

ORDER BELOW EXHIBIT – 1

1. Upon perusal of the record, it transpires that the present complaint has been registered by the complainant against the accused under section 138 of the Negotiable Instruments Act, 1881 on 18/11/2024. From the record, it transpires that matter has been at the stage of process to accused since inception. That inspite of repeated summons and warrants, the accused is not traceable. That it has been brought on record by the complainant advocate that the complainant has passed away and accordingly sought time to join the legal heirs of the deceased complainant on record vide Exh-6 on 08/09/2025. Matter has been kept on adjourned on 13/10/2025, 10/11/2025, 15/12/2025, 19/01/2026, 02/03/2026, 06/04/2026, 04/05/2026, 01/06/2026, 22/06/2026 and 02/07/2026 without and with cost in the interest of justice. There is no any death certificate on record. Today as well despite given last date in the interest of justice on the last hearing date, the complainant advocate has sought more time vide Exh-13 contending that they have given notice to the complainant. Matter is on substituting complainant since more than 9 months. From the record, it is apparent that more than sufficient opportunities have been provided to the complainant side. From the conduct of the complainant end, it seems that complainant side has no interest in proceeding with the matter.
2. Under the said circumstances, if the provision contained in the section 256 of the Code of Criminal Procedure, 1973 is taken into consideration, which is as follows :

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.

From the bare perusal of the above provision it is clear that if the complainant side does not appear either personally or through his Learned Advocate on the day fixed for hearing by the Court, then the Court shall acquit the accused. From the above provision, this case appears to be fit to be proceeded under section 256 of Code of Criminal Procedure, 1973.

3. Moreover, the ratio has been laid down by the Hon'ble Apex Court in the case of **S. RAMA KRISHNA REDDY V. RAMI REDDY REPORTED IN AIR 2008 SC 2066**, that the complainant cannot be allowed to keep the case pending for an indefinite period. Further it has been held by the Hon'ble Bombay Court in the case of **M/S. MERCHANT @ SOMJI AGRO INDUSTRIES & INVESTMENT (P.) LTD V. BRIJ MEHRA & ANR, PARA 4** that :

"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 complainant acquit the accused."

4. So, considering the above mentioned facts and circumstances of the case and keeping in mind the conduct of the complainant end, this Court firmly believes that ample opportunities has been given to proceed with the matter and further adjournment need not to be given in the present case when from the conduct, it is clear that the complainant end has no interest in proceeding with the matter. Hence, following order is hereby passed, in the interest of justice :

ORDER

- 1) Present complaint is hereby dismissed under section 256 of the Code of Criminal Procedure, 1973. Accordingly, accused is

hereby acquitted from the charge of section 138 of the Negotiable Instrument Act, 1881.

- 2)** Accordingly, the application vide Exh-13 hereby stands disposed as rejected.

DATE : 02/07/2026

**(JINSY JOSEPH THARAYIL)
ADDITIONAL JUDICIAL MAGISTRATE
FIRST CLASS, GODHRA
GJ 01652**