

IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03 (NORTH-EAST)
KARKARDOOMA DISTRICT COURTS: DELHI

Criminal Revision No.7/2021

State

(Through SHO, PS Karawal Nagar)

.....Revisionist/Petitioner

Versus

Haji Hashim Ali

S/o Shri Dhola Khan,
R/o 506, Gali No.14, Phase-6,
Shiv Vihar, Delhi.

.....Respondent

20.07.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Nitin Rai Sharma, Ld. Special PP for the State alongwith
SI Ankit Kumar and SHO, PS Karawal Nagar.

Shri M.R Shamshad, Advocate alongwith Shri Abhijeet Sarkar,
Advocate and Ms.Nabeela Jamil, Advocate, Ld. Counsels for the
respondent.

ORDER

This criminal revision petition is directed against order dated 01.02.2021, passed by learned Addl. Chief Metropolitan Magistrate (North-East), Karkardooma District Court in CC No.1390/2020, titled as, “**Haji Hashim Ali & Ors. V/s DCP, North East Delhi & Ors.**”; whereby a petition filed under Section 156 (3) Cr.P.C by the respondent herein was allowed and the petitioner was directed to register a separate FIR on the complaint of respondent and file compliance report thereto (hereinafter referred to as the “**impugned order**”).

2. The original case diaries of case FIR No.72/2020, under Section 147/148/149/427/436/188 IPC, registered at police station Karawal Nagar on 28.02.2020 have been produced at Camp Office by SHO, PS Karawal Nagar. It is pertinent to mention here that case FIR No.72/2020 was registered at PS Karawal Nagar on the written complaint of one Naresh Chand, S/o Late Shri Ram Singh,

which was regarding causing damage and putting his house on fire by the riotous mob on 25.02.2020 at about 4.30/5.00 PM. **It is a matter of record that respondent herein is a witness as well as an accused in the aforesaid case FIR.** The respondent was arrested in the said case FIR on 04.03.2020 and was thereafter enlarged on bail by the concerned Court vide order dated 15.05.2020.

3. I have heard arguments advanced at bar by both the sides on various dates spreading across several sessions and perused the trial court record. I have also gone through the status report, dated 04.01.2021 filed by the police before the learned ACMM (North-East).

4. Before advertng to the facts of the present case, it would be appropriate to note that from 24.02.2020 to 26.02.2020 large-scale communal riots had taken place in the North-East Delhi, wherein, more than 753 FIRs were registered. The said riots took place within the jurisdiction of eleven police stations of North-East Delhi. There was a large-scale conflict between pro-Citizenship Amendment Act (CAA) group and anti-CAA group, which led to large-scale arson, vandalism, injuries to persons and murders. The situation of North-East Delhi during the aforesaid riots was chaotic. The rioters had converted themselves into various unlawful assemblies and had committed large-scale violence. The police force remained largely busy in controlling the law and order situation as well as taking action to prevent further damage to the life and property of the persons. There are cases where one unlawful assembly of rioters, the common object whereof was to cause maximum damage to the life and property of persons from other community remained operative consistently in a particular area. It is again a matter of record that rioters committed acts of violence in a particular area against the persons from other community and one particular unlawful assembly remained operative in a particular area; whereas, the other unlawful assembly remained operative in other area. One unlawful assembly committed several acts in that area at or around the same time.

5. The respondent (Haji Hashim Ali), who is the resident of Gali No.14, phase-VI, Shiv Vihar, Delhi, situated within the jurisdiction of Police Station Karawal Nagar also suffered the brunt of communal riots. It has been the case of respondent that he was “**Secretary**” of the Committee looking after the day-to-day affairs of **Madina Masjid** (mosque), which is situated over an area of about 200 sq.yards at Shiv Vihar, Delhi. It has further been the case of respondent that on 25.02.2020, at about 5.45 PM-6.00 PM, a riotous mob consisting of about 20-25 people, armed with lathis, sticks, rods, acid and petrol bombs (**Molotov cocktail**) broke into the said Masjid and destroyed/damaged everything on which they could lay their hands on. The said riotous mob also put on fire two LPG cylinders lying inside the said mosque, which resulted in explosion and huge fire therein, thereby causing substantial damage to Madina Masjid. On the morning of 26.02.2020, one person from the riotous mob climbed on the top of Madina Masjid and hoisted saffron flag atop it by chanting communal/religious slogans, which resulted in a tense environment. After being released on bail in case FIR No.72/2020, PS Karawal Nagar, respondent on 25.06.2020 made a written complaint before SHO, PS Karawal Nagar, thereby detailing out the incident of 25.02.2020 (DD No.35A). The said complaint was later on clubbed with case FIR No.72/2020, **however, no separate FIR was registered on his aforesaid complaint.** The respondent in his aforesaid complaint had categorically named (i) Raja Ram, (ii) Manoj, (iii) Titu, (iv) Shiv Kumar, (v) Raju Dhobi, (vi) Shyam, (vii) Vijay Sunar, (viii) Sunil, (ix) Dharmender, (x) Azad, (xi) Surjeet, (xii) Prem Kant Baghel, (xiii) Bhudev @ Pappi and (xiv) Dewaan as the persons, who were part/members of the riotous mob on 25.02.2020 that had desecrated Madina Masjid and Titu as the person who had hoisted saffron flag atop the said Masjid on 26.02.2020 while chanting communal slogans. No action by the police was taken on the complaints of respondent.

6. Under these circumstances, the respondent filed a petition under Section 156 (3) Cr.P.C for registration of FIR on his said complaint; in which

report dated 04.01.2021 was filed by the police; wherein it was stated that said complaint of respondent had been clubbed with case FIR No.72/2020, as the place, date and time of incident mentioned therein is same. It was further stated in the status report that neither any concrete evidence could be found against the persons named by the respondent in his said complaint nor any CCTV footage of the alleged incident could be traced/found. It was further stated in the status report that the separate complaint made by one Wakil Ahmed (who was injured in acid attack on 25.02.2020) had been clubbed with case FIR No.138/2020, PS Karawal Nagar.

7. The learned ACMM (North-East) vide impugned order gave directions to SHO, PS Karawal to register a separate FIR on the aforesaid complaint of the respondent.

8. The impugned order has been challenged by the police by way of present criminal revision petition and this Court vide order dated 08.02.2021 had stayed the operation of impugned order and issued notice of the petition to the respondent, who came forward and the matter was heard in detail. During the course of hearing, the judicial file as well as case diaries of case FIR No.72/2020, PS Karawal Nagar were summoned and thoroughly perused by me.

9. The learned Special PP for the petitioner has very vehemently argued that the grievance of respondent stands duly redressed as case FIR No.72/2020 has already been registered at PS Karawal Nagar on 28.02.2020 under appropriate sections, wherein the complaint of respondent has been clubbed therewith and as such, there was no need to register separate FIR on his aforesaid complaint. The persons named by the respondent in his aforesaid complaint have been thoroughly investigated, however, no concrete evidence could be found against them till now. Furthermore, there is no CCTV footage available qua the incident to show the involvement of persons named by respondent in his said complaint. It is further

argued that respondent has been made a witness in the said case FIR, who can depose before the Court at an appropriate stage. It is next contended that further investigation in the matter is still on and in case some other persons are identified then supplementary chargesheet in the matter would be filed. It is stressed that an unlawful assembly contemplated under Section 141 IPC can consist of persons from both the communities. It is further emphasized that the object of an FIR is to set the police or criminal law in motion and that an FIR need not contain the minutest detail(s) as to how the offence had taken place nor it is required to contain the names of offenders or witnesses, but it must contain some information about the crime committed as also some information about the manner in which the cognizable offence was committed. The FIR itself is not the proof of a case, but it is a piece of evidence which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopedia of all the facts and circumstances of the case on which the prosecution relies. The learned Special PP referred to the decision dated 19.05.2020, passed by the Hon'ble Supreme Court of India in **WP (CrI.) No.130/2020**, titled as, "**Arnab Ranjan Goswami V/s Union of India & Ors.**" as well as decision dated 12.07.2001 of Hon'ble Supreme Court in **Appeal (CrI.) No.689/2001**, titled as, "**T.T Antony V/s State of Kerala & Ors.**" to emphasize the point that once an FIR has already been registered on the facts and circumstances of the case, then there is no need to register a separate FIR on the complaint of respondent, who merely supplements the allegations on which the investigating machinery has already been set in motion. As regards the clubbing of complaint(s), refuge has been taken under the law laid down in cases of "**C. Muniappan & Ors. V/s State of Tamilnadu**", (2010) Vol.IX SCC 567 and "**Amitbhai Anilchandra Shah V/s CBI & Anr.**", (2013) 6 SCC 348.

10. (i) Per contra, learned counsel for the respondent has very vehemently argued that this Court has perused the case diaries qua case FIR No.72/2020 and is in a position to note the kind of investigation conducted in the matter.

(ii) It is next contended that case FIR No.72/2020 does not address the grievance of respondent and a separate FIR on the complaint (dated 25.06.2020) of respondent was required to be registered in view of law laid down by Hon'ble Supreme Court in case reported as, “**(2014) 2 SCC Page 1**”, titled as, “**Lalita Kumari V/s Govt. of UP**”, as the same clearly discloses commission of a cognizable offence. **It is emphasized that the unholy alacrity of investigating agency to club various complaint(s) has led to a peculiar situation in as much as respondent has been made a “witness” as well as an “accused” in case FIR No.72/2020, which is not only ironical but also against the settled principles of criminal law.** It is argued that police could not have clubbed the complaint dated 25.06.2020 of the respondent with case FIR No.72/2020 for the simple reason that said FIR has been registered on an unnamed complaint made by one Naresh Chand; whereas, the respondent in his said complaint has categorically named 14 persons, who were part/member of the riotous mob that had desecrated “**Madina Masjid**”.

(iii) It is emphasized that principle of “**sameness**” propounded by the Hon'ble Supreme Court in case reported as, “**(2010) 12 SCC 254**”, titled as, “**Babubhai V/s State of Gujarat**” and case reported as, “**(2013) 6 SCC 384**”, titled as, “**Anju Chaudhary V/s State of UP & Anr.**” and host of other decisions does not apply in the present case.

11. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also applied my mind to the facts and circumstances of the case as also perused the case diaries in case FIR No.72/2020.

12. (i) It is pertinent to mention here that after the passing of impugned order, a very epochal development has taken place in the matter. During the course of hearing arguments in the instant revision petition, this Court has been informed by the investigating agency that case FIR No.55/2020, dated 26.02.2020, under Section 147/148/149/427/436/454/380/188 IPC is already lying registered at

PS Karawal Nagar, wherein the grievance raised by respondent vide his complaint dated 25.06.2020 has been duly redressed and the persons named by him in the said complaint have been interrogated. For the sake of ready reference, the relevant portion of the status report filed by investigating agency before this Court with regard to case FIR No.55/2020, PS Karawal Nagar is re-produced hereunder:

xxxxx

In continuation of previous status report filed before this Hon'ble Court on 25.03.2021, it is further submitted that the original complaint of Hashim Ali, S/o Dhaula Khan, R/o H.No.506, Gali No.14, Phase-6, Shiv Vihar, Karawal Nagar, Delhi-94 which was received in police station Karawal Nagar vide DD No.35-A, dated 25.06.2020 has been placed on file. Complainant alleged some persons in his complaint, they are 1. Rajaram, 2. Manoj, 3. Titu, 4. Shiv Kumar, 5. Raju Dhobi, 6. Shyam, 7. Vijay Sunar, 8. Sunil, 9. Dharmender, 10. Azad, 11. Surjit, 12. Premkant Bhagel, 13. Bhudev @ Puppy, 14. Diwan. All the alleged persons were called in the police station to join the investigation through Notice under Section 41-A Cr.P.C. All the alleged persons have been interrogated and notices under Section 91 Cr.P.C were also given to the alleged persons for providing their mobile phone which they were using in the month of February' 2020. Fourteen mobile phones of alleged persons have been seized, and has been sent to FSL for data retrieval.

Besides, the alleged persons mentioned above, nine more suspects who were seen in the video clippings provided by one Mohammad Nazar, member of Madina Masjid committee were also called in police station, they are 1.Jaiprakash, 2. Mohit, 3. Hardik Gupta, 4. Mahesh, 5. Girjakant, 6. Gagan, 7. Hemant Gupta, 8. Chetram, 9. Bhagat Singh @ Harion. All these nine alleged persons were called in police station to join investigation through Notice under Section 41-A Cr.P.C, all alleged persons have been interrogated, notices under Section 91 Cr.P.C were also given to the alleged persons for providing their mobile phone which they were using in the month of February, 2020 which are yet to be obtained.

Photographs of alleged/suspected persons who were seen in video clipping in covered face has also been obtained in A-4 sheet to send them to FSL for matching with the pictures seen in the video clips.

Co-complainant of the complaint received by DD No.35-A, dated 25.06.2020 namely Haji Abdul Jabbar is out of India for Haz, so he is yet to be examined.

Call Data Record of all above suspects have also been obtained which have been received from March' 2020. The same is yet to be analyzed. Further investigation of the case is in progress.

xxxxx

(ii) I have perused the case diaries of FIR No.55/2020, PS Karawal Nagar.

13. It is relevant to mention here that when the matter has been reserved for orders by this Court, at the eleventh hour prosecution has moved an application before this Court seeking withdrawal of the instant revision petition, *inter alia* contending therein that during the interregnum the police was not able to approach the Court of learned ACMM (North-East), as this Court vide order dated 08.02.2021 had stayed the operation of impugned order. It is contended that now the investigating agency wants to again approach the Court of learned ACMM (North-East) for holistic consideration of entire material in the light of another FIR regarding desecration of Madina Masjid being FIR No.55/2020, PS Karawal Nagar in the matter. Had this fact been brought to the notice of learned ACMM (North-East) during the consideration on the petition of the respondent under Section 156 (3) Cr.P.C, then the outcome of the impugned order could have been different.

14. The learned counsel for the respondent has opposed the application on the ground that the same is actuated with malafides and has been filed to cover-up the faulty investigation conducted in the matter.

15. Admittedly, the fact regarding registration of FIR No.55/2020 had not been made available to the learned ACMM (North-East) at the time of passing of

impugned order. Even no mention regarding registration of case FIR No.55/2020 was ever made by the investigating agency before the said Court. This *prima facie* reflects the callous attitude/negligence on the part of the investigating agency, as it was incumbent upon it to have placed complete material before the learned ACMM (North-East). This Court is quite pained to see the lackadaisical attitude adopted by the investigating agency in the matter. The police was not even aware that an FIR No.55/2020 has already been registered at PS Karawal Nagar by the time respondent had approached the court of learned ACMM (North-East) with his petition under Section 156 (3) Cr.P.C. The investigating agency was duty bound to have apprised the learned ACMM (North-East) of the entire facts and place complete material before it, which admittedly has not been done.

16. It is apparent that the investigation in case FIR No.55/2020 is still going on and the respondent is well within his rights to seek redressal of his grievance, if any, therein. I am of the considered opinion that interest of justice would be met if the case is remanded back to the learned ACMM (North-East) with the direction to consider the entire material, i.e petition of respondent filed under Section 156 (3) Cr.P.C afresh after taking into consideration the factum of registration of case FIR No.55/2020, PS Karawal Nagar. Now, the interest of justice demands that learned ACMM (North-East) should apply its mind in a holistic manner and pass appropriate orders thereupon. The learned ACMM (North-East) shall also consider the effect of Section 210 Cr.P.C in the matter.

17. In view of the above discussion, the application filed by police is hereby allowed and consequently the impugned order is hereby set aside with a view to do substantial justice to the parties. It is hereby clarified that the learned ACMM (North-East) has not committed any flaw in the impugned order as the same was based upon insufficient relevant material being placed before him. The trial court record be sent back alongwith copy of this order with the direction to learned ACMM (North-East) to consider the entire material, i.e petition of

respondent filed under Section 156 (3) Cr.P.C afresh in a holistic manner in the light of case FIR No.55/2020, PS Karawal Nagar. Needless to say, the learned ACMM (North-East) shall not get influenced by any of the observations made hereinabove.

18. The case diaries of case FIR(s) No.55/2020 and 72/2020, PS Karawal Nagar be sent back to the IO through SHO, PS Karawal Nagar.

19. The revision file be consigned to record room.

20. Parties are directed to appear before the Court of learned ACMM (North-East) on 23.07.2021 at 2.00 PM through VC.

21. A copy of this order be sent to learned Special PP for the revisionist/petitioner as also to learned counsel for the respondent through electronic mode.

**Announced in the Court on 20.07.2021
(Through Webex Video Conferencing)**

**(VINOD YADAV)
ASJ-03 (NORTH-EAST)/KKD COURTS/DELHI**