P.C. unless fraudulent or dishonest intention is shown right at the beginning of the

transaction. In fact Supreme Court in State of Kerala Vs. A. Pareed Pillai and Another, held that mere failing to keep up the promise subsequently

does not warrant, a presumption that the accused had a culpable intention right from the beginning being raised.

7. Non-payment of some amount due for one transaction out of various transactions in business dealings per se doesn't amount to cheating. The

averments in the complaint show that from five years there were transactions between the petitioner and 1st respondent and that the petitioner used

to give post-dated cheques, and some times he used to make payment for the goods supplied and take back the post-dated cheques, and on some

occasions the cheques were being presented in bank and the amounts covered by those cheques were withdrawn. If really there was an intention

on the part of the petitioner to cheat 1st respondent, he would not have paid any amount to the 1st respondent. In respect of the bounced cheques,

if the 1st respondent felt that there was an element of cheating on the part of the petitioner, he should have stated in the complaint that petitioner, at

the time of placing the order for goods, harboured an intention to cheat him. The contention of the petitioner is that since the goods supplied were

of inferior quality, he did not make the full payment. It is thus clear that the dispute between the petitioner and 1st respondent is purely civil in

nature and the averments in the complaint do not disclose any criminal liability on the part of the petitioner, because mere failure to honour a

promise by itself does not constitute the offence of cheating.

8. The contention of the learned counsel for 1st respondent that 1st respondent being businessman from a rural area his not disclosing all the

ingredients for the offence of cheating in the complaint, when there is no necessity to reproduce all the ingredients in the section in the complaint, is

not a ground for quashing the complaint prima facie appears to be appealing, but on deeper examination, I am not able to accept the said

contention. 1st respondent who has dealings running into several lakhs cannot be said to be an innocent man from a rural area. The complaint was

typewritten in Telugu and was in fact given to the Superintendent of Police, but not to the Station House Officer of the police station. It prima facie

shows that petitioner had guidance and advice and that he did not act spontaneously or on impulse, for him to omit mentioning important

ingredients in his complaint. So non-mention of the relevant ingredients for the offence of cheating in the complaint does have significance.

9. The following decisions relied on by the learned counsel for 1st respondent have no application to the facts of this case. Trisuns Chemical

Industry Vs. Rajesh Agarwal and others, is a case where the accused by quoting a rate higher than the market rate, promised to supply 5450

metric tonnes of Toasted Soyabean Extractions and received the entire amount of nearly Rs. 4,50,00,000/- as advance, and supplied commodity

which was most inferior and of sub-standard quality, and so the purchaser lodged a complaint for an offence u/s 420 I.P.C. In State of Karnataka

Vs. M. Devendrappa and Another, extension of an excise contract was obtained on fake bank guarantee, by impersonation. The Supreme Court

clearly held therein that power u/s 482 Cr.P.C. to quash a complaint has to be exercised ex debito justitia to do real and substantial justice, and if

the Court feels that it would be abuse of process of Court to allow any action which would result in injustice, it would be justified in quashing the

proceedings. In M/s. MEDCHL CHEMICALS AND PHARMA PVT. LTD. vs. M/s. BIOLOGICAL E.LTD. AIR 2000 S.C. 1869 the

Supreme Court held that a criminal proceeding cannot be quashed merely because civil remedy is available and that civil and criminal remedies are

not mutually exclusive, but are co-existent and that the object of criminal proceedings is to punish the offender. In NAGPUR STEEL & ALLOYS

PVT. LTD. vs. P. RADHAKRISHNA 1997 S.C.C. 1073 the Supreme Court held that merely because an offence was committed during the

course of a commercial transaction, High Court would not be justified in quashing the complaint, and the question as to whether the allegations in

the complaint are true or not are decided during the course of trial.

10. As stated earlier, in this case the bounced cheques were not drawn in the name of 1st respondent and were drawn in the name of V. Subba

Rayudu. The payee Subba Rayudu is not the complainant. Section 142 of the Act in no uncertain words says that no Court shall take cognizance

of an offence u/s 138 of the Act except on a complaint made by the payee or the holder in due course of the cheque. So in view of the embargo

placed by Section 142 of the Act, police registering a case u/s 138 of the Act and investigating it and filing a charge sheet does not arise. A plain

reading of the complaint given by 1st respondent only shows a breach of contract by the petitioner. Since dishonest intention on the part of the

petitioner when he placed an order with the petitioner is not spelt out in the complaint, it is clear that the 1st respondent is trying to put criminal law

into motion for recovery of the amount due to him, without seeking the remedy open to him under civil law, which is but an abuse of the process of

Court. Therefore the complaint against 1st respondent is liable to be quashed. The point is answered accordingly.

11. In view of my finding on the point for consideration, the petition is allowed and the F.I.R. in Crime No. 50 of 2002 of Vellur P.S., Cuddapah

District is quashed.