IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 466 of 2026
Date of Decision:18.5.2026

Sai Enterprises ...Petitioner

Versus

M/s AANDR Finance Pvt. Ltd. and Ors. …Respondent s

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?[1]

For the Petitioner: Mr. Nirmal Sharma, Advocate (through Video Conferencing) with Mr. Shubham Sood, Advocate.

For the Respondents: Nemo.

Sandeep Sharma, J. (Oral)

Having regard to the nature of dispute and order proposed to be passed, this Court sees no necessity to issue notices to the respondents, and as such, same are dispensed with.

2. Being aggrieved and dissatisfied with order dated 27.03.2025 passed by learned Additional Chief Judicial Magistrate, Nalagarh, Himachal Pradesh, whereby Complaint Case No.462/2022 titled as **Sai Enterprises vs. M/s AANDR Finance Pvt. Ltd. And Ors.,** came to be dismissed for non-prosecution, petitioner-complainant has approached this Court in the instant proceedings filed under Section 482 Cr.P.C, praying therein to set aside the aforesaid order and restore the complaint filed under Section 138 of the Negotiable Instruments Act.

[1] Whether reporters of the local papers may be allowed to see the judgment?

3. Precisely, the facts of the case as emerge from the record are that the petitioner-complainant instituted proceedings under Section 138 of the Negotiable Instruments Act ***(for short 'Act')*** in the competent Court of law. Since despite notice, respondent-accused ***(hereinafter referred to as the accused)*** was avoiding service and on account of ill health, petitioner was unable to prosecute the case, court concerned after adjourning the matter for some time, proceeded to dismiss the same for non-prosecution. In the aforesaid background, complainant has approached this Court in the instant proceedings, praying therein to set aside aforesaid order.

4. Precisely, the grouse of the petitioner as has been highlighted in the petition and further canvassed by Mr. Nirmal Sharma, learned counsel for the petitioner, is that since matter was fixed for the service of the respondent-accused and no arguments were to be advanced, there was no occasion, if any, for the Court below to dismiss the complaint for non-prosecution. While making this Court peruse impugned order dated 27.3.2025, learned counsel for the petitioner attempted to persuade this Court to agree with his contention that on afore date, Court below would have straightaway issued NBWs against the accused, However, it having taken note of non-presence of the complainant as well as

its counsel, proceeded to dismiss the complaint for non-prosecution.

5. Having heard learned counsel for the petitioner and perused material adduced on record, this Court finds that on 27.3.2025, case was listed thrice for service of the respondent-accused, who admittedly despite various notices, failed to put in appearance, but certainly Court ought not have straightway proceeded to dismiss the complaint for non-prosecution on the ground that he is not interested in prosecuting the case further, rather in such like situation, Court could have granted one more opportunity to the complainant or his counsel by adjourning the case to a date, enabling them to come present in person. This Court also finds that complainant or his counsel had not put in appearance on previous dates, but at the same time, complainant was unable to prosecute his case on account of illness and as such, it cannot be said that complainant‘s absence on the given date was intentional and deliberate.

6. In terms of Section 143 of the Act, offence under Section 138 of the Act is to be tried summarily and accordingly, procedure for summons case provided in Chapter XX of the Code of Criminal Procedure is applicable during the trial initiated on filing a complaint under Section 138 of the Act. Section 256 of Cr.P.C

(now Section 279 of BNSS), specifically deals with a situation of non-appearance of the complainant or death of the complainant.

7. At this stage, it would be apt to take note of Section 256 Cr.P.C, which reads as under:-

> *"**256. 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.*
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> *(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."*

8. Bare reading of aforesaid provision of law provides discretion to the Magistrate either to acquit the accused or to adjourn the case for some other day, if he thinks it proper. Proviso to aforesaid section further empowers the Magistrate to dispense with the complainant from his personal attendance, if it is found not necessary and to proceed with the case. If the complainant is represented by a pleader or by the officer conducting the prosecution, the Magistrate may proceed with the case in absence of the complainant. When the Magistrate, in a summons case, dismisses the complaint and acquits the accused due to absence of the complainant on the date of hearing, it becomes final and it

cannot be restored in view of Section 362 Cr.P.C. At this stage, it would be profitable to reproduce Section 362 Cr.P.C., herein below:-

> ***362. Court not to alter judgment.*** *-Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

9. Having taken note of effect of dismissal of complaint under Section 138 of the Act, Hon'ble Apex Court in case titled ***Associated Cement Co. Ltd.* v. *Keshvanand*,** reported in (1998) 1 SCC 687, elaborately dealt with the scope of Section 256 Cr.P.C (now Section 279 of BNSS), and held that though, afore Section affords protection to an accused against dilatory tactics on the part of the complainant, but, at the same time, it does not mean that if the complainant is absent, the Court can straightway proceed to acquit the accused in invitum. It has been specifially held in the afore judgment that power under Section 256 Cr.P.C (now Section 279 of BNSS) must be exercised judicially and fairly without impairing the cause of administration of criminal justice.

10. Similarly in case titled ***Mohd. Azeem* v. *A. Venkatesh*, reported in (2002) 7 SCC 726**, Hon'ble Apex Court held that dismissal of the complaint on account of one singular default in appearance on the part of the complainant, if permitted would result in failure of justice.

11. in case titled ***S.Anand* v. *Vasumathi Chandrasekar*, reported in (2008) 4 SCC 67**, Hon'ble Apex Court also deprecated practice of trial Court in dismissing the complaint on account of default in appearance. In the afore case complaint under Section 138 of the Act was dismissed by the trial Court exercising the power under Section 256 Cr.P.C on failure of the complainant or her power of attorney or the lawyer appointed by her to appear in Court on the date of hearing fixed for examination of witnesses on behalf of the defence. Hon'ble Apex Court after having considered the provisions of Section 256 Cr.P.C, observed that Court instead of disposal of a complaint in default, could have proceeded to decide the matter on merits on the basis of evidence already adduced on record by the complainant and the statement of accused recorded under Section 313 Cr.P.C.

12. In yet another case titled **N.K. Sharma's case vs. M/S Accord Plantations Private Limtied and another**, reported in 2008(2) Latest HLJ 1249, Co-ordinate Bench of this Court relying upon ***Associated Cement Co. Ltd.'s case* (supra)**, categorically held that when the Court notices that complainant is absent on a particular day, it must consider that whether the personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other

reason and if the situation does not justify the case being adjourned, then only Court is free to dismiss the complaint and acquit the accused, but if the presence of complainant on that day was quite unnecessary then resorting to the step of axing down the complaint, may not be a proper exercise of power envisaged under Section 256 Cr.P.C.

13. No doubt, in the case at hand, on 27.3.2025, case was actually listed for the steps to be taken by the complainant for service of the respondent-accused, but since he or his counsel could not come present on the afore date, court ought to have granted one more opportunity to the petitioner to do the needful before dismissing the case for non-prosecution. Dismissal of complaint in default for non-appearance of the complainant on the date fixed, without affording him even a single opportunity, is wholly unjustified. Since, very effect of dismissal of complaint in default has serious consequence of acquittal of accused, who admittedly had been avoiding service, Court below was expected to exercise his discretion with care and caution.

14. Reliance is placed upon the judgment dated 01.03.2023 passed by Hon'ble Apex Court in **M/s BLS Infrastructure Limited versus M/s Rajwanti Singh and others i**n Criminal Appeal Nos. 657-664 of 2023, where in similar facts and circumstances, Hon'ble Apex Court held that the action of

learned Magistrate not justified in straight away dismissing the complaint(s) and ordering acquittal of the accused on mere non appearance of the complainant. Relevant paras No.13 and 14 of afore judgment are as under:-

> *"13. In the instant case, we notice that there is a specific averment in the Special Leave Petition(s) that the appellant had led its evidence in the case and thereafter had moved an application under Section 311 of the Code to summon and examine further witnesses. In Paragraph 5(u), it is stated that the trial court as well as the High Court did not take into consideration that the complainant's cross-examination had been over in Complaint Case Nos.621742/16, 621743/16 and 621744/16, and no cross-examination was sought in other cases. Rather, CW-1's cross-examination in the above three complaint cases was adopted. There appears no specific denial of the aforesaid factual position. However, we find that neither the High Court nor the learned Magistrate has taken notice of the aforesaid position. Both the courts below thus failed to consider whether in the facts of the case under the proviso to sub-section (1) of Section 256, the court could proceed with the matter after dispensing with the attendance of the complainant. Further, if the complainant had not appeared to press the application under Section 311 of the Code, the learned Magistrate could have rejected the application under Section 311 of the Code and proceeded with the case on basis of the available evidence. We are, therefore, of the considered view that the learned Magistrate was not justified in straight away dismissing the complaint(s) and ordering acquittal of the accused on mere nonappearance of the complainant. The High Court too failed to take notice of the aforesaid aspects. Thus, the orders impugned are liable to be set aside.*
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> *14. For the reasons above, the order(s) of the High Court as well as of the learned Magistrate are set-aside. The proceedings shall stand restored to their original number(s) on the file of the learned Magistrate and the prosecution shall now proceed from*

the stage where it was when the order of acquittal/dismissal of the complaint(s) was passed."

15. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, the present petition is allowed, order dated 27.3.2025 is quashed and set aside and Complaint Case No.462/2022 titled as **Sai Enterprises vs. M/s AANDR Finance Pvt. Ltd. And Ors,** is ordered to be restored, with a direction to learned Court below to proceed with the trial from the stage, it was dismissed.

16. Learned counsel representing the petitioner undertakes to cause presence of his client before the learned Court below on **30.5.2026,** enabling Court below to proceed with the matter. Pending applications, if any, also stand disposed of.

(Sandeep Sharma)
Judge

May 18, 2026
Manjit