WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19-11-2026

CORAM

THE HON'BLE MR.JUSTICE B.MURUGESAN

CRL RC(MD) No. 1180 of 2023

CNR:{HCMD011143072023}

Balamurugan

..Petitioner

Vs

M.C.S.A.Ravi

..Respondent

PRAYER: This Petition filed under section To call for the records and set aside the judgment dt.17.08.2023 made in Crl A No.98/2021 on the file of the learned Vth Additional District Judge Madurai confirming the judgment and conviction dt.25.08.2021 made in STC No.649/2018 passed by the learned Judicial Magistrate, Thirumangalam, acquit the petitioner and allow the criminal revision petition.

For Petitioner : M/s.M.Nandhini Priyadharshini

For Respondent : Mr.A.Balaji

ORDER

Challenging the judgment dated 17.08.2023 of the V Additional District and Sessions Judge, Madurai, hereinafter referred to as 'the appellate court', in the criminal appeal in CA No.98/2021, the revision petitioner/accused has filed this Criminal Revision Petition under S.438 BNSS.

https://www.mhc.tn.gov.in/judis (Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

02. For the sake of convenience, the parties are referred hereunder according to their litigative status and ranking in this criminal revision, 'the revision petitioner' and 'the revision respondent', unless the context otherwise requires.

03. Prefatory facts are that the revision petitioner was convicted by the Judicial Magistrate, Tirumangalam, hereinafter referred to as ‘the trial court’, in STC No.649/2018 for the offence punishable under S.138 NI Act, that challenging such conviction and sentence of one year imprisonment, the revision petitioner had filed a criminal appeal in CA No.98/2021 on the file of the appellate court and that the appellate court has dismissed the criminal appeal for default.

04. Challenging such dismissal of the criminal appeal, the revision petitioner has filed this criminal revision.

05. Heard both sides, and perused all the materials available.

06. Learned counsel for the revision petitioner would submit that a criminal appeal cannot be dismissed for non prosecution, that the appellate court should have appointed either a legal aid counsel or an amicus curie and decided the case accordingly, that the appellate court should not have dismissed the criminal appeal in one line order and that therefore, the impugned order of the appellate court is not legal but erroneous and perverse, liable to be interfered with.

https://www.mhc.tn.gov.in/judis
(Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

07. Learned counsel for the revision respondent would fairly concede that a criminal appeal cannot be dismissed for non prosecution and that therefore, a considered order may be passed.

08. Short question is whether a criminal appeal can be dismissed for non prosecution?

09. On perusal of the judgment which is under challenge, this court finds that

(a) the appellate court has noted in the preamble 'This appeal is coming up before me for final hearing today i.e.,17.08.2023 in the presence of Thiru.A.M.Senthilkumar, Counsel for the Appellant and Thiru.M.Ponambalam, Counsel for the Respondent and Appellant called absent and this court passed the following…'(extracted as such) and

(b) the appellate court has held in the judgment 'No representation for Appellant. This matter again called after lunch. Appellant called absent. Sufficient time granted. In the interest of justice this Criminal Appeal is dismissed for default.'(extracted as such).

10. At this juncture, this court would like to refer to the decision of the Hon'ble Supreme Court in **Bani Singh and Others V State of UP (1996 SCC (4) 720)** where it has been held as under:

'….. 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

https://www.mhc.tn.gov.in/judis (Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

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 simpliciter. 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 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.'*(italics supplied by this court)

11. In **Madan Lal Kapoor V Rajiv Thapar and Others (2007) 3 SCC (Cri) 437)**, the Hon'ble Supreme Court has held as under:

'**4**. The matter relates to administration of criminal justice. As held by this Court, *a criminal matter cannot be dismissed for default and it must be decided on merits*…' (italics supplied by this court)

12. **K.S.Panduranga V State Of Karnataka (2013 (3) SCC 721)** is also a case where the Hon'ble Supreme Court has held as under:

https://www.mhc.tn.gov.in/judis (Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

> **‘22**. From the aforesaid decision, the principles that can be culled out are (i) that the High Court cannot dismiss an appeal for non- prosecution simpliciter without examining the merits; (ii) that the court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent; (iii) that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; (iv) that it can dispose of the appeal after perusing the record and judgment of the trial court; (v) 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, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so*; and (vi) that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.’ (italics supplied by this court)

13. Therefore, having regard to the aforesaid decisions, and considering the scheme under S.385 and S.386 Cr PC, this court holds that a criminal appeal cannot be dismissed for non prosecution.

14. In fine, the criminal revision in Crl RC (MD) No.1180/2023 shall stand allowed,

(a) setting aside the judgment of the appellate court in CA No.98/2021,

https://www.mhc.tn.gov.in/judis (Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

(b) remanding the criminal appeal in CA No.98/2021 to the appellate court for disposal in accordance with law, and

(c) directing the appellate court to complete the aforesaid exercise within 2 months from the date of receipt of this order.

15. Pending applications, if any, shall stand closed.

19-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
GNS

https://www.mhc.tn.gov.in/judis
(Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

To

1.The V Additional District Judge Madurai

2.The Judicial Magistrate, Thirumangalam,

https://www.mhc.tn.gov.in/judis (Uploaded on: 20/11/2026 12:41:15 pm)

WEB COPY

B.MURUGESAN, J.
GNS

CRL RC(MD) No. 1180 of 2023

19-11-2026

https://www.mhc.tn.gov.in/judis
(Uploaded on: 20/11/2026 12:41:15 pm)