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

+ **CRL.M.C. 6840/2025 & CRL.M.A. 28769/2025**

SH. UDAY RATRA

.....Petitioner

Through: Mr. Ashutosh Kaushik, Advocate
(DHCLSC)

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS.

.....Respondents

Through: Mr. Amit Ahlawat, APP for the State
with Ms. Shehnaz Khan, Advocate
along with SI Tej Dutt, PS Hari Nagar

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

23.09.2025

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1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly, Section 482 of the Code of Criminal Procedure, 1973²) seeks setting aside of the order dated 6th November, 2024 passed by the Sessions Court (09/West, Tis Hazari Courts) in CR No. 505/2024. The Petitioner also impugns order dated 6th November, 2022 passed by the JMFC (06/ West District, Tis Hazari Courts) in Complaint Case No. 5991/2019.

2. The factual background, in brief, is that while undergoing judicial custody, the Petitioner was allegedly physically assaulted by Respondent

¹ "BNSS"

² "Cr.P.C."



Nos. 2 and 3, at the instigation of Respondent Nos. 4 to 6, who are officers of Tihar Jail. The Petitioner filed complaints with the Tihar Jail administration, the DCP, West District, and the SHO, P.S. Hari Nagar; however, no action was taken in response. Subsequently, he instituted a complaint under Section 200 read with Section 190(1)(a) of the Cr.P.C. before the Court of the Metropolitan Magistrate (06/West District, Tis Hazari Courts, Delhi).

3. The Court took cognizance of the complaint and scheduled the matter for recording of pre-summoning evidence on 17th March, 2020. The Petitioner was afforded multiple opportunities to lead pre-summoning evidence, with a final opportunity granted on 16th December, 2022. However, the Petitioner failed to present any evidence, pursuant to which the Magistrate dismissed the complaint, holding that no *prima facie* case was made out in the absence of such evidence. The Petitioner challenged this order before the Sessions Court, which challenge was allowed by order dated 1st March, 2023, remanding the matter to the Magistrate's Court with directions to afford the Petitioner another opportunity to lead pre-summoning evidence.

4. Despite this, the Petitioner defaulted again, failing to lead pre-summoning evidence on three separate dates. Consequently, on 15th December 2024, the complaint was dismissed due to lack of evidence. The Petitioner's revision petition before the Additional Sessions Judge challenging this order was also dismissed on 6th November, 2024.

5. Mr. Ashutosh Kaushik, counsel for the Petitioner, submits that the Petitioner hails from a poor background and has filed the present case as a beneficiary of legal aid services. He explains that due to personal



limitations, he was unable to diligently follow up the case or lead evidence. It is further emphasized that the Petitioner is a person with disability and was unable to attend Court due to a traffic accident on 15th October, 2024. Proof of this was submitted before the Sessions Court but was not considered. He further argues that the Petitioner was incapacitated by extraneous circumstances beyond his control, and not due to any lack of *bona fide* intention to prosecute the complaint.

6. The Court has considered the aforementioned contentions. A perusal of the record reveals that the Petitioner was granted multiple opportunities to lead pre-summoning evidence before the Magistrate to prove the allegations levelled in the complaint. However, on account of his default, his right to lead pre-summoning evidence was closed and consequently, the complaint was dismissed. Pertinently, in 2023, the Sessions Court, while setting aside the said dismissal, granted the Petitioner yet another opportunity to lead such evidence. Despite this indulgence, the Petitioner demonstrated a lack of genuine interest in prosecuting the complaint and failed to utilise the opportunity to lead evidence on three different occasions.

7. While it is acknowledged that the Petitioner has pursued the complaints since 2014, spanning nearly a decade, the mere passage of time does not warrant intervention by this Court. The Court is also not persuaded by the contention that the failure to adduce evidence was solely due to the Petitioner's disability or incidents such as a traffic jam. Such explanations, in the opinion of this Court, do not amount to an inadvertent mistake sufficient to justify non-compliance, particularly given the ample opportunities that were made available to the Petitioner.

8. In light of the foregoing, the Court is of the opinion that the repeated



non-utilization of opportunities to lead pre-summoning evidence reflects not mere oversight, but a clear lack of intention to diligently prosecute the complaint. Consequently, having regard to the totality of the facts and circumstances, the Court finds no grounds to intervene in the matter. In the absence of any pre-summoning evidence to support the allegations levelled by the Petitioner in the complaint, the impugned orders passed by the Magistrate, as duly affirmed by the Revisional Court, merit no interference from this Court.

9. Dismissed, along with pending application.

SANJEEV NARULA, J

SEPTEMBER 23, 2025

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