

IN THE COURT OF SHRI SANDEEP YADAV
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

Criminal Revision No. 267/20

State, Govt. of NCT of Delhi.
Through Public Prosecutor.

.... Petitioner

Versus

Iunus Gurba - Kyrgyzstan
PP No. AC3580020 – (CS-37)
Presently residing at :- Zayed College, B-103
Thokar No. 7, Abdul Fazal Enclave Part – 2
Shahin Bagh, Jamia Nagar,
Okhla, New Delhi-110025.

.... Respondent

Date of Institution	:	22.10.2020
Date of Arguments	:	17.11.2020
Date of Order	:	19.11.2020
Order	:	Dismissed.

ORDER

1. Challenge is laid in this revision petition filed by State (Government of NCT of Delhi) to the order dated 24.08.2020 passed by learned Chief Metropolitan Magistrate, South East, New Delhi.

2. Arguments addressed at bar by Mr.Atul Srivastava, learned Addl.P.P. for State/petitioner and Ms. Ashima Mandla, learned counsel for respondent have been heard at length. Trial court record perused.

3. The factual matrix is that FIR bearing No. 63/20 was registered by Crime Branch, Delhi Police and pursuant thereto final report U/s. 173 CrPC was laid before learned Chief Metropolitan Magistrate, South East whereunder respondent **Iunus Gurba** and other persons were chargesheeted U/s. 14 (b) of Foreigners Act, Section 3 of the Epidemic Diseases Act 1897, Section 51 of the Disaster Management Act and Section 188/269/270/271/120B IPC. After considering the material on record, learned Chief Metropolitan Magistrate, SED vide impugned order dated 24.08.2020 discharged the respondent from all the offences.

4. Prosecution version flowing from charge sheet may be briefly recapitulated as under :-

5 On 21.03.2020, authorities of markaz at Tablighi Jamaat Headquarters were contacted by Delhi Police in view of corona virus pandemic. Mufti Shehzad was apprised of the situation arising out of spread of corona virus and was asked to send foreign devotees back to their respective countries. Government of India ordered complete lockdown in the entire country on 24.03.2020 for a period of 21 days starting from 25.03.2020 in view of corona virus pandemic. Pursuant to lockdown, ACP Lajpat Nagar, New Delhi vide order dated 684-713/ACP/Lajpat Nagar/New Delhi dated 24.03.2020 promulgated prohibitory orders under Section 144 Cr.PC thereby restricting social/political/religious gathering in the area and to take safety measures by following measures of social distancing i.e. home quarantine/isolation, etc. Menace and hazard of covid 19 infection was verbally conveyed to Maulana Md. Sadh and management of Markaz on

several occasions, including meeting held at PS Hazarat Nizamuddin. The meeting held at PS Hazarat Nizamuddin on 24.03.2020 was attended by Md. Ashraf, Mufti Shehzad, Dr. Jishan, Mursaleen Saifi, Md. Salman and Yunus. Despite instructions given in the said meeting, management of Markaz did not inform any health department or other government agency about huge gathering inside the Markaz and deliberately, willfully, negligently and malignantly disobeyed lawful directions promulgated in this regard by Government of India, Government of NCT of Delhi, ACP Lajpat Nagar and SHO PS Hazart Nizamuddin. Written notices dated 24.03.2020 and dated 28.03.2020 were issued to Maulana Md. Sadh and management of Markaz. However, they refused to pay any heed. Premises was inspected by SDM Defence Colony on various dates including 26.03.2020, 27.03.2020, 28.03.2020, 29.03.2020 and 30.03.2020. Around 1300 devotees from various States of India as well as foreign countries were found residing in the premises without maintaining any social distancing from each other and no-one was following directions such as use of facial mask, hand sanitizer, etc. It was confirmed during investigation that respondent alongwith other accused did not follow directions of authorities despite having the knowledge of corona virus pandemic. Six persons who were part of religious congregation lost their lives due to corona virus infection. It is further mentioned that 32 persons out of 1500 persons staying at Markaz were found to having symptoms of corona virus on 28.03.2020 and were shifted to hospital. By 31.03.2020, 207 persons had been admitted in various hospitals and around 860 people were quarantined. In addition to six deaths, 477 persons who had participated in the religious congregation tested positive for corona virus. Respondent alongwith other co-accused during investigation accepted that they participated in the Tablighi Jamat Markaz and had remained at the

Banglewali Masjid for sometime. It was also revealed during investigation that foreign nationals in the present case including respondent were visiting India on missionary work for Tablighi Jamat in order to propagate and profess principles and doctrines of Tablighi Jamat. It was further revealed that they attended congregation at Nizamuddin Alami Markaz which is religious gathering for the purpose of voluntarily participating in preaching mission by arriving in India on tourist visa or E-visa instead of obtaining missionary visa. Large number of foreigners from Indonesia, Malaysia and other countries had arrived India and some of these foreigners acted as carriers of infectious corona virus. On 19.03.2020, authorities of Markaz were contacted by CDMO Office which received information that an Indonesian nationale had tested positive with corona virus in Telangana with travel history to Delhi in a group on 09.03.2020 to participate in Tablighi Jamat Banglewali Masjid, Markaz, Hararat Nizamuddin. CDMO office was informed by Md. Shehzad of Banglewali Masjid, Markaz that there were hardly any people in masjid and none of them were showing any symptoms of corona virus infection. On 21.03.2020 authorities of Markaz at Tablighi Jamat Headquarters were contacted by Delhi Police and Mufti Shehzad of Markaz was asked to take immediate action for preventing spread of the disease and also to send foreign devotees back to their countries and other Indians to their respective States. However, this direction was not followed and respondent alongwith other accused persons refused to comply with lawful directions of authorities resulting in loss of lives and imminent danger to the lives of others.

6. While discharging the respondent, learned Chief Metropolitan Magistrate, SED categorically held that entire chargesheet and documents

attached thereto neither showed his presence nor participation in the Markez during the relevant period. It was further observed that there is no document on record to suggest that respondent was one of the participants who was involved in Tabliqi work. It was further observed that name of the respondent is not specifically mentioned either in the copy of the register seized or in the list of SDM providing the details of the persons who were sent from Markaz either to the hospital or Quarantine Centers or the list of persons who were part of Markez and were tested for Covid-19.

7. Mr. Atul Srivastava, learned Addl.P.P. for State/petitioner submitted that vital documents which were part of the chargesheet *viz.* copy of the passport of the respondent, notice U/s. 41 (A) CrPC issued to the respondent, acknowledgment of the notice, undertaking to the notice and questionnaire were not taken into consideration by learned Chief Metropolitan Magistrate while passing the impugned order. It was submitted that name of the respondent is clearly mentioned in these documents. It was further submitted that new facts were discovered from the answers given by the respondent to the questionnaire and hence, the information elicited from the respondent is admissible U/s. 27 of Indian Evidence Act. Mr. Atul Srivastava also referred to Section 58 of Indian Evidence Act which provides that facts admitted need not be proved. Mr. Atul Srivastava further submitted that respondent came to India on a tourist visa and he violated visa conditions and was thus liable to be charged U/s. 14 (1) (B) of the Foreigners Act. Mr. Atul Srivastava further submitted that respondent was found in Markaz Head Quarter and he was interrogated. It was lastly submitted that it is a settled law that accused cannot take advantage of fault of Investigating Officer. Mr. Atul Srivastava, during the course of arguments, relied upon the judgment given by

Hon'ble Supreme Court of India in Mehboob Ali & Others Vs. State of Rajasthan decided on 27.10.2015.

8. Ms. Ashima Mandla, learned counsel for the respondent submitted that respondent was not found in any activity of preaching and hence, there is no violation of any VISA condition. Reference was made in this regard to the answer given by the respondent to Question No. 18 of the Questionnaire. Ms. Ashima Mandla submitted that notice U/s. 14 (1) (A) of Foreigners Act was issued in May 2020 and hence, the same does not prove the presence of the respondent in the Markaz. Ms. Ashima Mandla further submitted that the passport was not seized when the respondent was inside the premises of Markaz. Ms. Ashima Mandla further submitted that the name of the respondent is not mentioned in the list of persons shifted from Markaz to Quarantine Center. It was vehemently argued on behalf of the respondent that there is no evidence that respondent was inside the Markaz premises from 13.3.2020 to 31.03.2020. It was further submitted that the name of the respondent does not appear in the register seized by the police. Ms. Ashima Mandla referred to and relied upon following judgments:-

In re:-

- 1) Problems and Miseries of Migrant Labourers, In Re. 2020 SCC Online SC 492.
- 2) Kurban Hussain Mohamedalli Rangawalla Vs. State of Maharashtra (1965) 2 SCR 622.
- 3) Syad Akbar Vs State of Karnataka (1980) 1 SCC 30.
- 4) Jacob Mathew Vs State of Punjab (2005) 6 SCC 1.
- 5) Konan Kodio Ganstone Vs. State of Maharashtra 2020 SCC Online Bom 869.

- 6) Dilawar Babu Kurane Vs. State of Maharashtra (2002) 2 SCC 135.
- 7) Neelu Chopra Vs. Bharti (2009) 10 SCC 184.
- 8) Dr. Yaduvir Singh Vs. State of UP 2010 SCC Online All 2009.

9. As observed above, Mr. Atul Srivastava, learned Addl.P.P. for State/petitioner mainly relied upon the documents *viz.* copy of the passport, notice U/s. 14 (1) (A), acknowledgment of notice, undertaking to the notice and Questionnaire. These documents have been carefully perused. None of these documents show or indicates that the respondent was present or participated in the Markaz from 12.3.2020 to 31.03.2020. The notice U/s. 14 (1) (A) Cr.PC required the respondent to appear before the Investigating Officer on specific date, time and place. In the acknowledgment, it is mentioned that respondent has appeared before the Investigating Officer on a specific date, time and place. The undertaking is to the similar effect.

10. Much emphasize was laid by Mr. Atul Srivastava on the questionnaire and the answers given by the respondent to the questions put by the Investigating Officer. The main question appearing at Sl. No. 18 which is about the role of respondent in Tabliqi Jamaat. The respondent answered that he is a follower. The questionnaire is in the form of a disclosure statement of the respondent recorded during investigation. The disclosure statement is inadmissible in evidence in view of the provisions contained U/s. 25 of the Indian Evidence Act. Mr. Atul Srivastava submitted that new facts were discovered from the response of the respondent to the questionnaire which were not in the knowledge of the Investigating Officer and hence, the same is admissible U/s. 27 of Indian Evidence Act.

11. In Mehboob Ali (Supra), it was held and observed as under:

“Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by the accused Mehboob and Firoz. He was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the Police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in section 27 of the Evidence Act.”

12. In the present case, no vital information was extracted from the respondent which could form the basis for carving out an exception to the general provision about inadmissibility of confession made in police custody. No admission of any vital fact was made by the respondent in response to the questionnaire and hence, the reference to Section 58 of Indian Evidence Act is of no consequence.

13. The name of the respondent is also not found in the register of guests seized from Markaz premises. The register is a vital document seized in this case. The obvious conclusion is that the questionnaire relied upon so heavily by the petitioner is inadmissible in evidence.

14 Ms. Ashima Mandal, learned counsel for respondent was right

in submitting that notice U/s. 14 (1) (A) Cr.PC was given in May 2020 while the period of commission of alleged offence is 12.3.2020 to 31.03.2020. Therefore, the notice U/s. 14 (1) (A) Cr.PC and response thereto will not advance to the case of the prosecution. It is not the case of the prosecution that passport of the respondent was seized while he was inside the Markaz premises. The evidence collected during the investigation is wholly insufficient to frame the charge against the respondent.

15. Having considered the rival submissions, it is concluded that the impugned order dated 24.08.2020 is well reasoned order which does not call for any interference. The revision petition is devoid of merits and the same is dismissed.

Trial court record be sent back alongwith copy of this order.

Revision file be consigned to **Record Room**.

Announced in open Court
On 19.11.2020

(Sandeep Yadav)
ASJ-02/South East District
Saket Court/New Delhi.