



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 2896 OF 2026

BETWEEN:

SRI SUNIL U.,
S/O UMAPATHI S. N.,
AGED ABOUT 36 YEARS
R/AT C/O PREM PHOTO COPY
3RD MAIN, MATHRUSHRI
BEHIND K.V.V.SCHOOL
VIJAYANAGARA
BENGALURU – 560 040.

...PETITIONER

(BY SRI HARISH T., ADVOCATE)

AND:

LAKSHMINARAYANA V.,
S/O VENKATACHALAIH
AGED ABOUT 51 YEARS
R/AT NO.2240/29, 3RD CROSS
KODANDARAMA BADAVANE
CHANNAPATNA TOWN
RAMANAGARA DISTRICT – 562 160.

...RESPONDENT

THIS CRL.P IS FILED U/S 482 CR.P.C PRAYING TO CALL FOR RECORDS ON THE FILE OF 1ST ADDL DISTRICT AND SESSION JUDGE RAMANAGARA IN CRL.APL.NO.37/2023. EXAMINE THE LEGALITY AND CORRECTNESS AND SET ASIDE THE ORDER DATED 20/01/2026 (ANNEXURE-A).



THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner – sole accused is before this Court calling in question an order dated 20.01.2026, passed by the 1st Additional District and Sessions Judge, Ramanagara, in CrI.A.No.37/2023, whereby, the appeal comes to be dismissed for its non-prosecution.

2. The petitioner gets convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. On the conviction, the petitioner prefers an appeal before the Court of Sessions in CrI.A.No.37/2023. Owing to the absence of the petitioner – accused, the appeal comes to be dismissed for its non-prosecution. It is that order that is called in question before this Court in the subject petition.

3. Learned counsel for the petitioner submits that the appeal could not be dismissed for its non-prosecution, which ought to have heard on its merits.



4. The submission merits acceptance as it is a settled principle of law that an appeal against conviction cannot be dismissed for non-prosecution. The Apex Court in the case of **DHANANJAY RAI v. STATE OF BIHAR** reported in **(2022) 14 SCC 95** has held as follows:

"6. In the impugned judgment [*Dhananjay Rai v. State of Bihar*, 2015 SCC OnLine Pat 6996] , the Division Bench of the Patna High Court has itself recorded that it is deviating from the settled position of law. Such an approach cannot be countenanced. **The well-settled law can be found in the decision of this Court of a Bench consisting of three Hon'ble Judges in *Bani Singh v. State of U.P.* [*Bani Singh v. State of U.P.*, (1996) 4 SCC 720 : 1996 SCC (Cri) 848]** The issue before this Court in the said case was whether the High Court was justified in dismissing an appeal against conviction for non-prosecution. This Court noted the conflict in the views expressed by two coordinate Benches of this Court in *Shyam Deo* [*Shyam Deo Pandey v. State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] and *Ram Naresh Yadav v. State of Bihar* [*Ram Naresh Yadav v. State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] . Paras 13 to 15 of the said decision are relevant, which read thus : (*Bani Singh case* [*Bani Singh v. State of U.P.*, (1996) 4 SCC 720 : 1996 SCC (Cri) 848] , SCC pp. 725-27)

"13. What then is the area of conflict between the two decisions of this Court? In *Shyam Deo case* [*Shyam Deo Pandey v. State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] , this Court ruled that once the appellate court has admitted the appeal to be heard on merits, it cannot dismiss the appeal for non-prosecution for non-appearance of the appellant or his counsel, but must dispose of the appeal on



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merits after examining the record of the case. It next held that if the appellant or his counsel is absent, the appellate court is not bound to adjourn the appeal but it can dispose it of on merits after perusing the record. In *Ram Naresh Yadav case* [*Ram Naresh Yadav v. State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] , the Court did not analyse the relevant provisions of the Code nor did it notice the view taken in *Shyam Deo case* [*Shyam Deo Pandey v. State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] but held that if the appellant's counsel is absent, the proper course would be to dismiss the appeal for non-prosecution but not on merits; it can be disposed of on merits only after hearing the appellant or his counsel or after appointing another counsel at State cost to argue the case on behalf of the accused.

14. We have carefully considered the view expressed in the said two decisions of this Court and, *we may state that the view taken in Shyam Deo case* [*Shyam Deo Pandey v. State of Bihar*, (1971) 1 SCC 855 : 1971 SCC (Cri) 353] *appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it "must" call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution* [Ed. : The word or matter between two asterisks has been emphasised in original.] *simpliciter* [Ed. : The word or matter between two asterisks has been emphasised in original.] . *On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that*



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the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case [Ram Naresh Yadav v. State of Bihar, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.

15. Secondly, the law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to the Public Prosecutor, if he is present, before disposal of the appeal on merits. **Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the**



record and the judgment of the trial court.

We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided *Ram Naresh Yadav case* [*Ram Naresh Yadav v. State of Bihar*, (2014) 14 SCC 238 : (2015) 1 SCC (Cri) 327] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent."."

(Emphasis supplied)

In the light of the law laid down by the Apex Court, the petition deserves to succeed.

5. For the aforesaid reasons, the following:

ORDER

- a. The criminal petition is allowed.
- b. The order dated 20.01.2026, passed by the 1st Additional District and Sessions Judge, Ramanagara, in Crl.A.No.37/2023, stand quashed.



- c. The Crl.A.No.37/2023, is restored to file of the 1st Additional District and Sessions Judge, Ramanagara, for its consideration in accordance with law.

Sd/-
(M.NAGAPRASANNA)
JUDGE

nvj
List No.: 1 Sl No.: 59