



Crl.R.C.(MD)No.763 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.763 of 2025

P.Murugan

... Petitioner/Appellant/
Accused

Vs.

S.Jesho

... Respondent/Respondent/
Complainant

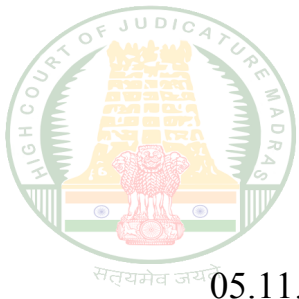
PRAYER : Criminal Revision Case filed under Section 438 r/w 442 of BNSS, to call for the records relating to the impugned judgment passed by Learned Additional District Court (FTC), Theni in C.A.No.82 of 2022 dated 05.11.2024 and the order of Learned Judicial magistrate (FTC), M.L., Uthamapalayam in C.C.No.71 of 2018, dated 17.08.2022 and set aside the same.

For Petitioner : Mr.C.Ramesh

For Respondent : Mr.B.Santhanam Rajesh Kumar

ORDER

Challenging the order passed by the learned Additional District Court (Fast Track Court), Theni in Crl.A.No.82 of 2022, dated



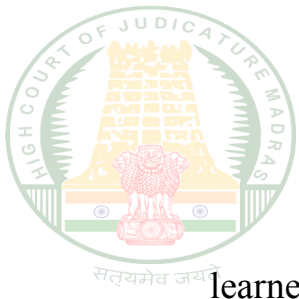
Crl.R.C.(MD)No.763 of 2025

WEB COPY

05.11.2024 dismissing the said criminal appeal for non appearance of the appellant, this criminal revision case is filed.

2. The learned counsel for the petitioner relying upon the judgment of this Court in Crl.R.C(MD)No.8 of 2025, dated 07.03.2025 categorically submitted that in criminal appeal, even if the accused does not appear through counsel appointed by him, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae and cannot dismiss the appeal merely because of non representation or default of the Advocate for the accused and on that basis, he submitted that the impugned order necessarily should be set aside and the same must be remanded back to the learned Additional District Judge (FTC), Theni. He also pointed out that already 20% of the compensation amount i.e., Rs.20,000/- has been deposited to the credit of C.C.No.71 of 2018 on the file of Judicial Magistrate (FTC) M.L, Uthamapalayam and pressed for allowing the criminal revision case.

3. Per contra, the learned counsel for the respondent placed before me the copy of B-diary from 13.10.2022 to 05.11.2024 on the file of the



Crl.R.C.(MD)/No.763 of 2025

WEB COPY

learned Additional District Court (FTC), Theni and pointed out that the learned Additional District Judge had given ample opportunity for the petitioner herein to conduct his case and the case was dragged on for several hearings only at the instance of the petitioner herein and hence, he is not justified in seeking a remand back and the total cheque amount is to a tune of Rs.15,00,000/-. He pressed for dismissal of the criminal case.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and carefully perused the materials available on record.

5. On careful perusal of the B-Diary extract placed before me by the learned counsel for the respondent from 31.07.2023, for 46 hearings, the case was posted for discovery / inspection / production and thereafter, on 24.10.2024, the same was posted for appearance and after recording the non-appearance of the party on 30.10.2024, the appeal came to be dismissed.



Crl.R.C.(MD)No.763 of 2025

WEB COPY

6. However, no doubt a criminal appeal cannot be dismissed for non-prosecution. But the learned counsel for the respondent submitted that the petitioner has been prolonging to conduct the case diligently only to protract the speedy disposal of trial. He insisted that in case of allowing the revision, the appellate Court may be directed to hear the appeal and dispose of the same within a short period to be stipulated by this Court.

7. Hence, at this point, taking cue from the judgment of this Court in Crl.R.C(MD)No.8 of 2025, dated 07.03.2025, this criminal revision case is allowed. The relevant portion of the same is extracted as follows:

8. At this juncture, it is necessary to refer the judgment of this Court in a similar case in P.Sethu Vs. R.Selvakumaran passed in Crl.RC(MD)No.519 of 2024, dated 04.10.2024, wherein this Court has observed as follows :

“5. The learned Counsel for the petitioner would rely on the decision of the Hon'ble Supreme Court in the case of K.Muruganandam and Others Vs. State represented by the Deputy Superintendent of Police and another in Crl.A.No.809 of 2021, dated 12.08.2021, wherein also the Criminal Appeal was dismissed for non-prosecution and the Hon'ble Apex Court has observed



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Crl.R.C.(MD)No.763 of 2025

that it is well settled if the accused does not appear though Counsel appointed by him or her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the Advocate for the accused and on that basis has set aside the impugned judgment and relegate the parties before the High Court for hearing the appeal afresh on its own merits and in accordance with law.

6. At this juncture, it is necessary to refer a judgment of the Full Bench of the Hon'ble Supreme Court in Bani Singh & Ors vs State Of U.P, reported in AIR 1996 SC 2439 and the relevant passages are extracted hereunder:

“We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does



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Crl.R.C.(MD)No.763 of 2025

not contemplate dismissal of the appeal for non-prosecution simplicitor. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfy itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record.

.....

Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the Court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the Court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits



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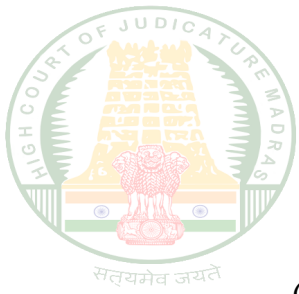


Crl.R.C.(MD)No.763 of 2025

in the absence of the appellant, the highrer court can remedy the situation is there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.”

7. Subsequently, a Division Bench of the Hon'ble Supreme Court, in the case of K.S.Panduranga vs State Of Karnataka reported in AIR 2013 SC 2164 has reiterated the position stated by the Hon'ble Supreme Court in Bani Singh's case above referred and held as follows:

“22. From the aforesaid decision, the principles that can be culled out are (i) that the High Court cannot dismiss an appeal for non- prosecution simpliciter without examining the merits; (ii) that the court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent; (iii) that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; (iv) that it can dispose of the appeal after perusing the record and judgment of the trial court; (v) that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused-appellant if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to



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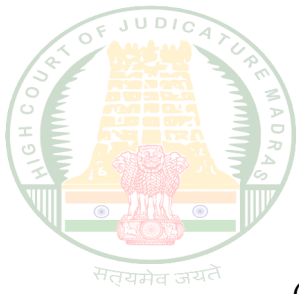


Crl.R.C.(MD)No.763 of 2025

appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and (vi) that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.

*23. In **Bapu Limbaju Kamble (supra)**, and **Man Singh (supra)**, this Court has not laid down as a principle that it is absolutely impermissible on the part of the High Court to advert to merits in a criminal appeal in the absence of the counsel for the appellant. We have already stated that the pronouncement in **A.S. Mohammed Rafi (supra)**, dealt with a different situation altogether and, in fact, emphasis was on the professional ethics, counsel's duty, a lawyer's obligation to accept the brief and the role of the Bar Associations. The principle laid down in **Sham Deo Pandey (supra)** relying on **Siddanna Apparao Patil (supra)**, was slightly modified in **Bani Singh (supra)**. The two-Judge Bench in **Mohd. Sukur Ali(supra)**, had not noticed the binding precedent in **Bani Singh(supra)**.*

*29. Regard being had to the principles pertaining to binding precedent, there is no trace of doubt that the principle laid down in **Mohd.Sukur Ali (supra)** by the learned Judges that the court should not decide a criminal case in the absence of the counsel of the accused as an accused in a criminal case should not suffer for the fault of his counsel and the court should, in such a situation, must*



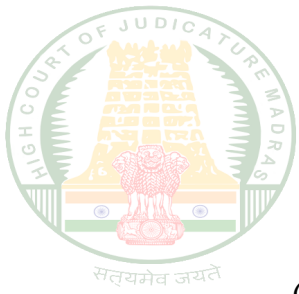
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Crl.R.C.(MD)No.763 of 2025

appoint another counsel as amicus curiae to defend the accused and further if the counsel does not appear deliberately, even then the court should not decide the appeal on merit is not in accord with the pronouncement by the larger Bench in Bani Singh(supra). It, in fact, is in direct conflict with the ratio laid down in Bani Singh (supra). As far as the observation to the effect that the court should have appointed amicus curiae is in a different realm. It is one thing to say that the court should have appointed an amicus curiae and it is another thing to say that the court cannot decide a criminal appeal in the absence of a counsel for the accused and that too even if he deliberately does not appear or shows a negligent attitude in putting his appearance to argue the matter. With great respect, we are disposed to think, had the decision in Bani Singh (supra) been brought to the notice of the learned Judges, the view would have been different.

36. In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in Mohd. Sukur Ali(supra) to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in Bani Singh (supra), is per incuriam. We may hasten to clarify that barring the said



Crl.R.C.(MD)No.763 of 2025

WEB COPY

aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the obtaining factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his submissions and the same have been dealt with.”

9.Considering the legal position above referred, this Court has no hesitation to hold that the dismissal of the Criminal Appeal for default, cannot legally be sustained and as such, the same is liable to be set aside.”

6. This Court is of the considered view that the impugned judgment in criminal appeal is need to be set aside and accordingly, the judgment, dated 05.11.2024 in Crl.A.No.82 of 2022 is set aside. The learned Additional District Court (FTC), Theni is directed to restore the appeal to its file and to proceed the hearing of the appeal and dispose of the same within a period of two (2) months from the date of receipt of copy of this order. In case if the petitioner is not represented by his counsel



Crl.R.C.(MD)No.763 of 2025

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again or is adopting dilatory tactics, the learned Additional District Court (FTC), Theni is directed to follow the dictum laid down by the Hon'ble Supreme Court in *Bani Singh & others vs State Of U.P.*, reported in *AIR 1996 SC 2439* as referred above.

7. In view of the above, this Criminal Revision Case is allowed.

28.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Court (FTC),
Theni.
- 2.The Judicial magistrate (FTC), M.L.,
Uthamapalayam.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD)No.763 of 2025

L.VICTORIA GOWRI ,J.

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Order made in
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