

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

<b>Sessions Case No.224/2021</b>	
<b>State Vs</b>	<b>Javed, Aged about 22 years, S/o Shokeen Ahmed, R/o House No.2133, Gali No.22, New Mustafabad, Delhi. Profession: Student</b>
<b>FIR No.102/20</b>	
<b>PS Dayalpur</b>	
<b>U/s 147/148/149/427/436/380/454/120-B/34 IPC</b>	

07.09.2021

**PHYSICAL HEARING**

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith IO, SI Vineet Kumar.

Shri Nasir Ali, Ld. Counsel for accused Javed alongwith accused on bail.

**ORDER ON CHARGE**

Today the matter is listed for consideration on charge . I have heard arguments advanced at bar by both the sides and perused the entire material on record.

2. (i) The facts of the case in brief, required for the present are that FIR in the matter was registered on 03.03.2020, on the basis of a written complaint dated 01.03.2020 (received vide DD No.55-B), made by Smt.Pushpa Devi, r/o

House No.A-7, Bhagirathi Vihar, Phase-II, near Brijpuri Puliya, Delhi-110094; wherein she stated that on 25.02.2020, at about 5.00 PM, a riotous mob after breaking open the shutter of her shop (by the name of “**Pooja Enterprises**”) bearing No.A-272 G/F, main Brijpuri Road, Phase-II, Bhagirathi Vihar, Delhi-110094 had looted the articles lying therein, as a result of which she suffered financial loss to the tune of around Res.5,50,000/-.

(ii) Thereafter, on 03.03.2020 another written complaint (vide Diary No.94) was received from one Suresh Chand Gupta, S/o Late Shri Bhagwat Prasad Gupta, r/o House No.106, Gali No.1,Guru Nanak Nagar, Delhi; wherein he stated that in the night of 25.02.2020, a riotous mob after breaking open the doors of his said house had committed robbery of various household articles (which included precious jewellery and cash of Rs.21,000/-). His said complaint was clubbed with the instant case FIR.

(iii) Another written complaint, dated 27.02.2020 (Diary No.21B) was received from one Alok Aggarwal; wherein he stated that on 25.02.2020, at about 4.00 PM , a riotous mob after breaking open the locks of his godown situated at Gali No.2, old Mustafabad, near Anas Masjid had looted 2500 Kgs of “**copper scrap**”, costing about Rs.10.00 lakhs. His said complaint was also clubbed with the instant case FIR.

(iv) Thereafter, vide Diary No.299, dated 09.03.2020, another written complaint was received from one Leeladhar Ojha, S/o Shri Shiv Dayal; wherein, he stated that on 25.02.2020, a riotous mob after breaking open the shutter of case shop No.A-9, old Mustafabad, Delhi, had vandalized the same and thereafter looted various articles lying therein. His said complaint was also clubbed with the instant case FIR.

3. During the course of investigation, IO prepared site plan and

recorded the statements of witnesses. Accused Javed was arrested in the matter on 19.04.2020 from his house, on the basis of a secret information as well as his categorical identification by Constable Ashok, who at the relevant time was lying posted as “**Beat Constable**” in the area/locality in question.

4. The learned defence counsel has made a strong pitch *inter alia* submitting that instant matter is a perfect recipe for discharge of accused on account of the following reasons:

(i) It is argued that the accused has been falsely implicated in the matter by the investigating agency, being resident of the same area/locality. His false implication is further evident from the fact that there is an “*unexplained delay*” of about six (05) days in registration of FIR, as the alleged incident took place on 25.02.2020; whereas case FIR in the matter was registered on 03.03.2020.

(ii) All the four complainants, i.e Smt.Pushpa Devi, Suresh Chand Gupta, Alok Aggarwal and Liladhar Ojha did not specifically name/identify the accused in their respective written complaints. They even did not specifically name/identify him vide their statements recorded under Section 161 Cr.P.C in the matter. No recovery of any sort has been effected from the accused.

(iii) Out of the alleged riotous mob of 150-200 persons, only accused has been chargesheeted in the matter. Till date, the investigating agency has not been able to identify/apprehend any other accused person in the matter,

which is very surprising and clearly points out towards his false implication in the matter.

(iv) It is very strenuously emphasized that there is no electronic evidence available against the accused in the form of CCTV footage/video-clip to nail his presence at the spot/SOC at the relevant time. His CDR location is of no consequences to the prosecution as he is resident of the same locality/area.

(v) It is next contended that HC Ashok Kumar is a “*planted witness*” as had he witnessed the incident, he would have immediately reported the matter to the Police Station on 25.02.2020 itself and should not have waited till the recording of his statement under Section 161 Cr.P.C in the matter on 06.03.2020 by the IO. No cogent/plausible explanation in this regard has come from the side of prosecution.

(vi) The police case against the accused is false on account of absence of judicial “**Test Identification Parade**” (TIP), when he is sought to be identified from amongst a large number of so called rioters. Reference in this regard has been made to the judgment of “*Usmangani @ Bhura Abdul Gaffar & Anr. V/s State of Gujarat*”, decided on 09.08.2018 by Hon’ble Supreme Court in *Crl.Appeal No.1041/2061* to emphasize that *identification of a few select persons in a large mob by a witness, in the absence of TIP cannot inspire the confidence of Court.*

5. (i) Per contra, learned Special PP for the State while throwing light on the background of the incident has very vehemently argued that the protests against Citizenship (Amendment) Act (CAA) were going on for last one and half

month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other areas of North East Delhi. On 23.02.2020, protests turned violent and protesters at Chand Bagh spread on Wazirabad Road and Karawal Nagar Road as well, upto Sherpur Chowk and Mahalaxmi Enclave. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Dayalpur and other police stations of North East District. A heavy damage to government and public property and loss of life was reported and paramilitary forces had to be deployed to control law and order situation in the area.

(ii) **As regards the case in hand**, it is submitted that accused was arrested from his house on 19.04.2020, pursuant to receipt of a secret information and his categorical identification by Constable Ashok in the matter.

6. The evidence available against the accused has been specified as under:

<b>(a) Role of accused</b>	He has been found to be an “ <b>active member of the riotous mob</b> ” on the date and time of incident that took active participation in rioting, vandalizing and arson in the area/locality in question on the date and time of incident.
<b>(b) Ocular evidence</b>	PW Constable Ashok (No.1214/NE) has categorically named/identified the accused vide his statement recorded under Section 161 Cr.P.C on 06.03.2020. This witness at the relevant time was lying posted in the area/locality as “ <b>Beat Constable</b> ”.
<b>(c) Technical Evidence</b>	CDR location qua the mobile phone number 9315901077 belonging to the accused has confirmed his presence at the spot/scene of crime (SOC) on the

	date and time of incident.
<b>(d) Involvement in other cases</b>	Besides the case in hand, he is also involved in several other cases of rioting in the area.

7. (i) As regards the contention of the learned counsel that all the four complainants did not specifically name/identify the accused vide their initial written complaints as well as not naming him vide their respective statements recorded under Section 161 Cr.P.C plus there being delay in registration of FIR, it is argued that the communal riots in North-East Delhi were very unprecedented; people were very much scared; police personnel were busy in maintaining law and order duty, rescuing the victims and stopping further damage to the life, limb and property(ies) in the area; there was curfew like atmosphere at or around the area and the people were so shocked and traumatized that it took several days for them to muster courage to come out and report the matter to the police when the situation became normal. It is contended that since the police personnel remained busy in maintaining law and order, the matters were not promptly reported to the police station. Except for the statements of police personnel, there is hardly any statement of victim(s)/public witnesses which could throw light qua the rioting activity undertaken by unlawful assembly of rioters. It is argued that accused has been duly named/identified by Constable Ashok (No.1214/NE), who at the relevant time was lying posted as “**Beat Constable**” in the area/locality and at this stage, his said statement cannot be thrown into dustbin.

(ii) The learned Special PP has next argued that further investigation in the matter is on and efforts are being made to identify the other rioters involved in the incident in the particular area of PS Dayalpur.

8. Lastly, it is submitted that at the stage of consideration on charge,

the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

9. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

10. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, **2000 I AD Delhi 107**, it was held that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

11. Furthermore, in case titled as, “**Umar Abdula Sakoor Sorathia V/s Intelligence Officer Narcotic Control Bureau**”, **JT 1999 (5) SC 394** it was held that, “it is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

12. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through

the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State**”, **1999V AD Delhi p 407**).

13. Now, reverting back to the case in hand. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/427/436/380/454/120-B/34 IPC have been invoked by the investigating agency. It is relevant to note that except for section 436 IPC, all the sections invoked in the matter are exclusively triable by learned Magistrate. Now, let us see whether ingredients of Section 436 IPC are made out in the matter or not. Before that, it would be appropriate to have the definition of Section 436 IPC, which for ready reference is re-produced as under:

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**Section 436- Mischief by fire or explosive substance with intent to destroy house, etc.**—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any **building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property**, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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14. The case FIR in the matter was registered on 03.03.2020, on the basis of written complaint dated 01.03.2020 (received vide DD No.55-B), made by Smt.Pushpa Devi, r/o House No.A-7, Bhagirathi Vihar, Phase-II, near Brijpuri Puliya, Delhi-110094. I have carefully gone through the aforesaid written complaint. In her said complaint, she has merely stated that on 25.02.2020, at



about 5.00 PM, a riotous mob after breaking open the shutter of her shop (by the name of “**Pooja Enterprises**”) bearing No.A-272 G/F, main Brijpuri Road, Phase-II, Bhagirathi Vihar, Delhi-110094 had looted the articles lying therein, as a result of which she suffered financial loss to the tune of around Res.5,50,000/-. **The said complainant has not stated a single word regarding committing mischief by fire or explosive substance by the riotous mob in her aforesaid shop on 25.02.2020, i.e on the date of incident. Even in her statement recorded under Section 161 Cr.P.C in the matter on 06.03.2020, she did not state a single word regarding putting/setting on fire of her shop by the riotous mob on 25.02.2020.** As such, the ingredients of Section 436 IPC are not at all made out either from her written complaint or from her statement recorded under Section 161 Cr.P.C in the matter.

15. (i) Now, coming to the next complaint which is of Shri Suresh Chand Gupta. He in his written complaint (received vide Diary No.94) merely stated that in the night of 25.02.2020, a riotous mob after breaking open the doors of his said house had committed robbery of various household articles (which included precious jewellery and cash of Rs.21,000/-). **Even from his said complaint, ingredients of Section 436 IPC are not made out.**

(ii) Though, in his statement recorded under Section 161 Cr.P.C by the IO on 06.03.2020 in the matter, he stated that after looting his said house, the riotous mob had set the same on fire; but it is a matter of record that he did not say a word about setting his house on fire by the riotous mob in his initial written complaint made to the police, based upon which case FIR in the matter was registered. It is only when his statement under Section 161 Cr.P.C was recorded by the IO on 06.03.2020 that ingredients of Section 436 IPC for the first time came into fore and same were accordingly invoked in the chargesheet. I am

afraid that the investigating agency cannot cover up the said flaw by way of recording the supplementary statements of complainants, if the ingredient(s) of Section 436 IPC was not there in their initial written complaints made to the police. This Court is conscious of the fact that cases of communal riots have to be considered with utmost sensitivity, but that does not mean that the common sense should be given go-by; mind has to be applied even at this stage with regard to the material available on record. In case reported as, “**2004 SCC Online Del 961**”, titled as, “**Deepa Bajwa V/s State & Ors.**”, Hon’ble High Court of Delhi has been pleased to observe as under:

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*6. After considering the submissions made by learned counsel for the parties, this Court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence. In the complaint dated 19th April, 2001, the Complainant himself alleged that the Councillor Chhannu Mal was introducing him to the petitioner. If that was the case, how could he say later that on that day the petitioner knew that he was a Scheduled Caste. This statement, therefore, was a crude falsity introduced at the behest of the police to implicate the petitioner under Section 3 of the Act. This effort on the part of the police to supply the deficiency and cover up a lacuna in the complaint in view of legal opinion was totally unwarranted and an*

abuse of the process of law.

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(underlining emphasized)

(iii) In another case reported as, “**2008 (2) JCC 979**”, titled as, “**Rajender Singh Sachdeva V/s State (NCT) of Delhi**” has been pleased to observe as under:

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*13. If these and other surrounding circumstances are taken into consideration the complaint of the petitioner appears to be well founded. According to the complainant, the incident in which the petitioner was involved occurred some time in April-May 1988, i.e 16 years before the complaint. He was not named in the FIR. That incident is also absent in the first report documented during investigation, i.e a complaint to the Assistant Labour Commissioner. The allegations against the petitioner surfaced only during the statement under section 161. Interestingly, he was named in that. The third statement was recorded on 21.05.2004. In the meanwhile, the petitioner was arrested on 18.05.2004. One does not find any logic as to the recording of the second statement under Section 161 except as a explanation by the complainant regarding identity and knowledge of the petitioner’s name. If this is seen in the background of absence of any mention of the petitioner in the FIR, the tenuousness of the link with allegations against him become apparent.*

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(underlining emphasized)

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*15. Now, it is well established by series of judgments of the Supreme Court commencing from Union of India V/s Prafulla Kumar Samal, AIR 1979 SC 366 onwards that charges can be framed against an accused if the materials, i.e documentary and oral evidence show his prima facie involvemenet and existence of a grave suspicion in that regard. The materials sought to be pressed into service by the prosecution in this case for the charge under Section 120B do not inspire such*

*confidence as to be termed as disclosing grave suspicion of his involvement. Another principle which has been recognized by the Courts is that if two views are possible, the one favouring the accused should be preferred at the charge framing stage. In this case, the entirety of evidence are the two Section 161 Cr.P.C statements of the complainant. There are no objective material or circumstantial evidence supporting the statements in the form of seizure of articles etc. In this background, it is clear that there are two views possible. Therefore, applying the rule enunciated in “**Dilawar Balu Karane V/s State of Maharashtra**”, 2002 (2) SCC 135, the interpretation favouring the petitioner has to be accepted.*

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(iv) Furthermore, in case reported as, “**(2002) 2 SCC 135**”, titled as, “**Dilawar Balu Kurane V/s State of Maharashtra**”, the Hon’ble Supreme Court has been pleased to lay down as under:

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*12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under [Section 227](#) of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under [Section 227](#) of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the*

*evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].*

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16. As such, the statement dated 06.03.2020 of complainant Suresh Chand Gupta, recorded under Section 161 Cr.P.C is of no help to the prosecution as far as invoking Section 436 IPC in the matter is concerned.

17. (i) Now, we are left with the complaints of Alok Agarwal (received vide Diary No.21B) and Leeladhar Ojha (received vide Diary No.299). A **fine-tooth-comb** analysis of their respective written complaints also **fails to invoke the ingredients of Section 436 IPC.**

(ii) Further, section 436 IPC cannot be invoked merely on the basis of statement dated 06.03.2020 of police witness namely Constable Ashok (No.1214/NE), who was lying posted as “**Beat Constable**” in the area/locality in question on the date of incident, as when the four complainants/victims had stated nothing in this regard in their written complaints, then the statement of said police witness has no significance to this effect. There is also a considerable delay in recording of his statement by the IO.

18. (i) There is no eye witness(es) of the incident(s) in question. Furthermore, there is no CCTV footage/video-clip of the incident available on record. There is no photograph showing arson having been committed in the matter.

(ii) Before proceeding, it is also relevant to note here that till date the investigating agency has not been able to apprehend/arrest any other accused

person in the matter, meaning thereby that no progress/further investigation in the case has so far been made and the investigating agency is still standing on the same square which it did when the accused was enlarged on bail by this Court vide order dated 24.07.2020.

(iii) This Court is conscious of the fact that cases of communal riots have to be considered with utmost sensitivity.

19. In view of the aforesaid discussion, I am of the considered view that ingredients of Section 436 IPC are not at all made out from the material produced on record by the investigating agency. Except Section 436 IPC, all the offences invoked in the matter are exclusively triable by the court of learned Magistrate.

20. Accordingly, the case file be placed before learned Chief Metropolitan Magistrate (North-East), Karkardooma District Courts on **08.09.2021 at 2.00 PM**, with a request to either try the matter himself or assign it to some other competent Court/learned MM. Accused is directed to appear before learned CMM (North-East) on the said date.

21. Ahlmad to comply.

(VINOD YADAV)  
ASJ-03(NE)/KKD COURTS/07.09.2021