

**IN THE COURT OF SH. M. K. NAGPAL
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE (PC ACT), CBI
09 (MPs/MLAs CASES), ROUSE AVENUE DISTRICT COURT,
NEW DELHI**

Cr. Case No. 03/2021

CNR No. DLCT-11-000305-2021

(Old CNR No. DLCT120000332021)

FIR No. 458/91

PS Saraswati Vihar (now known as PS Subhash Place)

U/S 147/148/149/302/307/326/395/397/427/436/440/201 IPC

State

....Complainant

Versus

Sajjan Kumar

S/o Ch. Raghunath Singh,

R/o H.No. B-3/1, Mianwali Nagar,

Paschim Vihar, New Delhi.

...Accused

ORDER ON CHARGE

04.12.2021

BACKGROUND AND FACTS OF THE CASE

1. Accused charge sheeted in this case was an elected member of Lok Sabha, the Lower House of the Parliament of India, from Outer Delhi constituency having been elected on ticket of the Indian National Congress (INC) Party, when widespread anti sikh riots took place in Delhi and other parts of the country against killing of the then Prime Minister (PM) Smt. Indira Gandhi by her two sikh bodyguards. The above killing of the then PM of India was in retaliation of her order to the Indian Army to attack the most religious place of sikhs named 'Shree Harmandir Sahib' complex in Amritsar, Punjab popularly known as 'Golden Temple', in June 1984. In

the above riots, thousands of sikhs were killed in Delhi as well as in other parts of the country and allegations were also made that the ruling INC party at the Centre was in active complicity with the protesters and in organization of the said riots.

2. The present case relates to killing of one S. Jaswant Singh and his son S. Tarun Deep Singh residing in the area of Raj Nagar in West Delhi by such an unruly mob consisting of several thousand persons and it has been alleged that the accused was leading the said mob and upon his instigation and abetment, the mob had burnt alive the above two persons and had also damaged, destroyed and looted their household articles and other property, burnt their house and also inflicted severe injuries on the person of their family members and relatives residing in their house.

3. The FIR of this case bearing No. 458/91 for commission of offences U/S 147/148/149/395/397/302/307/436/440 of the Indian Penal Code (IPC) at PS Saraswati Vihar, District North West was registered on the basis of an affidavit dated 09.09.1985 given by the complainant 'X' (the name and other details of the complainant are not being stated so as to prevent disclosure of her identity) before the Hon'ble Mr. Justice Ranganathan Mishra Commission of Inquiry and on recommendations of the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal. One statement dated 06.09.1991 of the complainant was also recorded before the above said Committee. In the above said affidavit, the complainant had deposed and narrated about the incident of attack on their house by a violent mob and the same resulting in the killing of her husband and son, injuries on her person and to some other persons,

as well as damage and destruction of their property etc. The above incident is claimed to have taken place in the evening of 01.11.1984 and it was also deposed in the said affidavit that details of the attack, killing and the goods looted or burnt have already been given in the Police Post, Punjabi Bagh, vide FIR No. 511/84 and the mob and its leader were though not known to her, but when she had seen a photograph of the accused later on, it was found resembling with the face of the man instigating the mob.

4. One statement of the complainant was also recorded before the above Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal on 06.09.1991 regarding the above incident and while deposing about the same again in the said statement, the complainant further stated that she saw a photo of the accused in a magazine later on and identified it to be of the person instigating the mob.

5. One letter No. F.597/2646/85/JPRC/SP/638 dated 09.10.1991 was then written by the Committee to the Administrator, Union Territory of Delhi for registration of a fresh case in respect to the above allegations of killing of the husband and son of complainant, as made in the above affidavit of complainant which was tendered before the Hon'ble Mr. Justice Ranganathan Mishra Commission on 09.09.1985. The original affidavit of complainant with its enclosures, along with her statement recorded by the Committee and a copy of the certificate issued by the IO/SI Dharam Singh of the above previous case FIR No. 511/84 of PS Punjabi Bagh were also enclosed with the said letter. It was specifically stated in the said letter that scrutiny of the police record conducted by the Committee had revealed that though the complainant was examined and

her statement was recorded U/S 161 of the Code of Criminal Procedure (Cr.P.C.) in the above FIR/case No. 511/84, PS Punjabi Bagh regarding the above said incident, but the incident of this case was neither investigated fully by the police in that case nor it was made the subject matter of chargesheet filed in the said case. It is necessary to mention here that the above FIR No. 511/84 of PS Punjabi Bagh was registered U/S 147/148/149/302/307/335/395/397/427 IPC in respect to various incidents of killing of sikhs and destruction and damage to their property in different parts of the said PS, including the area of Raj Nagar, and the judicial record pertaining to the said case is stated to have been destroyed in the weeding out process. It is also necessary to mention here that admittedly, the accused sent to face trial in this case was neither charge sheeted nor tried in that case.

6. As per allegations made in the present charge sheet, on the basis of above letter sent by the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal, the FIR of this case was registered by the then Inspector of Riots Cell namely Sh. Ram Kishan and investigation of this case was also conducted by him and during the course of investigation, he had even recorded one statement dated 08.01.1992 of the complainant regarding the above said incident and the complainant reiterated therein her previous statements made to the effect that she recognized the accused later on from his photo published in a magazine as the person who was instigating the mob on the day of incident of this case.

7. On completion of investigation, one final report is also stated to have been filed earlier in the court of Ld. Metropolitan Magistrate (MM)

concerned and the case was directed to be sent as untraced vide order dated 08.07.1994 passed by the Ld. MM as he was of the view that evidence collected by the IO so far was not sufficient to initiate prosecution against any particular person. However, the case was sent as untraced only till any substantial evidence came to light. It is necessary to mention here that one supplementary statement of the complainant dated 12.05.1992 was also recorded in the present case by the then ACP, Riots Cell, Sh. Rajiv Ranjan, before filing of the above 'untrace report' and the complainant is alleged to have stated therein that though the photograph of accused published in a magazine and seen by her later on resembled with the man who was leading the mob on day of incident of this case, but she could not say it with any degree of certainty that the beard man leading the mob was the accused. It is also necessary to mention here that before acceptance of the above final report as 'untrace', the Ld. MM had not issued any notice for hearing to the complainant.

CONSTITUTION OF SPECIAL INVESTIGATION TEAM (SIT)

8. Thereafter, the Govt. of India, Ministry of Home Affairs (MHA) vide its order No. 13018/13/2014-Delhi-1 (NC) dated 12.02.2015 had constituted a SIT for investigating/re-investigating the cases of 1984 riots with the following terms of reference :-

“a. To re-investigate the appropriately serious criminal cases which were filed in the National Capital Territory of Delhi in connection with the 1984 Riots and have since been closed. For this purpose, the SIT shall examine the records afresh from the Police Stations concerned and also the files of Justice J. D. Jain and Sh. D. K. Agrawal Committee and take all such measures under law for a thorough investigation of the criminal cases:

b. To file charge sheet against the accused in the proper court where after investigation sufficient evidence is found available.”

9. The Office of SIT (1984 riots) was also notified as a separate PS having jurisdiction over whole of the National Capital Territory (NCT) of Delhi by the Lieutenant Governor of Delhi vide GNCT Delhi Notification No.6/13/2015/2124 to 2131 dated 09.07.2015.

10. It has been alleged in the charge sheet that the present case was examined thoroughly by the SIT and after scrutiny, it was decided that this case is required to be further investigated. An intimation to this effect is also claimed to have been given to Ld. CMM, Rohini Courts on 21.11.2016.

FURTHER INVESTIGATION BY SIT

11. It is alleged that a public notice was published on 11.11.2016 in various leading newspapers in Punjab and Delhi requesting all concerned or acquainted with facts of the present case to give evidence or depose about the same before the SIT to facilitate further investigation of the case and details of the case were also uploaded on the website of Ministry of Home Affairs (MHA) to give it more wider publicity. It is claimed that during the course of investigation, material witnesses of the case were traced out, examined and their statements were recorded U/S 161 Cr.P.C. The statements of complainant under the above provision is being claimed to have been recorded on 23.11.2016 during the course of this further investigation, in which she again narrated the above incident of looting, arson and murders of her husband and son by the mob armed with deadly

weapons and she is also claimed to have deposed therein about the injuries suffered by her and the other victims of the case, including her sister-in-law namely 'W' (since deceased) , who is stated to have subsequently expired. She also clarified, *inter-alia*, in that statement that the above photograph of accused was seen by her in India Today magazine after around 1½ months. It is alleged that even the statements of daughter of complainant and her niece (daughter of her sister-in-law) named 'Y' and 'Z' respectively (their assumed names as their actual names and other details are not being disclosed to prevent disclosure of their identities) were recorded about the said incident and in their above statements they had also claimed themselves to be eye witnesses of the said incident and they further claimed therein that when the complainant had shown them the above India Today magazine having photograph of accused published in the said magazine, they identified the above photograph of accused as to be of the person who was leading the mob at the time of incident.

12. Further, during the course of investigation, the death certificates of both deceased as well as medical treatment papers of the above three injured persons/victims were produced by the complainant and taken into possession by the Investigating Officer (IO) vide seizure memos and these death certificates and medical papers were also verified by the IO from the concerned persons/authorities. Again, the certified copies of India Today magazine of editions dated 15.12.1984 and 31.12.1984, along with two CDs containing digital editions of this magazine, editions dated 15.11.1984, 30.11.1984, 15.12.1984 and 31.12.1984, were also procured from the office of concerned publication agency and the same were seized in this case and it is alleged that page No. 20 of the said edition dated

15.12.1984 was having a photograph of accused and this edition of magazine was also subsequently identified by the complainant to be the same edition of magazine in which she had earlier seen the photograph of accused and identified the same.

13. However, it has been claimed that the sister-in-law of complainant, the then DCP of District West Sh. U. K. Katna, the then ACP of PS Punjabi Bagh, Sh. J. K. Saxena and the then IO of case FIR No. 511/84, PS Punjabi Bagh SI Dharam Singh could not be examined during the course of this further investigation as they all had passed away by that time.

OUTCOME OF FURTHER INVESTIGATION

14. It is alleged that further investigation conducted into this case has revealed that on 01.11.1984 at around 4/4.30 pm, the victims 'X', 'Y' & 'Z', sister-in-law of victim/complainant 'X', along with both the deceased were present at their house in Raj Nagar area, West Delhi, when a violent mob consisting of thousands of persons and armed with iron rods and lathis etc. had attacked their house, broken its doors and windows, looted household articles and committed mischief by fire or otherwise by destroying their household articles and by setting their house on fire. It is alleged that due to the above violent conduct of mob, all the victims were forced to come out of their house and while both the deceased were murdered by burning them alive in an adjoining vacant plot, the other victims of this case were also beaten by the mob and they suffered grievous injuries, though they somehow managed to save their lives. It has been stated that no member of the above unruly and violent mob could be identified at that time by the victims as they were new in the said area having been shifted there only

around 1½ months back, but later on, when the complainant 'X' had seen a photograph of accused, who was a local MP of that area from INC party, in India Today magazine, edition dated 15.12.1984, she identified it to be of the same beard man who was leading the mob on the day of incident. Further, even the other two victims had identified the above photograph of accused appearing in the said magazine in the same way. Thus, it has been alleged that the accused by leading and being a member of an unlawful assembly consisting of thousands of persons and armed with deadly weapons had committed the offences of rioting, dacoity, murder, attempt to murder, causing grievous hurt and mischief by fire or otherwise by destruction of house and other household property of the victims.

15. The accused was interrogated and formally arrested in this case on 06.04.2021, while he was confined in Tihar Jail in some other case. It has been stated that accused stands already convicted and sentenced in a similar CBI case of rioting bearing SC No. 26/2010, RC-SII-2005-S0024 by the court of Ld. District Judge-VII-North East-cum-Additional Sessions Judge, Karkardooma Courts, Delhi and has been sentenced to imprisonment for remainder of his life.

16. Thus, on conclusion of further investigation, a charge sheet for commission of the above said offences punishable U/S 147/148/149/302/307/326/395/397/427/436/440/201 IPC has been filed against the accused.

17. It is also necessary of mention here that vide order dated 25.02.2021 passed by the Competent Authority under the Witness Protection Scheme, 2018, the identity of above three alive victims of this case, i.e. the complainant 'X', her daughter 'Y', and her niece 'Z' has been directed to be

protected so that they are not coerced, threatened or influenced by anyone and they are able to depose freely during the trial as accused has been claimed to an influential person.

18. As gathered from the record, charge sheet in this case appears to have been initially filed in e-form in the court of Ld. CMM, Rouse Avenue District Court (RADC), New Delhi as an email regarding filing of the charge sheet was sent/forwarded to the court of Ld. ACMM-01, RADC, New Delhi on 20.04.2021 for conduction of further proceedings. Since physical file was yet not received by the court of Ld. ACMM-01 and the IO was also not present, the matter was adjourned for consideration on 05.05.2021. On 05.05.2021, charge sheet was found to have been received physically and it was directed to be checked and registered. It is necessary to mention here that during the above said time, only urgent matters were being taken in District Courts as per the directions given and guidelines laid down by the Hon'ble High Court due to re-spread of Covid.

19. Cognizance of the offences alleged in the charge sheet was formally taken by the Ld. ACMM-01 vide order dated 26.07.2021 and vide subsequent order dated 30.07.2021, after compliance of provisions contained in Section 207 Cr.P.C., Ld. ACMM-01 had committed the matter to the court of Sessions as he was of the view that the offence punishable U/S 302 IPC, along with other offences, was exclusively triable by a court of Sessions.

ARGUMENTS OF PROSECUTION

20. Ld. Additional PP for State has argued that even though in her initial

statements and affidavit, the complainant had not made any specific claim regarding being an eye witness of the above incident of killing of her husband and son by the unruly mob, but still she had made specific and detailed depositions about the attack by mob on their house, looting of their household articles and destructions of their property etc., and also about the beatings given by participants in the mob to her as well as to the other victims and suffering of severe injuries by all of them, besides the deceased sister-in-law of the complainant. It is also argued that in her subsequent statements U/S 161 Cr.P.C. recorded in this case before acceptance of the above 'untrace report' and even during the course of further investigation of the case by the SIT, she has specifically stated that the killing of her husband and son was witnessed by her and her these statements are even corroborated by the statements made by her daughter and niece during the course of further investigation. It is also his argument that though initially the complainant and the other victims were not in a position to identify any participant of the mob, as they had shifted in the above area of their residence only around 1½ months prior to the incident, but in her affidavit filed before the Hon'ble Mr. Justice Ranganathan Mishra Commission, the complainant had specifically stated that the photograph of accused appearing in the above magazine resembled with the face of the person instigating the mob. Even in her statement made before the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal, she again stated, after identification of accused from the said photograph, that he was the person leading the mob on the day of incident and she had also stuck to her above stand regarding identity of the accused in the above manner even in her subsequent statement made during the

course of further investigation conducted by SIT and she also stands corroborated on these aspects by the other victims.

21. Further, it has also been argued by Ld. Additional PP that even the medical and other documentary evidence filed on record *prima facie* corroborates and substantiates the claim being made by prosecution witnesses regarding suffering of severe injuries on their person as well as on the person of one other victim who has since deceased, including head injuries, and large scale looting and destruction of their property, by fire or otherwise, by participants of the said mob. Hence, it is his contention that from the contents of charge sheet and documents placed on record, a *prima facie* case is made out against the accused for framing of charges for all the above offences, for which he has been charge sheeted, because it is made out therefrom that the accused was not only a member of the above unlawful assembly, but infact was leading the same and it is only upon his instigation and abetment that the persons constituting the above unlawful assembly had resorted to large scale rioting, arson and looting and had not only inflicted severe injuries on the persons of above three victims and the deceased sister-in-law of complainant in their attempt to kill them, but had also brutally murdered the two deceased of this case by burning them alive. It is further his contention that the discrepancies, inconsistencies or contradictions, if any, in the oral and documentary evidence placed on record in support of allegations made in the charge sheet, are liable to be ignored at this stage of charge because in accordance with the settled legal propositions, charges are required to be framed against the accused by taking a *prima facie* view of the matter only and a *prima facie* case can be said to have been made out against the accused even if a grave suspicion

exists against the accused about his involvement in commission of the above said offences.

22. In support of his arguments, Ld. Additional PP has also relied upon the following judgments :

- 1. Sajjan Kumar Vs. Central Bureau of Investigation, S.L.P. (Crl.) No. 6374 of 2010**
- 2. Ram Udagar Mahto Vs. State Crl. M. C. 3125 of 2019**
- 3. Ranveer Singh Vs. N.C.T. of Delhi, W. P. (Crl.) 319 of 2017**

ARGUMENTS OF DEFENCE

23. Per contra, it has been argued by Ld. Defence counsel that this investigation conducted by SIT is nothing but an abuse of the process of law for some vested political interests and this investigation actually amounts to re-investigation under the garb of further investigation. He has also argued that it has been directed and conducted simply with the sole motive to frame the accused in this case as he was a prominent leader of the ruling INCP at Centre and was also an elected MP at the relevant time of incident. He has also argued that infact in the name of further investigation, the investigating agency had recorded or re-written the statements of witnesses and twisted these statements to achieve the objective of false implication of accused in the present case. It has also been argued by him that once the FIR No. 511/84 was already registered about such type of incidents at the hands of mobs in different areas, including the Raj Nagar Area, and the complainant was a witness in said case and even her statement U/S 161 Cr.P.C. was recorded therein, this fresh FIR No. 458/91

regarding the same incident could not have been registered against the accused.

24. Further, while referring to the provisions of Sections 227 and 228 Cr.P.C. relating to discharge and framing of charge respectively against an accused in a trial before a court of Sessions, it is also his contention that the provisions of Section 227 Cr.P.C. have been incorporated in the Code with a specific purpose that if upon consideration of record of the case and documents submitted therewith, the Judge does not find sufficient grounds for proceeding against the accused, then he shall discharge the accused by giving his reasons for doing so as precious time of the court may not be wasted in putting the accused to trial on the basis of evidence which cannot lead to his conviction. It is also his submission that charge can be framed against the accused only when the court is of the opinion that there are grounds for presuming that the accused has committed the alleged offence and for this purpose, there should arise a grave suspicion about involvement of the accused in commission of the alleged offence from the material placed on record and a mere suspicion cannot serve the said purpose and justify the framing of charge.

25. Again, while referring to various statements made by the complainant 'X' and the statements of her niece 'Z' regarding the above incident, it is his contention that the complainant in her affidavit and complaints dated 06.11.1984 made no claim of her having witnessed the killings of her husband and son and even though in her above said affidavit dated 09.09.1985 tendered before the Hon'ble Mr. Justice Ranganathan Mishra Commission and in her subsequent statement dated 06.09.1991

made before the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal, she went on to make a claim regarding identity of the accused as the person leading and instigating the mob, but her these claims were not only belated claims, the same were also made with a view to falsely implicate the accused in this case, besides amounting to improvements in her stands. It is also his contention that even in her affidavit tendered before the Commission and statement made before the Committee she had given different versions regarding identity of accused.

26. Further, it has also been argued by Ld. Counsel for accused that it is only after more than seven years that the complainant had first made a claim about her being an eye witness to the above incident of murder. It has also been argued that statements of the other two victims, i.e. daughter and niece of the complainant, about witnessing the killings of both the deceased have been made for the first time only after a long gap of around 32 years and hence, even the above statements cannot be made the basis for framing of charge against the accused for the offence of murder. It is also his contention that the complainant had been changing her version again and again and the improvements made by her in her subsequent statements, coupled with other inconsistencies and contradictions, should only result in discharge of the accused as these statements cannot form basis of trial of the accused.

27. In support of his arguments, Ld. Defence Counsel has also relied upon the following judgments :

1. Hoor Begum Vs. State (NCT) of Delhi & Anr., 2011 (3) JCC 2131;

2. **Sunil Bansal Vs. The State of Delhi, 2007 (2) JCC 1415;**
3. **Prashant Bhaskar Vs. State (Govt. of NCT Delhi), Crl. Rev. Pet. No. 385/2009;**
4. **Bhagwanti Vs. State, 2002 (1) JCC 127;**
5. **Union of India (UOI) Vs. Prafulla Kumar Salam & Ors., Crl. Appeal No. 194 of 1977, (1979) 3 SCC;**
6. **Dilawar Balu Kurane Vs. State of Maharashtra, 1 (2002) CCR 61 (SC), 2002 SCC (Crl.) 310 (SC);**
7. **P. Vijayran Vs. State of Kerala (2010);**
8. **State Vs. Shashi Tharoor, SC No. 05/2019, decided on 18.08.2021.**

LEGAL POSITION AND FINDINGS

28. Before appreciating the rival contentions of Ld. Additional PP and Ld. Defence Counsel representing the accused on the point of charge, it is necessary to reproduce here the relevant provisions contained in Cr.P.C. regarding the discharge of an accused and for framing of charge against him. Section 227 Cr.P.C. which deals with discharge of an accused in a trial before a court of Session lays down as under :

“[Section 227](#) - Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

29. Section 228 Cr.P.C. dealing with the framing of charge prescribes as under :-

Section 228 - Framing of charge (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

30. Thus, it is clear from a joint reading of both the above sections that an accused is entitled to be discharged in such a case only if upon consideration of the record of the case and the documents submitted there with, and after hearing the submissions of the accused and the prosecution in this behalf, the court considers that there is no sufficient ground for proceeding against him and if the court is of an opinion that there is sufficient ground for presuming that the accused has committed an offence, then charge is liable to be framed against him. It is also well settled that the court at the stage of charge has only to take a *prima facie* view in the matter and it has also power to sift the evidence and material on record for the above said limited purpose of finding out whether or not the said material is sufficient to raise a grave suspicion about involvement of the

accused in commission of alleged offence or to make out a sufficient ground for proceeding against him.

31. The scope of Sections 227 Cr.P.C. and 228 Cr.P.C. was duly considered by the Hon'ble Supreme Court in case of **R. S. Mishra Vs. State of Orissa & Ors., (2011) 2 Supreme Court Cases 689** and it was observed that the word 'consideration' referred to in these Sections must be reflected in the order of court discharging an accused or directing the framing of charges against him. The relevant propositions of law as laid down in the said case are being reproduced herein below :-

“21. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If, after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.”

(Emphasis supplied)

32. Further, it is also now settled that during the above process of 'consideration' of record of case and the documents submitted therewith, the court has power to sift the same in order to find out whether or not sufficient grounds exist for proceeding further in the matter against the accused and charge can be framed against an accused when a *prima facie*

case against him is made out. It is also well settled that though mere suspicion is not sufficient for framing of the charge, but if grave suspicion is there against the accused then charge can be framed against him. In case of **Prafulla Kumar Samal (supra)**, being relied upon by Ld. Defence Counsel also, the following observations have been made by their Lordships on this aspect :-

“7.

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh where Untwalia, J. speaking for the Court observed as follows:-

'Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial.'

This Court has thus held that whereas strong suspicion may not take

the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.”

(Emphasis supplied)

33. Further, the following observations have also been made in the above said case **Prafulla Kumar Samal (supra)**, by the Hon'ble Supreme Court :-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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;

(2) 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;

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused;

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(Emphasis supplied)

34. Even in the case **Dilawar Balu Kurane (supra)** being relied upon by Ld. Defence Counsel too, the Hon'ble Supreme Court has made the following observations :-

“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.”

(Emphasis supplied)

35. Again, in the case of **State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption V. N. Suresh Rajan, 2014 134 AIC 1**, the propositions of law laid down by the Hon'ble Supreme Court in the cases of **Prafulla Kumar Samal (supra)** and **Dilawar Balu Kurane (supra)** have been reaffirmed.

36. Now coming to facts of the present case, it is observed that during the course of arguments advanced from both sides and on perusal of record, it has transpired that even prior to the statement made by complainant in the form of her affidavit dated 09.09.1985 tendered before the Hon'ble Mr. Justice Ranganathan Mishra Commission, one typed letter/complaint dated 06.11.1984 (available on page No. 25 to 27) was sent/made by her to police and it was addressed to the SHO, PS Punjabi Bagh and it is found to have been given in the above previous case/FIR No. 511/84 registered in respect of various incidents of rioting, arson, loot and murder etc., by unruly mobs

in different parts of the West and Outer Delhi, including the Raj Nagar area. One affidavit dated 07.11.1984 (on page No. 29) is also claimed to have been enclosed with the above said complaint/letter.

37. Besides the above, it has further been found that one statement of complainant U/S 161 Cr.P.C. dated 06.11.1984 (on Page No. 212) was also recorded by the IO/SI Dharam Singh of the said case and though the FIR number of the case is not found mentioned thereon, but it *prima-facie* appears that the same had been recorded in the above case FIR No. 511/84 only.

38. It is seen that in none of these three writings or statements, the complaint had made any claim of having witnessed the killings of her husband and son, though she had otherwise deposed regarding the said incident in which their house was attacked, property looted and destroyed, injuries inflicted on the person of all the occupants of house and her husband and son were killed. Further, in none of these writings or statements, she is also found to have made any claim regarding identification of the accused or any other member of the above mob.

39. Thus, it transpires from the above that there are total eight statements made or versions of incident given by the complainant, either in the form of a statement, an affidavit or a letter or complaint etc. and these are as under :

1. Letter/complaint dated 06.11.1984 sent/made to the SHO, PS Punjabi Bagh in FIR No. 511/84 (on page No. 25 to 27);
2. Affidavit dated 07.11.1984 enclosed with the above letter/complaint (on page No. 29)

3. Statement U/S 161 Cr.P.C. dated 06.11.1984 made in the above case/FIR No. 511/84 (on page No.212);
4. Affidavit dated 09.09.1985 tendered before the commission of Hon'ble Mr. Justice Ranganathan Mishra Commission (on page No.22 to 24);
5. Statement dated 06.09.1991 given before the Committee (on page No. 30 and 31);
6. Statement U/S 161 Cr.P.C dated 08.01.1992 made in the present case/FIR No. 458/91 (on page No. 214 to 215);
7. Supplementary statement dated 12.05.1992 made in the present case/FIR No. 458/91 (on page No.216 and 217);
8. Supplementary statement U/S 161 Cr.P.C. dated 23.11.2016 made before the SIT in the present case (on page 218 to 220).

These are besides three other supplementary statements made by the complainant on certain other aspects of investigation i.e. one statement dated 16.12.2016 made before SIT (on page No.221) regarding production of death certificate of deceased and medical papers of the injured etc. and seizure thereof, statement dated 03.04.2017 of the complainant made before SIT regarding the authenticity of her previous statement recorded on 12.05.1992 in the case (on page No.216-217) and her statement dated 27.01.2017 also made before SIT regarding identification of the India Today magazine edition dated 15.12.1984 carrying photograph of the accused (on page No.223).

40. Firstly, coming to the objection taken by Ld. Defence Counsel regarding legality of this further investigation and his argument that the present investigation done by SIT actually amounts to re-investigation of the case, it is observed that the investigation by SIT was undertaken only as

per the directions contained in the Order No. 13018/13/2014-Delhi-1 (NC) dated 12.02.2015 of the Govt. of India, MHA and even this SIT was constituted by the same order. The terms of reference for conduction of investigation by SIT have already been re-produced herein before and it is crystal clear therefrom that the SIT was duly empowered to re-investigate all appropriately serious criminal cases which were filed in the NCT of Delhi in connection with 1984 riots and had since been closed. Further, the SIT was also empowered to examine afresh the records of such cases identified by them from the concerned police stations and also the files of the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal. It was also empowered to take all such measures under law for a thorough investigation of the criminal cases and to file charge sheet against the accused in the concerned court where sufficient evidence has been found after investigation undertaken by it.

41. Moreover, in considered view of this court, the investigation conducted by SIT in this case does not amount to re-investigation and rather, it amounts to further investigation only because during the course of this investigation, the IO had not only recorded the statement of complainant and of the witness 'Z', i.e. niece of complainant, again, but even the statement of the other witness 'Y', who is daughter of the complainant, has been recorded for the first time during the course of such investigation. Besides the above, statements of some other witnesses have also been recorded and some documentary evidence has been collected by the IO during the course of this further investigation and hence, it cannot simply be termed as re-investigation of the case and can only be treated as further investigation. Therefore, the reliance being placed by Ld. Defence

Counsel upon the judgment of Hon'ble High Court in case **Hoor Begum (supra)** on this aspect is of no help as facts of the present case can be distinguished from the said case. Moreover, as has been held recently by the Hon'ble High Court in the case of **Ram Udagar Mahto (supra)** being relied upon by Ld. Additional PP, even the scope of further investigation U/S 178 (3) Cr.P.C. is very wide and it would mean something additional, more or supplemental to the earlier investigation and in that sense it amounts to continuation of the earlier investigation.

42. As far as the argument of Ld. Defence Counsel regarding registration of the earlier FIR No. 511/84 in the matter is concerned, as is clear from a bare perusal of the said FIR (on page No. 194 - 195), the same was not exclusively written or registered regarding incident of the present case and rather, it was a general FIR registered by the police regarding various such incidents that took place in different parts of the West and Outer Delhi. Though, the area of Raj Nagar is also found included in the areas mentioned in the said FIR, but as has already been discussed, admittedly, the accused was, neither charge sheeted nor tried in the said case. Hence, mere recording of the statement of complainant as a witness U/S 161 Cr.P.C. in the said FIR can in no way bar the registration of this subsequent FIR as a trial never took place in the earlier case/FIR No. 511/84 regarding the incident of attack on house of complainant, destruction of their property and killing etc of her husband and son. It has also been stated before this court by Ld. Additional PP that only one accused Babban Singh was convicted and sentenced in the said case for the offence punishable U/S 412 IPC, though total thirteen accused persons were charge-sheeted in that case for the said offence and this submission has not been challenged by

Ld. Defence Counsel. It is further on record of this case that the complainant of this case or any other member of her family or relative was never called as a witness during trial of the said case. Hence, the filing of present charge sheet against the accused for the incidents of this case or holding of his trial for the alleged offences by this court is not barred by any law or in view of the provisions contained in Section 300 (1) Cr.P.C. and Article 20 (2) of the Constitution of India. Ld. Additional PP has also rightly relied upon the judgment in case **Ranveer Singh (supra)** on this aspect and in support of his contention that the bar contained U/S 300 (1) Cr.P.C. comes into operation only when a person has been convicted or acquitted in a trial in an earlier case for the same offences.

43. Ld. Defence Counsel has also argued vehemently that it is only after a long gap and delay of around seven years from the date of incident that the complainant 'X' had made a specific claim of her being an eye witness to the killings of her husband and son and also regarding participation in and instigation by the accused of the mob which was responsible for the above said killings. While referring to the statements or versions of the incident as mentioned at Srl. No. 1 to 5 on page 19 of this order in support of his above argument, he has submitted that in none of these statements or versions of incident given by the complainant, any specific claim has been made about witnessing the killings of both the deceased persons by her as the first two statements/versions are completely silent on this aspect and the next three statements/versions only show that this fact came to her knowledge later on. Further, while referring to the fourth statement/version of the complainant as contained in her affidavit dated 09.09.1985 tendered before the above Commission, he has submitted that even in this affidavit,

the complainant was not sure about the identity of accused as she merely stated therein that a photograph later seen by her in a magazine resembles with the accused and it is only in her subsequent statement dated 06.09.1991 tendered before the above Committee that she stated specifically that it was the accused who was instigating the mob on the day of incident. Hence, according to him, a long gap was there between the date of incident i.e. 01.11.1984 and the date 06.09.1991, when the above statement of complainant implicating the accused in this case with certainty was tendered before the Commission.

44. In this regard, it is observed by the court that though the complainant did not specifically make any claim of seeing the killings of her husband and son and also did not even depose about identity of the accused or role played by him in commission of the alleged offences in her first statement/version as contained in the typed letter/complaint dated 06.11.1984 sent by her to the SHO, PS Punjabi Bagh, but she is found to have deposed in detail regarding the manner in which the above incident took place. She is also found to have specifically stated in the above letter/complaint that even she as well as the other two victims/witnesses 'Y' and 'Z' were severely injured in the said incident. Further, even in her affidavit mentioned at Srl. No. 2 above, as enclosed with the above letter/complaint dated 06.11.1984, it is found stated therein that they all as well as the deceased sister-in-law of complainant had suffered injuries in the above said incident. The above letter/complaint and affidavit were given or sent to the SHO, PS Punjabi Bagh just after five days of the incident. The fact that injuries were suffered by all these victims in the above incident is also found *prima facie* substantiated by the other oral and

documentary evidence which has been filed on record with the charge sheet. Even the subsequent statements dated 06.09.1991 and 23.11.2016 of the complainant, mentioned at Srl. No. 5 and 8 above, specifically contain a mention of suffering of injuries by all these victims in the said incident. Hence, as far as presence of the complainant 'X' and of the other two victims/witnesses 'Y' and 'Z' in the above said house in the area of Raj Nagar, Delhi at the relevant time of incident is concerned, this court is *prima facie* satisfied about the same and the questions as to why she is silent on this aspect in some other statements of her and what are the effects thereof can be safely left to be decided during the course of trial. Again, the effect of delay, if any, on her part in implicating the accused with certainty in the present case shall also be a matter of trial only as even prior to the statement dated 06.09.1991 of the complainant at Srl. No. 5, in her previous statement as contained in her affidavit dated 09.09.1985 tendered before the Commission (Srl. No. 4 above) she is found to have stated that the photograph seen subsequently by her in a magazine resembled with the accused. The above discrepancies appearing in different statements or versions of the incident given by the complainant cannot *prima facie* amount to serious or material contradictions in her stand or case of the prosecution for the purposes of charge and rather, the same can *prima facie* be considered as improvements and hence, cannot be made basis for discharge of the accused in the present case.

45. Now, coming to the statements of the other two victims 'Y' and 'Z', it is observed that statement dated 12.05.1992 of the victim/witness 'Z', i.e. niece of the complainant, was recorded by the then ACP of Riots Cell, Sh. Rajiv Ranjan and it was recorded prior to acceptance of the above 'untrace

report' in this case by the Ld. MM concerned. Hence, apparently, the above statement does not contain any deposition regarding identity of the accused as a participant or leader of the mob and it does not also contain any claim regarding her being an eye witness of killings of both the deceased. It does not even state that they suffered any injuries in the above incident, though it suggests that she was present at the time of incident, when the above house of complainant was set on fire by the mob and the killings of both deceased by the mob took place. The second statement of this witness 'Z' was recorded only on 23.11.2016 by Inspector Jagdish of the SIT and it is found that in this statement she had given a detailed version of the incident and had also made a specific claim of not only being an eye witness of the above killings, but also about suffering of injuries by all of them in the said incident. However, the statement of third victim/witness 'Y' in this case is found to have been recorded for the first time only during the course of this further investigation on 29.11.2016. Thus, it comes out from the above that it is only after around 32 years from the date of incident that these two witnesses for the first time have made a specific claim about seeing the said killings and about the identity of accused etc. and the submission of Ld. Defence Counsel is that their statements are liable to be outrightly ignored and discarded and the same cannot be considered for the purpose of framing of charge.

46. However, as has already been discussed, the presence of even these two witnesses/victims on spot at the relevant time of incident is not doubtful from the oral and documentary evidence placed on record and hence, the effect of delay, if any, on the part of these witnesses in implicating the accused or not deposing about the said killings for such a

long time will have to be seen only during the course of trial. It will also be a subject matter of the trial only as to why and for what reasons, these witnesses have not made any such claims earlier and why their specific statements regarding the incident on the above aspects were not tendered before the IO within a reasonable time, if not, immediately after the incident.

47. It has already been discussed that some documentary evidence has also been collected during the course of this further investigation and has been filed with the charge sheet and this documentary evidence is in the form of death certificates of both the deceased and some medical certificates and prescriptions etc. in respect of treatment of the above victims for the injuries suffered in the said incident and these documents have been produced before the IO by the complainant and have been seized in the case. Besides the above, the IO is also found to have recorded statements of some doctors in respect to the said documents and treatment given to the victims/witnesses. The above oral and documentary evidence also *prima facie* substantiates the claims being made by these victims. The evidentiary value of statements of complainant and other victims cannot be seen at this stage.

48. The judgments in cases **Sunil Bansal (supra)**, **Prashant Bhaskar (supra)**, **Bhagwanti Devi (supra)** and **P. Vijayran (supra)** being relied upon by Ld. Defence Counsel are not of any help to the case of accused in view of the factual and legal position already discussed and also in view of the judgment in case **Sajjan Kumar Vs. Central Bureau of Investigation**, SLP (Crl.) No. 6374/2010 decided on 20.09.2010 by the Full Bench of the

Hon'ble Supreme Court, whereby the order of the Hon'ble Delhi High Court refusing to set aside the order of Ld. Trial Court directing framing of charges against this very accused was upheld. This order of Ld. Trial Court was passed in another similar case investigated by CBI, arising out of and made a part of FIR No. 416/84 registered at PS Delhi Cantt., and directing framing of charges against the accused for offences punishable U/Ss 153A/295/302/395/427/436/339/505 IPC, while considering and believing the statements made by the witnesses during the investigation of case and implicating the accused therein after a long gap of around 23/25 years.

49. Hence, in *prima facie* opinion of the court, the above oral and documentary evidence collected by the IO(s) during the course of investigation of the case is sufficient to make this court to form a *prima facie* opinion that an unlawful assembly or mob of several thousand persons armed with deadly weapons like danda and iron rods etc. was there on the above said date, time and place and the common object of such mob or unlawful assembly was to resort to large scale looting, arson or destruction of property of sikhs to avenge the killing of the then Prime Minister Smt. Indira Gandhi by her two sikh bodyguards and the above incident of attack on the house of complainant took place at the hand of said mob only and in the said attack not only the house and other household articles of complainant were looted and destroyed, by fire or otherwise, but also the killing of her husband and son took place and even the complainant and the other victims suffered injuries at the hands of participants of such mob. Further, there is also sufficient material on record for this court to form a *prima facie* opinion that the accused was not only a participant of the said mob, but also leading it. It is so because the facts as narrated in the

charge sheet and as revealed from the documents enclosed therewith do not lead to a situation where two views are equally possible before the court regarding involvement of accused in the said incident and rather, the view regarding his participation in the said incident is much more stronger and these allegations and material give rise to a grave suspicion against the accused about his involvement in commission of the alleged offences and not a mere suspicion regarding his involvement in the said incident.

50. However, as far as the alleged offences U/Ss 307 and 201 IPC are concerned, this court fails to find on record any sufficient or *prima facie* material to show disappearance or destruction etc. of any evidence of commission of alleged offences by the accused or by any other member of the mob with an intent to conceal the offence or screen the offenders. Hence, no *prima facie* case for commission of the offence U/S 201 IPC can be said to be made out against the accused. Similarly, no *prima facie* case for commission of the offence U/S 307 IPC can also be said to have been made out against the accused as the statements of complainant and other victims on record *prima facie* rule out that the common object of above unlawful assembly was also to kill or murder the complainant and the other three female victims of the case and rather, it appears to this court that there was no such intention on part of the mob to kill them as some participants of the mob itself had taken away or dragged the female victims to a nearby house for shelter and to save them from being killed at the hands of participants of the unruly mob.

51. Still, this court finds sufficient material on record to frame charge against the accused for the offence of culpable homicide not amounting to

murder and punishable U/S 308 IPC, instead of Section 307 IPC, as the medical documents of the female victims/injured of the case, which are of the relevant period when injuries were suffered by them, as well as the connected statements of the doctors on record show that apart from the other injuries, they also suffered deep injuries on their heads and the injured 'Z' required fifteen stitches for her head injury and even the injured 'Y' required many stitches for the said injury and the deceased sister-in-law of complainant also even suffered a fracture on her left hand, besides the other injuries. These injuries suffered by the three female victims of the case *prima facie* appear to have been inflicted with blunt objects and with an intention or knowledge and under such circumstances that if their death was caused as a result thereof, then the accused and every other member of the above mob would have been guilty of the offence of culpable homicide not amounting to murder. As far as injuries suffered by the complainant herself are concerned, the same *prima facie* can be treated as simple injuries only having been caused by blunt objects.

52. Therefore, in view of the above, this court is of the considered opinion that a *prima facie* case is made out against the accused for framing of charge against him for commission of the offences punishable U/Ss 147/148/149 IPC as well as the offences punishable U/Ss 302/308/323/395/397/427/436/440 read with Section 149 IPC. Charges are accordingly directed to be framed against him for the said offences.

**Announced in open court
on 04.12.2021**

**(M. K. NAGPAL)
ASJ/Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 04.12.2021**