

Criminal Case No. 5083/2021

Order below Exhibit- 1

- 1) This case is filed under section-138 of N.I. Act. Today despite of repeated call outs complainant remain absent before the Court, Record and proceedings of the case demonstrates that complainant is aware of the proceeding. The present case is at the stage of service of the warrant to the accused. The Notice was issued to Complainant as well and Complainant has remained present before this Court and sought some time to get the address of the Accused Person. This Court has given time to complainant. However, the complainant has not provided the correct address of the accused. Since the filing of the complaint, this court has granted the complainant sufficient opportunities.
- 2) This Court can profitably refer herein Judgment of Hon'ble Gujarat High Court delivered in case of **Patel Rajendrakumar Ambalal Vs. State of Gujarat reported as 2018 Supreme (Guj.)358.** In this Judgment Hon'ble Gujarat High Court was pleased to observe thus with regard to pendency of cases filed under section-138 of N.I. Act and timely presence of the parties to the case.

“4.5. The pendency of the matters under Section 138 of the NI act and its elongated trials are the serious concerns of the Courts. Therefore, all concerned are expected to cooperate by remaining present without of loss of time.”

Despite of ample opportunities made available to the

complainant, complainant did not remain present before the 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. At this juncture this Court can also refer herein judgement of Hon'ble Bombay High Court delivered in case of Ramzan Khan Vs. Khadi Tours reported as 2019(5) Mh.L.J.(Cri.) 20. Hon'ble Bombay High Court was pleased to observe this in this judgement. “6. When the complaint and/or proceedings is filed by the litigant before the Court of law, it is onerous duty to prosecute the same diligently. The applicant cannot be dormant for years together as observed in the present case. Unless and until the non-applicants are served in the proceedings before the Court below, the said proceedings could not proceed further. Since it is a private complaint, it was duty of the applicant/complainant to take all necessary steps to serve the non-applicants.

8. Unnecessary filing of complaints and/or after filing of complaints, no step is taken and, therefore, the Courts are unnecessarily burdened and learned Judge below is unable to devote time for the litigants who are diligently prosecuting their proceedings has to remain in queue. This type of attitude on the part of the litigants has to be curbed though it is the right of citizens to approach to the Court of law for redressal of their grievance, if any. At the same, time, it is the duty of such citizens to prosecute the remedy availed of diligently and should not allow proceedings to remain in a dormant state for years

together.”

- 3) In this circumstances it would be profitable to refer **Judgment of Hon'ble Supreme Court in case of S. Rama Krishna Reddy Vs. S. Rami Reddy reported in AIR 2008 SC 2066.** In this Judgment Hon'ble Apex Court held that “**Complaint cannot allow a case to remain pending for an indefinite period.**” Further Hon'ble Gujarat High Court has adopted same view in judgment passed in **Criminal appeal no. 2405 of 2009 between Bhavani Textiles Mills Vs. State of Gujarat dated 18/01/2010.**
- 4) Hon'ble Gujarat High Court in a judgment reported in **ACR 2011 (II) 268 (GUJ) KANUBHAI ISHVARBHAI PATEL VS. BHARATBHAI JASHBHAI PATEL** has upheld the order of dismissal of the complaint for the negligency of the complainant. Hon'ble High Court has held in para 4 that;

*"4. From the papers, it also appears that the learned counsel for the appellant-complainant had never bothered to pray before the learned Trial Court for non attendance of the accused. I have perused the said provision also. after filing of the complaint, the complainant has never bothered to appear before the learned Trial Court and never bothered to proceed with the matter. **It appears that due to sole negligency on the part of the complainant, complaint of the complainant was dismissed by the learned Trial Court. I have not found any substance in present appeal.**"*

- 5) Hon'ble High Court Circular No.D-2913-2025 on date 20-02-2025 has directed that the Cases in which parties are not

interested in proceeding further with the matters be identified as infructuous cases in each concerned court and such kind of the cases can be disposed of accordingly. In the present case, the complainant has failed to demonstrate any interest in proceeding with the matter. Despite being given sufficient opportunities, no substantial steps have been taken by the complainant to advance the case. Consequently, in light of the High Court's directive, this matter may be considered for disposal as an infructuous case.

- 6) Looking to above-mentioned facts and circumstances of the case, I am of the opinion that complainant is no-more interested in proceedings of the case. Consequently, following order is passed.

ORDER

Complaint is hereby ordered to dismiss u/s. 256 of Criminal Procedure Code for want of presence of complainant. Accused is hereby acquitted from the case.

Signed and pronounced in the open Court today, on this 1st day of September, 2026.

Date: 01/09/2026

Place: Anand

(H. J. Vasavada)
4th Additional Senior Civil Judge
& Additional Chief Judicial Magistrate
Anand
Code No. GJ 01386

V. H. Dave
Eng. Steno Gr. II