

DLNE010005722021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT
KARKARDOOMA COURTS: DELHI**

CNR No. DLNE01-000572-2021
SC No. 69/21
State v. Tahir Hussain etc.
FIR No. 120/20
PS Dayalpur

U/s.147/148/149/188/427/436/380/454/120-B IPC

In the matter of: -

STATE

Versus

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| 1. Tahir Hussain S/o. Kallan Saifi, R/o. H.No.E-7, Main Karawal Nagar Road, Khajuri Khas, Delhi-94. | 2. Mohd. Shadab S/o. Nasim Ahmed, R/o. H.No.A1/217, Gali No.4, Nehru Vihar, Delhi. | 3. Shah Alam S/o. Kallan Saifi, R/o. A-1/112, Gali No.3, Nehru Vihar, Delhi. |
| 4. Riyasat Ali S/o. Liyakat Ali, R/o. H.No.218, Gali No.4, Moonga Nagar, Chand Bagh, Delhi-94. | 5. Gulfam @ VIP S/o. Sabir Ahmed, R/o. H.No. A-1, Gali No.1, Nehru Vihar, Delhi-94. | 6. Rashid Saifi S/o. Yameen Saifi, R/o. H.No. A- 1/135, Gali No.3, Nehru Vihar, Delhi-94. |

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| 7. Mohd. Rihan @ Arshad Pradhan S/o. Md. Kamar, R/o. H.No.E-507, Gali No.22, Mustafabad, Dayalpur, Delhi. | 8. Mohd. Abid S/o. Islamuddin, R/o. H.No. D- 2/94, Gali No.2, Dayalpur, Karawal Nagar, Delhi | 9. Arshad Qayyum S/o. Abdul Qayyum, R/o. H.No.A-27, Gali No.1, Chand Bagh, Dayalpur, Delhi. |
| 10. Irshad Ahmed S/o. Hazi Mangta, R/o. H.No.489, Gali No.3, Nehru Vihar, Dayalpur, Delhi. | 11. Deepak Singh Saini @ Fauzi Bhai S/o. Lt. Sh. Jaswant Singh, R/o. 517/8, Munga Nagar, Main Karawal Nagar Road, Delhi-94. | 12. Navneet S/o. Lt. Sh. Ombir Singh, R/o. H.No.452, Gali No.8, Munga Nagar, Karawal Nagar Road, Delhi-94. |
| 13. Mahak Singh, S/o. Sh. Ramveer Singh, R/o. H.No.376, Street No.6, Moonga Nagar, Karawal Nagar, Delhi-94. | | |

... Accused Persons

05.08.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against accused **1.** Tahir Hussain, **2.** Mohd. Shadab, **3.** Shah Alam, **4.** Riyasat Ali, **5.** Gulfam @ VIP, **6.** Rashid Saifi, **7.** Mohd. Rihan @ Arshad Pradhan, **8.** Mohd. Abid, **9.** Arshad Qayyum, **10.** Irshad Ahmed, **11.** Deepak Singh Saini @ Fauzi Bhai, **12.** Navneet and **13.** Mahak Singh.

1. Brief facts of the present case are that, this FIR No.120/20 u/s 147/148/149/427/436/120B IPC was registered at PS Dayalpur on the basis of complaint made by one Irshad Ali. He alleged that his shop (Royal Mattress) had been looted after breaking of lock.

After this, it was also set on fire by the mob of rioters at about 3 PM on 24.02.2020. He used to run his shop at 406-A, Moonga Nagar, Main Karawal Nagar Road, Delhi-94, which was owned by one Rekha Garg, w/o. Sh. Brij Mohan Garg. Thereafter, during the course of investigation, IO recorded his statement u/s. 161 Cr.P.C, where he disclosed the name of accused persons Mohd. Shadab, Shah Alam, Riyasat Ali, Gulfam, Rasid Saifi and Arshad Qayyum, stating that they were part of this riotous mob, which set his shop on fire.

2. Thereafter, two complaints made by Mohd. Zahid and Gunjan Sachdeva were also received by IO for investigation. He found out that the incidents referred to in these complaints were of the same day, place and time period of the aforesaid complaint. Hence, he clubbed all three complaints.
3. Mohd. Zahid in his written complaint stated that he was running a bakery shop below his residence i.e. 448/7, Moonga Nagar, Karawal Nagar Road, Delhi-94. On 24.02.2020, in the evening the rioters set fire in his shop and thereby caused loss to three big machines, raw material and two big counters worth Rs.11 lakh. His statement u/s.161 Cr.P.C. was recorded by IO, wherein he named Mohd. Shadab, Riyasat Ali, Gulfam, Rashid Saifi, Mohd. Rihan, Mohd. Abid, Arshad Qayyum and Irshad Ahmad, as part of the mob damaging his shop.
4. Gunjan Sachdeva, in his complaint stated that he was running a furniture shop in the name of Arora Furniture house situated at shop no.276, Moonga Nagar, Chand Bagh, Delhi. On 24.02.2020,

at about 02:30 PM, the rioters looted and set fire in his shop and the articles lying there, causing a loss of approximately Rs.12 lacs. IO recorded his statement u/s. 161 Cr.P.C., where he named accused persons Mohd. Shadab, Shah Alam, Gulfam and Mohd. Rihan, being present in the mob, which damaged his shop.

5. During further investigation a consolidated site plan was also prepared, which showed that all three shops were located near each other. IO reported in chargesheet that all the alleged incidents occurred during the period of 02:30 PM to 4 PM, on 24.02.2020.
6. IO during further investigation collected one video clip related to the incident of Royal Mattress from the complainant Irshad Ali. Later, Irshad Ali and Dilshad Ali (one public witness) identified three more accused namely Deepak, Navneet and Mahak Singh @ Mintu, as being members of the mob, which trespassed and committed loot at Royal Mattress.

Written Arguments of Defence: -

7. In the written submissions filed by **Sh. Z. Babar Chauhan**, ld. counsel for accused Shadab, Riyasat Ali, Rashid Saifi, Mohd. Rihan, Mohd. Abid, Arshad Qayyum and Irshad Ahmed, it was submitted that there is gap of time between the written complaints and identifications u/s. 161 Cr.P.C., which is not explained.
8. In the written submissions filed by **Sh. Dinesh Kumar Tiwari**, ld. counsel for accused Shah Alam, it was submitted that accused Shah Alam was not named in the complaint, but he was identified

in the statement u/s. 161 Cr.P.C. He was not assigned any specific role. Ct. Vikrant or Ct. Pawan had not disclosed the alleged incidents. No other witness made any allegation against Shah Alam.

9. In the written submissions filed by **Sh. Sanjeev Kumar**, ld. counsel for accused Navneet, it was submitted that the original video clip had not been collected by the IO. Accused Navneet was not the part of the mob, rather he was going to his work place. No announcement was made by police regarding enforcement of Section 144 Cr.P.C.
10. In the written submissions filed by **Sh. Saleem Malik**, ld. counsel for accused Gulfam, it was submitted that there was a delay in registration of FIR, which was not explained. No CDR and Cell ID show his presence at the spot at relevant time. Ct. Pawan is a planted witness. No TIP was conducted. Accused was not assigned any specific role. No recovery was made from the accused. No CCTV footage was collected by IO.
11. In the written submissions filed by **Sh. Anil Kumar Srivastav**, ld. counsel for accused Deepak Singh Saini, it was submitted that accused Deepak was not named in the complaint, but was identified on the basis of viral video. No original video or phone was recovered by IO. Without recovery of original source, there is no validity of this video.
12. In the written submissions filed by **Sh. Vivek Sharma**, ld. counsel for accused Mahak Singh, it was submitted that the

accused was not named in the FIR and no criminal act had been done by the accused. It was further submitted that no notice or announcement was done by police about the proclamation under Section 144 Cr.P.C. It was further submitted that no incriminating material had been recovered from the accused. It was further submitted that statement of complainant and his brother are considered to be a single witness evidence, as there is no independent public witness in the case except the complainant and his brother, who are interested witnesses. Reliance was placed upon case of **Masalti v. State of U.P. AIR 1965 SC 202**.

13. In the written submissions filed by **Ms. Tara Narula** and **Ms. Shivangi Sharma**, ld. counsels for accused Tahir Hussain, it was submitted that there was inordinate delay in registration of FIR, which is not explained. There is no evidence against him with regard to destruction of property or participation in riots. There had been multiple FIRs filed against accused, covering the same offences and the facts. It is a well-established law that for an offence, a person can only be tried once. It was further submitted that filing of numerous FIRs arising from the same cause of action, does not only lead to multiplicity of proceedings, but also causes unnecessary harassment of the accused. Therefore, accused Tahir Hussain cannot be subjected to a fresh investigation by the police in respect of same incident, giving rise to one or more cognizable offences consequent upon filing multiple FIRs. Reliance was placed upon the case of **T.T. Antony v. State of Kerala (2001) 6 SCC 181**. It was further submitted

that time of incidents is not ascertained. Accused Tahir has not been assigned any specific role, rather accusation against him, is only based on suspicion. It was further submitted that there is no incriminating evidence against him. There is no evidence, which establishes conspiracy or agreement to conspire. He was not identified as member of the mob, which set fire on shops.

14. In support of her contentions, ld. counsels for accused Tahir Hussain, relied upon certain case laws, which are as follows: -

- **C. Muniappan & Ors. v. State of Tamil Nadu, (2010) 9 SCC 567.**
- **Amitbhai Anilchandra Shah v. CBI & Anr. (2013) 6 SCC 348.**
- **Saju v. State of Kerala, (2001) 1 SCC 378.**
- **Musa Khan v. State of Maharashtra, (1977) 1 SCC 733.**
- **Dilawar Babu Kurane v. State of Maharashtra, (2002) 2 SCC 135.**
- **Masalti & Ors. v. State of U.P. (supra).**

15. **Written Arguments of Prosecution:** -

In the written submissions filed by **Sh. Madhukar Pandey**, ld. Special PP, he referred to the facts of the case and also provided calendar of evidence to show the evidence against the accused persons. It was further submitted that shop of Irshad was first looted by rioting mob of Hindus, which can be ascertained by the video provided by Irshad to the police. However, rioting mob of Hindus did not set fire in the shop. Thereafter, shop of Irshad was set on fire by the rioting mob of Muslims and in continuation of that, they also set fire in the shop of Gunjan Sachdeva and Mohd. Zahid.

16. **Appreciation of arguments, facts and law: -**

I have perused the statements of the witnesses and other materials placed on the record. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences, which are as follows: -

- Section 109 IPC provides punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.
- Section 147 IPC provides punishment for guilty of rioting.
- Section 148 IPC provides punishment for committing riot being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
- Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
- Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
- Section 380 IPC provides punishment for committing theft in any building, tent or vessel, used as a human dwelling, or used for the custody of property.
- Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.
- Section 435 IPC provides punishment for committing mischief by fire or any explosive substance intending to cause or knowing it to be likely that it will cause damage to any property to the amount of Rs.100/- or upwords.
- Section 436 IPC provides for punishment for committing 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.

- Section 450 provides for punishment for committing house-trespass in order to the committing of any offence punishable with imprisonment for life.

17. IO of the case, recorded statement of Irshad Ali u/s 161 Cr. P.C, wherein Irshad stated that, on 24.02.2020, around 2:30 – 3:30 PM, he received a call from Shyam Bihari Mittal (a public witness) who told him that his shop had been broken into and looted. After this a mob also set fire to his shop. Irshad, in his subsequent statements mentioned that, he had gone to his shop after the vandalism and loot. Irshad stated that he reached the place of incident when the second mob was setting the shop on fire. He identified Md. Shadab, Shah Alam, Riyasat Ali, Gulfam, Rashid Saifi and Arshad Qayyum. The rioters caused a loss of approximately Rs 27 – 28 lakhs.
18. From the statement of Shyam Bihari Mittal, it appears that he was having his house on the back side of Royal Mattress. According to him, vandalism and loot had taken place before arson took place. He did not see the mob and hence could not identify anyone from the mob. His statement, however, points out the time period of vandalism and loot and of the subsequent arson. He said that the time period of the vandalism and loot was around 30-40 minutes prior to the time when the arson had taken place.
19. Md. Zahid, in his statement stated that on 24.02.2020, at around 3:00– 3:30 PM, a riotous mob came towards his shop and broke

into it and then damaged, looted and set fire to his shop. Md. Zahid lived above his shop, from where he saw the incident. Shyam Bihari Mittal (a public witness), said in his statement, that he saw a mob from the top of Tahir Hussain's roof throwing stones, petrol bombs, etc. towards nearby shops, which included Nagina Bakery which was owned by Md. Zahid. Zahid identified Rashid Saifi, Arshad Qayyum, Md. Shadab, Riyasat Ali, Gulfam, Riham, Abid, and Irshad Ahmed in the mob. The rioters caused a loss of approximately Rs 11 lakh. Md. Zahid further stated that the rioters were shouting slogans in favour of Tahir Hussain.

20. Gunjan Sachdeva, in his statement stated that on 24.02.2020, at around 2:30 – 3:00 PM, he was closing his shop (Arora Furniture House), when he saw a group of 100 – 200 people of a riotous mob coming towards his shop (Arora Furniture House). He quickly locked the shop and ran away from there and was watching from a distance. He saw that the riotous mob broke in his shop and then damaged, looted and set fire to his shop. He identified accused persons namely Shah Alam, Md. Shadab, Gulfam and Riham @ Arshad in the mob. The rioters caused a loss of approximately Rs 12 lakh.
21. Irshad, in his subsequent statement, identified Deepak @ Fauji Bhai, Mahak Singh @ Mintu and Navneet @ Nammu in a viral video that he got from social media. The viral video was sent to FSL for its authenticity check. The report, bearing no. SFSLDLH/3559/PHY/13/20/P(AV)-169-2020 from FSL which was received on 23.10.2020 stated that "it was observed that the

files were found containing audio- video recording of a display monitor. Hence, the authentication of the same could not be carried out."

22. In the case of **Ram Singh v. Col. Ram Singh, 1985 Supp SCC 611**, Supreme Court while dealing with the admissibility of tape-recorded evidence, laid down certain guidelines, which are as follows: -

1. *The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker, it will require very strict proof to determine whether or not it was really the voice of the speaker.*
 2. *The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence- direct or circumstantial.*
 3. *Every possibility of tampering with or erasure of a part of a tape- recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*
 4. *The statement must be relevant according to the rules of the Evidence Act.*
 5. *The recorded cassette must be carefully sealed and kept in safe or official custody.*
 6. *The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances”*
23. According to the above cited case law authenticity of recorded statement must be verified, before the same is taken as evidence. Video recording also falls into similar species of evidence and before any video is relied upon, its authenticity must be established. That is so done, in order to ensure that it is not

tampered in any manner. In this case, as the authenticity or absence of tampering of the video is not determined, the video becomes inadmissible as evidence. When the video becomes inadmissible, then any identification on the basis of such video cannot have any evidentiary value. Apart from identification from this video, there is no evidence regarding persons involved in the vandalism at Royal Mattress. None of the witnesses of prosecution vouched for having seen that incident. For such reasons I find that prosecution could not bring on record such evidence which can be admissible and which could establish that accused persons Deepak @ Fauji Bhai, Mahak Singh @ Mintu and Navneet @ Nammu were part of the mob, which indulged into vandalism and loot at Royal Mattress. Hence, accused Deepak @ Fauji Bhai, Mahak Singh @ Mintu and Navneet @ Nammu are entitled for discharge.

24. The facts mentioned in the statement of Irshad Ali, Md. Zahid, and Gunjan Sachdeva, show that all remaining accused persons except Tahir Hussain were part of the riotous mob, which indulged into riot being armed with deadly weapons in that area. They broke open the shops of the complainants. They damaged the articles of all the shops of the complainants, having value more than Rs. 50/-. They set fire to the shops along with the articles having value more than Rs. 100/-. They also looted the articles of the abovesaid shops. These accused persons had participated in riot with other unidentified persons with a common object to vandalise and damage the properties in that

area. It must be appreciated that each complainant named those persons from this mob, whom they could see and identify in the mob. Therefore, each complainant did mention name of all accused persons. Such evidence makes out a case for offence U/S 148/380/ 427/435/436/450 r.with S. 149 IPC, against them.

25. According to the statement of Surender Sharma, at around 3:30 PM, Tahir Hussain was roaming around on the roof of his house. Tahir Hussain was pointing towards some shops on opposite side to his house, which included the bakery of Md. Zahid. After which the rioters vandalised, looted and set fire to the shops. Shyam Bihari Mittal, in his statement mentioned that some people were pelting stones and throwing petrol bombs from the roof of Tahir Hussain's house. Such evidence shows that this mob was instigated by Tahir Hussain to indulge into vandalism, loot and arson in the properties and shops situated in that area. That mob consequently attacked upon the nearby properties including the three properties in question in this case. Thus, as per evidence the incidents in question were having their root in the instigation from Tahir Hussain as well, which makes out a case for offence punishable u/s. 148/380/427/435/436/450 read with S.109 IPC against Tahir Hussain.
26. Furthermore, it is also noticed that during the period of abovesaid incidents, the proclamation was made U/S 144 Cr. P.C. in compliance of order of DCP North-East. This announcement was made by police officials. Allegedly, all accused persons except Tahir Hussain were outside their home and were part of an

unlawful assembly, consequently violating the aforesaid order, which satisfies the ingredients of offence U/S 188 IPC.

27. The arguments of defence about delay in identification of the accused persons or against credibility of witness, cannot be sustainable at this stage because it shall be matter of trial to look into such factors. Other cases being registered against Tahir Hussain or other accused for different incidents of same day, cannot be a ground to discharge them in this case. This case relates to riots with specific incidents at the shops of Irshad, Zahid and Gunjan, and complicity as well as liability of accused persons are to be looked into qua such incidents also. TIP has been recognized to be a tool of investigation to establish identification of culprits. Defence cannot use absence of the same to seek discharge.
28. Thus, on the basis of above-mentioned observations and discussions, I find that a prima facie case for offence punishable u/s. 148/380/427/435/436/450 read with Section 149 IPC as well as u/s. 188 IPC is made out, against accused **1.** Mohd. Shadab, **2.** Shah Alam, **3.** Riyasat Ali, **4.** Gulfam @ VIP, **5.** Rashid Saifi, **6.** Mohd. Rihan @ Arshad Pradhan, **7.** Mohd. Abid, **8.** Arshad Qayyum and **9.** Irshad Ahmed. A prima facie case for offence punishable u/s. 148/380/427/435/436/450 read with S.109 IPC is made out against Tahir Hussain. All these accused persons are directed to be tried accordingly.
29. Accused **11.** Deepak @ Fauji Bhai, **12.** Mahak Singh @ Mintu and **13.** Navneet @ Nammu, are discharged in this case.

However, it is relevant to observe that the incident of vandalism at Royal Mattress remains unsolved. Moreover, it is also apparent that at the time of filing first chargesheet in this case, IO had no clue about culprits behind vandalism and loot taken place at Royal Mattress. Still, IO kept mum over such fact in the chargesheet. When subsequently on the basis of identifying some culprits from a video by Irshad, IO was informed about names of aforesaid three persons, at least IO could realise that this vandalism was done by a different mob, rather than mob of other accused persons already chargesheeted in this case. In such situation, adding three accused in this case in respect of a separate cause of action despite knowing well that behind this cause of action a different mob was responsible, was not a legal action on the part of IO. SHO is therefore, directed to look into such aspects and act accordingly.

Ordered accordingly.

Announced in the open court (PULASTYA PRAMACHALA)
today on 05.08.2023 ASJ-03(North East)
(This order contains 15 pages) Karkardooma Courts/Delhi