25.11.2026
14.
BD.

CRR 3224 of 2026

Tirupati Overseas Corporation
Vs.
Jhilam Sinha

Mr. Tapas Dutta
Ms.Rituparna Pachal ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. The annexed envelope bears postal endorsement "Unclaimed".

In this application, the petitioner has prayed for setting aside of the order dated 11.01.2023 passed by learned Chief Judicial Magistrate, Alipore, in Complaint Case No. 756 of 2021 as well as the order of affirmation passed by learned Additional District and Sessions Judge, 8th Fast Track Court, Alipore dated 21st January, 2026.

By the impugned order dated 11.01.2023, the Trial Court dismissed the petitioner's Complaint Case initiated under section 138 of the N.I. Act. on the ground of default.

Being aggrieved by the aforesaid orders, learned counsel for the petitioner submits that learned Chief Judicial Magistrate failed to appreciate that the complaint was still at the stage of consideration as per Chapter XV of the Code of Criminal Procedure. Therefore, the primary duty of the Court was to examine whether sufficient grounds existed for taking cognizance and issuing process. The complaint ought not to have been dismissed merely because of the absence of the

complainant or the learned advocate, without first considering the materials already available on record.

In this context he relied upon the judgment of **Indian Bank Association & Ors. –vs. Union of India** reported in **2014(5) SCC 590.**

He further submits that learned Sessions Judge while deciding Criminal Revision No. 26 of 2025 observed that the dismissal was at the pre-summoning stage and could not be treated as one under section 256 of the Code of Criminal Procedure but was referable to section 203 of the Code, and therefore learned Magistrate could have considered the complaint, affidavit and accompanying documents before deciding whether process should be issued. However, he refused to interfere with the order impugned on the ground of technicalities.

He further submits that the impugned order has not been decided on merit and it was dismissed solely on account of non-appearance without first determining whether sufficient ground existed for proceeding under law. Therefore, the impugned order has resulted in failure of justice and therefore is required to be set aside.

Having heard learned counsel appearing on behalf of the petitioner and also considering the fact that before issuance of process the learned Magistrate was required to examine the complaint case, affidavit and accompanying documents to determine whether sufficient grounds existed for proceeding, instead of dismissing the complaint, solely on

the ground for non-appearance of complainant, I find that the prayer made by the petitioner is justified and is required to allowed to secure the ends of justice.

In view of above, CRR 3224 of 2026 stands allowed.

The impugned order dated 21st January, 2026 passed in Criminal Revision No. 26 of 2025 and the order dated 11.01.2023 passed in Complaint Case No.756 of 2021 are hereby set aside.

The Complaint Case No. 756/2021 is restored in its original file with original number. The Trial Court is directed to proceed in accordance with law.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)