OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (SOUTH-WEST)
DWARKA COURTS, NEW DELHI.

No. 4507 – 4596 /Misc/Endst/Genl/DWK/2026 Dated 29.01.2026

Sub: Petition under section 528 of BNSS, 2023 (482 of Cr.PC, 1973) seeking setting aside order dated 28.08.2024 passed by Hon'ble Court of Ld. JMFC-04, North-West, Rohini Courts, Delhi in CR. Case No. 542461/2016, FIR No. 511/2015, u/s 323/341/506/34 IPC, P.S Keshav Puram, Delhi.

As directed by the Ld. Principal District & Sessions Judge (S-W), a copy of letter no. 7534/Crl. dated 28.01.2026, alongwith copy of order dated 21.01.2026 passed by Hon'ble High Court of Delhi, seeking setting aside order dated 28.08.2024 passed Hon'ble Court of Ld. JMFC-04, North-West, Rohini Courts, Delhi in CR. Case No. 542461/2016, FIR No. 511/2015, u/s 323/341/506/34 IPC, P.S Keshav Puram, Delhi, is being forwarded herewith for information and necessary compliance to:

1. All the Ld. Judicial Officers posted at Dwarka Courts Complex, New Delhi. (Through email & Whatsapp).
2. Ld. Principal District & Sessions Judge's Secretariat (S-W), Dwarka Courts, New Delhi, for information. (through E-mail).
3. Branch Incharge, Judicial Branch, Dwarka Courts, New Delhi for information & follow up action, if any (through email).

(GURMOHINA KAUR)
Officer Incharge (General Branch)
Additional Sessions Judge-05
Dwarka Courts : New Delhi.

D-8 391/29/1/26 DT

Urgent Disposed Of

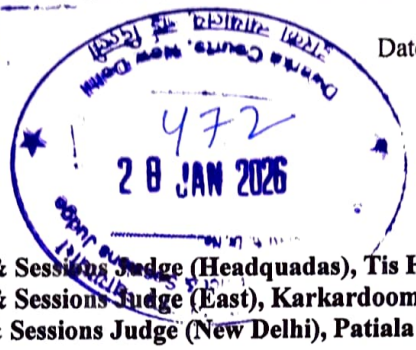
IN THE HIGH COURT OF DELHI AT NEW DELHI

No.:- 7534/cl. Dated:- 28/1/26

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To



1. **The Principal District & Sessions Judge (Headquadas), Tis Hazad Courts, Delhi.**
2. **The Principal District & Sessions Judge (East), Karkardooma Courts, PeRU.**
3. **The Prindpal District & Sessions Judge (New Delhi), Patiala House Courts) New**
4. **Delhi.**
5. **The Principal District & Sessions Judge (South West), Dwarka Courts, New Delhi.**
6. **The Principal District & Sessions Judge (West), Tis Hazad Courts, Delhi.**
7. **The Principal District & Sessions Judge (North West), Rohini, Delhi.**
8. **The Principal District & Sessions Judge (South), Saket Courts, Delhi.**
9. **The Print.iijaI District & Sessions Judge (North East), Karkardooma Courts, Delhi.**
10. **The Principal District & Sessions Judge (South East), Saket, New Delhi.**
11. **The Principal District & Sessions Judge (Shahdara), Karkardooma Courts, Delhi.**
12. **The Principal District & Sessions Judge (PC Act.) (CBI), RACC, Delhi.**
13. **The Principal District & Sessions Judge (North), Rohini Courts, Delhi.**
14. **The Principal Judge (Family Courts), Dwarka Courts, New Delhi.**
15. **The Ld. JMFC-04, North-West, Rohini Courts, New Delhi or Successor Court.**
16. **The SHO/IO/AO, Police Station Keshav Puram, Delhi.**

CRL.M.C NO. 537/2026, CRL.M.A 2162/2026 & CRL.M.A 2161/2026

Ram Swaroop Gupta & Ors .....**Petitioner**

VERSUS

The State of NCT of Delhi & Anr .....**Respondent**

Petition under section 528 of BNSS, 2023 (482 of Cr.PC, 1973) seeking setting aside order dated 28.08.2024 passed by Hon'ble Court of Ld. JMFC-04, North-West, Rohini Courts, Delhi in CR.Case No. 542461/2016., FIR No. 511/2015, u/s 323/341/506/34 IPC, P.S Keshav Puram, Delhi.

Sir,

I am directed to forward herewith for immediate compliance/ necessary action a copy of **judgment/order dt. 21.01.2026** passed in the above case by Hon'ble **Single Bench,** of this Court.

Other directions are contained in the enclosed copy of order.

Yours faithfully

AOJ (Crl.-II)
for Registrar General

Encl: **Copy of order dated 21.01.2026 and memo of parties.**

General Branch (CSW) for Circulation amongst all Ld. Judicial officers dealing with Criminal Trials.

PDJ (CSW)
28/01/2026

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IN THE HIGH COURT OF DELHI

AT NEW DELHI

(EXTRAORDINARY CRIMINAL JURISDICTION)

CRL. M.C. NO. ____ OF 2026

IN THE MATTER OF:

RAM SWAROOP GUPTA AND ORS. ...PETITIONERS

VERSUS

STATE NCT OF DELHI AND ANR. ...RESPONDENTS

MEMO OF PARTIES

1. **RAM SWAROOP GUPTA**
   S/o Om Saroop Gupta
   R/o H No. 1377/93. Ganesh Pura,
   Tri Nagar, Delhi – 110035

...PETITIONER NO. 1

2. **HEMANT GUPTA**
   S/o Ram Swaroop Gupta
   R/o H No. 1377/93. Ganesh Pura,
   Tri Nagar, Delhi – 110035

...PETITIONER NO. 2

3. **ANJALI GUPTA**
   D/o Ram Swaroop Gupta
   R/o H No. 1377/93. Ganesh Pura,
   Tri Nagar, Delhi – 110035

...PETITIONER NO. 3

VERSUS

1. **STATE NCT OF DELHI**
   Through Standing Counsel and Through SHO, PS: Keshavpuram
   Email: dhcprosecutiondelhipolice@gmail.com
   ...RESPONDENT NO. 1

2. **JAGMOHAN GUPTA**
   S/o Late Sh. Raj Nath Gupta
   R/o H No. 3893/14, Kanhiya Nagar,
   Tri Nagar, Delhi - 110035

   ...RESPONDENT NO. 2

Ram Saroop Gupta Hemant Gupta Jyoti Gupta

PETITIONER NO. 1 | PETITIONER NO. 2| PETITIONER NO. 3

THROUGH

ASRawat

AJATSHATRU SINGH RAWAT |
ANGAD GAUTAM | JAI ALLAGH
ADVOCATES FOR THE PETITIONERS
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FILED ON:16.01.2026
FILED AT: NEW DELHI

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 21.01.2026*

\+ **CRL.M.C. 537/2026, CRL.M.A. 2162/2026 & CRL.M.A. 2161/2026**

RAM SWAROOP GUPTA & ORS. .....Petitioners
Through: Mr. Ajatshatru Singh Rawat and Ms. Naimishi Verma, Advocates

versus

STATE NCT OF DELHI & ANR. .....Respondents
Through: Mr. Sanjeev Sabharwal, APP for the State

CORAM: JUSTICE GIRISH KATHPALIA

JUDGMENT (ORAL)

1. Petitioners/accused seek setting aside of order dated 28.08.2024 of learned trial court, whereby their application under Section 311 CrPC for recall of PW-1 Jagmohan Gupta for further cross-examination was dismissed.

2. Learned APP for State accepts notice. Mr. Jagmohan Gupta also has been impleaded in the present petition as respondent no. 2 but learned counsel for petitioners/accused submits that same was done only out of abundant precaution and otherwise, he is not a necessary party, it being a

GIRISH KATHPALIA

State case. As requested, respondent no. 2 is deleted from the array of parties.

3. Learned APP for State in all fairness does not oppose this petition on account of following discussion.

4. Ordinarily, dismissal of an application under Section 348 of BNSS (*earlier Section 311 CrPC*) being an interlocutory order, the revision petition would be barred by Section 438(2) of BNSS [*earlier Section 397(2)CrPC*] and what is explicitly barred, cannot be granted backdoor entry by invoking inherent powers. But this bar on the inherent powers is subject to a rider, whereby the High Court must examine if any gross injustice has been done. If the High Court arrives at a conclusion that the interlocutory order caused gross injustice, it would not only be justified for the High Court, but also it would be a duty of the High Court to invoke inherent powers and prevent injustice. The inherent powers wherever exist, are accompanied with an attendant duty to invoke the same to meet ends of justice.

5. In the present case, the gross injustice which appears to have been caused to the petitioners/accused is that on 02.09.2023 when PW-1 Mr. Jagmohan Gupta appeared for the first time for his cross-examination, the present petitioners/accused persons were not accompanied with their counsel. Even any proxy counsel was not accompanying them and they were called upon to cross-examine PW-1. As expected, the petitioners/accused persons being lay persons were unable to cross-examine PW-1, so the

GIRISH KATHPALIA

learned trial court closed the testimony of PW-1 recording 'Nil. Opportunity given'.

6. Thereafter, the petitioners/accused filed an application under Section 311 CrPC, explaining the reason for inability of the defence counsel to appear on 02.09.2023. It is also trite that power under Section 311 CrPC can be invoked by the trial court on its own as well without waiting for an application from either side. In the present case, even the application was filed. Although, learned trial court was not convinced with the reasons advanced to explain failure of defence counsel to appear, but even after that, the learned trial court could have invoked the power on its own to ensure no injustice was caused.

7. In the trial proceedings where the accused in the absence of defence counsel, is called upon to cross-examine a witness, it is not just the accused who suffers injustice. It is the entire trial which gets vitiated. Presence of legal assistance for the accused facing a trial is the core element of fair trial.

8. In a case where the trial court is convinced that the accused is somehow protracting the proceedings in order to frustrate the prosecution witnesses, the trial court instead of calling upon the accused in the absence of legal assistance to cross-examine the witness, should either appoint an *amicus curiae* or should direct the local legal services authority to send some legal aid counsel. The purpose is that the fairness and purity of trial must be kept. In addition, nothing prevents even the trial court to put any questions to the prosecution witness because purpose of such trial is to

GIRISH KATHPALIA

arrive at the truth. In the name of expeditious trial, fairness of the trial cannot be allowed to become a casualty.

9. Therefore, the impugned order is set aside and trial court is directed to grant another opportunity to the petitioners/accused through their counsel to cross-examine PW-1 Mr. Jagmohan Gupta. The next date before the learned trial court is informed to be 07.02.2026. On the next date, the learned trial court shall fix fresh date for further cross-examination of PW-1 Mr. Jagmohan Gupta, according to the calendar of the learned trial court. Accordingly, the petition and the accompanying applications stand allowed.

10. Copy of this order be sent to all Principal District & Sessions Judges in Delhi with the request to circulate the same amongst all Courts dealing with criminal trials so that such situation does not arise again.

GIRISH KATHPALIA
(JUDGE)

JANUARY 21, 2026
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