

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr.MMO No.1275 of 2025****Date of Decision: 25.03.2026**

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**Jagdish****.....Petitioner****Versus****Chamel Singh****.....Respondent**

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*Coram**Hon'ble Mr. Justice Sandeep Sharma, Judge.**Whether approved for reporting?*

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**For the Petitioner:** Ms. Nandita, Advocate vice Mr. Vinod Chauhan, Advocate.**For the Respondent:** Ms. Ritta Goswami, Senior Advocate with Ms. Bhawna Dhiman, Advocate.

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**Sandeep Sharma, J. (Oral)**

Being aggrieved and dissatisfied with order dated 01.09.2025 passed by learned Additional Sessions Judge, Paonta Sahib, District Sirmour, Himachal Pradesh, whereby criminal appeal No.110 of 2024, having been filed by the petitioner/appellant against the judgment of conviction and order of sentence dated 04.11.2024, passed by learned Judicial Magistrate, First Class, Shillai, District Sirmour, Himachal Pradesh, in case No.30 of 2022, came to be dismissed in default, petitioner/appellant has approached this Court in the instant proceedings filed under Section 528 of BNSS,

praying therein to set aside the aforesaid order and restore the appeal filed under Section 415 of BNSS.

2. Learned counsel representing the petitioner fairly states that on account of heavy rainfall, which resulted in road blockage and complete disruption of transportation, neither the petitioner/appellant nor his counsel could appear on the date of passing of the impugned order. However, learned Appellate Court, taking note of their absence, dismissed the appeal for want of prosecution.

3. To the contrary, Ms. Ritta Goswami, learned Senior counsel representing the respondent, supported the impugned order. She submitted that since petitioner/appellant had not come present to pursue his appeal, no illegality can be said to have been committed by the Court below, while passing impugned order. She submitted that in criminal proceedings complainant and accused, unless exempted, are always under obligation to put in appearance on each and every date.

4. Having heard learned counsel for the parties and perused material adduced on record, this Court finds that on 01.09.2025, case was listed for appearance of petitioner/appellant. No doubt, perusal of the *zimni* order placed on record reveals that on 01.09.2025, matter was called several times, enabling petitioner/appellant or his counsel to come present, but since none came present on behalf of petitioner/appellant, learned Appellate Court

proceeded to dismiss the appeal for want of non-prosecution, but certainly learned Appellate Court ought not have straightway proceeded to dismiss the appeal, rather in such a situation, Court could either issue fresh notice to the appellant/petitioner or its counsel, specifically calling upon him to come present or his counsel, or could have adjourned the matter for a later date.

5. Having taken note of effect of dismissal of appeal for non-appearance of accused, Hon'ble Apex Court in case titled ***Md. Sukur Ali vs. State Of Assam***, 2011 (4) SCC 729, held that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused, rather in such a situation, Court should appoint a counsel who is practising on the criminal side as *amicus curiae* and decide the case after fixing another date. Relevant Para of afore judgment read as under:

“5. We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the Court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the Court should appoint another counsel as *amicus curiae* to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the 'heart and soul' of the fundamental rights.

6. In our opinion, a criminal case should not be decided against the accused in the absence of a counsel. We are fortified in the view we are taking by a

decision of the US Supreme Court in **Powell Vs. Alabama**, 287 US 45 (1932), in which it was observed :-

"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a State or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense".

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9. In *Maneka Gandhi vs. Union of India* AIR 1978 SC 597, it has been held by a Constitution Bench of this Court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. We are of the opinion that it is not fair or just that a criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, in our opinion, if a criminal case (whether a trial or appeal/revision) is

decided against an accused in the absence of a counsel, there will be violation of Article 21 of the Constitution.

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11. Apart from the above, we agree with the eminent jurist Seervai who has said in his "Constitutional Law of India", Third Edition, Vol. I, Pg. 857:-

"The right to be defended by counsel does not appear to have been stressed, and was clearly not considered in any detail in Ajaib Singh's case (1953) SCR 254. But the right of a person accused of an offence, or against whom any proceedings were taken under the Cr.P.C. is a valuable right which was recognized by Section 340 Cr.P.C. Article 22 (1) on its language makes that right a constitutional right, and unless there are compelling reasons, Article 22 (1) ought not to be cut down by judicial construction..... It is submitted that Article 22 (1) makes the statutory right under Section 340 Cr.P.C. a Constitutional right in respect of criminal or quasi-criminal proceedings."

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17. We reiterate that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the Court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him. If on the next date of hearing the counsel, who ought to have appeared on the previous date but did not appear, now appears, but cannot show sufficient cause for his non-appearance on the earlier date, then he will be precluded from appearing and arguing the case on behalf of the accused. But, in such a situation, it is open to the accused to either engage another counsel or the Court may proceed with the hearing of the case by the counsel appointed as amicus curiae."

6. Reliance is also placed upon the judgment passed by the Hon'ble Apex Court in ***K. Muruganandam and Others Vs. State Rep. By***

***Deputy Superintendent of Police and Another***, (2021) 20 SCC 642, which read as under:

“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.* [*Kabira v. State of U.P.*, 1981 Supp SCC 76 : 1982 SCC (Cri) 144] and *Mohd. Sukur Ali v. State of Assam* [*Mohd. Sukur Ali v. State of Assam*, (2011) 4 SCC 729 : (2011) 2 SCC (Cri) 481]).

7. Accordingly, we have no hesitation in setting aside the impugned judgment [*K. Muruganandam v. State*, 2018 SCC OnLine Mad 13592] and order and relegate the parties before the High Court for hearing of Criminal Appeal No. 246/2012 afresh on its own merits and in accordance with law.”

7. From the aforesaid exposition of law, it can be safely inferred that if the accused or their counsel does not appear, the Court cannot dismiss the appeal for non-representation or default of the advocate, rather the Court is required to appoint an *Amicus Curiae*/legal aid counsel to represent the accused and decide the appeal on its merits. Relying upon the aforesaid judgments passed by the Hon’ble Apex Court, this Court has no hesitation to conclude that a criminal appeal involves the liberty of the accused and, therefore, cannot be disposed of for want of representation and as such, matter deserves to be considered on its merits after ensuring representation to the accused so that justice is duly served.

8. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, the present petition is allowed and order dated 01.09.2025, passed by learned Additional Sessions Judge, Paonta Sahib, District Sirmour, Himachal Pradesh, whereby appeal having been filed by the petitioner/appellant against the judgment dated 04.11.2024, passed by learned Judicial Magistrate, First Class, Shillai, District Sirmour, Himachal Pradesh, in criminal case No.30 of 2022, came to be dismissed for non-appearance, is quashed and set aside and appeal is ordered to be restored to its original number and position, with a direction to learned Appellate Court below to proceed with the case from the stage, it was dismissed.

9. Learned counsel representing the parties undertake to cause presence of their respective clients before the learned Court below on **08.04.2026**, enabling Court below to proceed with the matter.

Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),  
Judge**

**March 25, 2026**  
(shankar)