

Order Below Exhibit -01 in Criminal case No.4238/2021

Perused the record and proceeding

1. Present criminal case has been filed by the complainant against the u/s 138 of THE NEGOTIABLE INSTRUMENTS ACT, 1881 on 03/08/2021.
2. **Summons has been issued to accused but returned unserved. Thereafter kept for verify address of the accused and Ld. Advocate for the complainant has sought some time for the same which was granted. Thereafter matter kept for the hearing of the complainant on 04.04.2026, 20.04.2026 and 18.06.2026, but neither complainant nor his advocate remain present before this court to proceed with the matter nor any application tender behalf of him.**
3. Despite of ample opportunities made available to the complainant, he did not remain present before this Court. I may only say that Law Courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim "*Vigilantibus et non dormientibus jura subveniunt*" (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right.
4. Further u/s 256 of Criminal procedure code, in which it is provided that if complaint or his advocate remained absent on the date, which is fixed by court, then court shall acquit the accused read 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: 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 non- appearance of the complainant is due to his death.

5. Further In case of **S. Rama Krishna Reddy V/s. S.Rami Reddy reported in AIR 2008 SC page No 2066**, Hon'nble Apex court has held that the Complainant cannot allow a case to remain pending for an indefinite period.
6. Further **Hon'ble Gujarat High Court has adopted same view in Bhavani Textiles Mill V/s. State Of Gujarat, Criminal Appeal No 2405 of 2009 decided on dated 18/01/2010 and upheld the trial court order.**
7. Further **Hon'ble BOMBAY HIGH COURT in case of M/s. Merchant @ Somji Agro Industries & Investment (P) Ltd versus Brij Mehra & Anr has held 2004**

1 DCR 568 in para 4 as under

“4. Thus, in view of Section 256 of the Code of Criminal Procedure, 1973 when the complainant happens to be absent and his Advocate also happens to be absent and the summons are issued to the accused, the Magistrate shall acquit the accused. If he finds that in the interest of justice it is necessary to adjourn the hearing of the case, he may adjourn it to some other day. If the complainant is represented by his Pleader or by the officer conducting the prosecution, and when such complainant and his Advocate are absent, the Magistrate will have to dismiss the complaint and acquit the accused.”

8. Today, matter is called out but neither the complainant nor her advocate remained present before this court nor produced/tendered any application in her behalf. The same attitude of complainant clearly transpires that the complainant is not at all interested to proceed with the present case.
9. Hence considering the above-mentioned facts and circumstances, no further adjournment has to be given in favour of complainant. In view of S. 256 of Criminal Procedure code and relying upon the judgments of Hon’ble Supreme court and Hon’ble High Courts, in the interest of justice following order is passed.

- :: ORDER :: -

1. Due to non-appearance of complainant, Accused is hereby “**Acquitted**” in the charge of u/s 138 of **Negotiable Instruments Act, 1881.**
2. Pending application, if any, are to be dismissed accordingly.
3. No order as to cost.

Order Pronounced and signed in open court on today i.e. **03rd** day of August, 2026.

Date: 03.08.2026

Place:ANAND

(B.P.Thakar)

Additional Judicial Magistrate(F.C)

ANAND.

Code No. GJ01618