

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

Sessions Case No.80/2021	
State Vs	Sandeep Kumar, Aged about 30 years, S/o Shri Ramesh Chand, R/o House No.230, Gali No.11, Phase-9, Shiv Vihar, Karawal Nagar, Delhi. Profession/Occupation: Labourer.
FIR No.144/2020	
PS Karawal Nagar	
U/s 147/148/149/188/427/436/380/454 IPC	

15.09.2021

PHYSICAL HEARING

Present: Shri R.C.S Bhadoria, Ld. Special PP for the State alongwith IO, SI Ankit Kumar and Inspector Ramavtar Tyagi, SHO, PS Karawal Nagar.

Ms.Shikha Garg, Ld. Counsel from Legal Aid for accused Sandeep Kumar alongwith accused in J/C.

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 04.03.2020, on the basis of a written complaint (received vide Diary No.126-DR, dated 01.03.2020) made by Mohd. Zakir, S/o Mohd. Shamshad, regarding the incident of vandalizm and looting of his house

by the riotous mob on 25.02.2020. Thereafter, he preferred another written complaint (received vide Diary No.547-DR, dated 06.03.2020) of similar nature in the matter.

(ii) During the course of investigation, twenty eight (28) other written complaints of similar nature were received from different complainants. A perusal of the said complaints reveals that few of them are pertaining to the incidents of rioting which took place 24.02.2020 and 26.02.2020, while majority of these are qua incident(s) of rioting that took place on 25.02.2020 in the night.

3. On a specific query raised by this Court to learned Special PP as to how incidents of rioting which took place on three different dates (i.e on 24.02.2020, 25.02.2020 and 26.02.2020) have been clubbed with the instant case FIR and chargesheet. At this stage, a “**Status Report**” has been filed in the Court *inter alia* stating therein that the complaints with regard to incidents of rioting that took place on 24.02.2020 and 26.02.2020 would be separated from this chargesheet and separate chargesheets would be filed in respect thereof and the present chargesheet may be considered only in respect of incident(s) of rioting which occurred on 25.02.2020. The “**status report**” filed today in Court is reproduced as under:

xxxxx

Sub.: Status Report

(Case FIR 144/2020, PS Karawal Nagar).

Hon’ble Sir,

It is respectfully submitted that the above cited case was registered on the complaint of Mohd. Zakir, S/o Mohd. Shamshad, r/o House No.A-666, Gali No.24, phase10, Shiv Vihar, Karawal Nagar, Delhi. Further, 29 more complaints were clubbed on the basis of vicinity, date, time and place of incident in this case.

During investigation, it revealed that following cases have some discrepancies regarding date, time and places of incidents:

*(i) **Complaint of Shajeb Khan, S/o Gaffar Khan, r/o House No.306, Gali No.22, IInd floor, Shiv Vihar, Karawal Nagar, Delhi revealed the incident of 26.02.2020.***

*(ii) **Complaint of Mohd. Zaid, S/o Jalaluddin, r/o House No.A-279, Gali No.22, Phase-10, Shiv Vihar, Karawal Nagar, Delhi revealed the date of incident 26.02.2020.***

*(iii) **Complaint of Mohd. Ashik, S/o Mohd. Shareef, r/o House No.225, Gali No.12, Phase-VI, Shiv Vihar, Karawal Nagar, Delhi revealed the date of incident of 24.02.2020.***

*(iv) **Complaint of Munni, r/o House No.275, Gali No.2A, Phase-10, Shiv Vihar, Karawal Nagar, Delhi revealed the incident of 24.02.2020.***

*(v) **Complaint of Afsana, W/o Ilakh Khan, r/o House No.246, B-Block, Gali No.14, Phase-10, Shiv Vihar, Karawal Nagar, Delhi revealed the incident of 24.02.2020.***

*(vi) **Complaint of Jamil Ahmed, S/o Nawabuddin, r/o House No.665, Gali No.22/24, Phase-10, Shiv Vihar, Karawal Nagar, Delhi revealed the incident of 24.02.2020.***

*It is further submitted that above mentioned complaints will be **investigated separately** and we will file the separate final report regarding the above mentioned complaints before the Hon'ble Court.*

Prayed accordingly.

Forwarded

Sd/-

Sh.R.C.S.Bhaduria,

Special PP

(Sd/-)

Ramavtar Tyagi (Inspr.)

SHO/Karawal Nagar/Delhi

xxxxx

4. The learned Special PP on instructions has confirmed the aforesaid fact/development which is stated to have taken place pursuant to directions in this regard given by DCP (North-East). Accordingly, in view of the submissions made by learned Special PP as well as the “**status report**” filed in the matter, **it is hereby made clear that present case is now being considered only in respect of complaints narrating/stating the incident(s) of rioting that took place 25.02.2020** in the night.

5. After excluding the aforesaid six complaints (details as contained in the “**status report**”), we are now left with 23 (twenty three) complaints made by various complainants, which talk about the date of incident(s) to be of 25.02.2020. The details of the said complaints are as under:

- (i) Two complaints of complainant Mohd. Zakir, S/o Mohd. Shamshad (received vide Diaries No. 126-DR, dated 01.03.2020 & 547-DR, dated 06.03.2020);
- (ii) Complaint No.143-DR, dated 01.03.2020, made Abdul Majid, S/o Abdul Khaliq;
- (iii) Complaint No.145-DR, dated 01.03.2020, made by Sajid, S/o IKramuddin;
- (iv) Complaint No.538-DR, dated 06.03.2020, made by Shiv Dutt, S/o Mangal;
- (v) Complaint No.716-DR, dated 08.03.2020, made by Salim Khan, S/o Isak Khan;
- (vi) Complaint No.548-DR, dated 06.03.2020, made by Mohd. Shareef, S/o Mehrun;
- (vii) Complaint No.553-DR, dated 06.03.2020, made by Smt.Rubina, W/o Javed;

- (viii) Complaint No.593-DR, dated 07.03.2020, made by Md. Abrar Khan, S/o Sabir Khan;
- (ix) Complaint No.598-DR, dated 07.03.2020, made by Isteefaq Ali, S/o Fakir Ahmad;
- (x) Complaint No.573-DR, dated 06.03.2020, made by Soaib, S/o Md.Bure;
- (xi) Complaint No.559-DR, dated 07.03.2020, made by Akhtar Ali, S/o Islamuddin;
- (xii) Complaint No.558-DR, dated 07.03.2020, made by Md.Rizwan, S/o Akhtar Ali;
- (xiii) Complaint No.715-DR, dated 08.03.2020, made by Md.Shahid, S/o Md.Akhtar;
- (xiv) Complaint No.708-DR, dated 08.03.2020, made by Md.Abid, S/o Shahbuddin;
- (xv) Complaint No.696-DR, dated 08.03.2020, made by Sabbuddin, S/o Abdul Azid;
- (xvi) Complaint No.690-DR, dated 08.03.2020, made by Md.Varis, S/o Md.Abdul;
- (xvii) Complaint No.686-DR, dated 08.03.2020, made by Sama Parveen;
- (xviii) Complaint No.640-DR, dated 08.03.2020, made by Md. Tohir, S/o Samsuddin;
- (xix) Complaint No.638-DR, dated 08.03.2020, made by Abdul Majid, S/o Abdul Khaliq;
- (xx) Complaint No.673-DR, dated 08.03.2020, made by Md.Shahid, S/o Akhtar;
- (xxi) Complaint No.752-DR, dated 08.03.2020, made by Chand Miyan, S/o Md.Ahmad;
- (xxii) Complaint No.745-DR, dated 08.03.2020, made by Ms.Khushnuma,

W/o IKbal and;

(xxiii) Complaint No.736-DR, dated 08.03.2020, made by Fazluddin, S/o Sirajuddin.

6. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/427/436/380/454/188 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 from the aforesaid twenty three (23) complaints 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:

xxxxxx

*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.*

xxxxxx

7. I have carefully gone through the 23 complaints aforesaid, which all talks about the incident(s) of rioting pertaining to 25.02.2020. A **fine-tooth-comb analysis** of the said complaints reveals that **there are no allegations of arson in any of them and as such, ingredients of Section 436 IPC are not at all made out therefrom**. Even from the photographs filed on record, no incident of committing mischief by fire or explosive substance is borne out.

8. A perusal of record further reveals that statement under Section 161 Cr.P.C of complainant Mohd. Zakir, S/o Mohd. Shamshad was recorded in the matter on 01.05.2020. In his said statement, he has stated that when he inspected/visited his house on 04.03.2020, he noticed/found “**traces of smoke**” therein. In this regard, it is noted that in his initial two written complaints (which were received vide Diaries No. 126-DR, dated 01.03.2020 & 547-DR, dated 06.03.2020), he had not stated a single word regarding committing of arson in his house by the riotous mob on 25.02.2020 and thereafter all of a sudden, during the course of recording of his statement under Section 161 Cr.P.C by the IO on 01.05.2020, he has narrated/stated about “**traces of smoke**” having been found inside his house. Thus, it is only when his statement under Section 161 Cr.P.C was recorded by the IO on 01.05.2020 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 introduce all together a new case by recording a supplementary statement of one of the complainants, if the ingredients of Section 436 IPC were not there in his initial two 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:

xxxxx

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.

xxxxx

(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:

xxxxx

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.

xxxxxx

xxxxxx

*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.*

xxxxxx

(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:

xxxxx

*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)**].*

xxxxx

9. As such, the statement dated 01.05.2020 of complainant Mohd. Zakir, S/o Mohd. Shamshad, 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.

10. 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.

11. Accordingly, the case file be placed before learned Chief Metropolitan Magistrate (North-East), Karkardooma District Courts on **28.09.2021 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. Superintendent Jail concerned is directed to produce the accused before the Ld.CMM (NE) on the next date.

12. Ahlmad to comply.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/15.09.2021