

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

**Criminal Revision No.23/2020**

**State**

(Through SHO, PS Bhajanpura)

Revisionist/Petitioner

Versus

**Mohammad Nasir,**

S/o Shri Abdul Jalil Khan,  
R/o House No.C-62, Street No.8,  
North Ghonda, Delhi.

Respondent

13.07.2021

**THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Rajeev Krishan Sharma, Ld. Special PP for the State alongwith  
SI Rahul and SHO, PS Bhajanpura.

Shri Mehmood Pracha, Advocate alongwith Shri Sanawar Choudhary,  
Advocate and Shri Jatin Bhatt, Advocate, Ld. Counsels for the  
respondent alongwith respondent in person.

**ORDER**

This criminal revision petition is directed against order dated 21.10.2020, passed by the learned Metropolitan Magistrate-01 (North-East), Karkardooma District Court in CIS No.1210/2020, titled as, “*Mohd. Nasir V/s The State*”; 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 within 24 hours of the receipt of the order (hereinafter referred to as the “**impugned order**”).

2. The original case diaries of case FIR No.64/2020, under Section 147/148/149/186/353/332/436/307 IPC r/w Section 25/27 Arms Act and Section 3/4 PDPP Act, registered at police station Bhajanpura on 25.02.2020 have been produced at Camp Office by SHO, PS Bhajanpura.

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 04.08.2020 filed by the police before the learned Metropolitan Magistrate (MM).

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, who is the resident of street No.8, North Ghonda, Delhi, situated within the jurisdiction of Police Station Bhajanpura (in short "PS") also suffered the brunt of communal riots. It has been the case of respondent that on 22.02.2020 his sister was operated upon for kidney stone at Max Hospital, Shalimar Bagh, Delhi. On 24.02.2020, he had gone to take his sister from the said

hospital and was returning home in an Ola Cab and when he reached near Khajuri Chowk, he saw fire all around. The police officials present there advised him to avoid that route and as such, left with no option, he/respondent took an alternate route for going to his home. When his cab reached near Rubber Factory Chowk, he was stopped by some rioters, who asked his name to which he answered as Krishna and further told them that his sister had been operated upon and he was taking her back to their home. After reaching back, he asked the Ola Cab driver (who also happened to be a muslim) to stay back till the situation attained normalcy as there were thousands of rioters roaming in and around the area looking for muslims to kill them and the police having blocked all the exit routes. The Ola cab driver insisted for going back to his home at Ghazibad as his wife was worried and repeatedly calling him over phone. The respondent knew a short route from Vijay Park which could be used by him to exit the area and as such, respondent asked the Ola cab driver to drop them at Vijay Park. The respondent left the cab driver at Gokalpuri flyover and headed for his home when he saw a riotous mob lighting fire with guns. On the way, he met a non-muslim friend who dropped him at Vijay Park on his bike and he started walking towards Bhajanpura, On reaching the street of his house, he noticed a riotous mob comprising of about 100-150 persons carrying rods, pistols, petrol bombs, desi bombs and swords etc, which was being led by the owner of M/s Tyagi Store. It has further been the case of respondent that since he belonged to a different community, so Naresh Tyagi opened fire upon him as a result of which he suffered gunshot injury in his left eye. Thereafter, he was taken to Guru Tegh Bahadur Hospital (GTB Hospital), where he was operated upon and subsequently discharged on 12.03.2020. Thereafter, on 19.03.2020 he made a written complaint to SHO, PS Bhajanpura, which was registered vide Daily Diary (DD) No.3, wherein he specifically named Naresh Tyagi, Subhash Tyagi, Uttam Tyagi, Sushil, S/o Shri Jaipal, Naresh Gaur and their other accomplices as the assailants; however, no FIR on his aforesaid complaint was registered by the police. Thereafter, on 03.07.2020, respondent also sent a letter via E.Mail to DCP (North-East), *inter alia* seeking protection

under the Delhi Witness Protection Scheme, but to no avail. Aggrieved by non-registration of FIR on his complaint dated 19.03.2020, respondent approached the learned MM by way of petition filed under Section 156 (3) Cr.P.C on 17.07.2020.

6. In the meantime, an important development took place in the matter in as much as one case FIR No.64/2020 was registered at PS Bhajanpura on the statement of one ASI Ashok with regard to the incident of rioting in the area/locality of respondent on 24.02.2020. The copy of said FIR is lying annexed with the instant revision petition. In the said FIR, ASI Ashok stated that 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, meaning thereby that the police recognized that two warring groups were involved in the matter in the area. It was also recorded in the said FIR that respondent had suffered gunshot injuries at the spot/SOC on the date and time of incident. It was further stated that besides the respondent, six more persons namely Ali Hasan, Altaf, Javed, Aman, Faizi and Adnan had also suffered gunshot injuries on the said date and time. All the aforesaid injured persons were taken to hospital by **their family members only and not by the police.**

7. The petitioner vide its progress/status report filed before learned MM though admitted that respondent had received gunshot injury on 24.02.2020 and his MLC in this regard was also prepared at GTB Hospital, however, it was contended that with regard to the incident in question case FIR No.64/2020 had already been registered at PS Bhajanpura on 25.02.2020; wherein, the grievance of respondent has been suitably addressed and he has been made a witness in the case. It was further stated that during the course of investigation qua case FIR No.64/2020, all the accused persons named by the respondent vide his complaint dated 19.03.2020 had been thoroughly interrogated, however, no evidence was found against them and instead it came to fore that Naresh Tyagi and Uttam Tyagi were not present in Delhi at the relevant time, as they had gone to their native

place for attending family function; whereas, Sushil was present in his office on duty and nothing was stated about Naresh Gaur.

8. The learned MM vide impugned order gave directions to SHO, PS Bhajanpura to register a separate FIR on the complaint dated 19.03.2020 of the respondent.

9. The impugned order has been challenged by the police by way of present criminal revision petition and this Court vide order dated 29.10.2020 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.64/2020 were summoned and thoroughly perused by me.

10. The learned Special PP for the petitioner has very vehemently argued that the grievance of respondent duly stands redressed as case FIR No.64/2020 already stood registered at PS Bhajanpura on 25.02.2020 under appropriate sections and as such, there was no need to register separate FIR on the complaint of respondent dated 19.03.2020. The persons named by the respondent in his aforesaid complaint have been thoroughly investigated and it came to fore that named persons namely Naresh Tyagi and his brother Uttam Tyagi were not present in Delhi at the relevant time, as they had gone to their native village for attending family some function. 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 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 (Crl.) 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 (Crl.) 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 dated 19.03.2020, who merely supplements the allegations on which the investigating machinery has already been set in motion.

11. (i) Per contra, learned counsel for the respondent has very vehemently argued that this Court has perused the case diaries qua case FIR No.64/2020 and is in a position to note the kind of investigation conducted in the matter.

(ii) It is next contended that case FIR No.64/2020 does not address the grievance of respondent and a separate FIR on the complaint (dated 19.03.2020) 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 there was no mention of Section 307 IPC while registering case FIR No.64/2020 at PS Bhajanpura, that too when clearly the names of seven injured persons (including the respondent) were there before the investigating agency, who had received gunshot injuries on 24.02.2020. It is further emphasized that police did not make any efforts to take the said injured persons (including the respondent) to hospital and they all were taken to hospital by their kith and kin. It is next contended that police was not even aware of their medical condition; their MLCs were not collected, except for the MLC of

respondent and the matter was investigated from particular angle. The accused persons namely Salman @ Bandar, Sameer Saifi, Jubair, Sohail and Mohd. Shoaib were arrested merely on the basis of their disclosure statements and there is no substantive evidence against them. It is very vehemently argued that this is a farcical exercise which has been undertaken by the police in the matter.

12. The learned counsel for the respondent has referred to Delhi High Court Rules, especially Rule Nos.10, 13 and 14 of Part A, Chapter 11, Volume-III as also Rule 3 Volume III Chapter 12. For ready reference, the said Rules are reproduced hereunder:

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**Chapter 11**  
**Part – A**

*10. Procedure of Magistrate granting remand—A Magistrate authorising the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub-Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate. (Section 167). The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.*

*13. Police diary to be kept and sent up regularly—Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to the inspection of these diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.*

*14. Duty of Magistrates to Supervise Police investigation—Magistrates are bound to see that the provisions of the Code are attended to, any departmental practices notwithstanding. The law has provided that the Magistrate should either*

*expressly order (Section 202), or receive immediate intimation of (Section 157) every criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise. Every First Information Report received by a Magistrate of the 1st Class under Section 157 of the Code shall be entered in Registers No. XXIII and XXIV of First Information Reports prescribed in Rules and Orders of the High Court, Volume VI, Part B. The Magistrate concerned shall see that these registers are maintained by the Ahlmad attached to his Court properly and every entry pertaining thereto is correct. He shall also ensure the observance of the following instructions with regard to the maintenance of both the aforesaid registers:—*

- 1. Two separate registers. No. XXIII and XXIV, should be kept for each police station to avoid confusion.*
- 2. The date and time of the receipt should be entered in the copy of the First Information Report by the Magistrate in his own hand and signed or initialled immediately on receipt of the same, and this should not be left to the ministerial staff.*
- 3. Entries in registers should be made according to serial number of the First Information Report. If a later “First Information Report” is received and the earlier one is not forthcoming, the column for the entry of earlier report should be left blank and a reminder issued to the Station House Officer concerned. In this way one can find at a glance the numbers of the First Information Reports which may not be forthcoming on a particular date.*
- 4. The dates of presentation of challans and registration of case should invariably be entered in Register No. XXIV in the relevant column.*
- 5. The registers should be inspected by the presiding Officer at least once a month to ensure their proper maintenance and be signed by him in token of having done so.*

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### **Chapter 12**

**3. Use of Police diary by Court—As to be manner in which**

*Police diaries may be used by Courts, the following remarks should be borne in mind:*

*The Provision of Section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial empowers the Court to use the diary not only for the purpose of enabling the Police officer who compiled it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages the intervals which may have elapsed in it, and the steps by which a confession may have been elicited, or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the State and the accused.*

*Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must, before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.*

*Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence, and should call for diaries for this purpose.*

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13. It is emphasized that during the course of the remand proceedings, the learned MM was duty bound under the Rules to peruse the case diaries and supervise investigation being conducted in the matter, which was not done.

14. It is next argued that in the complaint of respondent dated 19.03.2020 the names of accused persons were categorically mentioned with the role assigned to them, but no investigation in this regard has been conducted, which is clearly apparent from the record. It is very vehemently argued that separate FIR was

required to be registered as the so called unlawful assemblies were different and distinct and had different common objects. The accused persons chargesheeted in the matter could not have a common object of causing harm to the life and limb and property of the person(s) of their own community, particularly in a communal riots situation. It is emphasized from record that the place of incident mentioned in FIR No.64/2020 is C-123, Gali No.8, Mohanpuri, Maujpur, Delhi where incident had taken place at about 9.20 PM on 24.02.2020; whereas, the incident with respondent had happened in Gali No.8, North Ghonda, which is a different place altogether. Even the time of incident with the respondent was 8.10 PM. The same is reflected in his MLC. The learned counsel has referred to the site plan at page 110 of the chargesheet and has explained the distance between the two places to be quite substantial.

15. The learned counsel has also referred to Volume-III, Chapter 4 of Delhi High Court Rules, dealing with the investigation of riots cases.

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**3. Court's duty to ascertain the true version**—*The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true (cf. 2 P.R. 1913).*

**4. Right of self-defence**—*When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the Court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (see Section 96-106, Indian Penal Code).*

**5. Separate trials when both parties are prosecuted**—*When both parties to a riot are prosecuted, the two cases must be*

*tried separately and evidence in the one case cannot be treated as evidence in the others even with the consent of the parties (IV. I.L.R. Lahore 376). Similarly, judgments in such cases should be written separately and care should be taken to see that the evidence in the one case is not imported into the judgment in the other. Sometimes Courts consider it convenient to dispose of such cases in a single judgment, but doing so they are liable to mix up the evidence in the two records. Even when the Lower Courts are careful enough not to mix up the evidence, the mere fact of their having written one judgment furnishes the convicts with a ground of appeal that the directions of their Lordships of the Privy Council in Madat Khan v. The King Emperor (I.L.R. VIII Lahore 193), have not been followed. Such objections have to be heard, examined and decided and a good deal of the time of the appellate Court is thus wasted.*

**7. An unlawful assembly, its common object and use of violence must be proved**—A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in Section 141 of the Indian Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use of force or violence in the charge, so that the essential ingredients of the offence are not lost sight of. A lucid statement of the law of unlawful assembly and riot by Plowden, J., will be found in 4 P.R 1889.

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16. The learned counsel has also made reference to case reported as, “(2013) 6 SCC 384”, titled as, “**Anju Chaudhary V/s State of UP & Anr.**” The relevant paragraphs of the said judgments are re-produced hereunder:

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*41. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different*

*persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.*

*42. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences “committed in the course of the same transaction”.*

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17. It is further argued that the complaint of respondent dated 19.03.2020 clearly discloses “**counter version**”, which was not covered in FIR No.64/2020 and as such, separate FIR was liable to be registered.

18. (i) It is next argued that the status report filed before the learned MM clearly shows that the police has conducted lop-sided investigation even in case FIR No.64/2020 and has shielded the guilty persons named in complaint dated 19.03.2020. The investigation qua the named persons was farcical and was in the nature of creating defence for them which is not the job of investigation. The reference in this regard has been made to the case reported as, “**(2010) 12 SCC 254**”, titled as, “**Babubhai V/s State of Gujarat**”. The relevant paragraphs of the said judgment are re-produced hereunder:

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*25. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer*

*should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).*

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*34. ....Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. Investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.*

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(ii) It is next contended that the instant revision petition has been filed with malafide intention, as SHO, PS Bhajanpura cannot legitimately feel aggrieved by the impugned order, because he was duty bound to follow the judgment rendered by the constitution bench of Hon'ble Supreme Court in case of **Lalita Kumari** (supra) to register separate FIR.

19. In the end, it is prayed that it is a clear case where appropriate directions shall be issued to initiate proceedings under Section 166-A IPC against the SHO, PS Bhajanpura and his supervising officers for not registering separate FIR(s) of the respondent on his complaints dated 19.03.2020 as well as 03.07.2020.

20. 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.64/2020, PS Bhajanpura, which reveals a **very shocking state-of-affairs**.

- (a) Admittedly, the incident in the matter happened with the respondent at about 8.10 PM on 24.02.2020 at North-Ghonda. The FIR No.64/2020 was registered at PS Bhajanpura on 25.02.2020, which was in respect of place Mohanpuri, Maujpur and not North Ghonda. The first case diary in the said FIR was written on 25.02.2020. The factum of seven persons (including the respondent herein) having received/suffered gunshot injuries was in the due knowledge of investigating agency, however, for the reasons best known to it, Section 307 IPC and Section 25 Arms Act were not invoked initially at the time of registration of said FIR. It is also very relevant to mention here that the first case diary was recorded on two different leaflets from two different booklets bearing different serial numbers.
- (b) Second case diary in the matter was recorded on 01.03.2020. It was also recorded on a different leaf/booklet.
- (c) Third case diary in the matter was recorded on 14.03.2020. Even the third case diary was recorded on a different leaf/booklet. By that time, respondent and other three injured persons had already been discharged from GTB Hospital. Interestingly, it is mentioned in case diary of 14.03.2020 that the police had been searching for victims, meaning thereby that the investigating agency by that time was not aware of the names and addresses of victims, which is quite surprising.
- (d) Fourth case diary in the matter was recorded on 17.03.2021. Vide the said case diary, the arrest of two accused persons namely Salman @

Bandar and Sameer Saifi were shown in the matter on the basis of a secret information received by IO/investigating agency to the effect that they had caused damage to the life and property(ies) of Hindus, however, name of not a single Hindu victim/injured has been mentioned therein. Be that as it may, it is an admitted fact that the said area/locality is dominated by Hindus.

- (e) The next case diary, i.e fifth case diary in the matter was recorded on 01.04.2020. The said case diary only reflects the factum that on the disclosure statements of accused Salman @ Bandar and Sameer Saifi, another co-accused namely Jubair was arrested in the matter.
- (f) Next case dairy, i.e the sixth case diary was recorded on 04.04.2020, which merely mentions that on the disclosure statement(s) of aforesaid accused persons, another co-accused namely Sohail was arrested in the matter.
- (g) The seventh case diary was recorded on 08.05.2020. It is in this case diary that the IO/investigating agency recorded that a **search operation of the victims in the case has been launched.**
- (h) The next case diary, i.e the eighth case diary was recorded on 05.06.2020, vide which it was stated that chargesheet in the matter has been prepared.
- (i) Next case diary is of 16.06.2020. This case diary has been recorded on a **different leaf altogether.** The said case diary reflects the factum that public prosecutor had raised certain objection(s) upon the chargesheet prepared in the matter, which now stands removed. The most important point worth noticing in the said case diary is that it

mentions the fact that **“no eye witness could be found/traced in the matter despite the MLC of respondent clearly showing his address”**. This clearly shows that the IO/investigating agency had no idea whatsoever about the aforesaid injured persons (including the respondent herein) in the matter. It was admitted vide this case diary that besides the disclosure statement(s) there was no evidence against the accused persons who have been arrested in the matter, i.e in case FIR No.64/2020, PS Bhajanpura.

- (j) Next case diary is of 08.07.2020. It is for the first time it is mentioned in the said case diary that statement under Section 161 Cr.P.C of respondent was recorded in the matter. The respondent vide his statement recorded under Section 161 Cr.P.C reiterated the facts mentioned by him in his complaint dated 19.03.2020, yet no action was taken against the persons mentioned therein. Even no separate FIR was registered in respect of complaint dated 03.07.2020, which was based on a totally different cause of action.
- (k) Next case diary in the matter was recorded on 28.07.2020. By that time the respondent had already approached the learned MM by way of petition under Section 156 (3) Cr.P.C. It is at this stage that the police started interrogating the persons named in the complaint dated 19.03.2020 of the respondent and did not even bother to look into the grievance of the respondent that he was being constantly threatened by the accused persons.

21. It is hereby noticed that the case diaries have not been maintained in the matter as per the mandate of Section 172 Cr.P.C (as amended in the year 2009), which says that it has to be in a bound volume and duly paginated. The statement(s) of the witnesses recorded in the matter are found to be recorded on an

altogether different booklet. The Hon'ble High Court of Delhi in case titled as ***Laxmi @ Laccho and Anr.Vs State of NCT of Delhi, Criminal Appeal no.485/12 decided on 11.02.2016*** has been pleased to comment adversely upon the conduct of Investigating Agency in exhibiting the callous attitude of not maintaining the same in a bound volume after the amendment of 2009. The Hon'ble High Court of Delhi was pleased to grant bail in the matter on account of this lapse on part of the police.

22. Some of the important judgments on Section 172 Cr.P.C are as under:

(i) <b>Mukund Lal Vs Union of India (1989) Supp. 1 SCC 622</b>	Section 172(2) Cr.P.C has unfettered power to examine the entries in the diaries. This is a very important safeguard.
(ii) <b>Bhagwant Singh V/s Commissioner of Police; (1983) 3 SCC 344</b>	Haphazard maintenance of the case diary would defeat the very purpose for which it is required to be maintained as per Section 172.
(iii) <b>State V/s Anil Jacob; 2009 Cr.LJ 1355 (Bom)</b>	Section 172 ensures transparency in the investigation.
(iv) <b>V.K Sasikala V/s State; (2012) 9 SCC 771</b>	The mandatory duty cast on the investigating agency to maintain a case diary of every investigation on a day-to-day basis and the power of the Court under Section 172(2) and plenary power conferred in the High Courts.
(v) <b>Ahmed Miya V/s Emperor; 1943 AIR 1944 Cal 243</b>	Court observed that the learned Judge should have had satisfied himself by looking into the case diary that the investigating officer was relating accurately and truly what he saw at the place of occurrence.
(vi) <b>Chandra Kumar V/s State of UP; 1988 All Cr.L.R 296</b>	When role of investigating officer is found to be wholly dubious and speaks of his connivance with the accused persons, non-impleadment of such accused persons creates a dent in the investigation.

23. It is pertinent to mention here that when two separate complaints disclosing cognizable offences are filed by two different complainants, there is no provision under which the investigating agency can club such complaints and

carryout investigation. To understand different situations, the following picture emerges.

S.No.	<b><u>COMPLAINANT PERSPECTIVE</u></b> (Situations when the Complainant approaches the Court for fair investigation and issue of clubbing FIR)			
	Complainant	Incident	Accused/Set of Accused	FIR
1.	<b>Same in more than one Complaints</b>	Incident is the ‘same’ and it fits into the ‘sameness principle’	<b><u>Same or not disclosed.</u></b>	The police/ court will permit/ confine the ‘investigation’ to <b>one FIR/ one trial.</b>
2.	<b>Same in more than one Complaints</b>	Incident is <b>not</b> the ‘same’ and it <b>does not</b> fit into the ‘sameness principle’	Accused/set of accused are <b>disclosed not disclosed</b>	Separate investigations should be done and there should be separate trials.
3.	<b>Different Complainants</b>	Incident is <b>not</b> the ‘same’ and it <b>does not</b> fit into the ‘sameness principle’	Accused/Set of Accused are <b>not disclosed by both or One Complaint discloses the accused another does not</b>	The police should register separate FIR, so that separate trials take place.
<b><u>ACCUSED PERSPECTIVE</u></b> (When the accused approaches the court for fair investigation and issue of clubbing the FIRs Entire idea is to seek protection from double jeopardy)				

	<b>Accused</b>	<b>Incident</b>	<b>Complainant</b>	Investigation and FIRs
1.	<b><u>Same</u></b>	Incident is the ‘same’ and it fits into the ‘sameness principle’ ( <i>and the incident has happened at one place</i> )	<b><u>Same Or Different</u></b>	The court will permit/ confine the investigation’ to <b>one FIR</b>
2.	<b><u>Same</u></b>	Incident is different and it <b>does not fit into the ‘sameness principle’</b>	Complainant is <b><u>Same or different</u></b>	Investigation and FIR may be different leading to two different trials.
3.	<b><u>Chain of incidents at different places originating through common cause of action [may be hatered through electronic media at different places</u></b>	Incidents are at <b>different</b> places affecting different victims	<b><u>Complainants are different</u></b>	Separate FIRs and investigations.

24. In the light of aforesaid chart, if the grievance of the respondent is analyzed, then it would be clearly apparent that the respondent had set out a “**counter version**” and the same was not covered within the principle of “**sameness**”, as propounded in the case(s) of **Babubhai** (supra) and **Anju Chaudhary** (supra). There is clear demarcation made by Hon’ble Supreme Court

even in the aforesaid cases that separate FIRs can be registered when the already registered FIR cannot be said to be depicting the same allegations. It is the case of the police itself that two different unlawful assemblies were operating, having clear and distinct common objects and as such, even otherwise two different FIRs were required to be registered. With a view to satisfy myself as to whether the complaint dated 19.03.2020 of respondent depicts a separate and distinct cause of action and fact in contradistinction with the facts of FIR No.64/2020, **then I find that the cause of action in both the matters is different.** Even in TT Antony (supra), the Hon'ble Supreme Court in paragraph No.21 thereof, came to the conclusion that the second FIR was not bad in law and the investigating agency was not barred from registering second FIR. The relevant paragraph in this regard is re-produced as under:

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*“21. ...This Court indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It appears to us that the Court did not repel the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different — the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually...”*

xxxxx

25. To the same effect is para 41 and 42 of judgment Anju Chaudhary (supra).

26. The mandate of the Delhi High Court Rules, referred to by the learned counsel for the respondent has not been followed by either the police or by learned Illaka MM in the matter, which clearly goes on to establish that the investigation even in case FIR No.64/2020, PS Bhajanpura has been done in a most casual, callous and farcical manner. The mandate of the Constitution Bench in case of **Lalita Kumari** (supra) has clearly been overlooked in this case and it is clearly

evident that defence for the accused persons named in the complaint of respondent has been sought to be created by the police. Even no investigation has apparently been conducted against the named accused Naresh Gaur. No separate FIR has been registered on the subsequent complaint of respondent dated 03.07.2020, wherein he clearly stated about the threats to his life being extended by the persons named in his earlier complaint.

27. Seeing the matter from any angle, I have not been able to persuade myself about the efficacy and fairness of the investigation carried out in the matter. The investigation in the matter is apparently against the spirit of **Babubhai** (supra). It is also evident that the petitioner has no reason, occasion or justification to feel aggrieved by the impugned order. The persons who could presumably be aggrieved may be Naresh Gaur, Naresh Tyagi, Subhash Tyagi, Uttam Tyagi, Sushil and their unknown accomplices, but they chose not to file criminal revision against the impugned order. Reference “**Manharibhai Muljibhai Kakadia & Anr. V/s Shaileshbhai Mohan Bhai Patel & Ors.**” (2012) 10 SCC 517. Even otherwise, it has been held hereinabove that a separate FIR against the aforesaid persons is liable to be registered and after proper investigation in the matter and if the said persons are chargesheeted then they will be well within their rights to exhaust their remedies available to them in accordance with law.

28. I do not find any merit in this revision petition. The same accordingly stands dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) which shall be deposited with Delhi Legal Services Authority by DCP (North-East) within one week from today and the said amount shall be recovered from the petitioner and his supervising officers, who have miserably failed in their statutory duties in this case after holding a due inquiry in this regard. The interim order passed by this Court on 29.10.2020 stands recalled forthwith.

29. The respondent is free to exhaust his remedies available to him in accordance with law to get a separate FIR registered in respect of his complaint dated 03.07.2020 as well as under Section 166-A IPC, if so advised.

30. A copy of this order be sent to Commissioner of Police, Delhi Police for bringing to his notice the level of investigation and supervision in the matter and to take appropriate remedial action under intimation to this Court.

31. The original case diaries of case FIR No.64/2020, PS Bhajanpura be sent back to the IO through SHO, PS Bhajanpura.

32. The trial court record be sent back forthwith alongwith copy of this order.

33. The revision file be consigned to record room.

34. 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 13.07.2021  
(Through Webex Video Conferencing)**

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