



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

[3368]



MONDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL PETITION NO: 7676/2024

Between:

1.SMT MEKALA SUDHA PRAMEELA KANTHA @ JANGAM
SUDHA PRAMEELA KANTHA, @ JANGAM SUDHA PRAMEELA
KANTHA, W/O. SATYAM, AGED 32 YEARS, D.NO.21-5-15,
KORLAMMAPETA, R/O.RAJAMAHENDRAVARAM.

...PETITIONER/ACCUSED

AND

1.THE STATE, REP. BY PUBLIC PROSECUTOR, HIGH COURT
OF ANDHRA PRADESH, AMARAVATI.

2.SMT THANNERU LATHA W/O SIVA KUMAR 45 YEARS DNO
21-515 KORLAMMAPETA, R/O. RAJAMAHENDRAVARAM.

...RESPONDENTS/COMPLAINANT(S):

Counsel for the Petitioner/accused:

1.K K DURGA PRASAD

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRL.P.No.7676 OF 2024**Between:**

Smt.Mekala Sudha Prameela Kantha
 @ Jangam Sudha Prameela Kantha,
 W/o.Satyam, Aged 32 years, Hindu,
 R/o.D.No.21-5-15, Korlammampeta,
 Rajamahendravaram.

....Petitioner/Accused.

Versus

1. The State: rep. By Public Prosecutor,
 High Court of Andhra Pradesh, Amaravati.

2. Smt.Thanneru Latha,
 W/o.Siva Kumar, Aged 45 years,
 R/o.D.No.21-5-15, Korlammampeta,
 Rajamahendravaram.

....Respondents/Complainant.

DATE OF ORDER PRONOUNCED : 06.01.2025

SUBMITTED FOR APPROVAL:**HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Judgment? | Yes/No |

JUSTICE B.V.L.N.CHAKRAVARTHI

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

+ CRL.P.No.7676 OF 2024

% 06.01.2025

Between:

Smt.Mekala Sudha Prameela Kantha
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 W/o.Satyam, Aged 32 years, Hindu,
 R/o.D.No.21-5-15, Korlammmapeta,
 Rajamahendravaram.Petitioner/Accused.

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 R/o.D.No.21-5-15, Korlammmapeta,
 Rajamahendravaram.Respondents/Complainant.

! Counsel for the Petitioner : Sri K.K.Durga Prasad

**^ Counsel for the
 Respondent No.1 : Public Prosecutor**

**^ Counsel for the
 Respondent No.2 : ---**

< Gist:

> Head Note:

? Cases referred:

1) 2023 LIVE LAW (SC) 776

2) 2024 INSC 1046

3) 2019 (11) SCC 341

This Court made the following:

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**CRIMINAL PETITION No: 7676 OF 2024****ORDER:**

Sri K.K.Durga Prasad, learned counsel for the petitioner, argued that the present petition is filed under Section 482 of the Code of Criminal Procedure and Section 528 of BNSS, 2023, on behalf of the petitioner/accused to modify or set aside the order dated August 30, 2024, in Criminal Petition No. 314 of 2024 in Criminal Appeal No. 147 of 2024, which is currently pending before the learned IX Additional District and Sessions Judge, East Godavari, at Rajamahendravaram.

2. The learned counsel for the petitioner further states that the petitioner was convicted by the learned Magistrate in C.C No. 557/2021 for the offence under Section 138 of the Negotiable Instruments Act, 1881, as per the judgment dated April 15, 2024, on the file of VII Additional Judicial Magistrate of the First Class, Rajamahendravaram. The learned Magistrate sentenced the petitioner to undergo simple imprisonment for one year and to pay a compensation of Rs.10,00,000/- (Rupees Ten Lakhs only), which is the amount of the cheque, in default, to undergo simple imprisonment for three (03) months. Subsequently, the petitioner filed Criminal Appeal No. 147 of 2024 on the file of the learned IX Additional District and Sessions Judge, East Godavari, at Rajamahendravaram. In the appeal, he filed

Cri. Petition No 314 of 2024 under Section 389(1) of the CrPC seeking suspension of the sentence and the payment of the compensation amount imposed by the learned Magistrate.

3. The learned counsel for the petitioner would further contend that the learned Sessions Judge, in an order dated 10.05.2024, permitted the application by suspending the sentence of imprisonment and the payment of compensation, on the condition of depositing 20% of the compensation awarded by the learned Magistrate within 60 days of the order.

4. Subsequently, the petitioner filed CrI.P.No.4747/2024 before this Court under Section 482 of the Criminal Procedure Code to modify or set aside the order of the learned First Appellate Court. This Court, in an order dated 29.07.2024, set aside the order of the learned First Appellate Judge and remitted the matter to the learned First Appellate Court for fresh disposal in accordance with the guidelines laid by the Hon'ble Supreme Court in the case of **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd., & Ors.** Subsequently, the learned Sessions Judge, under the impugned order dated 30.08.2024, suspended the order of the learned Magistrate, subject to deposit of 20% of the compensation amount within 60 days of the order.

5. The learned counsel for the petitioner would further contend that the learned Sessions Judge, as per paragraph 12 of the order, observed that the petitioner had not presented any circumstances to justify exemption from depositing the 20% of compensation. The grounds of appeal did not disclose any exceptional circumstances that could warrant such an exemption.

6. The learned counsel for the petitioner vehemently argued that the finding of the learned Sessions Judge deviates from the judgment of the Hon'ble Apex Court in the case of *Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd., & Ors*, and the order of this Court dated July 29, 2024, in CrI.P.No.4747/2024.

7. The learned counsel for the petitioner would further argue that the Hon'ble Apex Court, in paragraph 9 of the judgment, observed that when an accused applies under Section 389 of the Cr.P.C. for the suspension of sentence, they typically seek the grant of relief without any conditions. Therefore, when a blanket order is sought by the appellants, the Court must determine whether the case falls under an exception. However, unfortunately, the learned Sessions Judge did not follow these observations of the Hon'ble Apex Court. The learned Sessions Judge stated that, even after the petition was restored, the

petitioner had not presented any circumstances to justify exemption from depositing the 20% of the compensation amount.

8. The learned counsel for the petitioner would further contend that this observation of the learned Sessions Judge is against the aforementioned observations of the Hon'ble Apex Court. Therefore, the order of the learned Sessions Judge is not sustainable in law.

9. The learned Additional Public Prosecutor takes notice on behalf of the State and would submit that, as per the judgment of the Hon'ble Apex Court in the case of **Jamboo Bhandari v. M.P.State Industrial Development Corporation Ltd., & Ors**, when an accused applies under Section 389 of the Cr.P.C. for the suspension of sentence, the accused typically applies for the grant of relief of suspension of sentence without any conditions. The Court is then required to determine whether the case falls within an exception.

10. In a recent judgment of the Honorable Apex Court in the case of **Muskan Enterprises and another versus the State of Punjab and another** observed that the Appellate Court has discretion not to order the deposit of 20% of the amount under Section 148 of the Negotiable Instruments Act in appropriate and exceptional cases. The learned Sessions Judge in the order did not specify how the present case would not fall under the category of appropriate and exceptional cases,

except stating that the petitioner did not present any circumstances or claim an exception.

11. It is an undisputed fact that the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act by the learned Magistrate. The Magistrate sentenced the petitioner to simple imprisonment for one year and ordered him to pay Rs. 10,00,000/- (Rupees Ten Lakhs only) as compensation. The petitioner/accused subsequently filed an appeal challenging the judgment of the learned Magistrate. In the case of **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd., & Ors.**, referred above, the Hon'ble Apex Court held that when an accused applies under Section 389 of the Criminal Procedure Code (Cr.P.C.) for the suspension of sentence, they typically seek the grant of relief without any conditions. Therefore, when the appellants sought a blanket order, the Court had to determine whether the case fell under an exception. Consequently, when an application is filed by the appellant under Section 389 Cr.P.C. for the suspension of sentence, it is presumed that the appellant is seeking suspension without any conditions. The Court's duty is to ascertain whether the case falls under an exception or not, to impose conditions as prescribed under Section 148 of the Negotiable Instruments Act.

12. This Court vide order, dated July 29, 2024, earlier passed in Cr No. 4747/2024 filed by the petitioner, referred to the observations of the Hon'ble Apex Court stated above and remitted the matter to the Appellate Court to reconsider the application afresh, as per guidelines laid down by the Hon'ble Apex Court.

13. The learned Appellate Court in the impugned order referred to the above judgment of the Hon'ble Apex Court but failed to consider the observations of the Hon'ble Apex Court that, in general, an accused applies Section 389 CrPC to seek relief of suspension of sentence without any conditions. When an accused seeks a blanket order, it is the duty of the Court to determine whether the case falls under an exception. However, in the case at hand, the learned Appellate Court proceeded on the assumption that the petitioner did not provide or state any reasons for claiming an exception. The learned Sessions Judge merely rephrased the earlier order by adopting a pedantic approach, which is incorrect in light of the judgment of the Hon'ble Supreme Court. Therefore, overlooked the fact that when an appellant seeks a blanket order, the Court must consider whether the case falls under an exception.

14. As rightly pointed out by the learned counsel for the petitioner, it appears that the learned Appellate Court was not intending to exercise

its discretion and wants to confirm its earlier order. This approach is not in accordance with legal principles, as observed by the Hon'ble Apex Court. Furthermore, the Hon'ble Apex Court recently, in the case of **Muskan Enterprises and another Vs. State of Punjab and another**, considered the judgment of the Hon'ble Supreme Court in the case of **Surinder Singh Deswal @ Colonel S.S. Deswal** and others and **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd., & Ors.** The Hon'ble Apex Court observed that "Appellate Court has discretion not to order deposit of 20% of the amount U/s.148 of N.I. Act in appropriate and exceptional cases." It further noted that *"it would amount to a travesty of justice if exercise of discretion, which is permitted by the legislature and could indeed be called for in situations such as these pointed out above, or in any appropriate situation, is not permitted to be exercised by the Appellate Court by a judicial interpretation of 'may' being read as 'shall' in sub-section (1) of section 148 and the aggrieved appellant is compelled to make a deposit of fine or compensation awarded by the trial Court, notwithstanding any opinion that the Appellate Court might have formed at the stage of ordering deposit as regards invalidity of the conviction and sentence under challenge on any valid ground."*

15. Therefore, in the case on hand, the learned First Appellate Court failed to exercise its discretion appropriately and simply refused to exercise its discretion on the ground that the petitioner did not provide any grounds in the petition, despite the observation of the Hon'ble Apex Court extracted in the earlier order of this Court.

16. Consequently, this Court is of the considered opinion that the order of the learned First Appellate Court requires modification regarding the direction to deposit 20% of the compensation amount ordered by the learned Magistrate.

17. The learned counsel for the petitioner would submit that the petitioner is a woman suffering from ill-health since the onset of the COVID-19 pandemic and is unable to procure 20% of the cheque amount, which is Rs.2,00,000/- (Rupees Two Lakhs only). She has no immediate means to secure the said amount. Therefore, if permitted she will deposit 10% of the cheque amount, i.e., Rs.1,00,000/- (Rupees One Lakh only), within eight (08) weeks from the date of this Court's order. Consequently, she may be permitted to deposit 10% of the cheque amount instead of 20% of the cheque amount, as ordered by the learned First Appellate Court, and the order of the learned First Appellate Court may be modified accordingly.

18. In light of aforementioned submissions made by the learned counsel for the petitioner and in view of the observations of this Court regarding the order of the learned First Appellate Court, this Court is of the considered opinion that the order of the learned First Appellate Court can be modified to the extent of depositing “20%” of the compensation amount, making it “10%”, and giving ‘eight (08) weeks’ time to the petitioner to deposit the same, from the date of receipt of copy this order. The remaining order of the learned Sessions Judge shall remain in effect. If the petitioner fails to deposit the amount as ordered by this Court within the above stipulated timeframe, the learned Sessions Judge is authorized to proceed against the petitioner as per law.

19. Consequently, the Criminal Petition is disposed of at the stage of admission. The impugned order of the learned First Appellate Court is modified to the extent of depositing “20%” of the compensation amount, making it “10%”, and giving ‘eight (08) weeks’ time to the petitioner to deposit the same, from the date of receipt of copy this order. The remaining order of the learned Sessions Judge shall remain in effect. If the petitioner fails to deposit the amount as ordered by this Court within the above stipulated timeframe, the learned Sessions Judge is authorized to proceed against the petitioner as per law.

Interlocutory applications, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

Dt. 06.01.2025

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THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

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CRIMINAL PETITION No:7676 OF 2024

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Date: 06.01.2025

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