Community

APHC010557782025

IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

District Judge's Court, Vizianagaram
31 JUL 2026
Administrative Officer

WEDNESDAY, THE SIXTH DAY OF MAY

TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL REVISION CASE NO: 502 OF 2026

Revision Case filed under Section 438 & 442 of BNSS, aggrieved by the Order dated 23.06.2025 passed in Crl.A.No.218 of 2023 on the file of the III Additional District Judge, Bhimavaram.

Between:

Badeti Sridhar, S/o (late) Rama Krishna, Aged 44 years, R/o. Prop. Annapurna Poultries, Velupur Road, Attili Village, West Godavari District

...Petitioner/Appellant

AND

1. The State of Andhra Pradesh, Rep. by its Special Public Prosecutor, High Court of Andhra Pradesh at Amaravati.
2. Kammila Suru Babu, S/o. (late) Subba Rao, Aged 65 years, R/o D.No.1-1-6, Adhitya Nagar, Surtynarayana Puram, Bhimavaram, West Godavari District.

...Respondents/Respondents

Counsel for the Petitioner: Sri Venkata Narayana Rao Vedula

Counsel for the Respondent No.1: The Public Prosecutor

Counsel for the Respondent No.2: --

The Court made the following order:

RNo: 5206
31/7/26
1/8/26.

Check & Put up

D.R.

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL REVISION CASE No.502 of 2026

Between:

BADETI SRIDHAR, S/O (LATE) RAMA KRISHNA, AGED 42 YEARS, RIO PROP. ANNAPURNA POULTRIES, VELUPUR ROAD, ATTILI VILLAGE, WEST GODAVARI DISTRICT

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP BY ITS SPECIAL PUBLIC PROSECUTOR, HIGH COURT AT AMARAVATHI.
2. KAMMILA SURU BABU, S/O (LATE) SUBBA RAO, AGED 63 YEARS, R/O D.NO.1-1-6, ADHITYA NAGAR, SURTYNARAYANA PURAM, BHIMAVARAM, W.G.DIST.

...RESPONDENT(S):

DATE OF JUDGMENT PRONOUNCED: **06.05.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? ~~Yes~~/No
2. Whether the copies of judgment may be marked to Law Reporters./ Journals? ✓ Yes/No
3. Whether Her Lordship wish to see the fair copy of the Judgment? ✓ Yes/No

* THE HON'BLE DR.JUSTICE VENKATA JYOTHIRMAI PRATAPA

+ CRIMINAL PETITION No.502 of 2026

% 06.05.2026

Between:

BADETI SRIDHAR, S/O (LATE) RAMA KRISHNA, AGED 42 YEARS, RIO PROP. ANNAPURNA POULTRIES, VELUPUR ROAD, ATTILI VILLAGE, WEST GODAVARI DISTRICT

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2. KAMMILA SURU BABU, S/O (LATE) SUBBA RAO, AGED 63 YEARS, R/O D.NO.1-1-6, ADHITYA NAGAR, SURTYNARAYANA PURAM, BHIMAVARAM, W.G.DIST.

...RESPONDENT(S):

! Counsel for Petitioner : Sri Venkata Narayana Rao Vedula

^ Counsel for Respondents : Ms.K.Priyanka Lakshmi,
Assistant Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. AIR 1996 SC 2439
2. AIR 2013 SC 2164
3. Crl.R.C.(MD) No.519 of 2024, dated 04.10.2024
4. LL 2021 SC 384
5. 2026 LiveLaw (SC) 60

This Court made the following:

APHC010557782025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3396]**
(Special Original Jurisdiction)

WEDNESDAY,THE SIXTH DAY OF MAY

TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL REVISION CASE NO: 502/2026

Between:

BADETI SRIDHAR, S/O (LATE) RAMA KRISHNA, AGED 42 YEARS, RIO PROP. ANNAPURNA POULTRIES, VELUPUR ROAD, ATTILI VILLAGE, WEST GODAVARI DISTRICT

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP BY ITS SPECIAL PUBLIC PROSECUTOR, HIGH COURT AT AMARAVATHI.
2. KAMMILA SURU BABU, S/O (LATE) SUBBA RAO, AGED 63 YEARS, R/O D.NO.1-1-6, ADHITYA NAGAR, SURTYNARAYANA PURAM, BHIMAVARAM, W.G.DIST.

...RESPONDENT(S):

Counsel for the Petitioner:

1. VENKATA NARAYANA RAO VEDULA

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR

The Court made the following:

ORDER:

The instant Criminal Revision Case is filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the Order dated 23.06.2025, wherein, Crl.A.No.218 of 2023 on the file of the Court of III Additional District Judge, Bhimavaram was dismissed for default.

2. Heard Sri Vedula Venkata Narayana Rao, learned counsel for the Petitioner. Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor is in attendance.

3. This revision is filed challenging the order of dismissal of the criminal appeal for default, which was filed aggrieved by the conviction and sentence imposed against the Petitioner / Accused in C.C.No.657 of 2017 on the file of the Court of Additional Judicial Magistrate of First Class, Bhimavaram for the offence under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

4. As seen from the judgment of the learned trial Judge in C.C.No.657 of 2017, on behalf of the Respondent No.2 / Complainant, P.Ws.1 and 2 were examined and Exs.P.1 to P.10 were marked. On behalf of the Petitioner / Accused, D.Ws.1 and 2 were examined and no documents were marked. The learned trial Judge after conducting full-fledged trial, found the Accused guilty of the said offence and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.7,90,000/-, in default of payment of fine, he shall undergo simple imprisonment for six months. Aggrieved by the same, the Accused preferred Crl.A.No.218 of 2023 on the file of the learned III Additional District Judge, Bhimavaram. The learned Appellate Judge, *vide* impugned order dated 23.06.2025 dismissed the said appeal for default on the ground that, in spite of pendency of bailable warrant against him, he did not choose to attend before the Court prosecute the appeal. For ready reference, the impugned order is extracted hereunder:

"This petition coming to this day before me for disposal in the presence of Sri G.Sathi advocate for Petitioner / Appellant / Accused and of the Sri M.Bala Parameswara Rao for Respondent No.1 and Additional Public Prosecutor for Respondent No.2 and upon hearing the counsel for petitioner and perusing the record, this Court made the following:-

ORDER

This petition / Appellant / Accused filed under Sections 374 of Cr.P.C Appeal preferred by the Against calendar and judgment in C.C.No.657/17 dated 18-07-2023 passed by the IInd Additional Judicial Magistrate of I Class Court, Bhimavaram the Accused is convicted U/s 255(2) of Cr.P.C for the offence under Section 138 r/w 142 of NI Act.

Appellant / Accused called absent. B.W pending inspite of filed appeal not comfored to prosecute the appeal. Hence appeal dismissed for default with a direction to office to send the record for trial court to take steps as for law."

5. Learned counsel for the Petitioner / Accused would submit that, on the face of it, the impugned order is not sustainable under law, since the criminal appeal preferred by the Petitioner was dismissed for non-prosecution on the ground that the Appellant was absent on the given date. It is further submitted that although his counsel was present, the learned Judge did not choose to record the counsel's presence.

6. In that view, this Court directed the learned counsel for the Petitioner / Accused to file an affidavit to that effect. Accordingly, learned counsel for the Petitioner filed an affidavit before this Court submitting that the Petitioner has been diligently prosecuting the matter and there has been no wilful default or negligence on the part of the Petitioner. It is further submitted that, when the matter was listed on 23.06.2025 before the Appellate Court, for hearing, due

to unavoidable and *bona fide* circumstances, the counsel for the Petitioner was present before the Appellate Court and sought passover of the matter, however, without considering the same, the learned Appellate Judge proceeded with the matter and dismissed the appeal for default, without affording a reasonable opportunity to the Petitioner to prosecute the matter.

7. A careful perusal of the impugned order discloses that, in the preamble portion, the learned Appellate Judge has specifically recorded the presence of "Sri G. Sathi, Advocate for Petitioner/Appellant/Accused." Further, there is no mention even about the absence of the counsel for the Appellant. Thus, the very recital in the order would show that the Appellant was represented through counsel when the matter was taken up for consideration. Having recorded the appearance of the learned counsel for the Appellant, the subsequent observation that "Appellant/Accused called absent" and the consequential dismissal of the appeal for default on the ground that the Appellant had not come forward to prosecute the appeal, is self-contradictory and legally unsustainable. Once the appearance of the advocate for the Appellant is acknowledged, the appeal cannot be treated as unrepresented and cannot be dismissed for non-prosecution.

8. Further, a criminal appeal filed under Section 374 Cr.P.C., (Section 415 of BNSS) is a statutory right conferred upon a convicted Accused. Once such an appeal is admitted, the Appellate Court is under an obligation to examine the correctness, legality and propriety of the judgment under challenge. The Criminal Procedure Code does not contemplate dismissal of a criminal appeal

for default merely because the Appellant or his counsel is absent on the date of hearing.

9. Even in prosecutions arising under Section 138 of the Negotiable Instruments Act, the conviction recorded by the trial Court is subject to appellate scrutiny under the provisions of the Code of Criminal Procedure. Therefore, the Appellate Court is required to dispose of the appeal on merits after perusal of the record and consideration of the grounds raised in the appeal. The absence of the Appellant cannot, by itself, be a ground for dismissal of the appeal for non-prosecution. The order stating that the Appellant / Accused remained absent and, therefore, the appeal is dismissed for default does not amount to an adjudication on the merits of the conviction and sentence. Such a course is not contemplated under Section 374 Cr.P.C., (Section 415 of BNSS). The Appellate Court ought to hear the appellant or his counsel, appoint amicus curiae if necessary, and thereafter decide the appeal on merits based on the evidence and record available.

10. The impugned order does not disclose any discussion of the grounds urged in the memorandum of appeal, any appraisal of the evidence, or any independent consideration of the correctness of the conviction and sentence imposed by the trial Court. The dismissal is founded solely upon the alleged absence of the Appellant. Such disposal amounts to a dismissal for default and not a decision on merits as contemplated in the Code of Criminal Procedure. Therefore, the impugned order suffers from a patent legal infirmity. The recording of the appearance of the Appellant's counsel in the preamble

itself negatives the basis on which the appeal came to be dismissed. Even otherwise, the Appellate Court had no jurisdiction to dismiss a criminal appeal against conviction for default without examining the merits of the case.

11. While dealing with the similar circumstances, the Hon'ble Supreme Court in **Bani Singh and others vs. State of U.P**[1], had categorically held as follows:

> *"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's case 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 simplicitor. 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."*

12. Subsequently, the Hon'ble Supreme Court in **K.S.Panduranga vs. State of Karnataka**[2], while reiterating the above legal position, held as follows:

> *"22. From the aforesaid decision, the principles that can be culled out are (i) that the High Court cannot dismiss an appeal*

[1] AIR 1996 SC 2439
[2] AIR 2013 SC 2164

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.

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36. In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in Mohd. Sukur Ali(supra) to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in Bani Singh (supra), is per incuriam. We may hasten to clarify that barring the said aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the obtaining factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his submissions and the same have been dealt with."

13. Learned counsel for the Petitioner has placed reliance on the judgment of the High Court of Madras in **P.Sethu vs. R.Selvakumaran**[3]. The said judgment which pertains to the offence under Section 138 of N.I.Act, would show that, in a similar circumstance, by relying on the judgments of the Hon'ble Supreme Court in *Bani Singh's case and K.S.Panduranga's case*

[3] Crl.R.C.(MD) No.519 of 2024, dated 04.10.2024

referred supra, the High Court had categorically held that the dismissal of the Criminal Appeal for default, cannot legally be sustained, thereby set aside the order of dismissal of the appeal for default, directed the Appellate Judge to restore the appeal to the file and proceed with the hearing of the appeal.

14. The Hon'ble Supreme Court in **K.Muruganandam and others vs. State**[4], while setting aside the order of dismissal of the criminal appeal for non-prosecution passed by the High Court of Madras, categorically held that, .if the Accused does not appear through his counsel, 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.

15. Learned counsel for the Petitioner further relied on the order of the Hon'ble Supreme Court in **Meenakshi vs. State of Haryana and another**[5], wherein, it was held that an Appellant-Accused, who was convicted for the offence under Section 138 of N.I.Act, after suspension of sentence and grant of bail, need not be compelled to remain personally present before the Appellate or Revisional Court on every date of hearing. In the said case, the Court was concerned with the practice prevailing in the State of Haryana in the light of Form No.45 of Schedule II of Cr.P.C requiring the personal attendance of an Appellant-Accused on each and every adjourned date of hearing notwithstanding the suspension of sentence and grant of bail. The issue before the Court was whether insistence upon such continuous personal

[4] LL 2021 SC 384
[5] 2026 LiveLaw (SC) 60

appearance was warranted. The Court held that once the sentence stood suspended and the accused was enlarged on bail, insistence upon personal attendance on every date of hearing would be unnecessary and burdensome.

16. Though the present case stands on a different footing, the observations contained therein support the case of the Petitioner herein, because the Court expressly held that directing the Appellant-Accused to be personally present before the Appellate Court on every date of hearing is unwarranted. Therefore, the mere absence of the Appellant cannot be a valid ground for dismissal of the appeal, particularly when his counsel's appearance was recorded in the order itself. The said ratio cannot be invoked to justify the dismissal order, however, it strengthens the position that the appellant's personal absence, by itself, is not a sufficient reason either to refuse consideration of the appeal or to dismiss it for non-prosecution. Even in a case where Appellate Court directed the Appellant to deposit part of the compensation amount as a condition of bail, the Appeal shall not be dismissed for default or non-prosecution, on failure to comply with such condition, though it may lead to cancellation of bail.

17. It is pertinent to note that, in view of the aforesaid settled principles of law, a criminal appeal cannot be dismissed for default or for want of prosecution merely on account of the absence of the Appellant–Accused or his learned counsel. The appellate court is under an obligation to adjudicate and dispose of the appeal on its merits after due consideration of the material

available on record. However, having regard to the peculiar facts and circumstances of the case, it does not denude the Appellate Court of its authority to direct the Appellant–Accused to remain personally present before the Court on a date fixed for such purpose.

18. Further, the affidavit filed before this Court by the learned counsel for the Petitioner states that he was present before the Appellate Court on the date of hearing and had sought a pass over on account of *bona fide* circumstances. Be that as it may, even assuming that neither the Appellant nor his counsel was present, the Appellate Court could not have dismissed the appeal for default. The only course open to the Appellate Court was either to adjourn the matter or to dispose of the appeal on merits in accordance with law. Since the impugned order suffers from a legal infirmity and is in direct contravention of the settled principles governing disposal of criminal appeals, this Court is of the considered view that the same cannot be sustained.

19. Accordingly, the Criminal Revision Case is allowed. The order dated 23.06.2025 passed in Crl.A.No.218 of 2023 by the learned III Additional District Judge, Bhimavaram, is hereby set aside. The said appeal shall stand restored to the file of the learned III Additional District Judge, Bhimavaram. The learned Appellate Judge shall dispose of Crl.A.No.218 of 2023 afresh on its own merits, in accordance with law, after affording reasonable opportunity of hearing to both parties, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. The

Registry is directed to communicate a copy of this order to all the Judicial Officers in the State of Andhra Pradesh through the Principal District Judges concerned, for information and necessary guidance.

Pending miscellaneous applications, if any, shall stand closed.

SD/- V.DIWAKAR
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Dr. Justice Venkata Jyothirmai Pratapa

(For her Lordships Kind Perusal)

1. The Registrar (Judicial), High Court of Andhra Pradesh at Amaravathi.
2. The III Additional District Judge, Bhimavaram, West Godavari District.
3. The II Additional Judicial Magistrate of First Class-cum-II Additional Civil Judge (Junior Division), Bhimavaram, West Godavari District.
4. The Principal District Judge, Chittor, Chittor District.
5. The Principal District Judge, SPSR Nellore District.
6. The Principal District Judge, East Godavari District.
7. The Principal District Judge, West Godavari District.
8. The Principal District Judge, Guntur, Guntur District.
9. The Principal District Judge, Krishna, Krishna District.
10. The Principal District Judge, Prakasam, Prakasam District.
11. The Principal District Judge, Srikakulam, Srikakulam District.
12. The Principal District Judge, Vizianagaram, Vizianagaram District.
13. The Principal District Judge, Visakapatnam District.
14. The Principal District Judge, Kurnool, Kurnool District.
15. The Principal District Judge, Kadapa, Kadapa District.
16. The Principal District Judge, Ananthapur. Anantapur District.
17. One CC to Sri Venkata Narayana Rao Vedula, Advocate [OPUC]
18. Two CC's to the Public Prosecutor, High Court of A.P. [OUT]
19. The Section Officer, Criminal Section, High Court of A.P.
20. Nine (9) L.R. Copies
21. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
22. The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravati.
23. Two CD Copies

GPC

TAC

HIGH COURT

DATED: 06/05/2026

ORDER

CRLRC NO. 502 OF 2026

ALLOWING THIS CRIMINAL REVISION CASE

District Court, Vizianagaram,
Date : **.08.2026**.

Copy of ORDER dt.23.06.2025 in Criminal Revision Case No. 502 of 2026 on the file of Hon'ble High Court of Andhra Pradesh, Amaravathi, received in this Court in R.No. 5206 dt.31.07.2026, communicated to all the Judicial Officers in the Unit of Vizianagaram District Judiciary, for information.

True Copy / By Order

Chief Administrative Officer,
District Court, Vizianagaram

Sd/ M. Babitha

Principal District Judge,
Vizianagaram.

Copy to :

The System officer, e-Courts Project, District Court, Vizianagaram, with a direction to send the copy of the same **to all the Judicial Officers relating to Vizianagaram District Judiciary, through their respective official mails** and to upload the same in District Court website **vizianagaram.dcourts.gov.in** and also place the same in the **group of Chief Ministerial Officers** of Vizianagaram Judicial District.

.Dis.No.3326 Date:3 .08.2026.