

Sessions Case No.66/2021
State V/s Dinesh Yadav @ Michael & Ors.
FIR No.78/2020
PS Gokalpuri
U/s 147/148/149/188/380/427/436/454 IPC

28.09.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Sanjeev Sahay, Ld. Special PP for the State alongwith Inspector Jagdish Yadav, Inspector Vineet Pandey and ASI Manvir.

Shri Shubham Asri, Ld. Counsel for accused Dinesh Yadav @ Michael alongwith accused produced in JC through VC.

Shri Raksh Pal Singh, Ld. Counsel for accused persons namely Sahil @ Babu and Sandeep @ Mogli alongwith both the accused persons produced in JC through VC.

Shri Rajiv Pratap Singh, Ld. Counsel for accused Tinku alongwith accused produced in JC through VC.

Shri M.R Shamshad, Ld. Counsel for complainant Nisar Ahmed alongwith complainant in person appearing through VC.

ORDER

Today the matter is listed for consideration on charge as well as the bail application of accused Tinku.

2. At this stage, it has been pointed out that previous learned Special PP, Shri D.K Bhatia has been replaced by Shri Sanjeev Sahay, learned Special PP. The learned Special PP very candidly submits that although he has gone through the chargesheet, however, he is required to obtain instructions in the matter to have a feel of this litigation as well as about the “**riots cases**” of North-East Delhi generally. I am inclined to grant time to learned Prosecutor to take instructions in the matter; however, for his benefit, the brief background of the case has been explained to him and points have been jotted down for him to take specific instructions thereupon.

3. In this chargesheet, three different complaints have been clubbed, the detail whereof is as under:

- (a) Complaint of Aas Mohammad, S/o Shri Latif Khan, dated 29.02.2020; wherein, he stated that his shop at E-86, main Nala Road, Bhagirathi Vihar was robbed and put on fire by the riotous mob in the evening of 25.02.2020. However, he did not claim to have seen any rioter(s), as he was not present at his shop at the time of incident. However, in his statement recorded under Section 161 Cr.P.C by the police on 02.03.2020, i.e after registration of FIR, he categorically stated that although his shop was robbed, but no incident of arson took place there and as such, as per his said statement, no offence exclusively triable by the Court of Sessions seems to have been made out.
- (b) The other complaint is of Smt.Shaheen, W/o Shri Mustakeem, dated 15.03.2020; wherein, she has **not mentioned any date and time of incident**, however, she has claimed that she was not present at her house, i.e E-85, Khasra No.1/162, main Nala Road, Bhagirathi Vihar, Delhi during the period the riots took place in North-East Delhi and later on she came to know that her house had been robbed after breaking open the lock. Therefore, the incident in her case could be any time from 24.02.2020 to 26.02.2020.
- (c) The third complaint is of Nisar Ahmed, S/o Shri Deen Mohammad, r/o House No.F-61/1, Bhagirathi Vihar, Delhi-110094; wherein, he claims to have witnessed the communal riots on two different dates, i.e on 24.02.2020 at about 4.00 PM-8.00 PM, wherein persons namely Vikas Kashyap @ DJ wala, Golu bike wala, Gaurav Dabra, Mukesh Masterji, Kanhiya Lal etc. were some of the persons identified by him from amongst mob of 200-250 persons, who were

rioting near Gokalpuri pulia toll-tax. They had put up a loud-public address system, whereby they were exhorting their fellow community members to vandalize, rob and put on fire the houses and shops of persons belonging to the other community. They were claiming that the police was with them. The said mob was stopping the persons passing through that area and trying to ascertain their identities and if found to be from the other community, they would inflict injuries upon them. Their bikes were being put on fire and thrown into nala.

He also gave account of the communal riots happened on 25.02.2020, near his house which he had captured in the form of a video-film made from his mobile phone camera. He has named the accused persons in this case to be among the rioters in the riotous mob of about 50 persons. The said mob had put his godown, situated on the ground floor of his residence on fire after robbing it. The said mob had also put on fire his three motorcycles. He further claimed that on both the dates he made several calls to the police, but to no avail.

4. Therefore, it is *prima facie* clear that complaints mentioned at S.No.3(a) and (b) could not have been clubbed in this case. Whether the complaint mentioned at S.No.3(c) can be clubbed in this case or not will be clear from the sequence of events which took place in this case.

5. (i) Shri Nisar Ahmed had made his first complaint about rioting to the police on 04.03.2020, but no action thereupon was taken by the police. Thereafter, he filed his subsequent complaint dated 18.03.2020, claiming to have witnessed the incidents of aforesaid two dates in the area in question, but again to no avail. In the meantime, he continued to receive threats from the persons named by him in his complaint dated 18.03.2020. He was constrained to approach

Hon'ble High Court of Delhi by way of writ petition; wherein, for the first time the learned Prosecutor communicated to the Court that his complaint dated 18.03.2020 had been clubbed in the instant case.

(ii) He had simultaneously approached the “**Witness Protection Committee**” of North-East District, headed by learned Principal District & Sessions Judge (North-East), by pointing out the danger to his life, as he had been constantly receiving threats from the persons named in his complaint. The Chairman of the said Committee gave directions to the local police to provide protection to him.

6. (i) The Hon'ble High Court granted liberty to this witness to approach the competent Court for redressal of his grievances. Accordingly, he approached the court of learned Magistrate under Section 156 (3) Cr.P.C, seeking registration of separate FIR in his case and not to treat his complaint as part of this case. His petition was allowed by the learned Metropolitan Magistrate vide order dated 26.10.2020 and it was ordered that separate FIR on his complaint dated 18.03.2020 be registered, meaning thereby that he should not be treated as a complainant in the instant case, i.e FIR No.78/2020, PS Gokalpuri. The said order was challenged before this Court and this Court by a detailed order dated 26.04.2021, dismissed the Criminal Revision Petition of the State. The relevant paragraphs of the order dated 26.04.2021 (passed in **CrI. Revision Petition No.24/2020**) are re-produced as under:

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12. As such, in his aforesaid complaint, he gave details of the members of unlawful assembly of both days, i.e on 24.02.2020 and 25.02.2020 and their acts. His aforesaid complaint was clubbed with the complaint of Aas Mohammad, without realising that his complaint disclosed the acts of two dates and not of 25.02.2020 alone.

13. It has been averred that thereafter threats started pouring in from the persons named by him with regard to incident dated 24.02.2020. He was criminally

intimidated and attempts were made to force him to withdraw the names of persons mentioned in his complaint and to move away from his house after selling it at throw-away price. The respondent again approached the police, inter alia levelling the allegations of criminal intimidation by way of his complaint dated 23.05.2020, but the said complaint was neither investigated nor any kind of security was provided to him by the police.

14. Thereafter, the respondent was constrained to approach the Hon'ble Principal District & Sessions Judge (North-East), Karkardooma District Courts, being Chairperson of "Witness Protection Committee", seeking protection and the said Committee consisted of two other members, i.e Shri Ved Prakash Surya, DCP (North-East) and Shri V.K Sharma, Chief Public Prosecutor.

15. The respondent was not communicated anything about the registration of FIR on his complaint(s) dated 04.03.2020, 18.03.2020 and 23.05.2020 and as such, he was constrained to approach the Hon'ble High Court of Delhi by way of Criminal Writ Petition bearing No.995/2020, with the prayer directing registration of FIR(s) on his aforesaid complaints and to furnish copies thereof to him. During the course of hearing in the aforesaid writ petition, on 01.07.2020 for the first time, it was communicated to the Hon'ble High Court by the learned counsel for the State that his complaint dated 18.03.2020 had been clubbed with case FIR No.78/2020, PS Gokalpuri and he had been made witness in other three case FIRs. The Hon'ble High Court of Delhi was pleased to dispose off the aforesaid writ petition with the direction(s) to the State to furnish complete chargesheet of three cases wherein the respondent had been made a witness and copy of FIR No.78/2020, during the course of that day. The respondent was granted liberty in case his grievance remained un-redressed to approach the appropriate forum in relation to all the prayers which were made in the writ petition.

16. It is the case of the respondent that despite the aforesaid directions passed by the Hon'ble High Court of Delhi, he was not supplied either the copy of FIR or the

copies of chargesheets in three other cases, as a consequence whereof he was constrained to approach the learned Chief Metropolitan Magistrate (North-East), in terms of the liberty granted to him by the Hon'ble High Court of Delhi, by way of a petition under Section 156 (3) Cr.P.C on 16.07.2020, with a prayer for registration of FIR(s) on his complaints and investigation thereof against the accused persons named therein. He made all the persons as respondents in the said petition.

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*20. The learned Special PP for the State has very vehemently argued that the State was well within its rights to have clubbed the complaints of complainant dated 18.03.2020 with FIR No.78/2020 on the **principle of sameness**, as laid by the Hon'ble Supreme Court in the case of **Anju Chaudhary** (supra). No substance was found in complaint dated 23.05.2020 and further averments made by the respondent in his petition under Section 156 (3) Cr.P.C and as such, separate FIR(s) were not registered in the matter in view of the law laid down in the case of **T.T Antony** (supra).*

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27. The impugned order is well reasoned, there is no error of either fact(s) or law or lack of propriety therein and the same requires no interference from this Court in exercise of revisional powers. The revision petition is accordingly dismissed, being meritless.

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30. A copy of this order be also sent to both the parties through electronic mode. A copy of this order be also sent to Commissioner of Police, Delhi Police for issuing appropriate direction(s) to re-assess the investigation(s) conducted in host of riots' cases in North-East Delhi and order for remedial action(s) immediately, so that the said matters can have effective trial before the Court of law.

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(ii) It is a matter of record that Shri Nisar Ahmed has been shown as a witness in atleast eleven cases of riots of PS Gokalpuri. The said cases are in respect of different blocks of Gokalpuri, situated at a distance of more than a kilometer away from his house. In one such case, the evidence has come on record that it was a case of rioting at A-Block of Gokalpuri, but Nisar Ahmed and his two sons were shown as witnesses therein. The son of Shri Nisar Ahmed clearly stated on oath in the said case that he had not seen the riots happening at Block-A, as the said place is situated at a distance of more than half a kilometer from his house. Same is the position in other cases where he has been shown as a witness. Today, the learned counsel Shri M.R Shamshad, Advocate has sought information from this Court that list of cases in which he (Nisar Ahmed) has been shown as a witness in the riots cases be supplied to him, so that he could move appropriate application(s) therein. It is submitted by him that an application is supposed to be filed by Shri Nisar Ahmed in this case in this regard.

7. The aforesaid order dated 26.04.2021, passed by this Court in **Crl.RP No.24/2020** was not challenged by the State further and FIR No.134/2021 was registered at PS Gokalpuri on 07.06.2021, i.e after a delay of about two months of passing the said order by this Court.

8. Today the initial IO of the aforesaid case as well as the present IO, namely Inspector Jagdish Yadav and Inspector Vineet Pandey are present in Court and both of them have submitted that no progress in the investigation of case FIR No.134/2021, PS Gokalpuri has taken place. The persons named in the FIR have not been interrogated.

9. This is really a sorry state of affairs. It is being claimed by the police in other cases of riots that the circumstances prevailing during the period of riots and almost four weeks thereafter were really difficult and the police could not investigate the cases properly. Thereafter, Delhi was engulfed in Corona virus pandemic and as such, the quality investigation in the matter could not take place.

10. I wonder whether the police can take the same excuse qua the investigation of case FIR No.134/2021, PS Gokalpuri. The answer has to be “**clear No**”.

11. It has been communicated to this Court that the Worthy Commissioner of Police, Delhi Police on 19.09.2021 has issued directions vide Order No.3751-3900/Record Branch/PHQ, constituting a “**Special Investigation Cell (SIC)**” to monitor the ongoing investigations in the “**riots cases**”. It appears that the present case has so far not got the attention of either Worthy Commissioner of Police, Delhi Police or the SIC constituted by him.

12. The learned Special PP is directed to take instructions in the matter and communicate to the Court on the next date of hearing about the investigation carried on by the police in case FIR No.134/2021, PS Gokalpuri and the impact thereof on the consideration of complaint of Nisar Ahmed in the present case, with specific reference to the fact as to whether the said complaint can be considered to be part of the present case or case FIR No.134/2021, PS Gokalpuri.

13. The attention of learned Special PP is drawn to the latest law in this regard, as laid down by **Hon’ble Karnataka High Court in Crl.P.Nos.2271/2020** c/w 2268/2020, 2269/2020 and 2270/2020, titled as, “**Wazeer Khan & Ors. V/s State**”, **decided on 26.05.2020**, whereby the Hon’ble Court has been pleased to lay down as under:

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20. In view of the aforesaid position relating to filing of more than one FIR arising out of common incidents, spots and complaints are not forth coming in the present case. In the present case factual aspect like complaint and other events do not constitute a single transaction. Such transactions cannot be amalgamated and clubbed into a single FIR by showing one injured as the complainant and others as witnesses. In respect of such transaction, it is imperative for the State to register a

separate FIR if the complainant discloses commission of cognizable offence.

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14. Renotify the matter for consideration on charge now on **22.10.2021**.

15. Let the learned Special PP also take instructions on the bail application of accused Tinku. Renotify the bail application (IA No.02/2021) of accused Tinku for consideration now on **06.10.2021**.

16. A copy of this order be sent to the Worthy Commissioner of Police, Delhi Police for his reference and taking of appropriate steps required in the matter.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/28.09.2021