

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-1, MAVELIKARA****Present :- Sri, Japhinraj. J.B, Judicial First Class Magistrate – I****Dated this the 29<sup>th</sup> day of November, 2024.****C M P 2711/2024 in ST 1057/2021**

Petitioner : K. Sasidharan, Krishna vilasam,  
Mattom North, Mavelikara.  
Respondent : The POA, Mr. James,  
Sree Gokulam Chit Funds Pvt. Ltd,  
Mavelikara.  
(K. Asok Kumar)  
Section of Law : U/s. 256 of CrPC.

The petition having been heard on 29.11.2024, the court on the same day, passed the following.

**ORDER**

This is a petition filed by the accused under Section 256 of CrPC to dismiss the complaint filed under Section 138 of the Negotiable Instruments Act on the ground that the complainant is continuously absent before the court.

2. **Petition averments in brief is as follows:** The complainant was not appearing before the Hon'ble JFCM Court, Chenganoor for a long period. The complainant is also not appearing before this court for many postings. The 311 petition filed by the petitioner was dismissed citing the non-appearance of the complainant. The evidence of the accused is not complete due to the non-appearance of the complainant. Hence, the accused seeks to dismiss the complaint under Section 256 of CrPC.

3. Heard both Sides.

4. This is a petition to dismiss the complaint under Section 256 of CrPC on the ground that the complainant is not appearing before the court,. Section 256 of CrPC reads as follows: *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.* It is true that the complainant has not appeared before this court for many postings, but all this time the complainant was represented by counsel. Section 311 petition of the accused was dismissed by the court by a reasoned order and not for the non-appearance of the complainant. The non-appearance of the complainant has not hindered the defence evidence. There has not been any posting where the personal presence of the complainant was absolutely necessary for the further progress of this case, and he has failed to appear. Presently, the complaint is posted for defence evidence, and the personal presence of the complainant is not at all required. In such circumstances, the case has to be disposed of on merits rather than on default. Hence, the petition filed by the accused is dismissed.

Pronounced by me in the open court on the 29<sup>th</sup> day of November 2024.

Judicial First Class Magistrate-I

Mavelikara