

**(1992) 02 AP CK 0039**  
**In the Andhra Pradesh High Court**

Union Road Ways (P) Ltd.

APPELLANT

Vs

Shah Ramanlal Ritesh Kumar and Another

RESPONDENT

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**Date of Decision :** 14-02-1992

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (1992) 1 ALT 643 : (1992) CivCC 420 : (1993) 76 CompCas 315

**Hon'ble Judges :** J. Eshwara Prasad, J

**Bench :** Single Bench

**Advocate :** M.V. Bharati and Ravinder Bharati, for the Appellant; Public Prosecutor, for the Respondent

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## Judgement

J. Eswara Prasad, J.—The petitioners are accused in C.C. No. 110 of 1990 on the file of the VII Additional Judicial First Class Magistrate, Vijayawada, for the offences punishable under sections 138 and 142 of the Negotiable Instruments Act, 1881.

2. The first petitioner is the company and the second petitioner is the director. According to the complainant, a cheque was issued by the second petitioner for Rs. 15,000 on June 8, 1990, in favour of the first respondent and the said cheque was presented on June 19, 1990, and was returned by the bank on June 20, 1990, with an endorsement "refer to drawer". Presuming that the said endorsement made that the said cheque was issued without necessary funds in the account of the petitioners, the respondent laid the complaint, stating therein that he issued a registered notice dated June 23, 1990, calling upon the petitioners to pay the said amount and the petitioners have failed to pay the amount.

3. Learned counsel for the petitioners submits that blank cheques were kept in the custody of the branch manager of the company; on their being misused by the said branch manager, a complaint was launched with the police and F.I.R. dated June 24, 1990, was filed. He further submits that no offence is made out u/s 138 of the Negotiable Instruments Act, 1881, inasmuch as the cheque was not

returned with the endorsement that "it was returned because of insufficiency of funds standing in the name of the petitioners in their bank account as required by section 138 of the Act."

4. A reading of the complaint shows that the cheque was returned with the endorsement "refer to drawer". From this, the complainant inferred that the cheque was issued without necessary funds in the account of the petitioners and the cheque was returned on account of the insufficiency of funds in their account. Such an inference cannot be drawn. The cheque might have been returned for various reasons. Under similar circumstances the Punjab and Haryana High Court in Abdul Samad, Managing Director of Bias Steel Pipe Industries Pvt. Ltd. Vs. Satya Naraiyan Mahawar, , held that there is no justification to let the proceeding continue. To the same effect is the decision of the Karnataka High Court in Vyavasaya Seva Sahakara Sangha Niyamitha and others Vs. State of Karnataka and others, .

5. In view of the averments in the complaint stating that the cheque was returned for being referred to the drawer, the offence u/s 138 of the Negotiable Instruments Act, 1881, is not made out in the complaint. The proceedings in C.C. No. 110 of 1990 on the file of the VII Additional Judicial First Class Magistrate, Vijayawada, are accordingly quashed.