

Sufian Uddin Vs Shifa Begum

Court: Gauhati High Court

Date of Decision: Feb. 21, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151
Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 125, 125, 126, 126
Penal Code, 1860 (IPC) â€” Section 120, 500, 506

Citation: (2014) 3 DMC 85 : (2014) 3 GLD 676 : (2014) 2 GLT 907

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: S.C. Biswas, B. Choudhury and E. Ahmed, Advocate for the Appellant; S. Jahan, Addl. P.P, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Arup Kumar Goswami, J.

By filing this application u/s 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), the petitioner

calls into question the order dated 2.5.2013 passed by the learned Sessions Judge, Karimganj, in Criminal Revision No. 8/2012, whereby the

learned Judge dismissed the revision petition filed by the petitioner against the order dated 16.11.2011 passed by learned Sub-divisional Judicial

Magistrate(S), Karimganj in Misc. Case No. 4/2009 u/s 125 Cr.P.C., restoring the petition u/s 125 Cr.P.C. filed by the opposite party No. 1,

which was dismissed for default due to her non-appearance on 29.10.2011 because of her illness. Significantly, the order dated 16.11.2011, by

which the learned Magistrate restored the case to file is not under challenge in this petition. The said order is also not a part of the petition.

2. The learned Sessions Judge, Karimganj held that the provision of section 125 Cr.P.C. is incorporated as a welfare measure for the needy by

making provision for providing quick relief to the deprived wife, children etc. in the form of maintenance and therefore, the learned Magistrate

committed no wrong by way of restoring the case in its original position and that no prejudice was caused to him by such restoration.

3. Repeated adjournments were obtained by the petitioner and the case was finally taken up for motion hearing on 23.1.2014.

4. I have heard Mr. S.C. Biswas, learned counsel for the petitioner and Ms. S. Jahan, learned Addl. Public Prosecutor, Assam, appearing for

opposite party No. 2.

5. Mr. Biswas submitted that the instant petition before this court was filed questioning the jurisdiction and competence of the learned Magistrate to

restore an application u/s 125 Cr.P.C. which was dismissed for default as there is no provision in the Cr.P.C. to recall the order by which the

petition was dismissed for non-prosecution and that u/s 362 of the Cr.P.C., no court, after signing its judgment or final order disposing of a case,

can alter or review the same except to correct a clerical or arithmetical error. However, learned counsel submitted that after the case was filed, he

had come across a judgment of the Delhi High Court, dated 8.7.2011, rendered in the case of Jagmohan Arora v. Saroj Arora, wherein Delhi

High Court had taken the view that learned Magistrate is empowered to restore the proceedings initiated u/s 125 Cr.P.C., which was dismissed

for non-appearance of the applicant. Learned counsel made available the copy of the judgment to the court for consideration and to pass

appropriate order. Learned Addl. Public Prosecutor, Assam also submitted that the proceeding u/s 125 Cr.P.C., being civil in nature, the

Magistrate can invoke inherent power to re-call his earlier order of dismissal and restore the case to file.

6. At the very outset, it will be most appropriate to take note of Jagmohan Arora (supra). While coming to the aforesaid conclusion, Delhi High

Court had placed reliance upon section 127 Cr.P.C., which vests the court with the power to alter the maintenance allowance on proof of change

in the circumstances of any person receiving maintenance or interim maintenance or ordered to pay maintenance or interim maintenance u/s 125

Cr.P.C. Reference to section 127(2) Cr.P.C., which confers jurisdiction upon the Magistrate to cancel or vary any order made u/s 125 Cr.P.C. in

consequence of any decision of a competent civil court, was also made. It was observed that scheme of Chapter -IX Cr.P.C. shows that the

Magistrate does not become functus officio after passing an order u/s 125 Cr.P.C. and in view of there being no express prohibition, there is no

bar on the Court to recall its order dismissing an application u/s 125 Cr.P.C. Reliance was also placed in the case of Savitri Rawat Vs. Govind

Singh Rawat, , wherein the Supreme Court had held that though there was no specific provision under the Cr.P.C. to allow grant of interim

maintenance, however, such power is implicit u/s 125 Cr.P.C.

7. In Jagmohan Arora (supra), the Delhi High Court had observed as follows:

7.....There is also no bar that after dismissal for non-prosecution of an application u/s 125 Cr.P.C., an

applicant cannot file a second application. The only loss could be that the applicant would be entitled for maintenance from the date of subsequent

application filed. Thus the scheme of Code itself shows that there is no bar for the Magistrate to amend or recall his order. The proceedings u/s

125 Cr.P.C. are essentially civil in nature, though the criminal process is applied for the purpose of summary and speedy disposal of such matters

in the interest of the society. Thus, the proceedings u/s 125 Cr.P.C. which determine the civil rights of the parties in an expeditious manner under

the Cr.P.C. cannot be equated with the proceedings of a complaint case as the latter are for the purpose of fact finding of complicity in the

commission of the criminal offence. This being the position, to my mind, the decision rendered in the case of Adalat Prasad (supra) would have no

application to a case u/s 125 Cr.P.C.

10. In view of the absence of any express prohibition under Chapter IX in my opinion there is no bar on the Court to recall its order dismissing an

application u/s 125 Cr.P.C.....

11. The Bombay High Court in *Sau Mandakini Pagire Vs. Bhausahab Genu Pagire and The State of Maharashtra*, , came to the same conclusion.

Referring of Section 362 of Cr.P.C., the Court held that the recalling of dismissal order cannot be treated as an alteration or change in the

judgment or final order. Once it is found that the Criminal Court has inherent power to interim allowances to the wife u/s 125 Cr.P.C. then it

follows that exercise of such inherent powers can be done for settling right the wrong. The principle ""ubi-jusibi-remedium"" is attracted in such a

case.

8. At this stage, it will be also appropriate to take note of some decisions rendered by some of the High Courts on the question.

9. In *Kehari Singh v. State of U.P. & Am*, reported in 2005 CrL. L.J. 2330, Allahabad High Court had also taken a view that maintenance

proceedings can be restored by recalling or setting aside the order of the dismissal for default for effective adjudication on merits. While taking the

aforesaid view, the court had taken note of a judgment of the Andhra Pradesh High Court rendered in *Abdul Wanad v. Hafiza Begum*, reported in

1987 CrL. L.J. 726, taking a contrary view, along with some other cases. The Allahabad High Court held as follows:

12. The provision of Section 126(2) of Criminal Procedure Code provides that an order for payment proposed to be made on an application of

the person against whom an order for payment of maintenance is proposed, the ex parte order passed against him may be set aside by learned

Magistrate but there is no specific provision if the application of applicant complainant is dismissed in non-appearance, to recall the ex-parte order

and to restore the case to its original number. The intention of the Legislature was to provide imminent relief to most needy person as wife, children

and the parents as mentioned in the Section 125 Cr.P.C., such person are not able to maintain themselves and are facing many problems and they

are not earning persons. In such circumstances, they are not in proper position to pursue their cases in the Court by affording the necessary

expenses. So in such miserable conditions and due to some unavoidable circumstances they may not be able to attend the court proceedings on

every date fixed there to pursue their cases. In such situation, if it is held that the court lacks the jurisdiction to restore the case in absence of such

provision, the very object and purpose of Legislature would be frustrated. The paramount rule of interpretation which overrides the others is that

the Statute is to be expounded according to the intent of think that made it. Therefore, if there is any lacuna in the Statue, then also to oblige the

Magistrate judicially in order to give effect to the will of the Legislature. Therefore, the learned Magistrate is empowered to restore the proceedings

initiated u/s 125 Cr.P.C. which were dismissed in non-appearance of the complainant/applicant.

10. A Division Bench of Punjab and Haryana High Court in Smt. Kamla Devi and Others Vs. Mehma Singh, had also taken a similar view by

holding as follows:

7. There is no specific provision in Chapter IX of the Cr.P.C. dealing with application for grant of maintenance to wives, children and parents to

dismiss such applications for nonappearance of the petitioner. Since such applicants are not to be equated with criminal complaints which

necessarily are to be dismissed for non-appearance of the complainant in view of Section 256 of the Cr.P.C. it is only in the exercise of inherent

power of the Court that for non-appearance of the petitioner, application u/s 125 of the Code is dismissed. If that is so, there is no reason why

there should not be inherent power with the Court to restore such applications dismissed in default on showing sufficient cause by the petitioner for

his non-appearance.

8. The nature of the proceedings in Chapter IX of the Code is inherently concerning civil rights i.e. grant of maintenance to wives, children and the

parents. All these orders passed under different provisions of Chapter IX, as briefly noticed above, are interim in nature and can be modified,

varied or cancelled on the grounds mentioned therein. Furthermore, such orders are subject to final orders, if any, passed by the civil Courts

regarding grant of maintenance. The Criminal P.C. provides a swift and speedy remedy to the petitioner claiming maintenance who are being

neglected. It is only in the matter of implementation of such orders that a stringent provision is made for recovery of such amount as recovery of

fine or by sending the person against whom order is made to imprisonment for a certain period till payment is made. This remedy cannot be

throttled by procedural technicalities such as non-appearance of the petitioner on a particular day. Such nonappearance in a given case may be

beyond the control of the petitioner. In other words, there may be sufficient and cogent reason for the petitioner not to put in appearance when the

case was actually called. In such circumstances not to restore the application dismissed in default would result in miscarriage of justice. On a

sufficient cause being shown, the Court would have inherent power in such like cases to restore such applications dismissed in default.

11. In SK. Alauddin @ Alai Khan Vs. Khadiza Bibi @ Mst. Khodeja Khatun and Others, , the High Court of Calcutta had held that 125 Cr.P.C.

proceeding is a proceeding in civil nature in which the Magistrate can invoke the inherent powers to recall his earlier order finally dismissing a

proceeding for default provided sufficient grounds are shown.

12. However, a Division Bench of the Andhra Pradesh High Court, in the case of C. Subramaniam v. C. Sumathi & Anr, reported in 2003 (2)

ALD CrL 905 had taken a contrary view by holding that a magistrate has no power to dismiss a petition u/s. 125 Cr.P.C. for default and secondly,

for any reason, if it is dismissed, the said court will become functus officio and it has no power to set aside the default order, the earlier order is

illegal notwithstanding. It has further held that in such case the affected party has to take recourse to revisional jurisdiction as contemplated under

the Cr.P.C. While holding so, the Division Bench of the Andhra Pradesh High Court had affirmed the view taken by the learned Single Bench of

Andhra Pradesh High Court in Abdul Waned (supra), about which reference was already made. It also noted the judgments of the Division Bench

of Punjab and Haryana High Court in Kamla Devi (supra), Smt. Prema Jain Vs. Sudhir Kumar Jain, , a judgment of Delhi High Court, which was

noted in Jagmohan Arora (supra). It was held as follows-

11. Firstly, we deal with the maxim of equity, namely ""actus curiae neminem gravabit"" which means an act of Court shall prejudice no man. This

maxim is founded upon justice and a Good Sense, which serves safe and certain guidelines for the administration of law.

12. After disposal of the main petition on 4.10.2000, there was no lis pending in the Court of Judicial First Class Magistrate, Pakala. CrL M.P.

No. 798 of 2001 was preferred u/s 126(3) of the Code of Criminal Procedure praying for restoration of M.C. No. 5 of 2000 which was

dismissed for default.

Section 126(3) reads as follows:

The Court in dealing with applications u/s 125 shall have power to make such order as to cost as may be just.

This provision relates to imposition of costs to the successful parties in order to compensate for the costs incurred. So, this provision does not

confer any power to the Magistrate to recall the order dated 4.10.2000. The maintenance proceedings stood terminated by that date and the case

was disposed of. There is no provision in the Code to restore the application u/s 125 Cr.P.C. which was dismissed for default. In the absence of

specific provision, the maxim has no application as there is no case pending in the Trial Court. Section 362 of the Cr.P.C. mandates that 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.

This section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a

specific statutory provision becomes functus officio and disentitled to entertain a prayer with the same relief unless formal order of final disposal is

set aside by the Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment a final order

disposing of the case is signed. In the new Section 362 of the Code of Criminal Procedure which was drafted keeping in view of the

recommendations of 41st Report of the Law Commission and the Joint Select Committee appointed for the purpose, has extended the bar of

review not only to the judgment, but also to the final order other than the judgment. This provision applies to any order or judgment disposing of

the case under Criminal Procedure Law. Though the proceedings u/s 125 are in the nature of civil proceedings that does not mean Section 151 of

CPC would apply. Therefore, any order passed u/s 125 of Code of Criminal Procedure is subject to Section 362 of Cr.P.C. Though the order

passed by the learned judicial Magistrate of First Class is illegal, but he cannot rectify it under the guise of review. It can be corrected only by

invoking revisional jurisdiction by the concerned Court as contemplated under the Code. Therefore, in our view, entertainment of the

Miscellaneous Petition after disposal of the main case and restoration of the main case by the learned Judicial First Magistrate, Pakala are

unwarranted and not referable to any statutory provision. In support of our view, a decision reported in the case of Superintendent and

Remembrance of Legal Affairs, West Bengal v. Mohan Singh, may be quoted, wherein it has clearly been laid down that once a judgment has

been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that

judgment, as there is no provision in the Code of Criminal Procedure which would enable the High Court to review the same or to exercise

revisional jurisdiction. In the same way, the subordinate Criminal Courts have no inherent power to invoke u/s 482 of Cr.P.C. which vests such

power only with High Courts. There is no provision in the Cr.P.C. which would enable the learned Magistrate to review or recall the order dated

4.10.2000.

13. In the case of Abdul Waned (supra) the learned Single Judge of Andhra Pradesh High Court had held as follows:

Section 126 Cr.P.C. is silent as to the order that can be passed when the applicant is absent. There is no indication as to either dismissing the

application for default or the consideration of the matter on merits ex parte. The learned counsel for the petitioner contends that the provisions

under Chap. IX are in the nature of Civil Proceedings and the power to dismiss the application for default and set aside the ex parte order are

implicit. It is true that the provisions u/s 125 to 127 Cr.P.C. pertaining to maintenance have the trappings of Civil Proceedings and the projection of

right to recover maintenance apparently of civil nature are transplanted in Criminal Procedure Code for providing speedy and imminent relief and

immediate sustenance of life to the handicapped segment of the society. The proviso while providing the procedure for determining the matter ex

parte and also setting aside the ex parte order in the event of determining the matter ex parte and also setting aside the ex parte order in the event

of the respondent being absent is conspicuously silent regarding in the event of applicant not diligent in prosecuting the matter. In so far as the dual

situations of either being the plaintiff or the defendant being absent suitable provisions have been made under O. IX C.P.C. and also setting aside

the ex parte orders if sufficient cause is shown and the pattern embodied in C.P.C. is evolved in so far as setting aside the ex parte order when the

respondent is absent, but the analogous provisions in C.P.C. in respect of orders that can be passed in the event of absence of the applicant has

not been incorporated. The endeavor to read implicit power cannot be encouraged as there is no specific or implied provision to that effect and

further the provision in the event of the absence of respondent and the absence of similar provision in the absence of the applicant can be inferred

as eluding such power in the event of the absence of the applicant: We cannot escape the conclusion that there is lacuna regarding this aspect.

14. On a reference made by a learned Single Judge of this Court on a question of law as to whether the court has power to review its judgment or

final order disposing of a case by exercising inherent power u/s 482 Cr.P.C., notwithstanding the specific bar u/s 362 Cr.P.C. to alter or review of

such judgment and final order of disposal, in Murti Dhar Singh and Others Vs. Vijendra Singh Jafa, , a Division Bench of this court had taken the

view that the order of dismissal for default is not a final order of disposal of a case as the court had not gone into merit of the case and therefore,

the bar prescribed u/s 362 Cr.P.C. is not attracted. Accordingly, this court held that it is always open to the court to recall the order of dismissal

for default of appearance in order to ensure the ends of justice in exercise of inherent power of the High Court u/s 482 Cr.P.C. This court also

held, that nevertheless, such an order is a judicial order and not an administrative order as was held in some of the cases cited before the Bench

including judgment of learned Single Judge of this court in Haji Sabajudoin Ahmed Vs. Banamali Das, . The dismissal for default for appearance

considered in the aforesaid case was in a criminal revision petition filed before this court. In the aforesaid case, this court had also noted a

judgment rendered by the Delhi High Court in the case of Smti Prema Jain (supra), wherein Delhi High Court had held that the dismissal of an

application for maintenance u/s 125 Cr.P.C. was an order of administrative nature rather than a judicial one and as such dismissal order can be

restored. However, this court, in exercise of power u/s 482 Cr.P.C., restored a criminal revision petition to file which was dismissed for default

and the question whether a Magistrate could restore a case for dismissal for default was not an issue. It is to be noted that the criminal revision

petition was filed praying for quashing of a complaint proceeding in which cognizance was taken u/s 500/506/120 IPC.

15. Section 125 Cr.P.C. is a measure of social justice to protect weaker sections like women, children and old parents. The object is to compel a

man to perform the moral obligation which he owes to society in respect of his wife, children and parents so that they are not rendered destitute.

No procedure is prescribed for invoking the jurisdiction of the Magistrate for an order u/s 125 Cr.P.C. though in respect of trial of cases involving

criminal offences, elaborate provisions are made in the Code. It is obvious that an application has to be filed for grant of such relief and evidence

has to be led in the manner as prescribed u/s 126(2) Cr.P.C. The jurisdiction of the Magistrate is not punitive. Section 125 Cr.P.C. provides

speedy remedy by means of a summary procedure. Order of maintenance may be granted from the date of the order, or, if so ordered from the

date of the application. In the event of default of payment of maintenance by the person who is directed to make payment of maintenance, the

Magistrate can issue warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or

any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment to a term which may extend to one month

or until payment if not so made. Section 126(2) Cr.P.C. empowers the Magistrate to proceed ex-parte against a person against whom an order

for payment of maintenance is proposed to be made if the Magistrate is satisfied that such person was wilfully avoiding notice, or wilfully neglecting

to attend the Court and also to set aside such ex-parte order for good cause shown on an application made within three months subject to such

conditions as the Magistrate may impose. Section 127(1) Cr.P.C. provides for alteration of monthly allowance for maintenance or interim

maintenance on proof of a change in the circumstances of any person receiving maintenance or ordered to pay maintenance. Section 127(2)

Cr.P.C. provides that in consequence of any decision of a competent Civil Court, if an order made u/s 125 Cr.P.C. is required to be cancelled or

varied, the Magistrate should cancel or vary the maintenance, as the case may be. Section 127(3) Cr.P.C. provides for cancellation of

maintenance granted u/s 125 Cr.P.C. in favour of a woman subject to the satisfaction of the Magistrate of the conditions enumerated therein. Thus,

the order u/s 125 Cr.P.C. cannot be said to be a final order not admitting of any change in the content of the order earlier made. Having regard to

the provisions contained in Chapter IX from sections 125 to 128 Cr.P.C., it would appear to me that Chapter IX Cr.P.C. is a Code in itself with

regard to order for maintenance of wives, children and parents.

16. In *Jagir Kaur and Another Vs. Jaswant Singh*, , the Apex Court has laid down that section 125 Cr.P.C. proceedings are of a civil nature

though they are in a criminal trial and the remedy is a summary one.

17. An application filed u/s 125 Cr.P.C. is not a complaint within the meaning of section 2(d) of Cr.P.C. for the reason that if any person having

sufficient means neglects or refuses to maintain his wife, children or parents, who are unable to maintain themselves, he does not commit any penal

offence, and a complaint must necessarily allege that some person has committed an offence. Therefore, the person against whom the application

u/s 125 Cr.P.C. is directed, is also not an accused person.

18. In *Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another*, , the Apex Court had laid down that a Magistrate cannot restore a

complaint to file by revoking his earlier order dismissing it for the non-appearance of the complainant and proceed with it when an application is

made by the complainant to revive it. It was held that dismissal of a complaint for non-appearance of a complainant or discharge or acquittal of the

accused on the same ground is a final order and in absence of any specific provision in Cr.P.C., a Magistrate cannot exercise any inherent

jurisdiction. The Apex Court had also relied on a judgment in the case of *Bindeshwari Prasad Singh Vs. Kali Singh*, , wherein the Supreme Court

had ruled that after dismissing a complaint, the learned Magistrate becomes functus officio and has no power to review or recall that order on any

ground whatsoever. In Adalat Prasad Vs. Rooplal Jindal and Others, , the Apex Court had laid down that the observation of the Apex Court in

K.M. Mathew Vs. State of Kerala and another, , that for recalling an erroneous order of issuance of process, no specific provision of law is

required, would run counter to the scheme of Cr.P.C., which has not provided for review and thus does not lay down the correct law.

19. Prior to amendment of section 125 Cr.P.C by the Code of Criminal Procedure (Amendment) Act, 2001 w.e.f. 24.9.2001, the provision did

not confer specifically any power on the Magistrate to grant an interim order of maintenance. In Smti. Savitri (supra), the question that arose for

consideration of the Apex Court was as to whether a Magistrate before whom an application is made u/s 125 Cr.P.C., can make an interim order

directing the person against whom the application is made under that section to pay reasonable maintenance to the applicant concerned pending

disposal of the application.

Having regard to the object of section 125 Cr.P.C., the Apex Court observed that it is the duty of the court to interpret the provision of Chapter-

EX of the Code in such a way that the construction placed on that would not defeat the object of the legislation. In absence of any express

prohibition, the Apex Court construed the provision in Chapter-IX as conferring an implied power on a Magistrate to direct a person against

whom an application is made u/s 125 of Cr.P.C. to pay some reasonable sum by way of maintenance to the applicant as an interim measure

pending final disposal of the application.

20. In Morgan Stanley Mutual Fund Vs. Kartick Das, , while considering the provisions of Consumer Protection Act, 1986, the Apex Court held

that there is no power under the said Act to grant any interim relief or even ad-interim relief and only a final relief could be granted.

21. In New India Assurance Co. Ltd. Vs. R. Srinivasan, , the Apex Court while dealing with the power of the consumer disputes redressal

agencies under the Consumer Protection Act, 1986 was considering as to whether they had the power to dismiss a complaint and also to restore a

complaint once dismissed for default. The Apex Court observed that every court or judicial body or authority, which has a duty to decide a lis

between two parties, inherently possesses the power to dismiss a case in default and the Court or judicial or a quasi-judicial body is under no

obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings in absence

of the complainant, and therefore, the court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have

the inherent power and jurisdiction to restore the complaint on good cause being shown for non-appearance of the complainant.

22. Section 362 of the Cr.P.C. provides that save as otherwise provided by the Code or by any other law for the time being in force, no Court,

after 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. In

Murti Dhar Singh (supra), a Division Bench of this Court had held that the order of disposal for default is not a final order of disposal of a case as

the court had not gone into merit of the case and therefore, the bar prescribed u/s 362 Cr.P.C. is not attracted. Therefore, it was further held that,

in exercise of inherent powers of the High Court u/s 482 Cr.P.C., the High Court can restore a revision petition, which is filed for quashing of a

complaint proceeding, which was dismissed for default.

23. u/s 482 of the Cr.P.C., the High Court has inherent power to make such orders as may be necessary to give effect to any order under the

Code, or to prevent abuse of the process of the Court or otherwise to secure ends of justice. In view of the interpretation given by the Division

Bench of this Court in Murti Dhar Singh (supra), bar imposed u/s 362 Cr.P.C. does not come into play in respect of an order dismissing a case for

default as the same is not a judgment or a final order of disposal. It is to be noted that power u/s 482 Cr.P.C. cannot be exercised or invoked to

do what is specifically prohibited by the code,

24. Dismissal of a complaint for non-appearance of the complainant resulting in acquittal of the accused is a final order and therefore, dismissal of a

complaint for non-prosecution and dismissal of an application u/s 125 Cr.P.C. stand on a different footing. In absence of an embargo, the learned

Magistrate has inherent power to restore an application which is dismissed for default. This inherent power is, however, not to be equated with the

inherent power that is exercised by the High Court u/s 482 Cr.P.C. This is a power, unless prohibited by law, as held in New India Assurance

Company Ltd. (supra), which inheres in every court to restore an application on good cause being shown for the non-appearance of the applicant,

as also the power which inheres in every court to dismiss an application.

25. In view of the discussions above, I am of the considered opinion that an application u/s 125 Cr.P.C. can be dismissed for default and the

learned Magistrate can restore the case to file subject to good cause being shown for restoration. As a result, this petition is held to be devoid of

any merit and accordingly, the same is dismissed.