

In The Court of Sessions Judge,**Vaishali, Bihar 844101.****Distt. - Vaishali, BIHAR.****Criminal Revision No. 78 of 2026**Arising out of Complaint Case No. 1066 of 2022

1. Ajit Kumar Singh S/o Sumangal Singh

.....The Revisionist

Vs

1. The State of Bihar

2. Kumar Vikram S/o Chandeshwar Pd. Singh

.....The Opposite Parties

The criminal revision has been preferred by the revisionist against the order dated 21.01.2026 passed by Learned Sujata Kumari, Judicial Magistrate 1st Class Hajipur, in Complaint Case No. 1066 of 2022 (Chandeshwar Pd. Yadav vs Ajit Kumar Singh) whereby and whereunder the learned Magistrate has allowed the application of the son of the deceased-complainant to pursue the case.

Counsel for the Revisionists: Learned Advocate Sri Krishna Kumar Singh
Counsel for the Opposite Party No.1: Learned P.P. Sri Shyam Babu Rai

Dated- 10th April 2026**Present- Harshit Singh.**

J u d g e m e n t

1. The criminal revision has been preferred by the revisionist against the order dated 21.01.2026 passed by Learned Sujata Kumari Judicial Magistrate 1st Class Hajipur, in Complaint Case No. 1066 of 2022 (Chandeshwar Pd. Yadav vs Ajit Kumar Singh) whereby and whereunder the learned Magistrate has allowed the application of the son of the deceased-complainant to pursue the case.

2. Heard learned Counsel for Revisionist and Learned Public Prosecutor for the State.

3. In this revision petition, the revisionists have taken following grounds for impugning the order dated 21.01.2026 –

a. That the order of the learned Magistrate dated 21.01.26 is not legally maintainable either on point of law as well as on fact.

b. That the order of the learned Magistrate regarding giving an opportunity to fight the case to the son of the complainant is bad in law.

c. That the son of the complainant neither does have knowledge of the money transaction nor was the witness in the complaint petition.

d. That the learned Magistrate wrongly and illegally passed the order to fight the case to the complainant son without assigning any reason.

- e. That the learned Magistrate has adopted biased attitude regarding the case of the opposite party no.2
- f. That it is not proper to allow the complaint son to fight the case in place of his father.
- g. That the learned Magistrate came to the conclusion that in the interests of justice the son of the complainant is given an opportunity in this case to fight this case is against the provision of the law.
- h. That the second party in support of his case filed a written statement which is part and parcel of the record and the same has not been considered by the learned Magistrate.

Hence prayed to allow the present criminal revision and set aside the order dated 21.01.2026 passed by Ld. Sujata Kumari Judicial Magistrate 1st Class, Hajipur.

4. Heard the learned Counsel for the revisionist and the learned Counsel for the State and also perused the materials available on record as well as the impugned order.

5. This extract is taken from *Chand Devi Daga v. Manju K. Humatani*, (2018) 1 SCC 71 : (2018) 1 SCC (Cri) 264 : 2017 SCC OnLine SC 1282 at page 77

14. Two-Judge Bench in *Jimmy Jahangir Madan v. Bolly Cariyappa Hindley* [*Jimmy Jahangir Madan v. Bolly Cariyappa Hindley*, (2004) 12 SCC 509 : 2004 SCC (Cri) Supp 317] referring to this Court's judgment in *Ashwin Nanubhai Vyas* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983 : 1967 Cri LJ 943] had held that heirs of the complainant can continue the prosecution. Following was held in para 5: (SCC p. 512)

"5. The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 of the Code to continue the prosecution is no longer res integra as the same has been concluded by a decision of this Court in *Ashwin Nanubhai Vyas v. State of Maharashtra* [*Ashwin Nanubhai Vyas v. State of Maharashtra*, AIR 1967 SC 983 : 1967 Cri LJ 943] in which case the Court was dealing with a case under Section 495 of the Code of Criminal Procedure, 1898, which is corresponding to Section 302 of the Code. In that case, it was laid down that upon the death of the complainant, under the provisions of Section 495 of the said Code, mother of the complainant could be allowed to continue the prosecution. It was further laid down that she could make the application either herself or through a pleader. Undisputedly, in the present case, the heirs themselves have not filed the applications to continue the prosecution, rather the same have been filed by their power-of-attorney holders. ..."

6. From the conjoint reading of Section 256 Cr.P.C. (corresponding Section 279 of BNSS) and Section 302 Cr.P.C. (corresponding Section 339 of BNSS), it is clear that after the death of the complainant, his legal heir may be permitted to continue the proceeding u/s 138 of the Act, 1881 personally or through pleader or through the power of attorney holder, though, there is no requirement of substitution or impleading the legal heir of the deceased complainant.

Therefore, it is not always necessary for the concerned court to dismiss the complaint u/s 256 Cr.P.C. If the complainant failed to appear for any reason, it may postpone the hearing and if the application is filed by the legal heir of the complainant to pursue the complaint proceeding on the ground that the complainant has died, court should normally permit the legal heir of the complainant to pursue the same.

Therefore, the contention of learned counsel for the applicant that court below has erroneously permitted the son of the complainant after his death to pursue the complaint proceeding appears to be misconceived.

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10.4.26

It is well settled law that, in a case where the Complainant is died and legal heir are prosecuting the complaint under section 138 of NI Act the same principle is applicable in respect of proving the complaint beyond all reasonable doubt as such the legal heir will steps into the shoes of deceased Complainant.

7. Following up the factual matrix of the case and also in the view of the law, the revision sans merit and liable to dismissed.

Order

Consequently,

- a. The instant revision petition is dismissed.
- b. Learned Trial Court is requested to proceed in accordance with law.
- c. Let a copy of this order be sent to the concerned court.

The Judgement is pronounced and delivered in the open Court in presence of the parties under my seal and signature on this 10th of April 2026.

The Judgment is dictated and corrected by:

Harshit Singh
Harshit Singh
Sessions Judge
Vaishali
Dated: 10.04.2026

Harshit Singh
Harshit Singh
Sessions Judge
Vaishali
Dated: 10.04.2026