

**IN THE COURT OF SH. ARUN KUMAR GARG
CHIEF METROPOLITAN MAGISTRATE
(NORTH-EAST), KARKARDOOMA COURTS, DELHI**

IN THE MATTER OF :

CNR No. DLNE02-001529-2015

State Vs. Mohd. Tahir Hussain

FIR No. 52/2015 PS Karawal Nagar

U/s. 3 of The Delhi Prevention of Defacement of Property Act, 2007

Cr. Case No. 463885/2015

Date of Institution : 23.10.2015

Date of reserving the judgment : 30.03.2022

Date of pronouncement of judgment : 13.04.2022

JUDGMENT

1. Serial No. of the case : 463885/2015
2. Name of the Complainant : HC Balbir Singh,
No. 1964/NE
PIS No. 28950724
PS Karawal Nagar
3. Date of commission of offence : 14.01.2015
4. Name of accused person : Mohd. Tahir Hussain
S/o. Sh. Kallan Saifi
R/o. H. No. E-7, Main
Karawal Nagar Road,
Khajuri Khas, Delhi-
110094
5. Offence charged : U/s. 3 of The Delhi
Prevention of Defacement

of Property Act, 2007
6. Plea of accused : Not guilty
7. Final Order : Acquitted

BRIEF REASONS FOR ORDER:

1. The accused in present case has been sent for trial for the offence under Section 3 of the Delhi Prevention of Defacement of Property Act, 2007 (herein after referred to as the DPDP Act). Brief facts of the case as per chargesheet are that on 14.01.2015 at about 06.40 PM, HC Balbir Singh from PS Karawal Nagar, while on patrolling duty alongwith Ct. Krishan Kumar, reached in front of Shri Goverdhan Dharam Kanta, A-217, Loni Road, Karawal Nagar, Delhi-94 and found one plastic like paper Board of Aam Adami Party of the size 3 feet x 2 feet, hanging on an electricity pole no. KWNX895 of BSES with the writing “*Aap Sabhi ko Nav Varsh Ki Mubarakbad. Dilli ne pukara Kejriwal Dubara; Mohd. Tahir Hussain-Karyakarta Aam Adami Party Mustafabad Vidhansabha; 5 saal kejriwal*” in Hindi and with photographs of chunav chinha Jharoo, accused Mohd. Tahir Hussain and Kejriwal ji thereon. Thereafter, IO had got the photographs of the above said board taken through a private photographer and had seized the same and since, as per the IO, accused

has defaced the electricity pole by affixing the said board for publicity of his party being Aam Adami Party worker, he has committed the offence in terms of Section 3(1) of the DPDP Act.

2. After conclusion of the investigation, chargesheet was filed by IO HC Balbir Singh against the present accused on 23.10.2015. Cognizance of the offence was thereafter taken by Ld. Predecessor of this Court vide order dated 19.10.2019 and accused was summoned. Since the accused was in JC in some other case, he was produced before this Court from the Jail on 26.02.2021 and after compliance with the provisions of Section 207 Cr.P.C, notice for the offence under Section 3 of DPDP Act, in terms of Section 251 Cr.P.C, was served upon the accused on 24.03.2021, to which the accused did not plead guilty and claimed trial.

3. The prosecution has thereafter examined two witnesses in support of its case. The first informant/IO ASI Balbir Singh, has been examined as PW-1 and he has proved the tehrir Ex. PW-1/A, the seizure memo Ex. PW-1/B in respect of the board Ex. P-3, Arrest memo of the accused Ex. PW-1/C, Personal Search memo of the accused Ex. PW-1/D, site plan Ex. PW-1/E, photographs Ex. P-1 and

P-2 of the board Ex. P-3 and the board Ex. P-3.

4. HC Krishan Kumar, who was on patrolling duty with IO ASI Balbir (then HC Balbir), on the given date when the board was seized and had got the FIR registered on the basis of tehrir Ex. PW-1/A, has been examined as PW-2, who has proved the seizure memo Ex. PW-1/B in respect of the board Ex. P-3 and has also identified the board Ex. P-3.

5. PW-1 and PW-2 were duly cross-examined by Ld. Counsel for accused. Since, the accused has admitted the FIR alongwith certificate u/s 65-B of Evidence Act, in support thereof, Ex. A-1(Colly) in terms of Section 294 Cr.P.C., on the submissions of Ld. APP for the State, PE was closed vide order dated 02.03.2022.

6. Statement of accused under Section 313 read with Section 281 Cr.P.C was recorded on 30.03.2022, after putting entire incriminating evidence against him. The accused has denied all allegations against him. Accused chose not to lead any evidence in his defence and hence, at joint request, final arguments were heard on behalf of both the parties on the same day.

7. It is submitted by Ld. APP for State that the prosecution has

been able to prove its case against the accused beyond reasonable doubts on the basis of uncontroverted testimonies of PW-1 and PW-2. He submits that the accused has failed to impute any motive to the prosecution witnesses for his false implication, nor, according to him, the accused has led any evidence in his defence to disprove the case of prosecution. He has thus prayed for conviction of the accused for the offence u/s 3 of the DPDP Act, 2007.

8. On the other hand, it is submitted by Ld. counsel for accused that not even an *iota* of evidence has been led by the prosecution in support of charge under Section 3 of the DPDP Act, 2007, in as much as, none of the witnesses examined by the prosecution has deposed that the board in question was installed either by the accused or at his instance. It was only during their cross-examination, according to Ld. Counsel for accused, that the witnesses have improvised their testimonies by deposing that they had made enquiries from the public persons about the person who had installed the said board on the pole and they had named the accused, however, the names of aforesaid public persons have not been disclosed by the witnesses, nor they have been cited as prosecution witnesses. He further submits that merely

because the name and photograph of accused was printed on the board in question does not mean that it is the accused who had got the aforesaid board prepared/installed at the spot.

9. Even otherwise, according to him, the board Ex. P-3 does not fall within the definition of defacement in terms of Section 3 of the DPDP Act in view of the authoritative pronouncement of Hon'ble Delhi High Court in *T.S.Marwah & Ors. v. State 2008(4) JCC 2561 (Del)*. Ld. Counsel for accused has thus prayed for acquittal of the accused from the aforesaid charge.

10. I have heard the submissions on behalf of both the parties and have also carefully perused the material available on record.

11. It is significant to note that accused in the present case has been charged with the offence under Section 3 of The Delhi Prevention of Defacement of Property Act, 2007, which provides penalty for defacement of any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property. Section 3 (2) of the Act further renders the beneficiary of the

act guilty of such offence unless he proves that the offence was committed without his knowledge or consent.

12. The term 'defacement' has been defined under Section 2(a) of the aforesaid Act, which includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in any other way whatsoever, whereas, the term 'writing' has been defined in Section 2(d) of the Act, which includes printing, painting, decoration, lettering, ornamentation etc., produced by stencil. The term 'property' has been defined in Section 2(c) of the Act, so as to include any building, hut, structure, wall, tree, fence, post, pole or any other erection.

13. In view of the aforesaid provisions, before an accused is convicted for the offence under Section 3 (1) of DPDP Act, the prosecution is required to prove following facts beyond reasonable doubts:-

(1) That the accused has defaced any property by writing or marking with ink, chalk, paint or any other material.

(2) That the said property is situated in a public view.

(3) That the writing or marking on the property in a public view was

not for indicating the name and address of the owner and occupier of the said property.

14. In order to secure conviction of the accused for the offence under Section 3(2) of the Act, the prosecution was required to prove that the offence as per Section 3(1) of the Act had been committed for the benefit of the accused.

15. In the case in hand, there are no allegations in the entire chargesheet that the board/hoarding Ex. P-3 had been installed at the pole in question for the benefit of the accused and that is the reason no notice for the offence under Section 3 (2) of DPDP Act was served upon the accused.

16. The only allegation against the accused, as per chargesheet and the notice dated 24.03.2021 in terms of Section 251 Cr.P.C., is that the board had been installed on the pole in question by the accused with his photo printed thereon and hence, the accused has committed the offence under Section 3 of DPDP Act. As has been alleged by Ld. Counsel for accused, there is not even an *iota* of evidence led by the prosecution to prove that the board/hoarding Ex. P-3 was either installed by the accused herein or that the same was installed at his

instance or for his benefit.

17. In fact, the IO has failed to point out in the chargesheet as to how he had pinned down at the name of accused as the installer of the Board Ex. P-3, in as much as, he has neither recorded the statement of residents of the locality where the board in question was found affixed by the police, nor has he recorded the statement of the printer.

18. None of the witnesses examined by the prosecution in its evidence has even deposed that the board in question was either hanged on the pole by the accused or that the same was installed at his instance or for his benefit. It was only during their cross-examination by Ld. Counsel for the accused that they have deposed that they made enquiries from some public persons about the name of the person who had installed the said board and they named the accused herein. However, upon further questioning, PW-1 and PW-2 could not tell the names and addresses of the said public persons, nor the said persons have been cited or produced as witnesses in the present case. Thus, the aforesaid statements of PW-1 and PW-2 during their cross-examination are clearly improvements which have not been corroborated by any other evidence.

19. Thus, in the absence of any proof as to the installation of the alleged board by or at the behest of the accused, much less, the proof beyond reasonable doubts qua the said fact, there is no question of the accused being guilty for the offence of defacement of the property within the meaning of Section 3 of DPDP Act.

20. In view of the aforesaid finding, the question as to whether the act of hanging of banner board in question falls within the purview of Section 3 of DPDP Act, 2007 or not, has become academic and hence not required to be dealt with at this stage. However, since the said judgment has been referred to by Ld. Counsel for accused during his arguments, with utmost respect to Hon'ble Delhi High Court, it may be noted that the issue before Hon'ble Delhi High Court in ***T.S.Marwah & Ors. v. State 2008(4) JCC 2561 (Del)*** i.e. the judgment relied upon by Ld. Counsel for the accused was regarding the interpretation of provisions of West Bengal Prevention of Defacement of Property Act, 1976 as applicable to Delhi during the relevant period and not with the provisions of DPDP Act, 2007. Although Section 3 of both the Acts are in *pari materia*, however, definitions of term “writing” in the two Acts are entirely different, in as much as, in the DPDP Act “writing”

inter-alia includes printing and painting, whereas, it was not so in West Bengal Act.

21. In view of the aforesaid discussions, accused is entitled to be acquitted and is hereby acquitted of the charge u/s 3 of the DPDP Act.

22. Bail Bonds in terms of Section 437-A Cr.P.C. have been furnished by the accused today and the same shall remain in force for a period of six months from today.

23. Ordered accordingly.

Pronounced in open court on this 13th day of April, 2022.

This judgment consists of 11 signed pages.

ARUN
KUMAR
GARG

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ARUN KUMAR GARG
Date: 2022.04.13
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(ARUN KUMAR GARG)

Chief Metropolitan Magistrate

North East, Karkardooma Courts: Delhi