

APHC010389022023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION No: 5853/2023

Between:

DEVABHAKTHUNI ASHOK KUMAR, S/O KOTESWARARAO, AGED ABOUT 46 YEARS, HINDU, OCC. BUSINESS, R/O D.NO. 6-66, MAIN ROAD, BESIDE PANCHAYAT OFFICE, GOLLAPUDI, VIJAYAWADA RURAL MANDAL, KRISHNA DISTRICT. A.P.

...PETITIONER/COMPLAINANT

AND

- 1.DEVABHAKTHUNI CHAKRAVARTHI, S/O D.SUBBARAO, HINDU, AGED ABOUT 45 YEARS, BUSINESS, R/O NEAR D.NO. 5-612, ASHOK NAGAR, VIJAYAWADA-520007.
- 2.THE STATE OF ANDHRA PRADESH, THROUGH PUBLIC PROCESUTOR HIGH COURT OF A.P. AMARAVATHI.

...RESPONDENTS/ ACCUSED & STATE:

Counsel for the Petitioner/Complainant:

- 1.T V V KOTESWARA RAO

Counsel for the Respondents/Accused & State:

- 1.BABU RAO PANDIRI
- 2.PUBLIC PROSECUTOR (AP)

The Court made the following:

ORDER:

1. The instant petition under Section 482 Cr.P.C has been filed by the Petitioner/Complainant seeking to set aside Order dated 30.05.2023 passed in Crl.M.P.No.1143 of 2023 in C.C.No.111 of 2015 on the file of the Court of

I Special Magistrate, Vijayawada, whereby Section 311 Cr.P.C. petition is dismissed.

2. The facts that led to filing of the present petition, in epitome, are;

a. A cheque bounce case was filed by the Petitioner/Complainant against Respondent No.1/Accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, originally before the Court of the I Metropolitan Magistrate, Vijayawada, and was numbered as C.C. No.465 of 2006. Subsequently, the case was transferred to the Court of the II Metropolitan Magistrate (Railways), Vijayawada, and renumbered as C.C. No.250 of 2009. Thereafter, it was again transferred to the Court of the I Metropolitan Magistrate, Vijayawada, and renumbered as C.C. No.170 of 2010. Later, as per the orders of the Metropolitan Sessions Judge, Vijayawada, the case was transferred to the Court of the I Special Magistrate, Vijayawada, and renumbered as C.C. No.111 of 2015.

b. Both parties adduced evidence in the case, and the Complainant submitted written arguments on 11.05.2017. Thereafter, the Complainant was recalled and Ex.P-13 was marked. The arguments of the Accused were heard on 14.07.2017. When the matter was posted for reply arguments, the Complainant filed CrI.M.P. No.2454 of 2017 seeking recall of himself and permission to mark certain documents to prove his financial capacity. The said application was dismissed by the learned Trial Judge on 31.07.2017. Aggrieved thereby, the Complainant preferred a revision in CrI.R.P.No.52 of 2017 before the Court of the learned VII Additional District Judge, Vijayawada,

which was also dismissed. Thereafter, the Complainant filed a further revision before this Hon'ble Court, and the same was dismissed on 23.02.2023.

c. Once again, the Complainant filed CrI.M.P. No.1143 of 2023 under Section 311 Cr.P.C. seeking permission to receive and mark certain documents on his behalf. The learned Trial Judge dismissed the said application vide order dated 30.05.2023, holding that the Complainant had already filed his bank statements to prove his financial capacity to lend the amount to the Accused, which were marked as Exs.P-9 to P-11, and that the subsequent application to mark another bank statement was only an attempt to prolong the proceedings.

3. Assailing the order passed by the learned Trial Judge, the Complainant filed the present petition mainly contending that he had filed bank statements for the period 2010 to 2018 along with the complaint, and that he now seeks to file bank statements pertaining to the period 2000 to 2007. Since the Accused allegedly borrowed the amount in the year 2004, the said bank statements are crucial for proving the Complainant's financial capacity and are essential for a just adjudication of the case.

4. Heard Sri T.V.V.Koteswara Rao, learned counsel for the Petitioner. None represented for Respondent No.1. Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor is in attendance.

5. Learned counsel for the Petitioner would submit that Respondent No. 1/ Accused borrowed money from the Petitioner/Complainant in 2004, and that the transactions from 2000 to 2007 are very crucial for deciding the case.

Learned counsel would further submit that the learned Trial Judge failed to provide an opportunity to the Petitioner to produce relevant documents to prove his financial capacity to lend such an amount to the Accused. It is further submitted that, since the Accused is questioning the financial status of the Petitioner, the material sought to be produced is very much essential to substantiate the contention of the Petitioner.

6. The record reveals that this is a cheque dishonour case originally instituted in 2007 under Section 138 of the Negotiable Instruments Act, 1881, and has been transferred and renumbered multiple times, currently pending as C.C.No.111 of 2015 before the Court of I Special Magistrate, Vijayawada. The matter has been pending for nearly two decades. At this stage, filing an application under Section 311 Cr.P.C. amounts to an attempt to re-open evidence, despite ample prior opportunity.

7. Section 138 N.I. Act is intended to provide a speedy and efficacious remedy. The legislative background and object of Chapter XVII of the NI Act, 1881 is to enhance the credibility and acceptability of cheques as a reliable instrument for discharge of financial liabilities in commercial transactions. The statutory scheme makes the dishonour of a cheque for insufficiency of funds or for exceeding the arrangement with the bank a penal offence, subject to fulfillment of the prescribed conditions of the provision, and provides for punishment by way of imprisonment, fine, or both. The purpose of introducing these provisions was to promote financial discipline, deter dishonest or irresponsible conduct by drawers of cheques, and provide a more effective

and expeditious remedy than conventional civil proceedings, thereby strengthening public confidence in the banking and commercial system. Time and again, multiple judicial pronouncements of the Hon'ble Supreme Court viz., ***Indian Bank Association v. Union of India***,¹ ***In re Expeditious Trial of Cases Under Section 138 of NI Act, 1881***,² ***Sanjabij Tari v. Kishore S. Borcar & Another***³ and of this Court have taken judicial notice of the alarming pendency of cheque dishonour cases and categorically held that delay in disposal of such cases defeats the very object of Chapter XVII of the N.I. Act.

8. On the other hand, Section 311 Cr.P.C. confers discretion to summon or recall witnesses only if such evidence is essential for a just decision and not to fill lacunae. Entertaining the present belated application would result in further delay, defeating the legislative intent of expeditious disposal. Prolonged pendency of criminal proceedings prejudices both the sides in a criminal trial, equally, if not more sometimes. The Complainant suffers financial loss, while the Accused undergoes prolonged mental agony, social stigma, and repeated court appearances.

9. The scope and ambit of Section 311 Cr.P.C. has been authoritatively laid down by the Hon'ble Supreme Court in ***Rajaram Prasad Yadav v. State of Bihar***⁴, wherein, it was held that, though the power under Section 311 Cr.P.C. is wide, the same has to be exercised judiciously and only when the evidence sought to be adduced is essential for a just decision of the case, and

¹ (2014) 5 SCC 590

² (2021) 16 SCC 116

³ 2025) 259 Comp Cas 685

⁴ (2013) 14 SCC 461

not for the purpose of filling up lacunae. In **Natwar Singh v. CBI**⁵, the Hon'ble Supreme Court cautioned that recall of witnesses at a belated stage, after closure of evidence, should not be permitted unless absolute necessity is demonstrated, particularly when such recall would cause prejudice to the opposite party and delay the proceedings. Further, in **Vinod Kumar v. State of Punjab**⁶, the Hon'ble Supreme Court has once again emphasized that a fair trial does not mean a trial with endless opportunities and that courts are under an obligation to curb attempts aimed at prolonging trials by repeated recall of witnesses.

10. Looking at the case file and the circumstances of this case, this Court finds it appropriate to refer to the decision in **K. Vadivel v. K. Shanthi & Others**,⁷ wherein the Hon'ble Supreme Court categorically held that though the pursuit of truth may, in appropriate cases, justify some delay in trial, a clear distinction must be drawn between cases where genuine grounds exist for such delay and cases where proceedings are sought to be protracted without any *bona fide* justification. The Hon'ble Supreme Court deprecated the practice of filing belated and repetitive applications at the fag end of the trial on grounds already rejected, observing that such conduct contributes to inordinate delay and undermines the right to speedy and timely justice, which is an essential facet of the rule of law. It was also observed that frivolous and vexatious proceedings, which add to pendency and impede disposal of

⁵ (2016) 4 SCC 483

⁶ (2015) 3 SCC 220

⁷ 2024 INSC 746

deserving cases, must be met with due sanctions in the form of exemplary costs to deter such misuse of judicial process. The relevant paras read thus;

*“45. The victims of crime, the accused, and the society at large have a legitimate expectation that justice will be available to the parties within a reasonable time. It is beyond cavil that speedy and timely justice is an important facet of rule of law. Denial of speedy and timely justice can be disastrous to rule of law in the long term. Even if the 31 parties involved in a case themselves, with no valid justification attempt to delay the proceedings, the courts need to be vigilant and nip any such attempt in the bud instantly. **The administration of justice feeds on the faith of the citizenry and nothing should be done to even remotely shake that faith and confidence.***

*46. The legal profession has an important role to play in the process. Any proceeding or application which prima facie lacks merit should not be instituted in a court. We are constrained to observe this because of late we notice that pleadings/petitions with outrageous and ex facie unbelievable averments are made with no inhibition whatsoever. This is especially so in some family law proceedings, both civil and criminal. Reading some of the averments therein, we are left to wonder whether at all the deponents were conscious of what has been written purportedly on their behalf, before appending their signatures. These misadventures directly impinge on the rule of law, because they add to the pendency and the consequential delay in the disposal of other cases which are crying for justice. **It is time that such frivolous and vexatious proceedings are met with due sanctions in the form of exemplary costs to dissuade parties from resorting to such tactics.**”*

(emphasis supplied)

11. In the present case, no convincing or exceptional circumstance has been shown by the Complainant as to why the proposed additional evidence could not have been adduced at the appropriate stage. It shows that the Petitioner herein, who is said to be the cousin of the Accused, is intending to keep the case pending for a longer period. Having regard to the fact that the

case has been pending since 2007, entertaining such an application would defeat the very object of speedy disposal of N.I. Act cases and cause serious prejudice to the Accused.

12. In the instant impugned order, the learned Magistrate, having considered the stage of the case, the nature of the relief sought, and the unexplained delay, has rightly exercised the discretion in dismissing the application under Section 311 Cr.P.C. The impugned order does not suffer from any illegality, perversity, or material irregularity warranting interference by this Court. Filing a belated petition after nearly a decade constitutes misuse of procedural provisions. In order to discourage such conduct and to promote judicial discipline, this Court considers it appropriate to impose costs on the Petitioner.

13. In the result, the Criminal Petition is dismissed. The learned Trial Judge is directed to dispose of the C.C. in accordance with law as expeditiously as possible and report the progress of the matter to the Registrar Judicial within fifteen days from the date of receipt of copy of this order.

Consequently, miscellaneous petitions, pending if any, shall stand closed.

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

Dt.05.12.2025
Dinesh

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION No.5853 OF 2023

Dated: 05.12.2025

Dinesh