



CNR: KAHC010246832024

NC: 2026:KHC:52115
CRL.A No. 958 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 958 OF 2024 (A)

BETWEEN:

SURESH,
AGED ABOUT 48 YEARS,
S/O SWAMY GOWDA,
NO 7/17, 7TH MAIN, 15TH CROSS,
ML SUBBARAJ LAYOUT,
LAKKASANDRA,
BENGALURU - 560 030.

...APPELLANT

(BY SRI. VISHWAS S. REDDY., ADVOCATE)

AND:

YOGESH B.R.
AGED ABOUT 40 YEARS,
S/O RAJEGOWDA TIMBER,
BOOKINAKERE VILLAGE,
POST AND HOBLI,
K.R. PET TALUK,
MANDYA DISTRICT,
KARNATAKA - 571 812.

...RESPONDENT

THIS CRL.A IS FILED UNDER SECTION 378(4) CR.PC BY
THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS
HONOURABLE COURT MAY BE PLEASED TO SET ASIDE THE
ORDER DATED 20.02.2024 PASSED IN C.C.NO.22709/2022 BY

Digitally
signed by
REKHA R
Location:
High Court
of Karnataka



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THE 16TH ADDL. CMM, BENGALURU AND RESTORE THE COMPLAINT IN C.C.NO.22709/2022.I.A.NO.1/2024 FOR SPECIAL LEAVE.I.A.NO.1/2024 FILED BY THE ADVOCATE FOR THE APPELLANT PRAYING TO GRANT LEAVE TO FILE THE APPEAL AGAINST THE JUDGMENT DATED:20.02.2024, PASSED IN C.C.NO.22709/2024, BY THE 16TH ADDL. CMM, BENGALURU, FOR THE REASONS STATED THEREIN AND ETC.,

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellant has preferred this appeal against the order dated 20.02.2024 passed by XVI Additional Chief Metropolitan Magistrate, Bengaluru, in C.C.No.22709/2022.

2. On the basis of complaint filed by the appellant/complainant under Section 138 of N.I.Act, case was registered in PCR.No.16734/2021. After sworn statement of the complainant, the case was registered in



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C.C.No.22709/2022. Summons was duly served to the accused. However, accused did not appear. Hence, Non-bailable warrant was issued against the accused on two occasions, but the same was not executed. However, in the absence of accused, the trial Court has referred the case to the Lok Adalath on 11.07.2023. Again the trial Court has issued Non-bailable warrant against accused from time to time. That on 20.02.2024, the trial Court has passed the following order:

"20/02/2024

Again case called out, at 04-10 P.M.

Complainant called out, absent. No representation for complainant.

Perused the records. There are more than 10 dates of hearing running around for more than 10 months for steps and also for service of summons and execution of NBW and to furnish the process fee.

But the complainant continuously remained absent. In spite of sufficient opportunity were given the complainant continuously remained absent and failed to take steps.

In spite of order, process also not paid continuously for several dates of hearing. The complainant also failed



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to appear before Lok Adalath for more than 1 time inspite of issuance of notice.

No doubt it is true that the case should not be dismissed either for default or for non prosecution. But on the other hand, the case has to be decided on merits and the real controversy between the parties has to be adjudicated finally and effectively.

But in this case, the complainant continuously remained absent. This shows that, the complainant is not interested in prosecuting this case. The proceedings of this nature is summary in nature as per Sec.143 of N.I. Act, which is required to be concluded in respect of trial within 6 months from the date of filing the complaint.

But, complainant continuously remained absent. Hence this court has no option but to dismiss the complaint for non prosecution. Hence, complaint is dismissed for non prosecution."

3. On perusal of the order sheet, it is crystal clear that after issuance of Non-bailable warrant, the trial Court has not ascertained whether the Non-bailable warrant is executed or not. Though the Non-bailable warrant is not returned, the trial Court has dismissed the complaint on the ground that the complainant remained absent. It is not sustainable under law. Once Non-bailable warrant is issued



against the accused, it is the duty of the trial Court to ensure that whether the Non-bailable warrant has been executed or not. The trial Court has blindly passed the order dismissing the compliant without assigning proper reasons, which is not sustainable under law. Accordingly, I proceed to pass the following:

ORDER

- (i) Appeal is ***allowed***.
- (ii) The order dated 20.02.2024 passed by XVI Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.22709/2022 is set aside and the case is restored to file.
- (iii) The trial Court is directed to secure the presence of accused and proceed with the case in accordance with law.
- (iv) The appellant/complainant is also directed to take necessary steps to secure the accused.



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(v) The appellant/complainant is directed to appear before the trial Court on 28.10.2026 without seeking any further notice from the trial Court.

The Registry is directed to send a copy of this order along with the trial Court records forthwith to the concerned Court.

Sd/-
(G BASAVARAJA)
JUDGE

RR
List No.: 1 Sl No.: 31