



WEB COPY



Crl.A.No.717 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 717 of 2021

M.Total Instruments Solutions,
M.Mazkure Alam,
S/o. C.A.Mohammed Ghouse,
No.140-B, Venkatasamy Road,
New Siddhapudur,
Coimbatore – 641 044.
Rep by its Power of Attorney Agent,
A.Abuthahir, S/o. Amsa,
No.46-A, Kallarai Cheri Street,
Chithannapuram,
Podanur, Coimbatore – 641 023.

Appellant/Complainant

Vs

1. M/s.Ashtapadi Foundation (Trust)
Pinnacle College Trust Office,
Syed Tower, IInd Floor,
Azard Road, Kaloar,
Ernakulam – 682 017.

2.The Principal,
Pinnacle School of Engineering Technology,
Areeplachy Post,
Ayanicode, Karavalloor,
Anchal, Kerala – 691 333.

Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the order of acquittal passed in S.T.C.No.985 of 2017, on the file of

1/18



Crl.A.No.717 of 2021

Judicial Magistrate Court No.3, Coimbatore, dated 31.08.2021 for the offence punishable under Section 138 of the Negotiable Instruments Act, and by allowing the appeal and to restore the private complaint on file.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Ms.C.Bharathi
Legal Aid Counsel

J U D G M E N T

The appellant as complainant filed a private complaint in S.T.C.No.985 of 2017 for offence under Section 138 of the Negotiable Instruments Act against the respondents. The trial Court, by judgment dated 31.08.2021 dismissed the complaint for non prosecution, against which, the present appeal filed.

2. This Court, on 09.07.2024, admitted the appeal and ordered notice to the respondents. At this stage, it would be appropriate to extract the order passed by this Court on 04.11.2025, followed by an order passed on 02.12.2025.

‘Proceedings dated 04.11.2025:

“It is seen that this Court, on 02.01.2025, had directed the learned Chief Judicial Magistrate, Coimbatore, to effect service of



notice through the jurisdictional police. Pursuant to the said direction, the Chief Judicial Magistrate, in D.No.638 of 2025, dated 25.02.2025, had sent a notice to the respondent to be served through the District Police Chief, Ernakulam (City).

2. The District Police Chief, Ernakulam, by communication dated 06.03.2025 respondents to the Chief Judicial Magistrate, Coimbatore, informing that the respondent's address falls within the jurisdiction of the District Police Chief, Kollam Rural a copy marked to the District Police Chief, Kollam Rual for necessary action. This communication was received by the Chief Judicial Magistrate, Coimbatore, on 18.03.2025. Thereafter, there is nothing to indicate, what further action taken, in effect the case pending without any progress.

3. The petitioner filed a private complaint under Section 138 of the Negotiable Instruments Act in S.T.C. No.985 of 2017. The case was periodically adjourned, and summons issued to the respondent/accused on 24.04.2017. On 11.05.2017, it is recorded summons sent by RPAD served to the accused on 20.04.2017, since the accused was absent, bailable warrant issued and remained pending from 11.05.2017 to 13.08.2019. On 13.08.2019, the accused appeared, and warrant was recalled. The case was adjourned to 05.11.2019. Again, on 05.11.2019, the accused (A1 and A2) failed to appear, and thereafter, the case was periodically adjourned.

4. Due to the Covid-19 pandemic, the case was adjourned periodically from 28.05.2020 till 07.05.2021. Thereafter, on 22.07.2021, when the case was called, complainant was not present, since both the complainant and the accused were absent, the case adjourned to 31.08.2021. On that date, i.e., 31.08.2021, there was



Crl.A.No.717 of 2021

no representation on behalf of the complainant and no response to the notice to the complainant, and after granting some time, the complaint was dismissed for non-prosecution. Aggrieved by the said dismissal, the present appeal filed.

5. In view of the above, the learned Chief Judicial Magistrate, Coimbatore, is directed to send a report regarding the follow up steps taken with the District Police Chief, Kollam Rural, to ascertain the status of service of summons.

6. Post the case on 11.11.2025.

7. The Registrar (Judicial) is directed to obtain a report and submit the same before this Court without any further delay.”

Proceedings dated 02.12.2025:

This Court, on 04.11.2025, had called for the report from the learned Chief Judicial Magistrate, Coimbatore to find out the steps taken in serving summons to the respondents/accused. Pursuant to the same, the learned Chief Judicial Magistrate, Coimbatore in D.No.3028/2025 dated 07.11.2025 had sent a report, which reads as follows:



CrI.A.No.717 of 2021

WEB COPY

From	To
Thiru K. Sivakumar, M.L., Chief Judicial Magistrate, Coimbatore.	The Hon'ble Registrar General, High Court of Madras, Chennai - 104.

D.No ³⁰²⁸ / 2025 Dated: 07.11.2025

Honoured Madam,

Sub : Service of summons – E-Process – CrI.A.No. 717 of 2021 on the file of Hon'ble High Court, Madras – status of service of summons and report called for – Report submitted - regarding

Ref : 1. Order in Cr.A.No.717 of 2021 dated 04.11.2025 received by this Court through mail on 06.11.2025
2. Reply from District Police Chief, Kollam Rural dated, 28.03.2025 received by this court on 02.04.2025.
3. E- process of Hon'ble High Court, Madras received by this court on 30.01.2025

-oOo-

I most humbly submit that, I have assumed charge of Chief Judicial Magistrate, Coimbatore on the forenoon of 06.08.2025. On perusal of the files and records I am submitting the report as directed by the Hon'ble High Court, Madras in 1st reference cited order.

I humbly submit that, the reference ^{1st} cited e-process in CIS- Periphery for causing service of summons to the respondent namely M/S.Ashispadi Foundation(Trust), Pinnacle Colleg Trust Office, Syed Tower, II nd Floor, Azad Road, Kaloor, Ernakulam was received in the common establishment of Chief Judicial Magistrate Court. I humbly submit that the said e-process was received by Judicial Magistrate Court No. III, Coimbatore on 30.01.2025 and the same was handed over to this court on 24.02.2025. Soon after the receipt of the same this Court has sent the summons to District Police Chief, Ernakulam City on 25.02.2025 in D.No.638/ 2025 for causing service.

I further humbly submit that, It was informed by the District Police Chief, Ernakulam to this Court that the respondent's address falls within the jurisdiction of the

cont...page 2



Crl.A.No.717 of 2021

WEB COPY

/ 2 /

District Police Chief, Kollam Rural. I humbly submit that, Since the hearing date mentioned in the notice ie., 27.02.2025 already exceeds this court was marked the status of summon as 'not served' on 20.03.2025 in CIS-Periphery.

I further humbly submit that, thereafter on receipt of the letter from this Court the District Police Chief, Kollam Rural has also submitted the report to this court on 02.04.2025 stating that, they have "affixed the notice on the board in front of the institution since the respondent have ceased all the operations and the possession is under the control of Punjab National Bank."

I further humbly submit that, the e-process of summon in the Crl.A.No.717 of 2021 was already marked and closed on 20.03.2025 in CIS-Periphery for the hearing 27.02.2025. The reply from District Police Chief, Kollam Rural was received only on 02.04.2025. Hence this court could not uploaded the reply in CIS-Periphery. This Court not submitted the report dated 02.04.2025 to the Honble High Court, Madras by post.

Hence I am submitting herewith the status report given by the District Police Chief, Kollam Rural on 02.04.2025 for your honours kind perusal and submitting the report for your honours kind consideration.

Yours faithfully,

Chief Judicial Magistrate,
Coimbatore.

Encl:
As above



Crl.A.No.717 of 2021

WEB COPY


POLICE

DEPARTMENT

From District Police Chief
Kollam Rural

To The Hon'ble Chief Judicial Magistrate,
Coimbatore,
Tamil Nadu.

Sub : Serving of Notice issued against Pinnadi Pinnadi School College of Engineering Technology report submitting reg:-

Ref : Letter from CJM Coimbatore regarding the - service of Notice in Cr.A.No 717 of 2021 in the Hon'ble High Court of Judicature Madras- Reg

Kind attention is invited to the subject and references cited.

An instruction from the office of the Chief Judicial Magistrate Court in Coimbatore, dated 25.03.2025, was received. In this office, it was a notice to the Principal of Pinnadi School of Engineering Technology, to state at Arakkudi (P.O), Arakkudi, Arakkudi, Arakkudi, Kerala, along with Section 535(1) of the Cr.P.C. The notice was issued by the Hon'ble High Court of Madras.

In compliance with this, the Station House Officer at Pinnadi Police Station was assigned to serve the notice along with the above-mentioned. The Station House Officer's report reveals that Pinnadi School of Engineering Technology, located at Arakkudi in 2016, and the property, including buildings and other facilities, now under the possession and control of Pinnadi National Bank, National Number 21842350007. Furthermore, the report indicates that there has been no charge, nor present, after institution. The police have effected the notice on the board in front of the institution and taken photographs as evidence. The report also mentions that the charge man for the institution is Harman, son of Harman, residing in Ernakulam.

Accordingly, this office, in compliance with the above-mentioned, is returning the report along with a copy of the notice and the photographs taken after the notice was effected to the institution's premises for further appropriate action as per the law.

Yours faithfully,


 Sabu Mathew K M IPS
 District Police Chief



Crl.A.No.717 of 2021

WEB COPY

2. It is seen that all steps were taken to serve notice to the respondents but respondents are not available in the address.

3. In view of the above, Registry is directed to print the name of the respondents in the cause-list and list the case on 03.12.2025.”

3. On 03.12.2025, despite respondents' name printed in the cause-list, none appeared. Hence, this Court appointed Ms.C.Bharathi as Legal Aid Counsel for the respondents/accused. The order dated 03.12.2025 is extracted hereunder:

“The learned counsel for the appellant/complainant is present.

2. Pursuant to the order passed by this Court on 02.12.2025, the name of the respondents have been printed in the cause list, but there is no representation for the respondents today either in person or through counsel. In view of the same, this Court appoints Ms.C.Bharathi, Enrollment No.MS 3428/2024 (Cell No.9361248738) as Legal Aid Counsel for the respondents/accused.

3. Registry is directed to print the name of Ms.C.Bharathi, learned Legal Aid Counsel for the respondents in the cause-list.

4. The learned counsel for the appellant is directed to serve appeal papers to the learned Legal Aid Counsel for the respondents.

5. Post the case on 17.12.2025.”



Crl.A.No.717 of 2021

WEB COPY

4. (i) The contention of the appellant/complainant is that the appellant deals in purchase and sale of equipments and instruments to Engineering, Polytechnic and educational institutions. The appellant/complainant is the Proprietor of M/s.M.Total Instruments Solutions and he is looking after the day-to-day business, and appointed a Power of Attorney to prosecute the complaint. The first respondent is the Trust running educational institution (Pinnacle College Trust Office) and second respondent, Principal of Pinnacle School of Engineering Technology, Areepilachy Post, Karavalloor, Anchal, Kerala, who placed orders and purchased equipments for college lab by purchase orders dated 13.02.2015 to 13.01.2016 for a total value of Rs.19,13,475/- covered by invoices. The equipments and instruments supplied on credit basis covering several invoices starting from 29.03.2015 to 30.04.2016. The machineries and equipments supplied accepted and delivery taken by the second respondent, thereafter part payments of Rs.2,50,000/- on 23.07.2015 and Rs.5,00,000/- on 03.11.2015, in total, Rs.7,50,000/- paid.

(ii) For the balance outstanding amount and liability, the second respondent issued two cheques, viz., cheque No.201227 dated 11.06.2016 for a sum of Rs.3,52,644/- and cheque No.201257, dated 29.06.2016 for a sum of Rs.4,95,646/-. Both cheques drawn on Federal Bank, Ernakulam Branch.



Crl.A.No.717 of 2021

Thereafter, on the instructions of the appellant, cheques presented. One cheque returned for the reason 'Funds Insufficient' and the other cheque returned for the reason 'stop payment'. Thereafter, second respondent requested the appellant to represent the cheques. The cheques were represented on 07.09.2016 and on 08.09.2016 again it was returned for the reason 'stop payment'. Thereafter statutory notice issued on 03.10.2016. The respondents received notice but neither paid the cheque amount nor sent any reply, following the statutory procedure complaint filed on 01.12.2016. The originals verified on 22.02.2017 and the complaint was taken on file. Thereafter summons issued to the respondents and they have not responded immediately and the case was periodically adjourned.

(iii) On 11.05.2017, service of summons through RPAD recorded and found accused/respondents absent and bailable warrant issued. Thereafter from 18.07.2017 to 13.08.2019, the case was periodically adjourned for 10 hearings for execution of bailable warrant, the complainant was present and finally on 13.08.2019, the case was adjourned to 05.11.2019. In the meanwhile, on 13.09.2019, the accused appeared before the trial Court, filed advance hearing petition and recall warrant petition. On 13.09.2019, the bailable warrant recalled and the case was adjourned to 05.11.2019.



Crl.A.No.717 of 2021

Thereafter, the case was adjourned for preparation of copies for 5 hearings from 05.11.2019 to 08.04.2020.

(iv) On 08.04.2020, due to Covid-19, on the directions of Principal District Judge, Coimbatore, the functioning of the Courts got disrupted and there was restrictions for the litigants to appear before the Courts and the case was periodically adjourned. On 10.11.2020, it is recorded that both the appellant and the respondents not appeared and thereafter on 29.12.2020 and 12.02.2021, petition for dispensing the presence of the complainant filed, subsequently on 09.04.2021 finding no representation for the complainant, notice dated 16.04.2021 is said to have been issued to the complainant for his appearance and the case was adjourned to 07.05.2021. On 07.05.2021, the second spell of Covid-19 surfaced and the case was adjourned from 07.05.2021 to 22.07.2021 finally finding no representation for the complainant, on 31.08.2021, the impugned order passed recording despite service of notice to the complainant on 16.04.2021, no representation for the complainant and dismissed the complaint.

5. The learned counsel for the appellant submitted that in this case the appellant is a small time entrepreneur, he supplied goods to the tune of



Crl.A.No.717 of 2021

WEB COPY

Rs.19,00,000/- and the respondent/accused admitted the receipt of goods and paid a part sum of Rs.7,50,000/-, for the balance amount in discharge of liability, he issued the cheques. There is no dispute with regard to the supply and receipt of goods. The appellant filed invoices confirming supply of goods in the complaint. He further submitted that substantial and real justice can be done only after full-fledged trial, not by short-circuiting the trial on technical grounds which will amount to denying of justice to the appellant/complainant.

6. Further, in support of his contention, the learned counsel relied upon the judgment of Hon'ble Apex Court reported in (2022) 3 SCC 117 and (2023) 4 SCC 326, wherein the Hon'ble Apex Court had given waiver for limitation during the period from 15.03.2020 till 28.02.2022 and further for the point that proviso to Section 256(1) of Cr.P.C. enables the Magistrate to dispense with the attendance of the complainant and proceed with the case where the complainant is represented by a Pleader or by the officer conducting the prosecution or **where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary.** The case is periodically adjourned for preparation of copies and there is no requirement that personal attendance of the complainant, and the case was not adjourned



Crl.A.No.717 of 2021

only for the reason complainant not appeared and trial is getting stalled.

Hence, prayed for allowing this appeal.

7. The learned counsel for the respondents strongly opposed the appellant's contention and submitted that as per Section 256 of Cr.P.C., it is within the discretion of the Magistrate to find out whether the absence of the complainant is genuine or not. In this case, the appellant/complainant though initially showed some interest in prosecuting the case, appeared before the trial Court and thereafter the case was adjourned for preparation of copies, but copies not made ready and furnished to the respondents. The respondents, hailing from the State of Kerala, was travelling all the way from Kerala and appearing before the trial Court covering considerable distance, that too during the COVID period. However, the complainant after filing the complaint, left it midway and not prosecuted the case, due to which, the respondents suffered harassment. It is for the appellant/complainant to be vigilant and the law comes to the aid only of the diligent and not others. On nine hearing dates, neither the appellant/complainant nor his counsel present before the Court. A speedy trial is a fundamental right of the accused and after giving sufficient time and opportunity and serving notice to the appellant/complainant, the complaint dismissed.



Crl.A.No.717 of 2021

WEB COPY

8. In support of her contention the learned counsel relied upon the decision of the Hon'ble Apex Court reported in *AIR 2008 SC 2066*, wherein it is held that the conduct of the complainant gives immense significance. The complainant cannot file a complaint and keep it pending for an indefinite period. Considering all these aspects and also finding that speedy trial is a fundamental right, dismissed the complaint. Further the Hon'ble Apex Court observed that the High Court failed to take into consideration that in dealing with an order of acquittal, the principal of law required to apply is that, if two views are possible, a judgment of acquittal should not be ordinarily interfered with. In this case, it is an order of acquittal passed after finding that complainant not interested in pursuing the complaint and left it dormant. Hence, prayed for dismissal of the appeal.

9. Considering the submissions made on either side and on perusal of materials, it is seen that in this case complaint filed along with supporting documents. All documents verified, thereafter complaint taken on file and summons issued. After receipt of summons, the respondents failed to appear before the trial Court and thereafter bailable warrant issued and the case was periodically adjourned. Finally on 13.09.2019, the respondents/accused



Crl.A.No.717 of 2021

appeared, filed advance hearing petition and warrant recall petition.

Thereafter the case was posted for preparation of copies.

10. It is to be noted that it is a private complaint. The normal procedure in private complaint is that, a complaint is taken on file after verifying whether sufficient copies for the accused are presented along with complainant, thereafter only complaints entertained. In this case, adjourning the case for preparation of copies does not arise. In any event, the case was adjourned for preparation of copies and the absent period of the appellant/complainant was predominantly during the period of COVID, when there was restrictions in functioning of the Courts. It is seen that on 09.04.2021, notice dated 16.04.2021 sent for complainant appearance on 07.05.2021 and from 07.05.2021, the second spell of COVID surfaced and restrictions placed in functioning of Courts. Thus the notice in D.No.854/2021 dated 16.04.2021 lost its significance and purpose. Thereafter the case adjourned and finally on 31.08.2021, referring to the notice dated 16.04.2021, dismissing the complaint is not proper. In all fairness, fresh notice could have been issued to the appellant/complainant. Further on 31.08.2021, the case was posted for appearance of the respondents/accused to receive copies and not for any other reason.



Crl.A.No.717 of 2021

WEB COPY

11. Admittedly, trial is yet to commence and the case was not adjourned for the absence of the appellant/complainant. Dismissing the complaint under Section 256(1) of Cr.P.C. amounts to short circuiting the proceedings and not allowing the case to reach its logical end. Only after a full-fledged trial, the real and substantial justice is delivered.

12. In view of the above, the impugned order dated 31.08.2021 passed in S.T.C.No.985 of 2017 by the learned Judicial Magistrate No.III, Coimbatore is set aside and the complaint in S.T.C.No.985 of 2017 is restored on the file of Judicial Magistrate Court No.III, Coimbatore. The prosecution shall now proceed from the stage, when the order of acquittal/dismissal of the complaint was passed.

13. It is seen that in this case, the complaint was filed in the year 2017. Further the respondents/accused are evading the service of notice, further, despite notice served, not appeared before this Court. The respondent, an educational institution cannot have such an approach. For this reason, in the earlier part of the order the steps taken by the police reproduced. Considering this fact, the Trial Court to issue notice, if required coercive action can be taken. Hence, the trial Court is directed to give priority and preference in



Crl.A.No.717 of 2021

taking the complaint to reach its logical end without giving long adjournments and ensure that the trial is completed preferably within a period of six months from the date of receipt of a copy of this order.

14. With the above directions, the Criminal Appeal is allowed.

15. This Court is very much appreciative for the Legal Aid Counsel, Ms.C.Bharathi for her thorough preparation, research and making effective submissions. The Tamil Nadu State Legal Services Authority shall pay the remuneration to Ms.C.Bharathi, Legal Aid Counsel.

03.02.2026

Index : Yes / No
Neutral citation : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
rsi

To

The Judicial Magistrate No.III,
Coimbatore.



WEB COPY



Crl.A.No.717 of 2021

M.NIRMAL KUMAR, J.

rsi

CRL A No.717 of 2021

03.02.2026