



Crl.R.C(MD)No.931 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.01.2026**

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

CRL.R.C.(MD)No.931 of 2025

Maheshwaran
D/o.Seenivasan

... Petitioner

VS.

1. Dhanushkodi
S/o.Jeganathan

2. Gowtham
S/o.Jeganathan

3. Amutha
S/o.Jeganathan

4. Nallammal
S/o.Jeganathan

... Respondents

PRAYER: Criminal Revision case is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records relating to the case in C.C.No.347 of 2023 on the file of the Learned Judicial Magistrate No.2, Usilampatti, Madurai and set aside the same and direct the Magistrate to fix the date for hearing of the petitioner side evidence in the above case.



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For Petitioner : Mr.Anandapadmanaban
for
M/s.APN Law Associates
For Respondents : Mr.J.Selvam

ORDER

Heard Mr.Anandapadmanaban, learned Counsel for petitioner and Mr.J.Selvam, learned Counsel for Respondent Nos.1 to 4.

2. The present Criminal revision case is filed challenging the order of Judicial Magistrate, Usilampatty in CC.No.347 of 2023, vide order dated 29.05.2025, whereby, the complaint was dismissed for default for non-prosecution. The relevant portion of the order is extracted here under:

"This petition has been filed under Section 190(1)(b), 200 of Cr.P.C.

Complainant present. All accused absent. Petition filed and allowed. Today posted for complainant side evidence as last chance. But complainant not ready. Already sufficient chance given for complainant side evidence. Hence, this complaint is dismissed for default for "non-prosecution."



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3. It is submitted by the learned counsel for the petitioner that it is not in dispute that the impugned order was passed invoking Section 256 of Cr.P.C. It is the case of the petitioner that Section 256 of Cr.P.C. does not empower the Magistrate to dismiss a complaint for default or non-prosecution. He would also submit that one of the essential ingredients for invoking section 256 of Cr.P.C. is that the complainant ought not to have appeared on the date fixed for hearing. However, admittedly, the complainant was in fact present and the impugned order records the same. It is submitted that even if the complainant had been absent, the Magistrate may not have authority to dismiss the matter for default or non-prosecution.

4. To the contrary, learned counsel for the respondents would submit that this is a case in which Section 256 Cr.P.C. was invoked and that, as would be evident upon perusal of the impugned order, the complainant had not been prosecuting the matter for a considerable period and in view thereof, order of dismissal for default ought to be treated/deemed to be an order of acquittal, as it is an order passed during the post-cognizance stage. He would place reliance upon the judgment



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of the Hon'ble Supreme Court in the case of **S. Ramakrishna vs. S.**

Rami Reddy (Dead) by his LRs and others, reported in **2008 (5) SCC**

535, and would also draw support from order of this Court in **Crl.O.P.**

No. 6905 of 2022, dated 06.06.2022.

5. Heard both sides and perused the materials available on record.

6. This court is of the view that there is merit in the submission made by the learned Senior Counsel appearing on behalf of the petitioner for the following reasons :

Before proceeding further it may be relevant to refer Section 256 of Cr.P.C. which reads as under :

"256. Non-appearance or death of complainant -

(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:



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Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the nonappearance of the complainant is due to his death."

The ingredients of Section 256 of Cr.P.C has been explained by the judgment of the Hon'ble Supreme Court in the case of ***S.Ramakrishna vs S.Rami Reddy (Dead) by his LRS and others*** reported in **2008 (5) SCC 535**. Relevant portion is extracted hereunder:

"9. The ingredients of Section 256(1) are: (i) that summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date; and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned."



7. Learned Counsel for respondents placed reliance on the above decision of Supreme Court and order of this Court in Crl.OP.No.6905 of 2022 dated 06.06.2022, to submit that the present challenge to impugned order dated 29.05.2025 is devoid of merits. This Court finds that the submission of the learned Counsel for respondent by placing reliance on the decision of the Supreme Court in *S.Ramakrishna's case* and order in Crl.OP.No.6905 of 2022 is misplaced and in-applicable to the facts of the present case for the following reasons:

- a) From a reading of the decision in *S.Ramakrishna's case*, it would be clear that respondent therein i.e., complainant had not been attending court for a long time;
- b) Appellant was acquitted;
- c) The case was not dismissed for default or non-appearance.

This would be evident from the following extract:

"3. Rami Reddy filed a complaint petition in the Court of Additional Judicial Magistrate First Class, Kurnool purported to be under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'the Act') on 6.6.2001. It was registered as C.C. No. 368 of 2001. Rami Reddy expired on 28.10.2003. Respondents herein filed an application for substitution of their names in place of the said Rami Reddy on



22.12.2003. Appellant filed an objection thereto. No order was passed on the said application. The counsel appearing on behalf of the complainant started representing the proposed heirs of the said Rami Reddy. It appears that on or about 18.4.2005 till 23.1.2006, i.e., on 14 dates nobody represented the complainant.

4. On 23.1.2006, noticing that the respondents had not been attending the court for a long time, the appellant was acquitted by the learned Magistrate in purported exercise of his jurisdiction under Section 256 of the Code of Criminal Procedure. An appeal was preferred there against before the High Court of Andhra Pradesh questioning the validity of the order dated 23.1.2006. By reason of the impugned judgment, a learned single judge of the High Court set aside the said judgment of acquittal holding:

"A perusal of the docket order passed by the Court below, coupled with the extract of diary maintained by the Court below, show that the matter has undergone several adjournments due to the absence of the appellants only, and ultimately, on 23.1.2006 the trial court passed the impugned order. From this it is clear that the appellants are not interested in getting the matter prosecuted. However, as this Court has consistently taken the view that any lis between the parties shall be decided on merits rather than on technicalities, this Court is of the view that the appellants may be given one more opportunity to get the matter prosecuted."

(emphasis supplied)



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8. In Crl.OP.No.6905 of 2022 dated 06.06.2022, it was recorded that the complainant was called absent, as could be seen from point No.

(vii). Relevant portion is extracted hereunder:

"vii) Whiles, when the complaint was still in unnumbered stage, the matter had been taken up by the Magistrate on 12.11.2021 and the learned Judicial Magistrate had dismissed the complaint under Section 256 Cr.P.C. with the following order:-

"Complainant called absent. No representation. Past several hearings complainant called absent. No representation. Complainant is not interested to proceed the case further. Hence the complaint is dismissed U/S 256 Cr.P.C."

(emphasis supplied)

9. Applying the decision of the Supreme Court in *S.Ramakrishna's* case, one of the essential ingredients for invoking Section 256 of the Cr.P.C. is that the complainant ought to be absent. However, admittedly, in the present case, the complainant was present, therefore, the ingredient for invoking Section 256 of Cr.P.C. is absent.

10. Learned Counsel for the respondents has not been able to point out any provision, which enables the Magistrate to dismiss the complaint on the ground of non-prosecution or for default. In any event, from the



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facts recorded, there is no occasion for that question to arise even in view of the fact that complainant was admittedly present.

11. In view thereof, this Court finds that the impugned order is bad for want of jurisdiction and thus set aside. The case in C.C.No.347 of 2023 stands restored to the file of Judicial Magistrate No.II, Usilampatti, with a direction to the Judicial Magistrate No.II, Usilampatti to dispose of the case on merit in accordance with law. It is made clear that both sides would cooperate in the proceedings and ensure that the case is disposed of as expeditiously as possible. All rights and contentions are left open.

12. With the above directions, this Criminal Revision case is disposed of.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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MOHAMMED SHAFFIQ, J.

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To:

The Judicial Magistrate No.II,
Usilampatti, Madurai.

Order made in
CrI.R.C.(MD)No.931 of 2025

07.01.2026