

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

Sessions Case No.123/2021	
State V/s	(i) Neeraj @ Kashi, Aged about 30 years, S/o Late Shri Rohtash, R/o House No.D-204, Gali No.6, Bhajanpura, Delhi.
	(ii) Manish @ Rahul, Aged about 30 years, S/o Shri Ravinder Kumar, R/o House No.D-54, Gali No.3, Bhajanpura, Delhi.
FIR No.169/2020	
PS Bhajanpura	
U/s 147/148/149/436/380 IPC	

04.10.2021

PHYSICAL HEARING

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State alongwith IO, ASI Arvind Kumar.

Shri Ashok Kumar, Ld. Counsel for accused Neeraj @ Kashi alongwith accused on bail.

Shri Devendra Rai Dutta, Ld. Counsel for accused Manish @ Rahul alongwith accused on bail.

ORDER ON CHARGE

There is an application, filed on behalf of accused Neeraj @ Kashi for cancellation of NBWs. For the reasons stated in the application, the same is allowed and the NBWs issued against the accused Neeraj @ Kashi stands cancelled. He is warned to be careful in future.

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

3. Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 06.03.2020, on the basis of twelve (12) written complaints received from different complainants with regard to incidents of rioting that had taken place on 25.02.2020. The details of said complaints are as under:

(i) Complaint made by Sonu, S/o Shri Majid Khan (received vide DD No.30A, dated 04.03.2020);
(ii) Complaint made by Ram Shiromani, S/o Shri Prabhu Dayal (received vide DD No.34-B, dated 05.03.2020);
(iii) Complaint made by Ubaid-Ur-Rehman, S/o Shri Shakil Rehman (received vide DD No.42-B, dated 05.03.2020);
(iv) Complaint made by Naeem, S/o Shri Maudin (received vide DD No.28-B, dated 05.03.2020);
(v) Complaint made by Smt.Huma, W/o Shri Noor Alam (received vide DD No.48-B, dated 04.03.2020);
(vi) Complaint made by Shoeb, S/o Shri Mursaleen (received vide Dy.No.30/Riots, dated 04.03.2020);
(vii) Complaint made by Mohd. Ahmad, S/o Mohd. Saleem (received vide DD No.71-B);
(viii) Complaint made by Satish Kumar, S/o Shri Karan Singh (received vide DD No.60-B, dated 04.03.2020);
(ix) Complaint made by Khuda Baksh, S/o Shri Shakur Khan (received vide DD No.55-B, dated 04.03.2020);
(x) Complaint made by Mohd. Imran, S/o Mohd. Yunus (complaint received vide Dy.No.43, dated 04.03.2020);
(xi) Complaint made by Shakir Salmani, S/o Shri Mohd. Manglu (received vide Diary No.36-R, dated 04.03.2020);
(xii) Complaint made by Mohd. Akhtar, S/o Mohd. Abdul Aziz (received vide DD No.49-B, dated 02.03.2020)(

4. On the last date of hearing, i.e on 01.09.2020, this Court had categorically noted down that the complaints preferred by complainants namely Mohd. Akhtar, Satish Kumar and Shakir Salmani do not disclose the date(s) of commission of offence(s); whereas, the complaint made by Ram Shiromani discloses the commission of offence to be intervening night of 24/25.02.2020. On account of the aforesaid reason(s), this Court had specifically asked learned Special PP whether one single FIR could have been registered in the matter *dehors* the law laid down by Hon'ble Supreme Court in case titled as, “**Anju Chaudhary V/s State of UP & Ors.**”, (2013) Vol.VI SCC 384”. This Court had further raised a query from the learned Special PP as to whether any offence triable exclusively by the Court of Sessions is made out from the various complaints clubbed in this case.

5. (i) Today also the said queries have been raised with learned Special PP. However, at this stage, a “**Status Report**” has been filed in the Court *inter alia* stating therein that **eight complaints which depict different time and place of occurrence will be segregated and separate chargesheet(s) will be filed qua them.** The relevant extract of the “**status report**” filed today in Court is reproduced as under:

xxxxx

***Sub.: Status report in case FIR mentioned above.
(FIR No.169/2020, PS Bhajanpura)***

Hon' ble Sir,

Scrutiny of complaints revealed that complainants:-

Complaints 1 to 4 are of same place of incidents or nearby the area with same time span of occurrence and complaints 5 to 12 have been segregated on the ground of dated and place of occurrence. The same will be

investigating separately and separate chargesheet will be filed in this regard.

As per the investigation and analysis of all the complaints no session triable offence is made out.

Submitted pls.

xxxxx

6. 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 in respect of four complaints only and the remaining eight complaints are being kept outside the purview of this case. The details of complaints being considered and those which are being kept out of purview in the instant case are as under:**

Complaints being considered	Complaints NOT being considered
(i) Complaint made by Sonu, S/o Shri Majid Khan (received vide DD No.30A, dated 04.03.2020);	(i) Complaint made by Smt.Huma, W/o Shri Noor Alam (received vide DD No.48-B, dated 04.03.2020);
(ii) Complaint made by Ram Shiromani, S/o Shri Prabhu Dayal (received vide DD No.34-B, dated 05.03.2020);	(ii) Complaint made by Shoeb, S/o Shri Mursaleen (received vide Dy.No.30/Riots, dated 04.03.2020);
(iii) Complaint made by Ubaid-Ur-Rehman, S/o Shri Shakil Rehman (received vide DD No.42-B, dated 05.03.2020);	(iii) Complaint made by Mohd. Ahmad, S/o Mohd. Saleem (received vide DD No.71-B);
(iv) Complaint made by Naeem, S/o Shri Maudin (received vide DD No.28-B, dated 05.03.2020);	(iv) Complaint made by Satish Kumar, S/o Shri Karan Singh (received vide DD No.60-B, dated 04.03.2020); (v) Complaint made by Khuda Baksh, S/o Shri Shakur Khan (received vide

	DD No.55-B, dated 04.03.2020);
	(vi) Complaint made by Mohd. Imran, S/o Mohd. Yunus (complaint received vide Dy.No.43, dated 04.03.2020);
	(vii) Complaint made by Shakir Salmani, S/o Shri Mohd. Manglu (received vide Diary No.36-R, dated 04.03.2020);
	(viii) Complaint made by Mohd. Akhtar, S/o Mohd. Abdul Aziz (received vide DD No.49-B, dated 02.03.2020)(

7. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/436/380 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 four (04) 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:

xxxxx

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.

xxxxx

8. I have carefully gone through the four (04) complaints aforesaid, i.e the complaints preferred by complainants namely Sonu, Ram Shiromani, Ubaid-

Ur-Rehman and Naeem, which all talk about the incident(s) of vandalizing, robbery and rioting. 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.

9. 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.

10. Accordingly, the case file be placed before learned Chief Metropolitan Magistrate (North-East), Karkardooma District Courts on **30.10.2021 at 2.00 PM**, with a request to either try the matter himself or assign it to some other competent Court/learned MM. Accused persons are directed to appear before learned CMM (North-East) on the said date.

11. Ahlmad to comply.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/04.10.2021

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

SC No.107/2021	
State V/s	(i) Amit Goswami , S/o Shri Om Prakash, Aged about 28 years, R/o House No.C-266, Gali No.11, Bhajanpura, Delhi. Profession: Shopkeeper.
	(ii) Shyam Patel , S/o Shri Vinish Patel, Aged about 40 years, R/o House No.C-266, Gali No.11, Bhajanpura, Delhi. Profession: Shopkeeper.
	(iii) Sonu , S/o Shri Shiva Nand, Aged about 23 years, R/o House No.C-407, Gali No.17, Bhajanpura, Delhi. Profession: Shopkeeper.
	(iv) Sunil Sharma , S/o Shri Mani Ram Sharma, Aged about 23 years, R/o House No.C-266, ,Gali No.11, Bhajanpura, Delhi. Profession: Shopkeeper.
	(v) Rakesh , S/o Shri Ram Lal, Aged about 33 years, R/o Roshan Gurjar Ka Makaan, Village Gamri, Bhajanpura, Delhi. Profession: Shopkeeper.
	(vi) Mukesh , S/o Shri Savant Roy, Aged about 22 years, R/o House No.C-407, Gali No.17, Bhajanpura, Delhi.\ Profession: Shopkeeper.
FIR No.166/2020	
PS Bhajanpura	
U/s 147/148/149/435/436/457/380 IPC	

04.10.2021

PHYSICAL HEARING

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State alongwith
IO, SI Rahul.
Ms.Mukta Arora, Ld. Counsel for accused Amit Goswami alongwith
accused produced physically in JC (on bail in this case).

Shri Saroj Kumar Jha, Ld. Counsel for accused Shyam Patel, Sonu, Mukesh @ Kalia with all the three accused persons on bail.

Shri Rajender Kasana, Ld. Counsel for accused Sunil Sharma alongwith accused produced physically in JC (on bail in this case).

Shri Shubham Asri, Ld. Counsel for accused alongwith accused produced physically in JC (on bail in this case).

ORDER ON CHARGE

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

2. Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 05.03.2020, on the basis of ten (10) written complaints received from different complainants with regard to the incidents of rioting that had taken place on 25.02.2020. The details of the said complaints are as under:

(i) Complaint made by Smt.Shahnaz Kausar, W/o Shri R.P Kausar (received vide DD No.44-B, dated 02.03.2020).

(ii) Complaint made by Mohd. Anees, S/o Mohd. Shafiq.

(iii) Complaint made by Shoaib Malik, S/o Late Shri Mohd. Saleem

(iv) Complaint made by Afaq Ahmed, S/o Shri Banne Khan (received vide DD No.49-B, dated 01.03.2020).

(v) Complaint made by Dildar Ahmed, S/o Shri Jabar Ali

(vi) Complaint made by Smt.Shahna Begum, W/o Mohd. Sahid.

(vii) Complaint made by Salim Ahmed, S/o Shri Babu (received vide DD No.37-B, dated 01.03.2020)

(viii) Complaint made by Wali Mohammad, S/o Shri Abdul Hakim (received vide DD No.27-B, dated 01.03.2020)

(ix) Complaint made by Mohd. Saleem, S/o Mohd. Peerdeen

(x) Complaint dated 27.02.2020, made by Aman Sharma.

3. On the last date of hearing, i.e on 03.09.2020, this Court had categorically noted down that the complaint preferred by Shoaib Malik does not mention the date and time of incident, while from the complaints of Dildar Ahmed and Afaq Ahmed the time of incident(s) is not made out; whereas, the complaint preferred by complainant Wali Mohammad discloses the incidents of two dates, i.e of 25.02.2020 and 26.06.2020. Even the perusal of site plan reveals that the spots/scenes of crime (SOC) where the incident(s) of rioting had taken place are scattered at various places across the length and breadth of PS Bhajanpura. On account of the aforesaid reason(s), this Court had specifically asked learned Special PP on 03.09.2021 as to under which law complaints of two dates, i.e of 25.02.2020 and 26.02.2020 have been clubbed in the instant case FIR and chargesheet.

4. (i) Today also the said queries have been raised with learned Special PP. At this stage “**Status Report**” has been filed in the Court *inter alia* stating therein that the complaints preferred by complainants namely Wali Mohammand, Mohd. Salim and Aman Sharma have been segregated on account of the date and place of incident(s) mentioned therein.

(ii) A further “**Status Report**” has also been filed qua the specific complaint of Wali Mohammad *inter alia* stating therein that since his complaint talks about incidents of two dates, i.e of 25.02.2020 and 26.02.2020, therefore, his complaint would be separately investigated and separate chargesheet would be filed qua the said complaint.

5. The relevant extracts of the “**status report(s)**” filed today in Court are re-produced as under:

xxxxxx

***Sub.: Status report in case FIR mentioned above.
(FIR No.166/2020, PS Bhajanpura)***

Hon’ ble Sir,

Complaints 1 to 8 are of same place of incidents or nearby the area with same time span of occurrence and with regard to complaint No.9 of the present case, I.e Mohd. Salim, S/o Mohd. Peerden mentioned above, the incident of 25.02.2020 which took place in C-89, Gali No.3, Bhajanpura, Delhi has been investigated in the present and with regard to incident took place on 26.02.2020, i.e C-Block, Gali No.2, Bhajanpura, Delhi alongwith the complaint No.10 of Aman Sharma have been segregated on the ground of dated and place of occurrence. The same will be investigating separately and separate final report will be filed in this regard.

As per the investigation and analysis of all the complaints no session triable offence is made out.

Submitted pls.

xxxxxx

xxxxxx

Sub.: Status report (further).

As per the complaint of Wali Mohammad, S/o Shri Abdul Hakim, R/o D-975, Jan Kalyan School Road, Bhajanpura, Delhi there were two incidents mentioned in the complaint. First one is of 25.02.2020 and the other one is dated 26.02.2020. Hence, the incident dated 26.02.2020 of the complaint of Wali Mohammad is beintg separately investigated and separate chargesheet will be filed accordingly.

xxxxxx

6. 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(s)**” filed in the matter, **it is hereby made clear that present case is now being considered ONLY in respect of seven complaints lying mentioned at paragraph No.2(b)(i) to (vii).**

7. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/435/436/457/380 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 seven (07) complaints or not.

8. I have carefully gone through the seven (07) complaints aforesaid. A perusal of the complaint preferred by complainant Smt.Shahna Begum, W/o Mohd. Shahid reveals that she had stated that on 25.02.2020 she had closed her “**parlour**” situated at C-120/11A, Gali No.2, Bhajanpura and on 26.02.2020 she came to know that the riotous mob after breaking open the lock of her said parlour had damaged/vandalized the same, looted the articles lying therein and thereafter **set on fire the remaining articles lying inside her aforesaid parlour.**

9. Now the question arises that on the basis of her aforesaid complaint/version, whether ingredients of charge under Section 436 IPC can be drawn up against the accused persons or not. For this, firstly it would be appropriate to have the definition of Section 436 IPC, which for ready reference is re-produced as under:

xxxxx

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.

xxxxx

10. From a bare perusal of Section 436 IPC, the essential ingredients of the said section are as under:-

- (i) Commission of mischief;
- (ii) by fire or any explosive substances;
- (iii) intending to cause or knowing that it is likely to cause destruction of the building,
- (iv) which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.

11. The first ingredient of Section 436 IPC is '**mischief**'. "**Mischief**" has been defined under Section 425 of IPC and the same is also quoted herein below:

"Mischief- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"."

12. Thus, to make out an offence of "**mischief**", one has to cause or know that it is likely to cause wrongful loss or damage to 'public' or to any 'person'..

13. Applying the above propositions of law, it is clear that the complainant Smt.Shahna Begum had nowhere stated that the rioters had caused or intended to cause mischief so as to destroy her aforesaid “**parlour**” by setting fire or by explosive substance. **The building/parlour remained intact and only the articles lying therein were set on fire.** Thus, I am of the opinion that ingredients of Section 436 IPC are not made out from the averments made by complainant Shahna Begum in her aforesaid complaint. I am supported in my aforesaid view by the law laid down by Hon'ble Gauhati High Court in **Crl.Revn.Ptn.No.307/2013**, titled as, “**Sri Pankaj Borah & Ors. V/s State of Assam**”, wherein the Hon'ble Court has been pleased to lay down as under:

xxxxx

13) Applying the above propositions of law, it is clear that the impugned order of framing charge u/s 436 of IPC against the accused petitioners was passed without considering this aspect of the matter. It cannot be denied that the scope of application of Section 436 IPC is not beyond doubt under the facts of the case. Learned trial Court has not applied his mind as to whether destruction of public premises in the manner and method suggested by materials available on record, can at all make out an offence u/s 436 IPC. None of the witnesses have stated that the accused persons caused or intended to cause mischief so as to destroy the building by setting fire or by explosive substance. The building remained intact and the accused persons destroyed the door panes, other articles like tables, chairs etc. by taking them outside of the building. Had the accused persons intended to damage the building by setting fire, there was no question of taking out of the articles from inside and they could have done the same by putting fire on the articles while they remained inside the premises.

xxxxx

(underlining which is mine emphasized)

14. Furthermore, in **Criminal Ptn.No.5598/2018**, titled as, “**Vishalakshi V/s State of Karnataka**” (date of decision 27.08.2018), the Hon'ble High Court of Karnataka has been pleased to lay down as under:

xxxxx

4. From the complaint itself, it can be made out that the reason for the whole incident appears to be the fact that the complainant gave shelter to the wife of first accused. The police have invoked offence under Section 436 of IPC. But plain reading of the complaint makes it very clear that there is no allegation that the complainant's house was set on fire. It was to the motor cycle of the complainant that the accused set fire and therefore, registration of complaint under section 436 of IPC does not appear to be proper.

xxxxx

(underlining which is mine emphasized)

15. A **fine-tooth-comb analysis** of the remaining 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.

16. 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.

17. Accordingly, the case file be placed before learned Chief Metropolitan Magistrate (North-East), Karkardooma District Courts on **30.10.2021 at 2.00 PM**, with a request to either try the matter himself or assign it to some other competent Court/learned MM. Accused persons are directed to appear before learned CMM (North-East) on the said date.

18. Ahlmad to comply.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/04.10.2021

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

Sessions Case No.113/2021	
State V/s	(i) Neeraj @ Kashi, Aged about 30 years, S/o Late Shri Rohtash, R/o House No.D-204, Gali No.6, Bhajanpura, Delhi.
	(ii) Manish @ Rahul, Aged about 30 years, S/o Shri Ravinder, R/o House No.D-54, Gali No.3, Bhajanpura, Delhi.
FIR No.170/2020	
PS Bhajanpura	
U/s 147/148/149/435/457/380/436 IPC	

04.10.2021

PHYSICAL HEARING

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State alongwith IO, ASI Arvind Kumar.

Shri Ashok Kumar, Ld. Counsel for accused Neeraj @ Kashi alongwith accused on bail.

Shri Devendra Rai Dutta, Ld. Counsel for accused Manish @ Rahul alongwith accused on bail.

ORDER ON CHARGE

There is an application, filed on behalf of accused Neeraj @ Kashi for cancellation of NBWs. For the reasons stated in the application, the same is

allowed and the NBWs issued against the accused Neeraj @ Kashi stands cancelled. He is warned to be careful in future.

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

2. (a) Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 06.03.2020, on the basis of thirteen (13) written complaints received from different complainants with regard to rioting and damage caused to their properties (shops/houses etc.) and vehicles by the riotous mob on 24.02.2020.

(b) It is noted that one more complaint made by complainant Mohd. Hasim, S/o Mohd. Zabbar (received vide Diary No.04, dated 21.03.2020) is also lying on record. As such, the total number of complaints received in the matter comes to fourteen (14), the detail whereof is as under:

(i)	Complainant Mohd. Anwar, S/o Mohd. Zafar, r/o House No.343, Gali No.16, C-Block, Bhajanpura, Delhi in his written complaint (received vide Diary No.40, dated 04.03.2020) stated that on the night of 24.02.2020 , a riotous mob had vandalized and looted his “ hair cutting saloon ” situated at the aforesaid address.
(ii)	Complainant Mohd. Faiyaz, S/o Mohd. Mohseen, r/o House No.171, Gali No.6, Chand Bagh, in his written complaint (received vide DD No.63B, dated 03.03.2020) stated that in the night of 24.02.2020, a riotous mob after breaking open the shutter of his tailoring shop (rented) by the name of “ Western Tailors ” had looted the articles lying therein like sewing

	machines, clothes etc. and also taken away cash amounting to Rs.20,000/-.
(iii)	Complainant Mustkeem Ahmed, S/o Abdul Hameed, r/o House No.E-231, Gali No.9, Chand Bagh, Delhi in his written complaint (dated 04.03.2020) stated that on 24.02.2020, a riotous mob had looted his shop No.C-305 (dealing in dress material), situated in main Bhajanpura market. He further stated that the riotous mob had also taken away cash amounting to Rs.20,000/- from his cash box (galla).
(iv)	Complainant Istekhar, S/o Mohd. Kalu, r/o House No.D-410, Gali No.23, Bhajanpura, Delhi in his written complaint stated that on 24.02.2020, a riotous mob after breaking open the locks of his “saloon” had vandalized the same and put on fire the articles after removing them outside, as a result of which he suffered financial loss to the tune of around Rs.1,95,000/-.
(v)	Complainant Hakam Singh, S/o Shri Avtar Singh, r/o House No.C-35, main Wazirabad Road, Bhajanpura, Delhi in his written/typed complaint (received vide Diary No.26, dated 04.03.2020) stated that on 24.02.2020, a riotous mob after breaking open the shutter of “ chicken corner shop ” had vandalized the same and looted cash amounting to Rs.20,000/-. He further stated that he suffered financial loss to the tune of around Rs.2.00 lakhs in the said incident.
(vi)	Complainant Gurmeet Singh, S/o Shri Avtar Singh, r/o House No.C-35, main Wazirabad Road, Bhajanpura Road, Delhi in his written/typed complaint stated that on 24.02.2020, at about 1.00 PM, a riotous mob had pelted stones upon his “Dashmesh Palace” due to which 40-50 glasses were damaged/broken. He further stated that the said riotous mob had also set on fire the board erected upon the gate as well as the vehicles which were lying parked outside, as a result of which he suffered financial loss to the tune of around Rs.1.00 lakh.

(vii)	Complainant Aslam Hussain, S/o Shri Musabbar Hussain, r/o House No.F-520 A, Gali No.21, Khajuri Khas, Delhi-94, in his written complaint, dated 28.02.2020, stated his shop bearing No.C-102 (by the name of “Gulshan Hair Saloon”), situated in Gali No.5, near Paal Churi Bhandaar, Delhi-53 was looted by the riotous mob on 24.02.2020, as a result of which he suffered financial loss to the tune of around Rs.5.00 lakhs.
(viii)	Another written complaint (received vide Diary No.04, dated 21.03.2020) made by complainant Mohd. Hasim, S/o Mohd. Zabbar, r/o C-1/134, Gali No.C-1, Nehru Vihar, Mustafabad, Delhi-94 is also on record, whereby he stated that the locks of his tailoring/boutique shop bearing No.C-386, Gali No.16, Bhajanpura market had been broken, thereafter his said shop was vandalized and looted by the riotous mob. However, he did not mention the specific date of incident in his written complaint.
(ix)	Complainant Zakir Malik, S/o Shri Bundu Khan, r/o House no.E-78, Gali No.3, Chand Bagh, Delhi-94, in his written complaint stated that his furniture shop, situated in Gali No.2, Sanjay Mohalla, D-Block, near Pandit Khadram Public School, Bhajanpura was vandalized, articles lying therein looted (including cash of Rs.21,000/-) and some articles were set on fire by the riotous mob on 24.02.2020.
(x)	Complainant Nadeem Ahmed Siddiqui, S/o Late Shri Jameel Ahmed Siddiqui, r/o House No.477, Gali No.21, Jaffrabad, Delhi, in his written complaint, stated that his scooty (Activa 125), bearing Regn.No.DL14SK/8131, which was lying parked outside Mohan Nursing Home, Yamuna Vihar, Delhi was set on fire by the riotous mob on 24.02.2020.
(xi)	Complainant Yashwant Singh, S/o Shri Prem Singh, r/o House No.A-65, Gali No.2, Prem Vihar, Karawal Nagar, Delhi, in his written complaint (received vide Diary No.45, dated 04.03.2020) stated that his motorcycle

	bearing Regn. No.DL5SAF/9466 (make Bajaj Discover), which was lying parked outside Mohan Nursing Home, was set on fire by the riotous mob on 24.02.2020 at or around 4.00 PM.
(xii)	Complainant Pankaj Kumar Upadhyay, S/o Shri Santosh Kumar Upadhyay, r/o House No.B-2337, Gali No.35, Sonia Vihar, 1 st pusta, Delhi, in his written complaint stated that on 24.02.2020, he had parked his scooty outside coaching centre, which was set on fire by the riotous mob.
(xiii)	Complainant Amjad Khan, S/o Shri Raheesh Ahmad, r/o House No.A-46/7, Gali No.1, main road, Chauhan Bangar, Jafrabad, Delhi in his written complaint stated that on 24.02.2020 his e-rickshaw bearing Regn. No.DL5ER/7050 was set on fire by the riotous mob near Bhajanpura Petrol Pump.
(xiv)	Complainant Arun Kumar, S/o Shri Raju Yadav, r/o House No.C-209, street No.22, Khajuri Khas, in his written complaint stated that the gate/shutter of his hotel/shop (rented) No.A-1/2, situated at main Wazirbad Road, Bhajanpura, Khajuri Chowk, near Agarwal Sweets was broken/damaged by the riotous mob on 24.02.2020 and articles lying therein like four LPG cylinders, two steel bhattis, two deep-freezers etc were looted and the hotel was vandalized. He further stated that cash amounting to Rs.20-25,000/- was also found missing from the cash counter.

3. During the course of investigation, IO seized the vandalized/damaged articles (exhibits) from shop/saloon No.D-597, gali No.16, Bhajanpura (belonging to complainant Istekhar), prepared site plan and recorded the statements of complainants/witnesses. Both the accused persons were formally arrested in the matter on 09.04.2020, pursuant to the disclosure statements made by them in case FIR No.157/2020, PS Bhajanpura as well as on

the basis of their identification by HC Manoj Bhati (NJo.462/NE) and Constable Yogesh (No.1276/NE).

4. On a specific query raised by this Court to learned Special PP , at this stage, a “**Status Report**” has been filed in the Court *inter alia* stating therein the **six complaints which depict different time and place of occurrence will be segregated and separate chargesheet(s) will be filed qua them.** The relevant extract of the “**status report**” filed today in Court is re-produced as under:

xxxxx

*Sub.: Status report in case FIR mentioned above.
(FIR No.170/2020, PS Bhajanpura)*

Hon’ ble Sir,

Scrutiny of complaints revealed that complainants:-

Complaints 1 to 8 are of same place of incidents or nearby the area with same time span of occurrence and complaints 9 to 14 have been segregated on the ground of dated and placed of occurrence. The same will be investigating separately and separate chargesheet will be filed in this regard.

As per the investigation and analysis of all the complaints no session triable offence is made out.

Submitted pls.

xxxxx

5. 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 in respect of**

eight complaints only and the remaining six complaints are being kept out of the purview of this case. The details of complaints being considered and those which are being kept out of purview in the instant case are as under:

Complaints being considered	Complaints NOT being considered
(i) Complaint made by Mohd. Anwar, S/o Mohd. Zafar (received vide Diary No.40, dated 04.03.2020).	(i) Complaint made by Zakir Malik, S/o Shri Bundu Khan.
(ii) Complaint of Mohd. Faiyaz, S/o Mohd. Mohseen (received vide DD No.63B, dated 03.03.2020).	(ii) Complaint of Nadeem Ahmed Siddiqui, S/o Late Shri Jameel Ahmed Siddiqui.
(iii) Complaint preferred by Mustkeem Ahmed, S/o Abdul Hameed.	(iii) Complaint of Yashwant Singh, S/o Shri Prem Singh (received vide Diary No.45, dated 04.03.2020).
(iv) Complaint made by Istekhar, S/o Mohd. Kalu.	(iv) Complaint made by Pankaj Kumar Upadhyay, S/o Shri Santosh Kumar Upadhyay.
(v) Complaint made by Hakam Singh, S/o Shri Avtar Singh (received vide Diary No.26, dated 04.03.2020).	(v) Complaint of Amjad Khan, S/o Shri Raheesh Ahmad.
(vi) Complaint of Gurmeet Singh, S/o Shri Avtar Singh.	(vi) Complaint of Arun Kumar, S/o Shri Raju Yadav.
(vii) Complaint made by Aslam Hussain.	
(viii) Complaint made by Mohd. Hasim, S/o Mohd. Zabbar (received vide Diary No.04, dated 21.03.2020).	

6. A careful perusal of the chargesheet filed in the matter reveals that sections 147/148/149/435/457/380/436 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 eight (08) 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:

xxxxx

*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.*

xxxxx

7. I have carefully gone through the eight (08) complaints aforesaid, which all talk about the incident(s) of rioting pertaining to 24.02.2020. 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. 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.

9. Accordingly, the case file be placed before learned Chief

State V/s Neeraj @ Kashi & Anr.: SC No.113/2021: FIR No.170/2020: PS Bhajanpura

Metropolitan Magistrate (North-East), Karkardooma District Courts on **30.10.2021 at 2.00 PM**, with a request to either try the matter himself or assign it to some other competent Court/learned MM. Accused persons are directed to appear before learned CMM (North-East) on the said date.

10. Ahlmad to comply.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/04.10.2021