

2025 SCC OnLine Del 468

In the High Court of Delhi at New Delhi
(BEFORE SWARANA KANTA SHARMA, J.)

Bachittar Singh ... Petitioner;

Versus

State of NCT of Delhi and Others ... Respondents.

CrI.M.C. 240/2025

Decided on January 29, 2025

Advocates who appeared in this case :

Mr. Archit Upadhyay, Advocate

Mr. Rajkumar, APP for the State along with SI Himanshu Kumar Dubey, PS Amar Colony.

The Judgment of the Court was delivered by

SWARANA KANTA SHARMA, J.:—

CRL.M.A. 1230/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.C. 240/2025

3. By way of this petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter '*BNSS*'], the petitioner seeks setting aside of order dated 05.10.2024 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge, South East District, Saket Courts, New Delhi [hereafter '*Sessions Court*'] in CrI. Rev. No. 496/2024 titled '*Bachhitar Singh v. State*'. By way of the impugned order, the learned Sessions Court was pleased to dismiss the revision petition filed by the petitioner, and uphold the order passed by the learned Metropolitan Magistrate-12, South East, Saket, Delhi [hereafter '*Magistrate*'] wherein the learned Magistrate had dismissed the complaint filed by the petitioner, under Section 203 of Criminal Procedure Code, 1973 [hereafter '*Cr.P.C.*'] as well as for non-prosecution.

4. Issue notice. The learned APP accepts notice on behalf of the State.

5. Briefly stated, the facts of the case are that on 27.02.2018, the petitioner had been repairing the roof of his house along with his wife when respondent no. 2, accompanied by two unidentified persons, had come to the roof of the adjoining building. Respondent no. 2 and his associates had started abusing the petitioner and his wife, and had threatened to kill both of them. They had then demolished the top wall

of the petitioner's property with the intent to harm him and his wife. Luckily, the petitioner and his wife had managed to escape before the wall could be demolished. The petitioner had immediately gone to the ground floor and had called the police, who had arrived an hour later and recorded the petitioner's statement. On 22.05.2018, as no action had been taken by the police in response to the complaint, the petitioner had filed a formal written complaint to the SHO of Police Station Amar Colony, Delhi. Despite this, no action had been taken on his complaint, nor had an FIR been registered. Left with no option, the petitioner had filed a formal complaint before the DCP concerned on 13.05.2019, but no action had been taken for redressal. Subsequently, the petitioner had filed an application under Section 156(3) of Cr. P.C. before the learned Magistrate seeking a direction for the registration of an FIR against respondent no. 2 and 3, and the unknown associates of respondent no. 2.

6. The learned Magistrate, *vide* order dated 18.05.2024, had dismissed the application under Section 156(3) of Cr. P.C. and had fixed the matter for leading pre-summoning evidence. On 03.10.2023, while the matter was listed for pre-summoning evidence, the petitioner had appeared before the learned Magistrate and had requested an adjournment as the legal aid counsel was not available. The matter had been adjourned to 13.12.2023. On 13.12.2023, the legal aid counsel was again unavailable, and the matter had been adjourned to 05.03.2024. On 05.03.2024, when the matter was listed again for pre-summoning evidence, for the third consecutive hearing, the legal aid counsel assigned to the petitioner had not appeared before the Court, and an adjournment had been granted with a final opportunity to lead pre-summoning evidence. The matter had been adjourned to 04.05.2024.

7. On 04.05.2024, the petitioner had appeared in person, but the legal aid counsel had once again not been available. The learned Magistrate observed that despite being granted several opportunities, the complainant had not led pre-summoning evidence. The learned Magistrate further observed that the complainant was not interested in pursuing the complaint. Consequently, the learned Magistrate on 04.05.2024 had dismissed the petitioner's complaint, under Section 203 of Cr. P.C. for there being no evidence to take cognizance of complaint, as well as for non-prosecution. The order dated 04.05.2024 is set out below:

"04.05.2024

Present: Complainant in person.

Matter is at the stage of PSE.

A request for an adjournment is made on behalf of the complainant on the ground that the main counsel is not available

today.

Heard. Allowed.

Several opportunities have been granted to the complainant to lead pre-summoning evidence, however, he has failed to lead PSE.

Today matter is fixed with last opportunity.

It appears that the complainant is not interested in prosecution of the present complaint.

Accordingly, right to lead pre-summoning evidence is closed.

As there is no evidence on record for taking cognizance, the complaint is dismissed under section 203, Cr. P.C. and for non prosecution..."

8. Aggrieved by the order of dismissal, the petitioner had filed a criminal revision petition before the learned Sessions Court, who had *vide* the impugned order, dismissed the petition on the grounds that the petitioner had not filed any complaint against the legal aid counsel, appointed by the Delhi Legal Services Authority [hereafter '*DLSA*']. As a result, the learned Sessions Court had concluded that the petitioner was responsible for the dismissal of his complaint since he was negligent in prosecuting his case, and thus the revision petition was devoid of any merit. The relevant extract of impugned order dated 05.10.2024 is set out below:

"5. Admittedly, the said case was instituted by the complainant on 19.12.2019. On 18.05.2023, the Ld. Magistrate was pleased to dismiss the application moved by the complainant u/s 156(3) Cr. P.C. in the said case. Thereafter, the Ld. Magistrate fixed the matter for recording of presummoning evidence. Admittedly, the matter was taken up on 03.10.2023, 13.12.2023, 05.03.2024 and 04.05.2024 for recording of pre-summoning evidence. Admittedly, on all the said dates the complainant sought an adjournment on the ground that main counsel was not available.

6. As to the reason for non-availability of the main counsel of the appellant on all the said dates, it is orally submitted that the complainant instituted the said case through a Legal Aid Counsel provided by District Legal Services Authority, who was not serious in pursuing the matter. However, the complainant has not placed any material on the file which reflects that he ever made any complaint against his Legal Aid Counsel for said (mis)conduct at the relevant time. In such circumstances, the complainant must explain as to why he remained silent for almost an year since the dismissal of his application u/s 156(3) CrPC, till the passing of impugned order-and did not agitate the matter before the District Legal Services Authority against his counsel. In the absence of any explanation, complainant could not be permitted to go scot free by shifting the

blame completely onto his Legal Aid Counsel. Moreso, when the complainant has not bothered to plead anything against his Legal Aid Counsel in the present petition. In the considered opinion of this Court, the complainant was negligent in prosecuting his case before the Ld. Magistrate, which led to the passing of the impugned order. The Ld. Magistrate was correct and justified in closing the right of the complainant to lead pre-summoning evidence as complainant was granted sufficient opportunities to do so.”

9. Assailing the aforesaid orders, the learned counsel for the petitioner argues that the learned Sessions Court has failed to take into account the fact that the responsibility of ensuring effective representation lies with the DLSA and the counsel appointed by them. Therefore, the petitioner should not be made to suffer due to lapses on the part of his legal representative. It is further argued that the learned Sessions Court did not consider that the petitioner is a layman, unaware of his rights and the procedural recourses available to him. The petitioner, having trusted the competence of his appointed legal counsel, did not file a complaint against the counsel, as he believed that the counsel appointed by the DLSA would diligently handle the case. It is argued that the non-filing of a complaint against the legal aid counsel by the petitioner cannot be construed as neglect on his part.

10. Further, the learned counsel for the petitioner contends that it was the duty of the appointed legal aid counsel to represent the petitioner before the learned Magistrate. In the event the counsel was unavailable, it was the DLSA's duty to ensure that no adverse orders were passed and should have ensured legal representation by taking appropriate steps to appoint a legal aid counsel to assist the petitioner. Thus, the responsibility to safeguard the petitioner's interests rested with the appointed legal aid counsel. It is further argued that no adverse orders should have been passed against the petitioner due to lapses on the part of the legal aid counsel without first seeking an explanation from the DLSA regarding the absence of the counsel and the repeated adjournments.

11. The learned counsel for the petitioner further contends that under Article 39A of the Constitution of India, which directs the provision of legal aid, it is the fundamental duty of the legal system to ensure that the petitioner receives adequate legal representation. It is argued that the learned Sessions Court failed to appreciate that this is not a case of non-prosecution, as the petitioner had consistently appeared on each and every date of hearing. His consistent presence before the learned Magistrate negates any inference of non-prosecution. It was, in fact, the petitioner's counsel who failed to appear and repeatedly requested adjournments at each hearing. Therefore, the

petitioner should not be penalized for the absence and lapses of his legal counsel.

12. This Court has heard arguments addressed by learned counsel for the petitioner and has perused material on record.

13. In the present case, this Court notes that the complaint was filed by the petitioner before the learned Magistrate on 19.12.2019. However, after his application filed under Section 156(3) of Cr. P.C. was dismissed *vide* order dated 18.05.2023, the case was adjourned for recording pre-summoning evidence on 14.08.2023. It is not disputed that the matter was thereafter taken up on 03.10.2023, 13.12.2023, 05.03.2024, and 04.05.2024 for recording of pre-summoning evidence. The record reveals that on each occasion when the case was listed for hearing, the complainant had sought adjournments on the ground of non-availability of his counsel. However, it is undisputedly clear from the record that the complainant was present on every date of hearing before the learned Magistrate.

14. Although the order sheets mentioned above, i.e. of the year 2023, do not specifically mention that the complainant was assisted by a legal aid counsel, it is evident from the record that the legal aid counsel had been appointed by the Secretary, South-East DLSA on 22.03.2019, as per the order/letter on record. The earlier ordersheets of the case file clearly records the presence of legal aid counsel; therefore, the learned Magistrate was in knowledge that in the present case, a legal aid counsel was assisting the complainant as well as the Court. Further, on the very first page of the complaint, under the signature of the counsel who had prepared and filed the complaint, the term 'Legal Aid Counsel' was mentioned.

15. The order dated 06.12.2022 reveals that the complainant had, in fact, brought to the notice of the learned Magistrate in the year 2022 that the legal aid counsel appointed was not appearing on his behalf, and on the same day, a copy of the order dated 06.12.2022 had been sent to the Secretary, DLSA, South-East District, Saket Court that the counsel appointed to assist the complainant had not been appearing before the Court. The order dated 06.12.2022 is set out below:

"Present: Complainant in person.

A request for an adjournment is made on behalf of the complainant on the ground that his legal aid counsel, Mr. 'xxx xxx xxx' is not available today.

Copy of this order be sent to DLSA, SE for information.

Put up on 14.02.2023."

16. Thereafter, the legal aid counsel had appeared once to address arguments on application filed under Section 156(3) of Cr. P.C. on 24.04.2023, and his appearance was recorded in the order sheet.

However, after dismissal of this application on 18.05.2023, while the case was listed for recording pre-summoning evidence, the learned legal aid counsel did not appear even once, making it a ground for dismissal of the complaint by the learned Magistrate.

17. It is to be further noted that prior to approaching the learned Magistrate, the petitioner had filed a complaint with the police on 27.02.2018, but no action had been taken on the same. Despite subsequently approaching the SHO on 22.05.2018 and the DCP on 13.05.2019, the petitioner's grievances had remained unaddressed. This prolonged inaction on the part of the authorities also reflects the difficulty faced by the petitioner, particularly given his socioeconomic background. It is distressing to note that the incident in question occurred in 2019, and despite the petitioner's efforts to seek justice, he remains without a resolution six years later. This delay is exacerbated by the inaction of the police, non-availability of legal aid counsel on every date of hearing, as well as the mechanical approach of the learned Magistrate and Sessions Court.

18. The learned Magistrate did not account for the fact that the complainant, who is illiterate and from a disadvantaged socioeconomic background, was dependent on legal aid counsel. It is easy to dismiss a complaint - as in the present case - without even a question or inquiry as to why the counsel in such a case was not appearing for the last several dates.

19. However, the premise on which the revision petition was dismissed by the learned Sessions Court is a step further towards lack of empathy as it observes that it was the fault of the complainant/petitioner herein that he had not lodged a complaint against the legal aid counsel. The Sessions Court blamed the complainant of being '*negligent*' and trying to '*shift the blame to the legal aid counsel*', and that he could not be '*permitted to go scot free*'. In this Court's opinion, the learned Sessions Court totally ignored the fact that the record clearly revealed that there was an appointment letter appointing a legal aid counsel for the petitioner, and each order sheet of the learned Magistrate revealed absence of his legal aid counsel. Therefore, there was no question of the complainant being negligent in pursuing his case as he himself was present on each and every date of hearing, however, the counsel appointed to assist him did not reach the Court.

20. As also noted above, the complaint filed before the learned Magistrate mentioned that it was drafted and presented by a legal aid counsel. In fact, another legal aid counsel had drafted and presented the revision petition before the learned Sessions Court. Although it was brought to the knowledge of Sessions Court that petitioner's legal aid counsel was not appearing before the Magisterial Court, the learned

Sessions Court - instead of extending any help to the petitioner - held him 'negligent', and erroneously observed that he was shifting the blame on his legal aid counsel, even though the petitioner had appeared before the learned Magistrate on each and every date of hearing.

21. This Court also notes that the learned Sessions Court did not take note of the events that transpired before the court of learned Magistrate. Had the ordersheets of that Court been perused by the learned Sessions Court, there was no occasion to reach a conclusion that the non-appearance of the legal aid counsel was due to the fault of the complainant in absence of a written complaint filed by him against the said counsel. Clearly, even the learned Magistrate concerned in the year 2022 had sent a complaint to the concerned DLSA in this regard, at the asking of the complainant reflected in the order sheet dated 06.12.2022. The complainant thus, could not have been faulted for non-appearance of the legal aid counsel. The findings of the learned Sessions Court are thus clearly contrary to the facts of the case and order sheets of the Magisterial Court.

22. In the case at hand, the petitioner's situation highlights the challenges faced by individuals from disadvantaged backgrounds when they depend on the legal aid system. It raises concerns about whether sufficient safeguards are in place to protect the interests of such petitioners and ensure their right to effective legal representation. For an uneducated individual, who could not afford to hire a private lawyer, the appointment of a legal aid counsel is a significant source of hope. However, as a layman, the petitioner would have lacked both the legal knowledge and the confidence, and it would have been difficult for him to find the courage or resolve to file a complaint against his legal aid counsel. This is particularly true considering the respect and trust that individuals often place in advocates, who are seen as pillars of the legal system. Many people, especially from marginalized backgrounds, are often reluctant to file complaints against their lawyers, fearing the consequences of challenging someone they rely on for legal support. The learned Sessions Court ought to have considered that it would have required significant courage for the complainant to lodge a complaint against his own legal aid counsel, given his social and educational limitations.

23. In the present case, the reasons behind the consistent non-appearance of the legal aid counsel, despite being appointed to assist the complainant, remain unclear. However, a perusal of the orders passed by the learned Magistrate as well as learned Sessions Court reflect a lack of empathy and any initiative on their part to find out as to why the appointed counsel was consistently absent. There was no effort to inquire whether the petitioner still required legal aid or if there

were underlying reasons for the counsel's non-appearance. In the event that the Courts were not aware that this was a legal aid matter, they made no attempt to get appointed a legal aid counsel. Had there been a little effort on their part to find out the reason as to why the counsel was repeatedly absent, and would have seen the file, it would have been clear that a legal aid counsel had been appointed by the concerned DLSA, who was earlier appearing for the petitioner/complainant. Such inaction further highlights the non-effective legal aid neglect of the petitioner's right to legal representation and effective access to justice.

24. The lack of efforts by the Courts below to probe into the reasons for absence of legal aid counsel, and the failure to provide adequate support, including appointing a substitute counsel, if needed, speaks volumes about the manner in which the legal system sometimes handles vulnerable individuals. This Court is of the opinion that in cases involving legal aid, it is the collective responsibility of the judicial system, not just the complainant, to ensure that access to justice is not impeded by procedural lapses or personal limitations.

25. Indian jurisprudence regarding the right to legal aid recognizes that ensuring legal representation for those unable to engage a private counsel is fundamentally important. The success of a robust legal system lies in providing substantive legal aid to a citizen, not merely a procedural one. Every member of the community has the right to be heard and to receive justice. There is no gainsaying that without effective legal assistance, the right to be heard and access justice stands defeated.

26. A higher educational level and the art of being articulate may not be available to a litigant who also suffers the handicap of financial constraints, preventing them from engaging a private counsel. The protection and equality guaranteed under the law depend not only on the rights it confers but also on how the law is administered to those without financial means to engage a lawyer. The constitutional commitment to ensuring equal protection of laws is not limited to providing legal assistance to an accused in a criminal trial but extends to a victim of crime, who is equally entitled to legal aid under the law. The justice system demands that a person entitled to the assistance of a counsel at State expense is not merely assigned a legal aid counsel in formality but is provided effective legal representation. Failing to do so defeats the constitutional promise of equality before law.

27. In circumstances such as the present case, it was the duty of both the learned Magistrate and the Sessions Court to assist the complainant, who remained practically unassisted despite being assigned a legal aid counsel. In the realm of ground reality before the Magisterial Court, there was a clear denial of legal aid to him, as his

appointed counsel did not appear continuously on several dates. The complainant, therefore, remained unheard, despite his continuous presence on every date of hearing. It is difficult to comprehend how a complainant who lacked legal assistance could be blamed for the non-appearance of his legal aid counsel and held responsible for not diligently pursuing his case, even when he himself appeared on every date of hearing. Instead of aiding the complainant in securing justice despite his financial challenges, the system became an obstacle in his path to justice.

28. Had the petitioner been financially able to engage a private counsel who would have appeared on every date of hearing, his complaint would not have been dismissed. Thus, despite being procedurally assigned a legal aid counsel, the complainant was deprived of substantive and effective assistance, as the said counsel did not appear even once. The law has to extend the shelter of equal hearing to all who appear before it, irrespective of their economic standing.

29. The vulnerability of a financially weaker complainant also lies in the fact that he understands very little about the legal system and its functioning. Cases like the present one cry out for judicial sensitivity and awareness. The economic and other disabilities of a litigant cannot be allowed to result in a miscarriage of justice.

30. Therefore, considering the same, this Court is of the view that since the legal aid counsel assigned to the petitioner was not available on 03.10.2023, 15.12.2023, 05.03.2024 and 04.05.2024, even though the petitioner was personally present before the learned Magistrate, and the complaint filed by him was dismissed under Section 203 of Cr. P.C. as well as for non-prosecution, which was upheld by the learned Sessions Court, this Court directs that the complaint filed by the petitioner before the learned Magistrate i.e. 'Ct. Cases 43492/2019' be restored to its original number and its stage, and be listed for pre-summoning evidence.

31. In view of the same, the impugned orders of the learned Sessions Court and learned Magistrate are set aside.

32. The concerned DLSA is requested to ensure that a legal aid counsel is appointed at the earliest, and the learned Magistrate is directed that the pre-summoning evidence in this case be concluded within two months.

33. Before parting with this case, this Court notes that Article 39A of the Constitution of India mandates that the State provide free legal aid to ensure equal justice and opportunities to all citizens, particularly those facing economic or other disabilities. The true meaning of this provision can only be fulfilled when legal aid is effectively available to those in need, and it is the legal aid counsels who ensure that

marginalized individuals are not denied access to justice due to their inability to afford legal representation. Legal aid is not just about offering free legal services but about guaranteeing that all citizens, regardless of their financial status, can navigate the legal system and have their rights upheld. If legal aid counsels are absent, this constitutional vision cannot be realized, as vulnerable individuals would be left without the necessary support to secure justice, ultimately undermining the very purpose of Article 39A. Legal aid counsels are thus central to making the promise of equal justice a reality.

34. Notably, Delhi is home to one of the best legal aid systems in the country, with a dedicated legal services authority in every district. The very name 'Delhi State Legal Services Authority' [DSLISA] highlights that legal aid is a service to the community. In light of this, it is not only the responsibility of the Secretary of the DLSA of each district to ensure the provision of effective legal aid, but every judge in every district is tasked not only with referring appropriate cases to legal aid which come to their knowledge while adjudicating cases, in case, they have not been able to approach DLSA due to lack of knowledge. Also it will be appreciable that the judges would take active steps whenever a legal aid counsel fails to appear. Since, we as judges are bound by our commitment of ensuring that those who appear before us are adequately, legally represented, a collective duty is cast on all judges and not only upon the Secretary of DSLISA and DLSA(s) of each district.

35. In the background of what transpired in the present case, before the Magisterial Court and Sessions Court, this Court deems it apposite to issue following directions to the Secretary, DSLISA:

- a) The Secretary, DSLISA, is directed to ensure that an appropriate mechanism is put in place to monitor the appearance of legal aid counsels in cases where they have been appointed, in all the District Courts of Delhi. It must be ensured that legal aid counsels duly inform the Secretary of the concerned DLSA about their regular appearances in the cases assigned to them.
- b) The DSLISA shall also devise a framework to address situations where a legal aid counsel fails to appear for two consecutive dates in a case, ensuring that timely and effective steps are taken to safeguard the interests of the litigants.
- c) The DSLISA shall also consider establishing a review or grievance redressal mechanism to enable litigants to report instances of non-representation by legal aid counsels, so that corrective measures can be taken without undue delay.
- d) The judicial officers be also sensitized and encouraged to ensure that such cases are brought to the notice of concerned Secretary,

DSLSA, in case of non-representation where a legal aid counsel has been appointed.

36. A compliance report in this regard shall be filed before this Court by the Secretary, DSLSA within 06 weeks from date.

37. It is also clarified that this Court's observations do not reflect any conclusive finding on the non-appearance of learned legal aid counsel for the complainant/petitioner, since the reasons for non-appearance of the legal aid counsel are not before it.

38. The present judgment is only an attempt to put in place a mechanism to address delays caused by the non-appearance of legal aid counsels and to prevent the dismissal of cases involving individuals who are already vulnerable and seeking justice. It is a small step towards ensuring that the legal aid system extends not just procedural assistance but also effective and meaningful legal representation - in all cases. While it is undeniable that the legal aid system in Delhi is functioning diligently, there remains a need for continuous improvement to safeguard the rights of those who rely entirely on it for access to justice.

39. A copy of this judgment be forwarded by the Registry to the concerned Magistrate for information and compliance. Copy be also forwarded to the Secretary, DSLSA for compliance of the directions issued in the judgment. Copy be also forwarded to the Director (Academics), Delhi Judicial Academy for taking note of its contents and circulation.

40. The present petition is disposed of in above terms.

41. The judgment be uploaded on the website forthwith.

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