

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.11646 OF 2022**

Between:

Boddu Jhansi Rani

... Petitioner

And

The State of Telangana,  
rep. by its Public Prosecutor,  
High Court for the State of Telangana,  
Hyderabad & another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.04.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals     | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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**K. SURENDER, J**

\* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 11646 of 2022

% Dated 12.04.2023

# Boddu Jhansi Rami

... Petitioner

And

\$ The State of Telangana,  
rep. by its Public Prosecutor,  
High Court for the State of Telangana,  
Hyderabad & another

... Respondents

! **Counsel for the Petitioner:** Sri. Penjuri Venugopal

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

> **HEAD NOTE:**

? **Cases referred**

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.11646 OF 2022****ORDER:**

1. This Criminal Petition is filed to quash the proceedings in C.C.No.1551 of 2019 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Secunderabad for the offences under Section 138 of the Negotiable Instruments Act.
2. The petitioner is questioning the prosecution under Section 138 of the Negotiable Instruments Act for return of the cheque presented after three months from the date on the cheque.
3. The case of the 2<sup>nd</sup> respondent is that the cheque bearing No.029221 dated 21.09.2018 for Rs.9.00 lakhs was issued. The said cheque was presented for clearance on 27.12.2018 in the bank where the 2<sup>nd</sup> respondent was maintaining his account and same was returned unpaid on the ground of 'insufficient funds'.
4. Aggrieved by the said return of the cheque, notice was issued and thereafter, for the reason of not paying amount covered by the cheque, complaint was filed.
5. The only ground raised by the learned counsel for the petitioner is that the cheque is dated 21.09.2018, however, the said cheque was presented on 27.12.2018, which is beyond the validity

period of three months of the cheque. For the said reason, the prosecution cannot be maintained against the petitioner/accused. He relied on the judgment of the Hon'ble Supreme Court in the case of **Shri Ishar Alloy Steels Ltd., v. Jayaswals Neco Limited** in Appeal (crl.)219 of 2001 arising out of Special Leave Petition (Crl.) 3854 of 2000, dated 22.02.2001, wherein, the Hon'ble Supreme Court while dealing with the case under Section 138 of the Act, wherein the cheque was presented beyond six months. It was held that the criminal Court had no jurisdiction to issue process to the appellant and accordingly set aside the criminal proceedings.

6. On the other hand, learned counsel appearing for the 2<sup>nd</sup> respondent would submit that the cheque is not returned for the reason of not being valid but specific reason was given that funds were insufficient. Once the cheque is returned on the ground of insufficient funds, the ingredients required to be satisfied under Section 138 of the Act are made out and accordingly, the prosecution can be maintained. He also submits that the issues raised by the accused can only be decided during the course of trial and proceedings cannot be quashed under Section 482 of Cr.P.C.

7. It is not in dispute that the subject cheque was presented beyond the three month period of the date of the cheque. The

Reserve Bank of India had issued notification on 04.11.2011 signed by the Chief General Manager in-Charge. The said notification was issued in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 and accordingly directed the Banks not to make payment of the cheques/drafts/pay order/bankers cheque if the cheques are presented beyond the period of three months from the date of such instruments.

**Section 35A in BANKING REGULATION ACT,1949** reads as follows:

<sup>177</sup> [ 35A Power of the Reserve Bank to give directions. —

Where the Reserve Bank is satisfied that— in the <sup>178</sup> [public interest]; or <sup>179</sup> [ in the interest of banking policy; or] to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions. The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.]

8. Under Section 138-A of N I Act, it is mentioned that the cheque should have been presented to the Bank within a period of six months from the date on which it is drawn or within the period of validity. Section 35-A of the Banking Regulation Act, 1949 confers powers to the Reserve Bank for giving directions in the interest of public or banking policy. Accordingly directions were issued that the Banks should not make payment of the cheques

which are presented beyond the period of three months from the date of such instrument.

9. Section 138-A of the Negotiable Instruments Act deals with two contingencies, firstly, the cheque being presented within a period of six months and the secondly, within the period of its validity whichever is earlier. By virtue of the notification of the Reserve Bank of India, the period of validity would be three months and the cheque should have been presented within a period of three months. The Bank has committed an error in entertaining the cheque and giving memo stating that the cheque was returned for the reason of 'insufficient funds'. It is the specific direction of the Reserve Bank of India that the Banks should not entertain the cheque beyond the period of three months which had to be scrupulously followed by the Bank and should have returned the cheque on the ground of being stale or invalid.

10. The basis for prosecution is the return of the cheque which was presented beyond the period of its validity. Applying the judgment reported in **Shri Ishar Alloy Steels Ltd., v. Jayaswals Neco Limited's case (supra)**, the Criminal Court does not have jurisdiction to proceed with the trial of the petitioner.

11. In the result, the proceedings against the petitioner in C.C.No.1551 of 2019 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Secunderabad, are hereby quashed.

12. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

**K.SURENDER, J**

Date: 12.04.2023

Note: LR copy to be marked.

B/o.kvs

**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL PETITION No.11646 OF 2023**

**Dt.12.04.2023**

kvs