

DLNE010018222021



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

CNR No. DLNE01-001822-2021

SC No. 242/21

State v. Noor Mohammad etc.

FIR No. 221/20

PS Khajuri Khas

U/s. 148/427/435/436 IPC r/w. Sec. 149 IPC & 392/188/411 IPC

31.01.2024

ORDER ON SENTENCE

1. Vide this order, I shall decide the sentence against convicts **1.** Noor Mohammad @ Noora and **2.** Nabi Mohammad, in this case.
2. Briefly stated, both the convicts have been held guilty vide judgment dated 03.01.2024. Convict Noor Mohammad @ Noora has been held guilty for offences punishable under Section 148/427/435/436 IPC read with Section 149 IPC. Convict Noor Mohammad @ Noora has been further held guilty for offences punishable under Section 392 and 188 IPC. Convict Nabi Mohammad has been held guilty for offence punishable under Section 411 IPC.
3. Convict Noor Mohammad @ Noora has been held guilty against the charges that on 24.02.2020 between 02:30 PM to 3 PM at and near old E-04, Khajuri Khas, main Karawal Nagar road, near

Chand Bagh pulia, Karawal Nagar, he along with his other associates (unidentified), formed an unlawful assembly. The object whereof was to cause maximum damage to the property, vehicles and persons of the area, as well as to person belonging to Hindu community, commit criminal trespass, vandalism, theft, and arson in the shops, houses and properties of the other persons in the said area. This mob including Noor Mohammad @ Noora by the use of force and violence and in prosecution of the common object of such assembly, committed riot and also vandalized and set on fire Auto Mobile Shop of Dilip; robbed him and Shiv Kumar of their mobile phones, besides causing damage to the goods lying in the aforesaid shop; vandalized and set ablaze shop in the name of Ashok Foam and Furniture; set ablaze the motorcycles of Ramdutt Pandey, Manoj Negi, Sonu Sharma, Pappu and Ashok Kumar. This mob including convict Noora, had assembled in violation of prohibitory order passed by Id. DCP (N/E) under Section 144 Cr.P.C.

4. Convict Nabi Mohammad has been held guilty against the charge that on 01.04.2020, a mobile phone make Samsung having golden colour without Sim card was seized from him, which mobile phone had been purchased by him from co-accused Noor Mohammad @ Noora, knowing fully well that Noora had stolen this mobile phone.

Arguments on behalf of Convicts

5. **Sh. Akhtar Shamim**, Id. counsel for convict Noor Mohammad @ Noora, argued that convict is a divorcee and has old aged mother to look after. Other brothers of convict are busy in their

life and have not taken responsibilities of the mother. Id. counsel further argued that convict Noora had been acquitted in other cases of riots and he is named in two other cases, which are still pending.

6. **Sh. K.K. Dubey**, Id. counsel for convict Nabi Mohammad, argued that there is no previous involvement of Nabi Mohammad and he had nothing to do in this case. He has old aged mother and two children to look after. He is sole bread earner of his family. He is in jail since 03.01.2024.
7. Per Contra, **Sh. Ram Chander Singh Bhadoria**, Id. Special PP for State argued that properties of victims were completely damaged because of riotous acts of Noora. Noora also robbed mobile phones of two victims. For Nabi Mohammad, Id. Special PP argued that there must be a lesson for him not to purchase stolen mobile. He further argued that convict Noora be also given strong lesson.

Punishment provided in Law

8. The punishment provided for the offences for which the convicts have been held guilty, are as follows: -
 - 8.1. Section 148 IPC - Imprisonment of either description for a term which may extend to three years, or with fine, or with both.
 - 8.2. Section 188 IPC - Imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
 - 8.3. Section 427 IPC - Imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- 8.4. Section 435 IPC - Imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.
- 8.5. Section 436 IPC - Imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and fine.
- 8.6. Section 392 IPC - Rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.
- 8.7. Section 411 IPC - Imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Victim Impact Report

9. A victim impact report was submitted by Id. Secretary, DLSA, North East, Delhi, in pursuance to the judgment passed by High Court of Delhi, in the case of **Karan v. State, Criminal Appeal No. 352/2020**, decided on 27.11.2020. As per report, victim Dalip reported loss of around 32,00,000/- due to annihilation of the entire work place i.e. garage of Auto mobiles in the name of Giri Auto Mobiles. Victim Shiv Kumar Raghav reported loss of around 4,00,000/- due to annihilation of the entire work place i.e. office situated inside aforesaid garage.
10. The convicts Noor Mohammad @ Noora and Nabi Mohammad had submitted affidavits of their assets and income, in the format of Annexure-A, respectively. The particulars given by the convicts in their affidavit have been verified through SDM/Police/Prosecution and after considering the same, paying capacity of the convicts was assessed as under: -

- 10.1. Convict **Noor Mohammad @ Noora** used to do work of rope making with an income of Rs.8000/- per month. The convict does not possess any movable or immovable property registered in his name. He has no bank account in his name.
- 10.2. Convict **Nabi Mohammad** used to ride TSR/auto before his conviction with an income of Rs. 15,000/- per month. The convict does not possess any movable or immovable property registered in his name. He has no bank account in his name.

APPRECIATION OF LAW, ARGUMENTS AND FACTS

11. In **Manoj Pratap Singh v. State of Rajasthan, (2022) 9 SCC 81**, Hon'ble Supreme Court referred to some aggravating and mitigating circumstances. The criteria were termed as "crime test and criminal test". In that case, the court was though dealing with question of desirability of death sentence, but the parameters of aggravating and mitigating circumstances can be looked into as per peculiar facts and circumstances of each case.

CRIME TEST

12. As per facts of this case, on 24.02.2020 at about 02:30-3 PM, rioters came from the side of Mustafabad, who were equipped with iron rod, danda, lathi etc. The rioters broke open the main gate of Giri Auto Mobiles. Around 40-50 rioters entered inside that property and they set two motorcycles on fire, which were standing outside the workshop. These rioters also broke open shutter of workshop and set ablaze 13 motorcycles as well as spare parts, which were lying inside the workshop. There was one more gate, which led to plot inside that property. Two victims/complainants had come to this plot. Two boys including

convict Noora from those rioters also came inside that plot. They demanded mobile phone and money from both the complainants on the threats of setting them ablaze. They took away mobile phones from both these complainants and gave five minutes to these complainants to flee away. Both these complainants jumped over the adjacent plot and saved their life. Mr. Shiv Kumar Raghav had brought Rs.2.5 lac to his office in order to lend it to his friend for marriage of his daughter. He had kept that amount in a back side room in this plot, beneath a mattress, because of worsening condition. When the situation came under control, then both these complainants came back at about 8 PM to this property. They saw that the workshop was on the fire. The articles in the back side room were scattered here and there and amount of Rs.2.5 lacs was also missing. Accordingly, they had suffered loss of Rs.2.5 lacs and Rs.3.2 lacs respectively.

13. Thus, the crime committed in this case had several facets. There was crime committed out of communal riot to cause huge loss to the victims. There were several victims in this case. Description of whom has already been given in para-3 of this order. Another face of the crime was in the form of robbery of mobile phones. Thus, the crimes committed in this case were based on hatred and greed. Riotous acts were guided by hatred, while robbery and loot of the cash amount was guided by greed.

CRIMINAL TEST

14. The above-mentioned description of facts shows that crime in question was committed by convict Noora, being part of a mob. This culprit did not have well settled family background, in the sense that he is reportedly a divorcee. He did not have a regular

and fixed source of sound earning. He is not literate.

15. There is a report from SHO regarding criminal cases against convict Noora. The report shows name of convict Noora involved in some cases, but he has not been convicted in any case, except the present one. In fact, this report also shows that he was acquitted in other cases of riot. Apart from riot cases, this convict is shown to be involved in other case of theft.
16. The overall assessment of given background of the convict Noora shows that he was prone to get carried away by misconceived sense of religious cause. In **Lokeman Shah v. State of W.B., (2001) 5 SCC 235**, while dealing with a case of riots, Hon'ble Supreme Court made some observations, which are relevant in this case also. The observations are: -

“25. The last and the only remaining aspect is regarding the sentence. The appellants had neither any previous enmity with the victims nor even any acquaintance with them. It is an admitted fact that they acted in a rage of fury blindfolded by communal frenzy. We are aware that in most of the communal riots the participants are by and large illiterate and indoctrinated people. When the literate leaders try to keep themselves away, without participating in the perpetration of crimes though, perhaps, some such persons would fan up the communal frenzy by their utterances in the minds of the ignorant poor people who in a deranged fury rush into the streets prowling for prey. It was an unfortunate plight of the people who are ignorant about the real sublime thoughts of religions that they threw themselves into the cauldron of communal delirium which was burning up to the boiling point. That was a time when the minds of the rioters turned demented and no sensible thoughts would enter into them. The leaders and the society have not played their part to teach them that religions are not meant for killing fellow human beings. If ignorance had promoted people to take up cudgels in the name of religion for indulging in carnage or murders, they are no doubt liable to be convicted and sentenced for the offence committed by them. But we have great difficulty to treat such a case as rarest of the rare cases in which the alternative sentence of life imprisonment can unquestionably be foreclosed.”

I find that convict Noora herein may also fall into same category, as referred to in the above-mentioned observations.

17. As far as convict Nabi Mohammad is concerned, he is also an illiterate person. He was reportedly a TSR driver and thus, he is also from low income group of society. As per report received from SHO, no other criminal case was found reported against him. There are chances that out of greed to have a mobile phone at meager amount, he did not care, if the said mobile phone was stolen one.

COMPENSATION

18. As per VIR, convict Noor Mohammad @ Noora reportedly does not own any immovable property. Other convict Nabi Mohammad also does not own any property. Noor Mohammad @ Noora and Nabi Mohammad do not have any bank account. Convict Noora has been earning about Rs.8,000/- per month. Convict Nabi has been earning Rs.15,000/- per month, prior to his conviction in this case. Thus, both the convicts had been in the low-income group of the society.
19. As far as compensation to the complainants/victims is concerned, it is mentioned in the victim impact report that compensation may be awarded as per the discretion. In respect of victims of riots taken place in North-East Delhi, Delhi Government already undertook exercise to grant compensation to such victims. Since the convicts in the present case are not financially capable to pay any compensation towards loss incurred by these victims, this court could direct the Government only, to compensate the victims. But since Government has already undertaken this

exercise, I do not find requirement to pass fresh directions for the same purpose.

DECISION

20. Keeping in view the discussion held herein above, I find that though the crime committed in the case is not a lighter crime, but lack of education, influence of mob sentiments, unsettled life and given family background of convict Noora cannot be overlooked. As far as convict Nabi Mohammad is concerned, I find that facing trial in this case and spending time in Jail after conviction, would have given him sufficient lesson. Accordingly, convicts are sentenced as under: -

Sentence for Convict Noor Mohammad @ Noora

- 20.1. Convict Noor Mohammad @ Noora, S/o. Sh. Munna Mauji, shall undergo simple imprisonment for a period of one year, for offence punishable under Section 148 IPC.
- 20.2. Convict Noora shall undergo simple imprisonment for a period of six months for offence punishable under Section 188 IPC.
- 20.3. Convict Noora shall undergo simple imprisonment for a period of one (1) year, for each offence punishable under Section 427 IPC, concerning incident of vandalism at "Giri Automobile Shop" and "Ashok Foam and Furniture Shop".
- 20.4. Convict Noora shall undergo simple imprisonment for a period of 3 years and shall pay a fine of Rs. 2,000/-, for each offence punishable under Section 435 IPC in respect of incident of setting ablaze articles lying in the "Giri Automobile Shop" and in "Ashok Foam and Furniture Shop" as well as in respect of each

incident of setting ablaze the motorcycles belonging to Ram Dutt Pandey, Manoj Negi, Sonu Sharma, Pappu and Ashok Kumar. In default of payment of each count of fine, convict shall undergo simple imprisonment for a period of six (6) months for each incident. (To rule out any confusion, it is clarified that aforesaid sentence is in respect of each incident and the total number of incidents is seven (7). Thus, the sentence will be in multiple of seven (7) in respect of fine.)

20.5. Convict Noora shall undergo rigorous imprisonment for a period of 4 years and shall pay a fine of Rs. 5,000/-, for each offence punishable under Section 436 IPC in respect of incident of setting ablaze of "Giri Automobile Shop" and in respect of incident of setting ablaze of "Ashok Foam and Furniture Shop". In default of payment of each count of fine, convict Noora shall undergo simple imprisonment for a period of one (1) year for each incident. (To rule out any confusion, it is clarified that aforesaid sentence is in respect of each incident and the total number of incidents is two (2). Thus, the sentence will be in multiple of two in respect of fine.)

20.6. Convict Noora, shall undergo rigorous imprisonment for a period of 4 years and shall pay a fine of Rs. 5,000/-, for each offence punishable under Section 392 IPC, in respect of robbery of mobile phone from Dilip, and robbery of mobile phone from Shiv Kumar Raghav. In default of payment of each count of fine, convict shall undergo simple imprisonment for a period of one (1) year for each incident. (To rule out any confusion, it is clarified that aforesaid sentence is in respect of each incident and

the total number of incidents is two (2). Thus, the sentence will be in multiple of two in respect of fine.)

20.7. All the fines shall be recoverable as per Section 421 read with 431 Cr.P.C. Convict Noora shall be entitled for benefit u/s. 428 Cr.P.C. All the sentences of imprisonment shall run concurrently.

Sentence for Convict Nabi Mohammad

20.8. Convict **Nabi Mohammad, S/o. Sh. Shafi Mohammad**, is sentenced to imprisonment already undergone in this case.

Ordered accordingly.

Announced in the open court today on 31.01.2024
(This order contains 9 pages)

(PULASTYA PRAMACHALA)
ASJ-03 (North- East)
Karkardooma Courts/Delhi