



WEB COPY



Crl.R.C(MD)No.49 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.01.2026**

CORAM

THE HONOURABLE **MR.JUSTICE MOHAMMED SHAFFIQ**

CRL.R.C.(MD)No.49 of 2026

and

Crl.M.P.(MD).No.682 of 2026

Mokkaiyan

... Petitioner

vs.

State of Tamil Nadu rep. by,
The Inspector of Police,
Rajathani Police Station,
Theni District.
Crime No.37/2025

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records and set aside the judgment dated 26.11.2024 passed in Crl.A.No.137 of 2024 on the file of the learned Additional District Judge, Theni, confirming the conviction and sentence imposed upon the petitioner in S.C.No.136 of 2022 on the file of the learned Assistant Sessions cum Chief Judicial Magistrate, Theni dated 30.08.2024 and acquit the petitioner.

For Petitioner : Mr.P.Senguttuarasan

For Respondent : Mr.M.Karunanithi
Government Advocate



Crl.R.C(MD)No.49 of 2026

WEB COPY

ORDER

The present Criminal Revision Petition has been filed challenging the judgment of Additional District Judge (FTC), Theni in Crl.A.No.137 of 2024 dated 26.11.2024, whereby, it was observed that appellant, i.e., petitioner herein, was called absent; there was no representation in appeal and appeal was dismissed summarily. Relevant portion of judgment reads as under:

*“Appellant called absent. No representation,
Perused, This Appeal is dismissed summarily.”*

2. The short question that arises for consideration in the present revision is as to whether it is open to Appellate Court to dismiss the appeal summarily on the premise that appellant is called absent and is not represented by any counsel. The above question is no longer *res integra* and stands resolved by a series of judgments of the Supreme Court and other High Courts.

3. However, before I proceed to answer the above question, it may be relevant to give a brief overview of the case.



Crl.R.C(MD)No.49 of 2026

3.1. The defacto complainant Prakash/PW.1 is the son of the injured witness, Ammavasi/PW.2. Case of prosecution is that petitioner/accused Mokkaian habitually consumes alcohol and uses abusive language in the street and involved in street brawl/quarrel. P.W.2 Ammavasi reproached such behaviour on numerous occasions. On 09.02.2022, at about 07.30 p.m., when Ammavasi was standing near Vinayagar Temple tree in Rajadhani Kalamman Temple Street, accused arrived at the spot, abused Ammavasi and immediately took out a concealed aruval and attacked him, causing a bleeding injury on the right side of his head. When the accused attempted to strike again on the head, P.W.2 blocked the blow with his left hand. On the basis of complaint given by P.W.1, FIR was registered in Crime No.37 of 2022 for offences under Section 294(b) and 307 of IPC. On completion of investigation, charge sheet was filed in P.R.C.No15 of 2022 before Judicial Magistrate, Andipatti and the case was committed to Principal District Sessions Court, Theni. Thereafter, case was numbered in S.C.No.136 of 2022 and transferred to Assistant Sessions cum Chief Judicial Magistrate, Theni.

4. Assistant Sessions cum Chief Judicial Magistrate, Theni, by order dated 30.08.2024 passed in S.C.No.136 of 2022, acquitted the



Crl.R.C(MD)No.49 of 2026

petitioner of offence under Section 294(b) of IPC and convicted for offence under Section 307 of IPC and sentenced him to undergo four years rigorous imprisonment and to pay a fine of Rs.2000/-, in default to undergo three months simple imprisonment.

4.1. Aggrieved, petitioner filed an appeal before Additional District Judge (FTC), Theni in Crl.A.No.137 of 2024. However, appeal came to be dismissed summarily by merely recording "*Appellant called absent. No representation, Perused, This Appeal is dismissed summarily*".

4.2. It is against the above order of summary dismissal by Appellate Court, the present revision has been filed on the premise that once the Appellate Court has admitted the appeal, it ought to be decided on merits and it is impermissible for the Appellate Court to dismiss the appeal for non-prosecution or for non-appearance of appellant or his counsel.

5. The above question, as stated supra, is no longer *res integra* and stands resolved by the judgment of three Judges Bench of the Supreme



Crl.R.C(MD)No.49 of 2026

Court in ***Bani Singh and others Vs. State of U.P.*** reported in (1996) 4

WEB CO

SCC 720. The Supreme Court in Bani Singh's case while dealing with the question as to whether it is permissible to dismiss an appeal for non-prosecution, overruled the earlier decision in ***Ram Naresh Yadav Vs. State of Bihar*** reported in ***AIR 1987 SC 1500***. In Ram Naresh Yadav's case, it was found that the Court can dismiss the appeal for non-prosecution and enforce disciplinary action against the erring Advocate or refer the matter to Bar Council. In *Bani Singh's* case, it was held that the decision in *Ram Naresh Yadav's* case was rendered without noticing the earlier decision in ***Shyam Deo Pandey and others Vs. State of Bihar*** reported in ***AIR 1971 SC 1606***, wherein, it was held that once the Appellate Court had admitted the appeal, it must be heard on merits and Appellate Court cannot dismiss the appeal for non-prosecution or for non-appearance of the appellant or his counsel. Relevant portion of the judgment in *Shyam Deo Pandey's* case is extracted hereunder:

"19. A reading of Section 423 makes it clear that a criminal appeal cannot be dismissed for default of appearance of the appellants or their counsel. The Court has either to adjourn the hearing of the appeal in order to enable them to appear or it should consider the appeal on merits and pass final orders. The consideration of the appeal on merits at the stage of final hearing and to arrive at a decision on merits so as to pass final



orders will not be possible unless the reasoning and findings recorded in the judgment under appeal are tested in the light of the record of the case. After the records are before the Court and the appeal is set down for hearing, it is essential that the appellate court should: (a) peruse such record; (b) hear the appellant or his pleader, if he appears, and (c) hear the public prosecutor, if he appears. After complying with these requirements, the appellate court has full power to pass any of the orders mentioned in the section. It is to be noted that if the appellant or his pleader is not present or if the public prosecutor is not present it is not obligatory on the appellate court to postpone the hearing of the appeal. If the appellant or his counsel or the public prosecutor, or both, are not present, the appellate court has jurisdiction to proceed with the disposal of the appeal; but that disposal must be after the appellate court has considered the appeal on merits.

(emphasis supplied)

6. Thus divergent views were expressed by the Supreme Court in *Ram Naresh Yadav* and *Shyam Deo Pandey*. Divergence of opinion on the above aspect was resolved by the Supreme Court in *Bani Singh's* case, wherein, the Supreme Court overruled the decision in *Ram Naresh Yadav's* case and approved the law laid down in *Shyam Deo Pandey's* case. Relevant portion of the said decision is extracted hereunder:



"14. 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 case [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] 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 not contemplate dismissal of the appeal for non-prosecution simpliciter. 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 satisfying 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. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] that if the appellant or his



pleader is not present, the proper course would be to dismiss an appeal for non-prosecution."

7. I also find support for the above position in the following judgments of the Supreme Court:

a) *K.Muruganandam and others Vs. State in Criminal Appeal No. 809 of 2021 dated 12.08.2021:*

The Supreme Court found that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae.

Relevant portion of judgment is extracted hereunder:

"8. It is well settled that if the accused does not appear through counsel appointed by him/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 (see Kabira vs. State of Uttar Pradesh and Mohd. Sukur Ali vs. State of Assam)."

b) *Shankar Vs. The State of Maharashtra in Criminal Appeal No.1106 of 2019 dated 23.07.2019:*

It was reiterated that once appeal against conviction is admitted, it is duty of Appellate Court either to appoint an Advocate as amicus curiae



or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose of the appeal. Relevant portion of judgment is extracted hereunder:

"5. When the accused has preferred the appeal against the conviction, the appeal can be disposed of on merits only after hearing the appellant or his counsel. When there was no representation for the appellant, in our considered view, the High Court ought not to have disposed of the case on merits. It was held in 2005 (11) SCC 185 titled Mangat Singh vs. State of Punjab that where the advocate for the appellant is absent on the date of hearing, the Court shall either appoint an amicus curiae and then decide the appeal. Once the appeal against the conviction is admitted, it is the duty of the Appellate Court either to appoint an advocate as amicus curiae or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose of the appeal. When the appellant was not represented by the advocate, in our view, the High Court ought not to have decided the matter on merits and the impugned order is liable to be set aside and the matter is remitted back to the High Court. The High Court shall restore the Criminal Appeal No. 296 of 2014 and afford sufficient opportunity to the appellant and proceed with the matter in accordance with law. In case, if the appellant is still not represented, we request the High Court to nominate a counsel for the appellant through the Legal Services Authority and proceed with the matter."

8. From the above discussion, it leaves no room for any doubt that it is impermissible for an Appellate Court to dismiss for default a criminal appeal filed against conviction on the premise that appellant is called absent or is not represented by a counsel. In view thereof, this



Crl.R.C(MD)No.49 of 2026

Court has no hesitation in setting aside the judgment passed in the appeal. Accordingly, the judgment passed by Additional District Judge (FTC), Theni in Crl.A.No.137 of 2024 dated 26.11.2024 is set aside and the matter stands remanded to the Additional District Judge (FTC), Theni, who shall decide the appeal on merits. It is made clear that if for any reason, the appellant is not represented by counsel, appellant may request the Additional District Judge, Theni to nominate a counsel through Legal Services Authority and thereafter, proceed with the matter.

9. It is submitted by learned counsel for petitioner that petitioner was on bail during pendency of appeal before the Additional District Judge (FTC), Theni. However, in view of dismissal of appeal, he has been arrested on 17.11.2025 and has been in prison since then and thus prayed for grant of bail. Learned Additional Public Prosecutor would submit that it is necessary that petitioner co-operates in proceedings before the Appellate Court, which was agreed to by learned counsel for petitioner.

10. In the circumstances, this Court is of the view that since petitioner was on bail during pendency of appeal, he shall be enlarged on



Crl.R.C(MD)No.49 of 2026

bail subject to the following conditions:

WEB COPY

i) Petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Assistant Sessions cum Chief Judicial Magistrate, Theni;

ii) Petitioner and sureties shall affix their photographs and Left Thumb Impression in the bond and the above said Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity;

iii) Petitioner shall appear and sign before Assistant Sessions cum Chief Judicial Magistrate, Theni, on the first working day of every month at 10.30 a.m., until the disposal of appeal;

iv) In case, petitioner is not able to appear before the said Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. (corresponding to 355 B.N.S.S) and shall appear before the said Court on any other day in lieu of the date of his absence, as directed by the said Court.



Crl.R.C(MD)No.49 of 2026

11. With the above observations, this Criminal Revision Case stands disposed of. Consequently, connected miscellaneous petition is closed.

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

12.01.2026

Note:

(i) Registry is directed to mark a copy of this order to Central Prison, Madurai through mail forthwith.

(ii) Issue order copy by 29.01.2026.

To

- 1.The Additional District Judge (FTC),
Theni.
- 2.The Assistant Sessions cum Chief Judicial Magistrate,
Theni
- 3.The Inspector of Police,
Rajathani Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Central Prison,
Madurai.



WEB COPY



Crl.R.C(MD)No.49 of 2026

MOHAMMED SHAFFIQ, J.

Lm

Order made in
Crl.R.C(MD)No.49 of 2026

12.01.2026