

**IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

RIOTS CASE

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| CNR No | <u>DL-SH01-001230-2021</u> |
| Sessions Case No. | 59/2021 |
| FIR No. | 66/2020 |
| Police Station | Jyoti Nagar |
| Under Sections | 147/148/149/427/436/188 IPC |

STATE

.... Prosecution

Versus

- (1) Suraj**
S/o Sh. Vijay Singh
R/o H.No. D-748, gali no.03,
Ashok Nagar, Delhi.
- (2) Yogender Singh**
S/o Sh. Chote Singh
R/o H.No. D-1/326, gali no.14,
Ashok Nagar, Delhi.
- (3) Ajay**
S/o Sh. Mahender Singh
R/o H.No. 182, B Block, gali no.06,
Shakti Garden, Delhi.
- (4) Gorav Panchal**
S/o Sh. Subhash Panchal
R/o H.No. D-748, gali no.03,
Ashok Nagar, Delhi.

..... Accused Persons

09.11.2021

ORDER ON THE POINT OF CHARGE

1. 1.1. The present case First Information Report pertains to police station Jyoti Nagar and arraigned in the charge-sheet are four accused persons namely Suraj, Yogender Singh, Ajay and Gorav under Section 147/148/149/436/427/188 IPC.

1.2. As per the charge-sheet, the present case was registered on the written complaint dated 27.02.2020 of complainant Gulfam whose shop is at D-542, Gali no.9 Main Wazirabad Road, near Dispensary Wali Gali, and running by the name of AREE AUTO ELECTRIC BATTERIES WORKS. As per the complaint, the shop was burnt by unidentified people on 25.02.2020.

During the investigation, the site plan was prepared and photographs of the spot taken. Seizure memo of the burnt material inside the shop was prepared.

1.3. Accused Suraj was arrested in case FIR No. 55/2020 PS-Jyoti Nagar based upon video footage and he made a disclosure about his involvement in the present case alongwith accused Yogender. Accused Ajay and Gorav Panchal were arrested in FIR no. 60/2020 and they two had made disclosure statement about their involvement in the present case. The said four accused persons were arrested in this manner.

1.4. In support of the case, the prosecution relies upon the statement of public eye witness Mohd. Aslam, who runs his rehari shop under Meet Nagar flyover. He stated that on 25.02.2020 riots were taking place at Ashok Nagar, Meet Nagar and Wazirabad Road. He stated that the rioters in the evening of 25.02.2020 entered the battery shop at gali no.9 Main Wazirabad Road, Ashok

Nagar and burnt it after ransacking the same. He took the name of the accused Ajay and Gorav as part of the rioters mob. The two accused persons were also arrested with his help in FIR No. 60/2020 and identified by HC Rajkumar on 18.04.2020 from a public place. Consequent to disclosure, accused Ajay had also got recovered one danda, which he had hidden in a public place

1.5. The supplementary charge-sheet was also filed showing the rent agreement/possession of shop of the complainant, FIRE call details and the FSL report of the video footage certifying the same as having no indication in any form of altercations.

1.6. The supplementary statement of complainant Gulfam was also recorded wherein he stated that at the relevant time, he was out of station for a marriage ceremony in Moradabad, U.P. As riot victim, he had also received compensation from the government.

1.7. Statement of witnesses Sat Narayan and Shivam Sharma were also recorded who stated that on 25.02.2020 they had seen 100-150 people/rioters armed with rods and dandas and covering their faces having burnt shop of the complainant.

2. Ld. Counsel for the accused persons Suraj, Yogender and Ajay had argued that the present case is fit for discharge as the accused is not named in the FIR and they were arrested in case FIR No.55/2020. It was also submitted that the statement of witnesses were recorded very late after the happening of the incident and thus, cannot be believed. Moreover, there is no recovery of any weapon. It was also argued that the video footage pertains to FIR No. 55/2020 and cannot be used in the present case. Moreover, the police witnesses are interested witnesses

and their testimonies cannot be relied upon.

However, Ld. Counsel for the accused Gaurav has conceded on the point of charge.

3. Arguments on the point of charge were heard at length on behalf of both prosecution and accused persons. The record has been painstakingly scrutinized.

4. **Section 228 Code Of Criminal Procedure, 1973**

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, and thereupon the Chief Judicial 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.

5. 5.1. It has been held in catena of judgments that at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

5.2. Hon'ble Supreme Court of India in a case titled as ***Bhawna Bai vs. Ghanshyam And Others.***,(2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in *Dinesh Tiwari v. State of Uttar Pradesh and another* (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 CrI.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* (2000) 1 SCC 722, while exercising power under Section 228 CrI.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

6. Hon'ble Supreme Court of India in the case of State of Rajasthan Versus Ashok Kumar Kashyap in Criminal Appeal No. 407 of 2021 (Arising from SLP (Crl.) No. 3194 of 2021) observed that :

23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that 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. It is observed that in other words, the sufficiency of grounds 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. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, 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 the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v. N. Suresh Rajan [State of T.N.v. N. Suresh Rajan, (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

.....It was held that as observed hereinabove, the High Court was required to consider whether a prima facie case has been

made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.”

7. After, hearing Ld. Counsels for the parties and perusing the charge-sheet and supplementary charge-sheet alongwith accompanying record, I am of the view that prosecution has met its case for the purpose of charge.

8. This is a case of criminal mischief and destruction by fire of the shop of the complainant Gulfam running in the name of AREE AUTO ELECTRIC BATTERIES WORKS, at D-542, Gali no.9 Main Wazirabad Road, near Dispensary Wali Gali, Delhi by riotous mob of 100-150 persons on 25.02.2020. There is a video footage showing two accused persons namely Suraj and Yogender which is stated to be near the place of incident. The said video footage has been found to be correct and unaltered in the FSL report and certificate u/s. 65B Evidence Act has also been filed. HC Ravinder, Beat Ct. who was deputed on 25.02.2020 at Ashok Nagar Beat, saw the arsoning and destruction of the property at Gali No.9 and has also identified Suraj and Yogender as part of those rioters. Witnesses Sat Narayan and Shivam Sharma have also described the incident involving more than 100-200 rioters armed with rods and danda i.e. deadly weapon. Hence, there is common object which can be ascribed to the accused persons in committing the said offence of rioting & mischief.

The public witness Aslam has specifically identified accused Ajay and Gaurav as part of the riotous mob, which ransacked and burnt the shop of the complainant in the present matter. In fact, they were arrested on his instance and has signed their arrest memos.

Thus, on the basis of the contents of the charge-sheet duly supported by the

statement of the witnesses, it has come on record that riotous mob consisting of 100-150 persons armed with lathis and danda and including the accused persons had entered into the shop of the complainant Gulfam and committed mischief and destruction by fire of the said shop by the unlawful assembly in prosecution of common object. By assembling at the said point despite the promulgation of Prohibitory Order u/s. 144 Cr.P.C, they have also committed the offence u/s. 188 IPC. The complaint u/s. 195 Cr.P.C was also filed.

9. The contention of the accused that witnesses cannot be believed or their statements as recorded late, hence can't be relied upon, cannot be a basis for discharge as it is a matter of trial.

Moreover, the submissions that the police witnesses are not independent witnesses but interested for a ground of disregarding their statement, is without a legal basis. Also, FIR is not an encyclopedia but the beginning point of investigation and not naming accused in FIR, that too during the period of riots, does not discredit the case of the prosecution at all.

10. Thus, on the basis of material on record, I am of the opinion that there are grounds for presuming that the accused persons namely Suraj, Yogender Singh, Ajay and Gorav have committed offences under Section 147,148, 427,436,188 IPC read with Section 149 IPC.

Ordered accordingly.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 09.11.2021