

**In the Court of Judicial Magistrate First Class, Chanasma
Criminal Case No. 1079 / 2025**

**Order under Section 258 of the Code of Criminal Procedure, 1973 (Corresponding provision of
BNSS-2023 Section:-281)**

(1) This case is instituted on police report (charge-sheet) for the offence punishable under Section-66(1)(B),85(1) of Gujarat Prohibition Act. by the police agency. The case has been registered under Sections 66(1)(b) and 85(1) of the Prohibition Act. However, upon perusal of the case papers, it does not appear that the ingredients of the offence under Section 85(1) are made out and therefore, it is treated as summons triable case. Prima facie, it appears that the case has been registered against the accused by the police as part of the routine drive conducted for maintaining law and order, pursuant to the directions issued by their superior officers. Repeated process in the nature of summons and, where necessary, warrants have been issued to secure the presence of the accused, but the same has remained unexecuted and the accused have not appeared; the concerned police agency has also failed to secure the presence of the accused despite several opportunities and adjournments have been granted by this court. So, Police authorities have failed to secure the presence of the accused despite repeated directions of this Court.

(2) The case, therefore, remained at a standstill at the initial appearance stage, and no fruitful purpose will be served by granting further adjournments merely for awaiting execution of process. Each case has remained pending for a considerable period, and repeated adjournments have been granted solely due to non-appearance of accused and non-execution of process. Further adjournments will serve no useful purpose and will only continue to burden the Court docket with long-pending petty matters. The present case has remained pending for more than six months and has been adjourned on more than five occasions solely for the execution of process. This Court had specifically directed the Police Inspector, Chanasma Police Station, to ensure that all processes issued by the Court are duly served and executed. However, despite such directions, the summons and warrants issued by this Court have not been executed.

In these circumstances, this Court is left with no alternative except to invoke the provisions of Section 258 of the Code and pass an appropriate order thereunder. It would not be appropriate to keep such a petty offence pending indefinitely on account of the continued non-execution of the Court's process, particularly when the Court's valuable time can be devoted to more substantial matters requiring adjudication.

Legal framework

(3) Section 258 of the Code of Criminal Procedure, 1973, empowers a Magistrate of the first class, in any summons-case instituted otherwise than upon complaint, to stop the proceedings at any stage, for reasons to be recorded in writing; where such stoppage is after recording of the principal witnesses, the

Magistrate may pronounce an acquittal, and in other cases the accused is to be released, such release having the effect of discharge.

The Hon'ble Bombay High Court, in *Motilal Mulchand Raka v. State of Maharashtra*, has explained that Section 258 CrPC is intended to deal with situations where proceedings cannot be carried forward in the ordinary manner because the presence of the accused or of an important prosecution witness, whose evidence is necessary for the trial, cannot be secured. It has been held that where such special or unusual circumstances exist—such as prolonged non-appearance of the accused or non-availability of a key prosecution witness—making it difficult or impossible for the Magistrate to decide the case on merits in the normal way, it is open to the Magistrate to stop further proceedings under Section 258 CrPC rather than keep the case pending indefinitely. The Court has clarified that when a Magistrate finds it impracticable to dispose of a matter through normal trial procedure owing to special or exceptional circumstances—such as prolonged non-appearance of accused or persistent failure to secure necessary witnesses—it is open to the Magistrate to stop proceedings under Section 258. The Hon'ble High Court observed that this provision exists to address circumstances that make it difficult or impossible for the Magistrate to proceed in the ordinary manner, thereby permitting stoppage of proceedings when deciding the matter on merits is hindered despite diligent efforts.

Other Hon'ble High Courts have similarly recognised that the power under Section 258 CrPC is to be exercised sparingly, with recorded reasons, to prevent abuse of process and avoid indefinite pendency of petty summons cases where, despite sincere efforts, the accused cannot be produced. Section 300(5) CrPC clarifies that where proceedings in a summons-case have been terminated under Section 258, it remains lawful to take fresh proceedings against the accused for the same offence, subject to statutory requirements.

(4) Reasons in this case :-

In the present case on hand following circumstances exist

- : • The case have remained pending for a prolonged time.
- The offences are summons-triable, minor in nature.
- Repeated process (summons/warrants) has remained unexecuted.
- Police have failed to secure the presence of the accused despite directions.
- The accused have shown persistent non-appearance.
- Continuation of proceedings has become impractical and futile, falling squarely within the principle recognized in *Motilal Raka*.

(5) Findings :-

(5.1) In these circumstances, this court finds that the situation squarely falls within the category contemplated in *Motilal Mulchand Raka* and by other Hon'ble High Courts: despite repeated efforts, the case cannot proceed in the normal manner because the accused are not being secured, and the

matter has remained pending without any progress for a considerable time. Continuing to adjourn this case indefinitely would unduly burden the docket and defeat the mandate of expeditious criminal justice; it would amount to an abuse of the process which Section 258 CrPC is designed to prevent. Hence, in the vast interest of justice I pass the following order.

FINAL ORDER

1. In exercise of powers under Section 258 of the Code of Criminal Procedure, 1973, (Corresponding provision of BNSS-2023 Section:-281) further proceedings in this case arising from charge-sheet under Section-66(1)(B), 85(1) of Gujarat Prohibition Act are hereby stopped. As this order is being passed before recording of any principal witnesses, the accused in this case shall stand released, such release operating as discharge within the meaning of Section 258 CrPC.
2. It is expressly clarified, in terms of Section 300(5) of the Code of Criminal Procedure, 1973, (Corresponding provision of BNSS-2023 Section:-337(5)) that this order shall not bar fresh proceedings being taken in accordance with law on the same facts, if at any future time the accused is apprehended or voluntarily appears and the competent prosecuting agency desires to prosecute the case.
3. Registry is directed to make the necessary entries in the relevant registers, close the case accordingly, and issue intimation of this order to the concerned police station and the prosecution agency for information and compliance.

Pronounced today in special sitting on this 11 th day of July, 2026.

Date:-11/07/2026.

Place:- Chanasma

(R. M. Chavda)

**Judicial Magistrate First Class,
Chanasma.**

Judge Code:- GJ01524