

Kusum Raj Vs. Ram Chander (deceased)
through Lrs and another

Cr. Revision No. 137 of 2012

28.11.2025 Present: Mr. Ketan Singh, Advocate, vice Mr. Imran Khan, Advocate, for the petitioner.

Mr. Sandeep Sharma, Advocate, for respondents No.1(a) and 1(b).

Mr. Jitender Sharma, Additional Advocate General, for respondent No.2-State.

Learned vice counsel representing the petitioner has sought adjournment on the ground that original counsel is not present today, but it was last opportunity. Hence, the time cannot be granted since the learned counsel representing the petitioner today is not ready to argue the matter. It was laid down by Hon'ble Supreme Court in *K. Muruganandam v. State of T.N.*, (2021) 20 SCC 642 : 2021 SCC OnLine SC 690 at page 644 that in case of non representation or default of the Advocate representing the accused, the Court is bound to appoint an Amicus Curiae. It was observed:-

6. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an Amicus Curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see *Kabira v. State of U.P.*, 1981 Supp SCC 76: 1982 SCC (Cri) 144 and *Mohd. Sukur Ali v. State of Assam*, (2011) 4 SCC 729: (2011) 2 SCC (Cri) 481).

It was held in *Purushothaman v. State of T.N.*, 2023 SCC OnLine SC 1410 that when the Advocate appearing for the appellant seeks adjournment on untenable or unreasonable grounds, the Court has a right to refuse the prayer for adjournment and to appoint a Legal-Aid Counsel. It was observed:-

5. In a given case, if the advocate appearing for the appellant-accused seeks adjournment on untenable and unreasonable grounds, the Appellate Court is well within its power to refuse the prayer for adjournment. In such a case, one of the courses suggested by a decision of this Court in the case of *Bani Singh v. State of U.P.* (1996) 4 SCC 720 can always be adopted by the High Court. The High Court has a discretion to appoint an advocate to espouse the cause of the appellant when the advocate appointed by the appellant refuses to argue the appeal on unreasonable grounds. Though the High Court has an option of considering the merits of the appeal and deciding the same on merits, the High Court could always adopt the first course of appointing an advocate to espouse the cause of the appellant.

Therefore, in view of the binding precedent, Secretary H.P. High Court Legal Services Committee is requested to appoint a Legal Aid Counsel on behalf of the petitioner to argue the matter within two weeks and the matter be listed thereafter.

(Rakesh Kainthla)
Judge

28th November, 2025
(Chander)