

**IN THE COURT OF SH. VINEET KUMAR, ASJ-02 (WEST),
TIS HAZARI COURTS, DELHI.**

Criminal Revision No. 746/2023

CNR NO. DLWT01-002265-2023

Sanjay Sethi

S/o Late. Sh. K.L Sethi

R/o N-71, UGF, Kirti Nagar

New Delhi-110015

....Revisionist

Vs.

1. THE STATE OF NCT OF DELHI

Through Public Prosecutor

2. Praveen Chhabra

R/o I-143, Second Floor

Kirti Nagar

New Delhi-110015.

...Respondents

Order reserved on : 20.04.2026

Order delivered on : 30.04.2026

ORDER : -

1. The present revision petition has been filed under Section 397/399 CrPC of the Code of Criminal Procedure, 1973 in criminal revision no. 746/2023 arising out of order dated 02.02.2023 (hereinafter called 'impugned order') passed by the Ld. JMFC, (NI ACT)-05, West, Tis Hazari Court in Case bearing no. Ct Case 5774/2019 titled as “Sanjay Sethi Vs. *Praveen Chhabra*” wherein the Ld. Trial Court dismissed the said complaint for non- prosecution and non-appearance of the

revisionist. Significantly, by means of the present revision petition, the revisionist has inter alia sought setting aside of the said order/impugned order dated 02.02.2023, passed by the Ld. Trial Court and restoration of the said complaint to its original number and stage/position.

2. It has been contended on behalf of Revisionist that at the time of filing the case, counsel for the revisionist/complainant was suffering from a cyst on the right side of the chest, leading to serious medical complications including low platelets, high blood sugar, and high blood pressure. That due to deterioration of health, the counsel was hospitalized at Hindu Rao Hospital and was advised immediate surgery on 27.07.2022; however, due to non-availability of beds, surgery was conducted on 29.07.2022 at Mohanty Surgical Centre & Nursing Home (Annexure-B). That owing to the said medical condition and surgery, the counsel was unable to pursue the complaint, resulting in non-appearance on 08.09.2022, 13.10.2022, 15.12.2022, and 02.02.2023. That the counsel has now fully recovered and resumed professional duties.

That on 09.10.2022, the counsel's 84-year-old mother suffered a serious accident, resulting in multiple fractures; she was admitted to Aakash Hospital, Dwarka, operated on 11.10.2022, and discharged on 13.10.2022. That the counsel is the sole caretaker of his mother, with no other family members to assist. That the complainant, being employed in Saharanpur, U.P., was entirely dependent on the counsel for court appearances, and due to the aforesaid circumstances, neither could appear on the relevant dates.

3. The relevant portion of the impugned order, dated 02.02.2023, is reproduced herein as under:

“It has been submitted that nobody has been appearing on behalf of the complainant and the matter should be dismissed for non-appearance.

Heard.

The matter is passed over till 3.00 p.m. and the presence of the complainant is awaited.

It is already 03.00 PM. Perusal of the case file reveals that since the last 3 dates of hearing, the complainant has not been appearing. On 15.12.22, one last opportunity was given to the complainant to proceed with the present matter. A cost of Rs. 2500/-has also not been deposited by the complainant. However, even today, none has appeared on behalf of the complainant despite matter being kept awaited since morning. It seems that complainant is not interested in further prosecution of the case.

In view of this, present complaint stands dismissed for non filing of process fee and for want of appearance of complainant as well as for non prosecution U/s 256 CrPC Accused stands acquitted for the offence punishable U/s 138 N 1 Act. Bail bond cancelled and surety discharged. Endorsement, if any on the documents be cancelled. Documents be returned to the rightful owner. ”

4. Aggrieved by the impugned order, revisionist has filed the instant revision seeking directions to set aside the impugned order on the following grounds:

- I. That on the various dates when the counsel of the Complainant/Revisionist was unable to appear in the Ld. Trial Court, the dates actually coincided with deteriorating medical condition of the counsel himself, first and then the unfortunate accident suffered by the mother of the Counsel of Revisionist.
- II. That the Revisionist will suffer great loss due to medical exigencies of his counsel.

III. That no prejudice will be caused to the respondents as the complaint case was at the stage of complainant evidence before the trial Court, when impugned order was passed.

5. Arguments were heard on behalf of both sides and the entire record was meticulously perused. Ld. counsel for revisionist has argued on the same lines as grounds taken in the present revision. Further, it has been argued on behalf of revisionist that the impugned order, which prejudicially affects the revisionist's legal rights, suffers from procedural irregularity, non-application of mind and is liable to be set aside, making the present revision maintainable.

On the other hand, Id. counsel for respondent has argued that the present revision is not maintainable as the order challenged by the revisionist is not a revisable order and the proper remedy against the impugned order is an appeal.

6. At the outset, it is essential to ascertain as to whether the present revision petition is maintainable under Section 397 Cr.P.C. against the impugned order.

7. To begin with, it would be profitable to reproduce Section 256 Cr. P.C. which reads as under:-

"256. 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, 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 a pleader 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.

*Further, reliance can be placed on the judgment titled as **Kalpana Tyagi Vs. Snehlata Sharma 104 (2003) DLT, 127** wherein, the Hon'ble Court has held that under such situation, law/Section 279 BNSS/Section 256 Cr.P.C. confers power on the court/Magistrate to acquit such an accused.*

8. Thus, a distinction, has to be drawn in with respect of the complaints dismissed prior to the summoning of an accused and those dismissed subsequent to the summoning of the accused. If a complaint is dismissed prior to the summoning of an accused, the order may be challenged by way of filing a revision, but once Section 256 comes into play, the dismissal of a complaint has the effect of acquittal of an accused and only an appeal can be filed under the Code to challenge the order of acquittal.

9. In the light of the above, when the facts of the present case are analyzed, it appears that present revision petition is not maintainable. The summons were issued to the accused, notice was framed against the accused to which he pleaded not guilty. Thereafter, the present complaint case under Section 138 NI Act was dismissed by Ld MM on 02.02.2023 on account of non- appearance of complainant/for non filing of process fee as well as for non prosecution. As Ld. MM chose to dismiss the

complaint for non-prosecution u/s 256 Cr. P.C., the consequences as detailed in said section would follow i.e. the accused stands acquitted. Moreover, it has been specifically mentioned in the impugned order that “accused stands acquitted for the offence u/s 138 NI Act”. In these circumstances, as per law, only an appeal can be filed to challenge the order of acquittal. Therefore, this revision is not maintainable and same is liable to be dismissed on this ground alone.

10. Accordingly, Revision stands ***dismissed***.

However, it is clarified that nothing said hereinabove shall tantamount to any opinion on the merits of the case.

After necessary formalities, revision file be consigned to Record Room. Copy of this order be sent to Ld. Trial Court along with Trial Court Record.

**Announced in open Court
today i.e. on 30.04.2026**

**(VINEET KUMAR)
ASJ-02/ WEST/ THC/DELHI
30.04.2026**