

**IN THE COURT OF SH. SAMEER BAJPAI
ASJ-03, SHAHDARA, KARKARDOOMA COURTS
DELHI**

Criminal Revision No. : 118/22

State (NCT of Delhi)

..... Revisionist

versus

1. Ajay

S/o Sh. Mahender
R/o H. No. 182,
B-Block Gali No.6,
Shakti Garden, Delhi – 94

2. Gaurav Panchal

S/o Sh. Subhash Panchal
R/o H. No. E-4/72,
East Gokulpur, Delhi – 94

..... Respondents

J U D G M E N T

1. By this order the Court shall dispose of the Criminal Revision Petition as moved by the State u/s 397 Cr.P.C., against the order dated 14.07.2022 passed by Ld.MM-04, Shahdara, Karkardooma Courts, Delhi in the case FIR No. 88/2020, PS Jyoti Nagar, whereby the accused persons/respondents were discharged for the offences punishable u/s 147/148/149/427/435/323/188/34 IPC.

2. The charge sheet was filed against the accused persons/respondents, as after registration of FIR no. 88/2020 the investigating agency concluded that the accused persons participated in the communal riots as took place in Delhi in the year 2020. The accused persons allegedly committed the offences as mentioned hereinbefore.

3. After completing all the necessary formalities the Ld. Trial Court finally considered the matter for charge and discharged both the accused persons for the mentioned offences through the impugned order.

4. The State has challenged the order of the Ld. Trial Court on the following grounds :

4.1 The impugned order as passed by the Ld. Trial Court has been assailed both on the question of law and on facts. Ld. Trial Court failed to appreciate that at the time of charge no roving enquiry is required and only prima-facie evidence has to be seen. Further, meticulous examination of evidence is neither required nor the same is just. Further, the Ld. Trial Court failed to take into consideration that at the stage of framing of charge when two views are possible, one which favours the prosecution must be considered.

4.2 The Ld. Trial Court has failed to appreciate the totality of the facts and circumstances of the case and completely ignored the evidence on

record which prima-facie makes out a case under sections 427/435/323/188/34 IPC, in addition to the charges against the accused persons u/s 147/148 and 149 IPC.

4.3 The Ld. Trial Court failed to appreciate the fact that the accused persons were armed with iron rods and *Dandas* to attack the victims and the intention of the accused persons was to kill innocent persons by rioting and the law as laid down in *Maharashtra vs. Priya Sharan Maharaj (MANU/SC/1146/1997)* by the Hon'ble Supreme Court clarifies the position regarding the question of framing of charge/discharge.

4.4 In terms of *Niranjan Singh Punjabi vs. Jitender Bijaya* at the stage of section 227 and 228 Cr.P.C. i.e. consideration of charge, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom are taken at their face value, disclosing the existence of all the ingredients constituting the alleged offences. Further, the court may for this limited purpose, sift the evidence but it cannot be expected to accept at this stage, all that the prosecution story as gospel truth.

4.5 The discharge of the accused persons from all the offences is not correct and the ld. trial court has not appreciated the evidence collected during investigation in the right perspective. Further, the ld. trial court wrongly applied *Masalti and others vs. State of U.P. AIR 1965 SC 202* as the facts of the said case and the present case are different.

4.6 The ld. trial court failed to take into consideration that the sole eye-witness has at every point proved his testimony in an ideal manner and the point that he is inconsistent does not arise when he has clearly given an account of incident and identified the miscreants.

4.7 The ld. trial court failed to appreciate that both the accused persons had been arrested upon identification by the complainant and recovery of incriminating material has also been effected from them.

4.8 The delay in FIR was mainly due to the widespread protests in the area and consequent deterioration of law and order situation due to which the complainant was late in approaching the police. As such the delay in giving the complaint and registration of FIR does not affect the evidence in the case.

4.9 The ld. trial court opined that the statement of the complainant lacks details regarding the particulars of the persons in the mob who attacked him and the manner in which it was done and the weapons used, but the ld. trial court failed to appreciate that in a situation of riots the victim/complainant was scared when attacked and only when he regained full senses, he narrated the full incident to the I.O. in his supplementary statement dated 18.04.2020.

4.10 The ld. trial court erred in observing that the witness Mohd. Aslam, on whose statement the accused persons were arrested in FIR no. 60/20 PS Jyoti Nagar is a stock witness, as in a riot like situation, there may

be several witnesses of different incidents of rioting and it was quite natural for them to testify in different FIRs.

5. Ld. counsel for the respondents just submitted that the order of the Id. trial court is absolutely perfect and needs no interference. Further, on merits the case of the prosecution was very weak as the investigation was manipulative. Further, the FIR of the incident was registered very late and despite the fact that no case was made out, the police tried to join the irrelevant dots, which can be clearly seen if a plane reading of the charge sheet is made. Further, the falsity of the case can be seen from the very fact that the respondents have been made accused persons in at least 5-6 FIRs of same kind of incident, which was not possible. Further, for the purpose of resolving the cases, the police picked a few innocent persons and put all the cases on them and the actual culprits were left out.

6. The Court has gone through the record and heard arguments.

7. In terms of the relevant provision the revisional jurisdiction can be exercised by the Court so as to examine the correctness, legality and propriety of an order passed by the trial court and in doing so the Court must actually see if there is apparent error in the order, there is non-compliance of the provisions of law and the decision is completely erroneous and arbitrary. Further, a revisional Court is not supposed to reverse the order of a trial

Court unless there is a patent defect or an error of jurisdiction or of law. Further, if the view as taken by the trial Court is also a possible view, while dealing the case in a revisional jurisdiction, a Court should not take any other view. Further, another norm which a revisional Court must keep in mind is that the jurisdiction of the higher Court is a very limited one and cannot be exercised in a routine manner but can be exercised only when there is patent illegality in the order.

8. Now, this Court must consider as to how the Id. trial Court concluded that no case is made out against the accused persons and they deserved discharge.

9. The Ld. Trial court first noted that the incident allegedly happened on 25.02.2020 and the information was given by the complainant to the police on 03.03.2020 and accordingly the FIR was registered on this date. It would be appropriate to reproduce the relevant portion of the observation of the Ld. Trial court as under:

“It seems that the nature of difficulty in recording information has been left to the presumption of this court, as neither the complainant in his first statement to the police on 03.03.2020, nor the police in the FIR registered on the same date, have explained as to what actually prevented the FIR from being registered till 03.03.2020, and if the reason to be given is shortage of staff due to them being involved in law and order arrangements, the same does not hold good, firstly, because the same itself not being tenable in the eyes of law, within the meaning of Section 154 Cr.P.C putting a

mandatory duty, without exception, upon the police to record such an information, and secondly, even if such was the case, because there is no police officer deployed on law and order duty on the particular day of incident, whose statement has been recorded pertaining to the offence alleged, to which this court shall advert again in the later part of this order, after discussing other aspects of the charge-sheet.”

9.1 The Ld. Trial court further doubted that the injuries to the complainant were caused due to the commission of the alleged offences. The Ld. Trial Court noted that the general diary entry no.106A dated 25.02.2020 does not mention the name of the person, who had been injured and admitted at the GTB Hospital. Further, the MLC dated 25.02.2020 mentions the injured to be Mohd. Ishaq S/o Mohd. Hanis R/o Maharajpur, Uttar Pradesh, whereas the complaint to the police dated 03.03.2020 has been made by Mohd. Tisam S/o Mohd. Anish R/o E-84/114, Rajeev Gandhi Camp, Chitra Vihar, Preet Vihar, Shakarpur, East Delhi. The Ld. Trial Court noted that although the complainant has mentioned in his initial statement itself that his name was inadvertently mentioned as Mohd. Ishaq in the MLC, but there is no explanation at all regarding the difference in details of parentage and residence. The Ld. Trial Court further noted that in the MLC, the doctors mentioned that the final opinion could not be given as the injured/complainant absconded from the hospital and when the investigating officer issued a notice u/s. 91 Cr.P.C to the complainant to provide his further treatment paper from another hospital to which he went, the injured/complainant never reverted and never supplied the medical documents.

Considering this fact, the Ld. Trial Court observed that under these circumstances the medical evidence against the accused, even seen at its face value cannot be said to be of an unimpeachable character.

9.2 The Ld. Trial Court further noted that no attempt has been made by the police to find out as to which beat officials were present or were deputed to the scene of occurrence after receiving the PCR call and further no attempt was made to gather any other witness and further no photographer/ videographer had been deputed by the police to the scene of occurrence when the allegation is that the situation was chaotic and due to the said situation, the registration of the FIR got delayed. Ld. Trial Court further noted that no notice u/s. 91 Cr.P.C was issued to the concerned Executive Engineer of the Public Works Department to obtain the CCTV footage from any public camera near Wazirabad road or Meet Nagar Flyover, or to the owners of any nearby shops or establishments. In this regard, the Ld. Trial Court observed that the police seemed to expect the court to believe its bald statement that no CCTV footage pertaining to the incident could be found.

9.3 Regarding the lapses as done by the police in collecting the evidence, including the CCTV footages and giving notices to the relevant witnesses, the Ld. Trial Court further observed that such actions on the part of the police had the effect of letting away the real culprits and carrying out only a semblance of investigation by finding easy scapegoats to pacify the

victims.

9.4 The Ld. Trial court further noted that the police seemed to have concentrated more on obtaining disclosure statements, without trying a hand at the logical and objective methods of investigation. The Ld. Trial court further noted that the police collected better evidence in other cases but failed to collect the same in the case in hand.

9.5 The Ld. Trial Court, analyzing the statement of the complainant as recorded on 30.03.2020, noted that the complainant merely alleged in the said statement that upon stone pelting by the mob, he abandoned his vehicle and started to run away but the mob had hit him, due to which he got injured and was taken by a police van to the GTB Hospital where his MLC was prepared and after preliminary treatment, he returned back to the spot of occurrence only to see that his vehicle got burnt. The Ld. Trial court observed that this statement did not have any detail regarding the identification of the persons in the mob, who had attacked him and the manner in which or the object and the weapon by which he received injury. The Ld. Trial Court further noted that as per the said statement of the complainant, his vehicle was found to be burnt when he returned back from the hospital to the spot of occurrence and therefore clearly his vehicle was not burnt in his presence. The Ld. Trial Court observed that on 03.03.2020 itself the investigating officer recorded a supplementary statement of the complainant, wherein the complainant had stated that he could identify the

accused persons who had put his vehicle on fire. Further, the statement included a generic and vague description of the assailants as being young persons of 20-25 years of age. Ld. Trial court observed that the true statement of the complainant recorded on the same date were full of contradictions, improvements and logical probabilities.

9.6 Ld. Trial Court further noted the manner in which the accused persons were identified in the present case and it would be appropriate to reproduce the relevant portion of the order of the Ld. Trial Court as under :

“Again on 18.04.2020, the accused persons had allegedly been arrested by HC Raj Kumar, posted at the same police station, in a different FIR, and had been brought to the police station, whereupon, the complainant, who surprisingly was present in the police station to enquire about the progress of his case on that very date and time, without being called by the investigating officer, saw both the accused persons sitting in the office of the investigating officer and immediately identified them, to the utter convenience of the investigating officer basing his investigation on such coincidence, and his statement regarding the identification of the accused persons was recorded, leading to their immediate arrest. Therefore, under the subterfuge of this coincidence and unexplained chance identification, the investigating officer seems to have deliberately avoided collection of more credible evidence by moving an application for test identification parade of the accused persons. It is also not convincing as to how could the complainant identify the accused persons after a gap of around two months between the date of incident and the date of chance identification at police station, considering firstly, the general nature of description given by him in his supplementary statement recorded on 03.03.2020 and secondly, the fact that he would have had little opportunity to identify them as a part of the mob which attacked him, without attributing such specific role to them, as got so permanently and irrevocably etched in his memory.”

9.7 Ld. Trial Court further noted that the statement of Ct. Sonu as recorded u/s. 161 Cr.P.C on 18.04.2020 cannot be considered with regard to the memo of the spot identification by the accused persons, while being in custody of the police as this witness only stated regarding the events of some other incident at Jyoti Nagar police station. Further, this witness gave statement only with regard to the identification of the accused persons by the complainant, recording the disclosure statement of the accused persons and arrest of accused persons in his presence. Now, it would be again appropriate to reproduce the relevant portion of the order of the Ld. Trial Court, which as under :

“Coming to the statements of other witnesses, whose statements under section 161 Cr.P.C. have been recorded by the investigating agency, Ct. Sonu is alleged to have given his statement on 18.04.2020 before the IO, but a bare perusal of the statement reveals that he has been only a witness to the events at the Jyoti Nagar Police station on the aforesaid date i.e. identification of accused persons by the complainant, recording of disclosure statement and arrest in his presence, and to the proceedings of identification of spot of occurrence by the accused persons. He is clearly not an eye witness to the incident regarding the commission of the alleged riotous activity and consequent offences, and can never testify about the identification and role of the rioters in the commission of the alleged offences. Needless to state, the "Fard Nishandehi Mauka-e-vardat" or the identification memo of the spot of occurrence by the

accused persons, while being in the custody of the police, completely lacks any legal backing, and in the absence of certain physicality being attached to a discovered fact, the same cannot be said to fall within the purview of Section 27 of the Evidence Act. It is, infact, a colourable exercise of powers to attempt to make a confessional statement while being in police custody, relevant and admissible under section 27, which is clearly hit by the bar imposed by section 25 and 26 of the Evidence Act, upon confessions to police and in police custody. Moreover, if the accused persons were ready to confess to the offences alleged, it has not been specified as to what prevented the investigating officer from moving an application u/s 164 Cr.P.C. for recording of the same by Ld. Metropolitan Magistrate. Similarly, the statement of Head Constable Raj Kumar, who was involved in the investigation of FIR no. 60/20 PS Jyoti Nagar, had been recorded by the investigating officer in the present case as well, in which he had stated that one Mohd. Aslam met him near Meet Nagar Flyover, and informed that two persons "who were involved in the riots of 25.02.2022" are sitting in bushes near the railway line beneath the Meet Nagar Flyover, and upon this information, dripping with the generality and casualness, the investigating officer proceeded to arrest both the accused persons, recorded their disclosure statements wherein they stated that they can get the weapons of offences, i.e. a danda and an iron pipe recovered, and upon this disclosure, again very conveniently, the investigating officer recovered both the aforesaid articles from the very place of arrest, which also was an open space,

not hidden from the public and not within the possession of the accused persons, as is visible from the comparison of their disclosure statements in the FIR no. 60/20 PS Jyoti Nagar, with the statement of HC Raj Kumar in the present case. A perusal of the initial complaint of the complainant police shall also reveal that the place of incident, the place arrest after around two months, and the place of the alleged recovery of the incriminating material is roughly the same, speaks volumes about the manner in which the present investigation has been conducted by the police. It is also clear that even HC Raj Kumar is not an eye witness to the commission of the alleged offences, and the person by the name of Mohd. Aslam, upon whose information he allegedly acted, has not been cited in the list of prosecution witnesses.”

9.8 Thereafter, giving reference of the cases i.e. **Busi Koteshwara Rao & Ors. versus State of Andhra Pradesh (2012 12 SCC 7 11)**, **Masalti versus State of Uttar Pradesh (AIR 1965 SC 202)** and **Inder Singh versus State of Rajasthan (2015 2 SCC 730)** Ld. Trial Court opined that the nature of injuries should be substantiated by the testimony of the witnesses and further, the identity of the accused persons should be confirmed by two or three or more witnesses.

9.9 Giving the said observations the Ld. Trial Court opined that when there appears no reasonable possibility of conviction, it shall be unfair to the accused persons and shall also amount to a wastage of judicial time

and resources, if the accused persons are compelled to face trial and the Ld. Trial Court discharged the accused persons.

10. Now, the question is if the impugned order is liable to be set aside for the reason that the same is patently illegal.

11. The impugned order shows that while discussing the case, the Ld. Trial Court has given many observations and this Court has to see if those observations are correct.

12. Regarding the lapses in the prosecution case, the Ld. Trial Court first correctly observed that after the alleged incident on 25.02.2020, the registration of the FIR got delayed and the FIR was registered on 03.03.2020 only and there was no explanation anywhere on record about the delay. The Ld. Trial Court was correct in observing that the reason of delay i.e. the chaotic situation due to widespread protests, was left to the presumption of the Court, whereas, a reasonable explanation about the delay should have been there on record.

12.1 The observation of the Ld. Trial Court regarding the injuries of the complainant that the injuries were not apparently due to the alleged offence is also reasonable. On this aspect the Ld. Trial Court correctly pointed out that the General Diary Entry No. 106A dated 25.02.2020 does not mention the name of the injured person who was admitted at the GTB

Hospital and the MLC mentions the name of the injured as Mohd. Ishaq S/o Mohd. Hanees, whereas, the complaint to the police dated 03.03.2020 was given by one Mohd. Tisam S/o Mohd. Anish. Ld. Trial Court further correctly noted that although in his initial statement the complainant stated that his name was inadvertently mentioned as Mohd. Ishaq in the MLC, but there was no explanation regarding the details of parentage and residence. The Ld. Trial Court further correctly observed that the MLC shows that the injured/complainant absconded from the Hospital and even on giving notice u/s 91 Cr.P.C., the complainant failed to provide the treatment papers from another Hospital and as such the injuries to the complainant cannot be attributed to the alleged act of the accused persons.

12.2 The Ld. Trial Court was further correct in observing that the police did not make any effort to find out as to which officer was already present or deputed at the scene of occurrence after receiving the PCR calls and further no attempt was made to find any witness and further no photographer or videographer had been deputed by the police to capture the scene of occurrence. On this aspect the observation of the Ld. Trial Court is further correct that no attempt was made by the police by way of giving a notice u/s 91 Cr.P.C. to the Executive Engineer or Public Works Department, in order to obtain CCTV footage from any public camera near Wazirabad road or Meet Nagar flyover, or even to the owners of the nearby shops and as such the story of police was not believable that no CCTV footage

pertaining to the incident could be found. The Ld. Trial Court then again rightly observed that such actions of the police, i.e. not collecting material evidence through CCTV footage etc. had the effect of letting away the real culprits. The Ld. Trial Court then again correctly observed that the police seemed to have concentrated more on obtaining disclosure statements without trying a hand at the logical and objective methods of investigation. Very very importantly the Ld. Trial Court observed that any of the discussed circumstances individually may not entitled the accused persons for discharge, but when taken cumulatively, it was difficult to believe the prosecution material on its face value.

12.3 Regarding the veracity of the statement of the complainant as recorded on 03.03.2020, the Ld. Trial Court correctly observed that the statement did not have details about the identification of the accused persons and further the manner in which the injury was caused to the complainant and further, if any weapon etc. was used. Ld. Trial Court further correctly observed that even the vehicle was not put on fire in the presence of the complainant as he himself stated in his statement that when he came back he found that his vehicle had been burnt.

12.4 It is also correctly observed by the Ld. Trial Court that on one hand, in his statement as recorded u/s 161 Cr.P.C. on 03.03.2020, the complainant gave only a general description of the rioters stating that they were about 20-25 years of age, but on the other hand, he also stated that he

could identify the accused persons if they come before him in future.

12.5 With regard to the complaint dated 03.03.2020 and the statement as recorded u/s 161 Cr.P.C. on the same date, Ld. Trial Court missed one thing that at the end of the complaint, the complainant says that the rioters were not known (Namaloom), whereas, in the statement as recorded u/s 161 Cr.P.C. the complainant stated that he could identify the rioters who were 20-25 years of age. So, this is also a major contradiction in the two statements of the complainant and creates doubt in the story of the prosecution. The Court observes that these kind of contradictions would come only when the manipulations are done and the case is cooked up.

12.6 Another important aspect which the Ld. Trial Court discussed is the manner in which the accused persons were identified by the complainant. As per the story of the prosecution, the accused persons were identified by the complainant on 18.04.2020, when after being arrested in some other case, they were by chance present in the police station and the Ld. Trial Court doubted the chance identification of the accused persons. In this regard the observation of the Ld. Trial Court was absolutely correct that the complainant could not identify the accused persons after a gap of around two months specially when he gave only a general description of the accused persons, to be the young persons of 20-25 years of age and further, the complainant would have only a little opportunity to identify them as a part of the mob, without attributing any specific role to them. This Court has

already observed that in the complaint, according to the complainant the rioters were not known, whereas, in his statement as recorded u/s 161 Cr.P.C., he stated that he could identify the rioters and then all of a sudden he identified them in the police station when the accused persons were sitting there after being arrested in some other case. This Court also observes that the manner in which the accused persons were identified by the complainant, makes the story of the police doubtful. Further, this kind of identification has not been done in the present case only but in many cases of riots.

12.7 Another important observation of the Ld. Trial Court is regarding the recovery of the articles at the instance of the accused persons. Ld. Trial Court correctly observed that the recovery of the articles i.e. a Danda and an iron pipe would not fall within the purview of Section 27 of The Indian Evidence Act and clearly hit by the bar as imposed by Section 25 and 26 of the Act. It is observed that the police did not take even the police remand of the accused persons in order to recover the alleged weapons i.e. Danda and iron rod and immediately after their arrest, judicial custody of the accused persons were obtained.

13. This Court completely agrees with the observations of the Ld. Trial Court that if observed cumulatively, it is difficult to believe the prosecution material at its face value. The Court would like to add here that the well settled principle of law is, that while considering charge against an accused

person, there has to be not only suspicion but a grave suspicion against him, but in the case in hand the suspicion or grave suspicion is infact not on the accused but against the story of the police.

14. Keeping in view the above discussion, it is held that the findings of the Ld. Trial Court are absolutely perfect and this Court sees no material on the basis of which the findings can be reversed.

15. Accordingly, the revision petition as filed by the State is dismissed.

16. File be consigned to Record Room.

Announced in the Open Court
Today i.e. on 25th March, 2026

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Delhi : 25.03.2026