

**IN THE COURT OF SH. PREM KUMAR BARTHWAL
PRINCIPAL DISTRICT AND SESSIONS JUDGE
NORTH DISTRICT, ROHINI COURTS, DELHI**

CNR No. DLNT01-014970-2025

Cr. Revision No. 300/2025

Ajay Gutpa (since deceased)

through his legal heirs :

(i) Mr. Antriksh Gupta

S/o Late Ajay Gupta

(ii) Mrs. Anju Gupta

W/o Late Ajay Gupta

Both R/o : H.No. 360A, Dhaka Johar,

Dr. Mukherjee Nagar, North West, Delhi-110009.

(iii) Ms. Pranjalie Gupta

D/o Late Ajay Gupta

R/o H.No. 308, Krishna Puri

Muzaffar Nagar, UP-251002.

.....Revisionists

Versus

Sh. Ashwani Sharma

R/o M-1/6, Model Town,

Delhi-110009

.....Respondent

Date of filing : 10.11.2025

Date of arguments : 20.03.2026

Date of Order : 27.03.2026

ORDER

1. Vide this order, this Court shall dispose of the instant revision petition filed by revisionist under Section 438 BNSS (Formerly Section 397 Cr.P.C.) against the impugned

order dated 13.05.2025, passed by Ld. JMFC-03, North, Rohini Courts, Delhi, in case titled as "*Ajay Gupta Vs. Ashwani Sharma*" bearing Cr. Case No. 5816/2016 (Old No. 237/1/14) whereby the Ld. Trial Court had dismissed the complaint case for non-prosecution.

2. The brief facts of the case, as per the present revision petition are that complainant Late Shri Ajay Gupta had filed a complaint case u/s 138 NI Act before the Ld. Trial Court wherein accused Ashwani Sharma (respondent herein) was summoned to face trial u/s 138 of NI Act and on 30.03.2015 notice u/s 251 Cr.PC for the offence punishable u/s 138 NI Act was also served upon the accused. Complainant evidence was closed on 04.03.2023 and statement of accused under section 313 Cr.P.C. r/w Section 281 Cr.P.C. was recorded on 12.04.2023 and he opted to lead DE. On non-appearance of the complainant/revisionist, the case was dismissed for non-prosecution vide the impugned order dated 13.05.2025.

3. Aggrieved against the said impugned order, the revisionist has preferred the present revision petition praying therein to set aside the impugned order on the grounds that LRs of the complainant were not aware about the pendency of the present complaint and Ld. counsel for the complainant was also not in touch with LRs of the complainant. It is submitted that LRs came to know about passing of impugned order in the first week of September, 2025. It is submitted that no prejudice

would be caused to the accused/respondent if the present complaint case is restored to its original number. It is prayed that the impugned order dated 13.05.2025 be set aside.

4. The Trial Court Record has been requisitioned and perused. The impugned order dated 13.05.2025 reads as under :-

“13.05.2025

Regular Steno is on leave today and court is also working as Link to Ld. CJM/North.

Present : None for the complainant despite repeated calls.

Sh. Neeraj Kumar Shah, Ld. Counsel for accused through VC.

Ms. Aarti, Ld. Proxy counsel for the accused.

Court notice issued to the counsel and the LRs for the complainant received back executed. Still no one entered appearance. Be awaited.

(Himanshu Sehloth)
JMFC-03/North/Rohini/Delhi
13.05.2025

At 12.30 p.m.

Present : None for the complainant despite repeated calls.

Sh. Neeraj Kumar Shah, Ld. Counsel for accused through VC.

Ms. Aarti, Ld. Proxy counsel for the accused.

Perusal of the record reveals that no one has appearing on behalf of the complainant since last four consecutive dates of hearing. Several opportunities have been granted to the complainant for diligent prosecution of the present case. Today again, no one has entered appearance on behalf of the complainant despite repeated calls.

The matter cannot be kept pending for eternity at the mercy of the complainant. In a complaint case, it is the bounden duty of the complainant to prosecute the matter diligently. The precious time of the court cannot be wasted by the

inaction of the complainant.

In the light of peculiarity of the circumstances, court is constrained to dismiss the present matter for non-prosecution.

File be consigned to record room.

(Himanshu Sehloth)
JMFC-03/North/Rohini/Delhi
13.05.2025”

5. Section 279 BNSS (analogous to Section 256 of erstwhile Cr.PC) becomes relevant at this juncture and for ready reference and the same provides as under:

Section 279 BNSS 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 after giving 30 days time to the complainant to be present, 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 an advocate 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.

(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.

6. Thus, once accused has been summoned and the case happens to be dismissed for non-appearance of the complainant despite 30 days notice, it would amount to acquittal of the

accused as per Section 279 BNSS (analogous to Section 256 Cr.P.C.). In the present matter, the accused Ashwani Sharma (respondent herein) was summoned to face trial u/s 138 of NI Act and on 30.03.2015 notice u/s 251 Cr.PC for the offence punishable u/s 138 NI Act was also served upon the accused. The counsel for complainant had lastly appeared on 13.08.2024 and had sought adjournment for filing appropriate application for substitution of LR of the deceased complainant. Even court notices were issued to the counsel for complainant as well as LRs of the complainant vide proceedings dated 09.10.2024 but none appeared on behalf of the complainant despite repeated service. In such an eventuality, the learned JMFC was constrained to dismiss the complaint for non-prosecution. Such dismissal tantamounts to acquittal and the remedy against said dismissal is to file an appeal whether under Section 419(4) BNSS (Formerly 378(4) Cr.PC or under Section 413 BNSS (Formerly 372 Cr.PC) and not a revision petition. The scope of Section 372 (proviso) Cr.PC and Section 378(4) Cr.PC provide a 'victim' and the 'complainant' in a case, to prefer appeals against acquittal of the accused by the order of the Ld. Magistrate, respectively. In this regard, I am guided by the judgment of Hon'ble Punjab & Haryana High Court titled, *Hardeep Singh Sandhu Vs. M/s Intex Technologies (India) Ltd., CRM-M-40152 of 2019 (O&M) decided on 21.07.2023* where it has been held that once the complaint in question was dismissed in default for want of prosecution, due to absence of the complainant, the said

dismissal amounted to acquittal and the only remedy for the complainant–respondent was to file the appeal.

7. In the considered opinion of this Court, the present revision petition is not maintainable against the impugned order dated 13.05.2025 passed by the Ld. JMFC-03, North Rohini District, Delhi and hence the same is hereby dismissed accordingly.

8. Trial Court Record be sent back along with a copy of this order. The revision petition file be consigned to Record Room.

*(Announced in the open court
today on i.e. on 27.03.2026)*

(PREM KUMAR BARTHWAL)
Principal District & Sessions Judge
North District/Rohini Courts/Delhi.