HIGH COURT OF ANDHRA PRADESH

* * * *

CRIMINAL APPEAL No. 1022 of 2009

Between:

1. NATIONAL COOPERATIVE BANK LTD., D.NO. 66/43, MUNICIPAL HOSPITAL ROAD, KURNOOL REP. BY ITS POWER OF ATTORNEY HOLDERR SRI S. HUSSAINMIAH S/O. S. MD. ISSSMAIL SAHEB R/O. MIG 58, HOUSING BOARD COLONY B. CAMP

...APPELLANT

AND

1. S MARY JOYICE, S.G. ASSISTANT M.P. ELEMENTARY SCHOOL AMADAAGUNTLA R/O. 40-143, BANGARUPETA
2. THE STATE OF A P, REP. BY THE PUBLIC PROSECUTOR HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT(S):

DATE OF JUDGMENT/ORDER PRONOUNCED: 03.11.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE ALAPATI GIRIDHAR

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* *Yes/No*
2. *Whether the copies of judgment may be marked to Law Reporters/Journals* *Yes/No*
3. *Whether Your Lordships wish to see the fair copy of the Judgment?* *Yes/No*

JUSTICE ALAPATI GIRIDHAR

* **THE HON'BLE SRI JUSTICE ALAPATI GIRIDHAR**

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...RESPONDENT(S):

! Counsel for the Appellant: Sri. N. RAVI PRASAD

^ Counsel for the respondents: PUBLIC PROSECUTOR

< Gist :

> Head Note:

? Cases Referred:

[1](1996) 4 SCC 720
[1](2014) 14 SCC 238
[1]*(1997) 1 SCC 855)*
[1]*(1998) SCC (Cri) 475*
[1]*(2009) 1 SCC 407*

APHC010089512009

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3605]**
(Special Original Jurisdiction)

TUESDAY, THE 3rd DAY OF NOVEMBER, 2026

PRESENT

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

CRIMINAL APPEAL NO: 1022/2009

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2. THE STATE OF A P, REP. BY THE PUBLIC PROSECUTOR HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT(S):

Counsel for the Appellant:

1. N RAVI PRASAD

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR (AP)

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

CRIMINAL APPEAL No.1022 of 2009

The Court made the following JUDGMENT:

1. Sri K.V.Akhileswra Reddy, learned Counsel on behalf of Sri N.Ravi Prasad, learned Counsel for the Appellant, submits that the Appellant is not in touch with the Counsel and he has no instructions. The record reveals the same was also represented on 21.08.2025 that he has no instructions, also that the Appellant could not take steps to serve the notice on the Accused for all these years despite many opportunities and on some dates, none appeared for the Appellant.

2. The record reveals that the Appellant filed a Complaint against the Accused under Section 138 of the Negotiable Instruments Act, 1881. However, on 01.09.2008 the Trial Court acquitted the Accused under Section 256 of the Code of Criminal Procedure, 1973, recording that the Complainant was absent and Counsel was also absent.

3. The Appeal is filed assailing the order. The material on record reveals that the Appellantcould not serve the notice on the Accused for all these years despite many opportunities, whereas the Appeal has been pending since 2009. It appears the Appellant has not been showing interest in prosecuting the Appeal for all these years and this Appeal has been on the old pendency list.

4. The settled law is that a criminal appeal cannot be dismissed for non-prosecution or default and the appeal must be decided on its merits. However, in the present case, the Complainant is the Appellant, and the Appeal has been pending for about 16 years. The Appellant could not even serve notice on the Accused for all these years. The short question for consideration is whether this Court can decide the Appeal on meritsagainst acquittal under Section 138 of the Negotiable Instruments Act, even without serving notice on the Respondent/Accused and without giving him an opportunity to be heard.

5. Thus, in this context, the law is to be examined.

a). Law on disposal of Criminal Appeals on merits:

6. The **Hon'ble Three-Judge Bench** of the **Hon'ble Supreme Court of India** in ***Bani Singh and Others v. State of U.P.***[1]**,** while considering a question arising in a Criminal Appeal, examined whether the High Court of Allahabad was justified in dismissing the Appeal filed by the Accused/Appellant against the order of conviction and sentence and issuing notice to the State, held that Criminal Appeals shall be disposed on merits. The **Hon'ble Supreme Court of India,** considered the law laid down in ***Ram Naresh Yadav*** **and others v. State of Bihar**[2] **and** ***Shyam Deo Pandey v. State of Bihar***[3], held that the law laid down in ***Shyam Deo Pandey*** was sound, except for a minor clarification, and did not agree with the law laid down in ***Ram Naresh Yadav*** case supra that an appeal could be dismissed

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[1](1996) 4 SCC 720
[2](2014) 14 SCC 238
[3]*(1997) 1 SCC 855)*

for non-prosecution when the Appellant was not present. The findings are extracted hereunder:

> *3. ……..Section 384, which deals with summary dismissal of appeals, enables the Appellate Court to summarily dismiss an appeal "if upon examining the petition of appeal and copy of the judgment received", it "considers that there is no sufficient ground for interfering". Section 385 provides that "if the Appellate Court does not dismiss the appeal summarily", it "shall cause notice of the time and place at which such appeal will be heard to be given" to the parties involved. It further provides that thereafter, the Appellate Court shall "send for the record of the case if such record is not already in Court" and "hear the parties". The relevant part of Section 386 provides that "after perusing such record and hearing the appellants or his pleader, if he appears, and the Public Prosecutor, if he appears", the Appellate Court "may, if it considers that there is no sufficient ground for interference, dismiss the appeal".*
>
> *4. From the facts of the present case, it is clear that when the matter came up before the High Court, it admitted the appeal and, following the procedure laid down in Section 385 of the Code, issued notice to the State……*
>
> ***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'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 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's case that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.

15. *Secondly, the law expects the Appellate Court to give a hearing to the appellant or his counsel, if he is present, and to the public prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the Appellate Court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the Appellate Court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however hasten to add 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. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav's case did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the Appellate Court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.*

16. *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 in the absence of the appellant, the higher court can remedy the situation if 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.*
>
> ***17.*** *In view of the position in law explained above, we are of the view that the High Court erred in dismissing the appeal for non-prosecution simplicitor without examining the merits. We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal on merits in the light of this judgment. The appeal will stand allowed accordingly.*

7. This judgment is rendered in the Appeal filed by the Accused against the State, challenging his Conviction, the **Hon'ble Supreme Court of India**, while dealing with the aforesaid question, held that the Appeal shall be disposed of after hearing the Accused or his counsel. If the Accused and his Counsel are absent, the Court can dispose of the appeal after perusing the record and the judgment of the Trial Court. If the Accused is in jail, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Accused/Appellant, if his lawyer is absent, and the Court deems it appropriate, it may appoint a lawyer at State expense to assist in disposing of the Appeal. The **Hon'ble Supreme Court of India** also dealt with Section 384 of Cr.P.C. and summary dismissal of appeals, upon examining the Appeal and the copy of the judgment, if the Appellate Court considers there is no sufficient ground for interfering in the judgment.

8. This Appeal is filed by the Complainant, challenging the acquittal of the Accused under Section 138 of the Negotiable Instruments Act, but the Appellant could not serve notice on the Accused for all these years as stated supra.

b). The law on Complaint filed but not prosecuting the case and acquittal of the Accused under Section 256 of CrPC:

9. The **Hon'ble Supreme Court of India**, in ***Associated Cement Co. Ltd. v. Keshvanand***[4]***,*** considered the case, where the Magistrate was dealing with proceedings under Section 138 of the Negotiable Instruments Act, acquitted the Accused on the ground that the Complainant was absent. The **Hon'ble Supreme Court of India,** held that 'what was the purpose of including a provision like Section 247 in the old code (or Section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his Complaint'. The **Hon'ble Supreme Court of India** also considered the circumstances in which the Magistrate could dismiss a Complaint when the Complainant was absent.

10. The **Hon'ble Supreme Court of India** in ***National Small Industries Corporation Limited v. State [NCT of Delhi] and others***[5]**,** relied upon ***Associated Cement Co. Ltd. v. Keshvanand,*** while considering the scope of Sections 256 and 259 of the Code of Criminal Procedure. The Court recognised the jurisdiction of the Magistrate to dismiss the Complaint, where the Complainant is absent.

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[4]*(1998) SCC (Cri) 475*
[5]*(2009) 1 SCC 407*

c). Appeal filed by a Complainant under Section 138 of the NI Act but did not appear even to take steps to serve notice on the Accused:

11. Generally, in cases instituted under IPC/BNS, the State will be prosecuting the cases. And when an Appeal is filed against a conviction, the opposite party will be the State, assisted by a Prosecutor, the Accused or his pleader would assist in disposing of the Appeal. Even in the absence of the Accused or his counsel, the Appeal shall be disposed of on merits in accordance with the procedure and law laid down in ***Bani Singh case supra***.

12. When it comes to criminal cases between individuals filed by way of Complaints between a Complainant and Accused, such as proceedings under Section 138 of the Negotiable Instruments Act, if the Appeal is against conviction, the law laid down in ***Bani Singh*** case supra shall be followed by duly serving notice on the Respondent/Complainant to ensure disposal of the Appealon merits.

13. However, when the Appeal is against acquittal under Section 138 of the Negotiable Instruments Act and the Complainant/Appellant or his counsel did not appear to take steps to serve notice on the Respondent/Accused in the Appeal despite several opportunities, whether this Court can proceed to decide the Appeal on merits against acquittal under Section 138 of the Negotiable Instruments Act even without serving notice on the Respondent/Accused and without giving an opportunity to the Accused to be heard. The answer is in the negative, as the Complainant has to take steps to serve notice on the Accused and assist the Court for disposal of the Appeal, the Court cannot proceed to decide the Appeal on merits as the Court cannot

allow the Appeal and convict the accused even without serving notice on him. If the notice is served on the Accused and he does not appear, does not engage a counsel, or the Counsel engaged by the Accused does not appear, the Court shall dispose of the Appeal on merits in accordance with the law laid down in ***Bani Singh case supra*.**

14. This Court is of the humble view that when the Appeal is filed by the Complainant challenging an order of acquittal, and the Complainant consistently did not pursue the Appeal to take steps to serve notice on the Accused despite being granted several opportunities, this Court has no option except to exercise its inherent powers and dismiss the Appeal for non-prosecution. Thus, this dimension as stated supra did not fall for consideration in ***Bani Singh*** case supra. Further, a Magistrate can dismiss the Complaint and acquit the Accused under Section 138 of the Negotiable Instruments Act as per Section 256 of the CrPC as held by the **Hon'ble Supreme Court of India**in ***Associated Cement Co. Ltd.*** and ***National Small Industries Corporation Limited cases supra***. A Sessions Judge may also proceed in this manner to dismiss an Appeal filed by Complainant for non-prosecution in these circumstances as stated supra.

15. In an Appeal by the Complainant, the High Court may proceed in this manner or invoke its inherent powers to dismiss an Appeal filed by the Complainant for non-prosecution in these circumstances. If this course is not followed, the Appeal would remain pending for years, as in this case even when the Complainant has failed to appear and even to take steps to serve notice on the Accused despite opportunities, where the Appeal cannot be

disposed of on merits without giving the Accused an opportunity to be heard, which amounts to burdening the Courts by adding these Appeals to the existing list of cases of old pendency.

16. In view of the law and foregoing discussion, the Appeal is dismissed for non-prosecution.

As a sequel, all pending miscellaneous applications, if any, shall stand closed.

JUSTICE ALAPATI GIRIDHAR

Dated: 03.11.2026
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