



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-06-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 10985 of 2026

Selvi Ezhumalai W/o Ezhumalai,
No.3/705, Avaiyar Street,
Medavakkam Koot Road,
Medavakkam, Chennai.

..Petitioner(s)

Vs

Vensar. B S/o Balu,
No.2, Anna Nagar,
Madambakkam Main Road,
Madambakkam, Chennai.

..Respondent(s)

PRAYER: The criminal original petition filed under Section 528 of BNSS to direct the Honourable Judicial Magistrate, FTC at Alandur to restore the CC.No.184 of 2025 (to file which was disposed on 26.02.2026 at the stage of trial, which was Dismissed for default) setting aside the order dated 26.02.2026 and restore the complaint before the Honourable Judicial Magistrate, FTC at Alandur.

For Petitioner(s):

Mr.N.Alamelu Mangai

ORDER

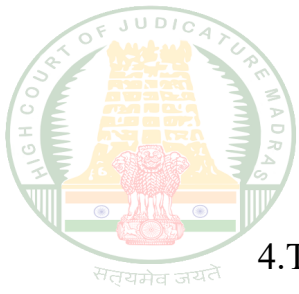
The petitioner /complainant had filed a 138 case against the respondent in C.C.No.184 of 2025. The case was dismissed for non prosecution on 26.02.2026, against which, the present petition has been filed.



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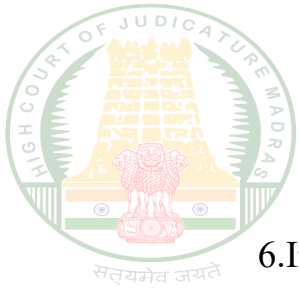
2.The contention of the petitioner is that the respondent for his financial requirement of construction had borrowed a loan of Rs.20 lakhs from the complainant to return that within a period of six months and also shown a property at Ganapathy Nagar, where construction is to be done. Further, the property was mortgaged in the complainant's name for the security purpose. Since the complainant, not much educated believing the representation of the respondent, had given a loan of Rs.20 lakhs borrowing amount from others and pledging of jewels. Further, the property was also mortgaged in favour of the complainant on 29.07.2021, thereafter, the respondent neither paid the mortgaged amount nor interest nor paid back the cheque amount. Hence, after intimation and issuing statutory notice, the present complaint has been filed.

3.The petitioner being a lady, she used to attend the court regularly on 07.11.2025, there was no presiding officer, hence, the case was posted to 12.12.2025 and on that day, there was advocate boycott and thereafter, it was posted 05.01.2026. Again there was advocate boycott and case was adjourned to 10.02.2026. On 10.02.2026, for the absence of the complainant, a petition has been filed under Section 279 and allowed and the case was posted 26.02.2026, on which date, the date has not been properly noted and hence, on 26.02.2026, there was no representation for the complainant, hence, the complaint was dismissed for default.



4.The learned counsel for the petitioner submitted that the absence of the complainant was due to the mistake of her advocate, for which, the complainant being a lady, ought not to be penalized. Further, short-circuiting the complaint on technical grounds would amount to a denial of justice. Since the complaint was dismissed only for non prosecution and not on merits, hence, the complaint to be restored.

5.Considering the submission and on perusal of the materials available on record, it is seen that the complaint was dismissed for non prosecution on a technical ground and not on merits. Therefore, notice to the respondent is dispensed with. Prior to the dismissal of the complaint, there had been an advocate boycott and hence, there is a likelihood that the hearing date was not properly noted. This Court is of the view that substantial justice can be rendered only after a full-fledged trial and that short-circuiting the proceedings on technical grounds is not proper. For these reasons, this Court finds that the dismissal order is not sustainable. Hence dismissal of the complaint on 26.02.2026 is set aside and the complaint is restored on condition that the petitioner to pay a cost of Rs.5,000/- to the respondent.



6. In view of the above direction, the criminal original petition is allowed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
sms

To

1. Judicial Magistrate Court, FTC at Alandur.



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M.NIRMAL KUMAR, J.

sms

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