

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
* HONOURABLE SRI JUSTICE HARINATH.N**

+ CRIMINAL PETITION NO: 4339 OF 2023
% 06.08.2025

Between:

1.GANGAVARAPU CHANDRASEKHAR NAIDU, S/O
CHENCHIAH NAIDU. R/O OPPOSITE SAI DEEP HEAVEN
APARTMENT. FIRST FLOOR, ADITYA NAGAR, 1ST LINE,
NELLORE CITY, SPSR NELLORE DISTRICT-524002.

...PETITIONER/ACCUSED

AND

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

2.NELLORE HARSHAVARDHAN REDDY, S/O LATE VENKATA
KRISHNA REDDY, R/O NEAR RAMALAYAM, INAMADUGU
VILLAGE, KOVUR MANDAL, SPSR NELLORE DISTRICT.

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused:

1.SIVAPRASAD REDDY VENATI

Counsel for the Respondent/complainant(S):

1.RAMAKRISHNA AKURATHI

2.PUBLIC PROSECUTOR (AP)

The Court made the following:

<Gist:

>Head Note:

? Cases referred:

(2008) 2 SCC 321

This Court made the following :

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
+ CRIMINAL PETITION NO: 4339 OF 2023
% 06.08.2025

Between:

1.GANGAVARAPU CHANDRASEKHAR NAIDU, S/O
CHENCHIAIAH NAIDU. R/O OPPOSITE SAI DEEP HEAVEN
APARTMENT. FIRST FLOOR, ADITYA NAGAR, 1ST LINE,
NELLORE CITY, SPSR NELLORE DISTRICT-524002.

...PETITIONER/ACCUSED

AND

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

2.NELLORE HARSHAVARDHAN REDDY, S/O LATE VENKATA
KRISHNA REDDY, R/O NEAR RAMALAYAM, INAMADUGU
VILLAGE, KOVUR MANDAL, SPSR NELLORE DISTRICT.

...RESPONDENT/COMPLAINANT(S):

DATE OF ORDER PRONOUNCED: 06.08.2025

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE HARINATH.N

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of order may be marked
to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair
copy of the order? | Yes/No |

JUSTICE HARINATH.N

APHC010304082023



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

[3457]

WEDNESDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE HARINATH.N

CRIMINAL PETITION NO: 4339/2023

Between:

1.GANGAVARAPU CHANDRASEKHAR NAIDU, S/O
CHENCHIAIAH NAIDU. R/O OPPOSITE SAI DEEP HEAVEN
APARTMENT. FIRST FLOOR, ADITYA NAGAR, 1ST LINE,
NELLORE CITY, SPSR NELLORE DISTRICT-524002.

...PETITIONER/ACCUSED

AND

1.THE STATE OF ANDHRA PRADESH, , REP. BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF ANDHRA PRADESH,
AMARAVATI.
2.NELLORE HARSHAVARDHAN REDDY, S/O LATE VENKATA
KRISHNA REDDY, R/O NEAR RAMALAYAM, INAMADUGU
VILLAGE, KOVUR MANDAL, SPSR NELLORE DISTRICT.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of
BNSS praying that in the circumstances stated in the Memorandum of
Grounds of Criminal Petition, the High Courtpleased to quash the
entire proceedings against the petitioner in CC. No. 250 of 2023 on the
file of The Additional Judicial Magistrate of First class, Kovur, SPSR
Nellore District being in abuse of process of law and Court and pass

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying
that in the circumstances stated in the Memorandum of Grounds of
Criminal Petition,the High Court may be pleased pleased to Dispense

with the filing of the certified copy of in CC. No. 250 of 2023 on the file of The Additional Judicial Magistrate of First Class, Kovur, SPSR Nellore District. and pass

IA NO: 2 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased pleased to stay all further proceedings in CC. No. 250 of 2023 on the file of The Additional Judicial Magistrate of First Class. Kovur. SPSR Nellore District and pass

IA NO: 1 OF 2024

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased Pleased to extend the stay granted by this hon'ble Court dated 03-07-2023 in IA No. 2 of 2023 in Crl.P No. 4339 of 2023 and pass

Counsel for the Petitioner/accused:

1.SIVAPRASAD REDDY VENATI

Counsel for the Respondent/complainant(S):

1.RAMAKRISHNA AKURATHI

2.PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE HARINATH. N**CRIMINAL PETITION No.4339 OF 2023****ORDER :**

1. The petitioner is seeking quash of CC.No.250 of 2023 on the file of Additional Judicial Magistrate of First Class, Kovur. The petitioner is arraigned as accused for the alleged offence under Section 138 of Negotiable Instruments Act.
2. It is submitted that the 2nd respondent filed a complaint alleging that the 2nd respondent along with one M.Naga Raju were in the real estate business and in order to facilitate generation of revenue an agreement of sale cum GPA was entered on the name of the petitioner with an understanding that the accused will re-convey the title to the complainant.
3. It is stated in the complaint that the petitioner along with M.Naga Raju without any intimation to the 2nd respondent executed a registered sale deed to one R.Sunil Kumar and collected the sale consideration. On demand from the 2nd respondent it is alleged that the petitioner issued a cheque towards part-payment and that the said cheque was dishonoured when it was presented.
4. The cheque bearing No.000005, dated 01.01.2023 was presented on 18.01.2023 which was returned dishonoured on

19.01.2023, thereafter, a legal notice dated 27.01.2023 was issued which was served on the petitioner on 28.01.2023. As the petitioner failed to pay the amounts, a complaint was filed.

5. The learned counsel appearing for the petitioner submits that the legal notice served on the petitioner does not mention the amount called upon for payment. The legal notice would simply call upon the petitioner to pay the amount covered under the cheque bearing No.000005 of HDFC Bank within a period of 15 days.
6. The learned counsel for the petitioner places reliance on the judgment of Hon'ble Supreme Court in the matter of **Rahul Builders Vs. Arihant Fertilizers & Chemicals and another**¹, the Hon'ble Supreme Court held that notice under Section 138 of NI Act would have to specify the amount demanded, in absence of demand of specified amount the notice cannot be considered as a valid statutory notice.
7. The learned counsel appearing for the 2nd respondent submits that the ground on which the petitioner is seeking quash of the case is a hyper-technical objection. It is submitted that the legal notice would have to be read as a whole notice and not in isolation. It is submitted that the legal notice has specifically

¹ (2008) 2 SCC 321

called upon the petitioner to pay the amount covered under cheque bearing No.000005 of HDFC Bank within a period of 15 days from the date of receipt of notice. It is further submitted that the petitioner is well aware of the amount for which the subject cheque was drawn. As such, there should be no ambiguity in the mind of the petitioner in paying up the cheque amount covered under the said cheque. It is also submitted that the petitioner instead of paying up the cheque amount as called upon, has also not responded to the legal notice nor called upon the 2nd respondent to clarify if there was any ambiguity in understanding the legal notice or any confusion with regard to the amount required to be payable on account of the dishonoured cheque. The petitioner has committed the offence under Section 138 of NI Act and as such would have to face trial and discharge the onus of burden of proof before the trial Court.

8. Heard the learned counsel for the petitioner, learned Assistant Public Prosecutor for the State and the learned counsel appearing for the 2nd respondent. Perused the material on record.
9. The short point for consideration in this petition is whether the notice dated 27.01.2023 issued by the 2nd respondent to the

petitioner can be considered as a statutory notice issued under Section 138 of NI Act or not.

10. Section 138 of NI Act reads as follows ;

138. Dishonour of cheque for insufficiency, etc., of funds in the account — *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability”

11. The provision of law is unambiguous and the 2nd respondent ought to have specified the amount covered under the cheque in question. It is also pertinent to note that the entire legal notice does not specify as to for what amount the cheque bearing

No.000005 drawn on HDFC Bank was allegedly issued by the petitioner to the 2nd respondent.

12. The stand taken by the 2nd respondent that the petitioner cannot dispute the amount for which he has drawn the subject cheque and issued the same to the 2nd respondent for encashment. It is also submitted that the 2nd respondent is well aware as to the value of the subject cheque and ought to have repaid the cheque amount as called upon to avoid the legal consequences under Section 138 of NI Act.
13. Negotiable Instruments Act, 1881 is a special enactment and the statutory requirement of issuing a notice calling upon the drawer of cheque to pay the amount covered under the cheque is an essential ingredient for invoking the provisions Section 138 of NI Act for filing a criminal case for the offence of dishonour of cheque. The format of the legal notice should communicate the amount which is to be repaid within a period of 15 days from the date of receipt of the legal notice.
14. If no specified amount is mentioned in the legal notice assuming the drawer of the cheque is not able to recollect the value of the cheque for which it was drawn and issued, he would be incapable of assuming the amount for which he has drawn the cheque and he would not be able to repay the cheque amount as

called upon within a period of 15 days from the date of receipt of legal notice.

15. If the statutory legal notice does not specify the amount of which for which it is drawn, the same cannot be considered as a statutory notice and initiation of the complaint under Section 138 of NI Act without issuing a valid legal notice cannot sustain.
16. On the facts of the case, the entire legal notice does not state as to for what amount cheque bearing No.000005 drawn on HDFC Bank and issued by the petitioner to the 2nd respondent for encashment. Such a legal notice is not a valid statutory notice under Section 138 of NI Act.
17. Section 138(b) of NI Act, 1881 makes it mandatory for the legal notice to raise the demand for payment of the cheque amount. The specified amount for which the cheque was drawn would have to be essentially mentioned in the statutory notice. It should not be left to the imagination of the drawer of the cheque to recollect the amount for which the subject cheque was drawn and comply with the requirement of the repaying the said amount within a period of 15 days. Mentioning of the specified amount for which the cheque was drawn in the statutory legal notice is a statutory and mandatory requirement for considering the legal notice as a statutory and valid legal notice.

18. A complaint lodged on the basis of defective notice cannot sustain the scrutiny of law. Accordingly, CC.No.250 of 2023 on the file of Additional Judicial Magistrate of First Class, Kovur is hereby quashed against the petitioner.

19. Accordingly, the criminal petition is allowed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE HARINATH.N

Dated 06.08.2025
KGM

THE HON'BLE SRI JUSTICE HARINATH. N

CRIMINAL PETITION No.4339 OF 2023

Dated 06.08.2025

KGM