

**IN THE COURT OF SH. VAIBHAV MEHTA,
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE-03,
ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

State v/s Rajender Pal Gautam & Ors.

FIR No. 134/2020

PS: I. P. Estate

U/s. 188/34 IPC

JUDGMENT

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|---|---------------------------------|---|
| 1 | Serial No. of the case | : 66/2021 |
| 2 | CNR No. of the case | : DL CT 12-000070-2021 |
| 3 | Date of commission | : 01.07.2020 |
| 4 | Date of institution of the case | : 01.07.2021 |
| 5 | Name of complainant | : SI Yogender Kumar |
| 6 | Name of accused person (s) | : 1. Rajender Pal Gautam S/o
Late Sh. Dalip Singh |

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2. Aman Nath Rajpoot S/o
Late Sh. Devi Ram

3. Adil Ahmad Khan S/o Sh.
Zamil Ahmad Khan

4. Durgesh Pathak S/o Sh.

Mathura Prasad

5. Raju Dhingan S/o. Late
Sh. Kirni

6. Mandeep Singh S/o. Sh. J.
P. Singh

7. Babu Lal Sarkaniya S/o.
Late Sh. Narayan Singh

8. Deepak Jain S/o. Sh.
Rajender Jain

9. Mohd. Asad S/o. Late Sh.
Abdul Barsey

10. Vakar Khan S/o Sh.
Gaffar Khan

11. Subhash Kheralia S/o.
Sh. Shiv Pal

12. Parveen Mudgal S/o. Sh.
Banwari Lal Sharma

13. Gajender Singh S/o. Sh.
Shyam Singh

14. Dilbagh Singh S/o. Sh.
Balwant Singh

15. Vinod Kumar S/o. Sh.

Shriram Kumar

16. Sanjay Kumar S/o. Sh.
Ram Kumar

17. Vijay Kanaujia S/o. Lt.
Sh. Ram Kanaujia

18. Satish Kumar S/o. Sh.
Sarbjee Shah

19. Ramesh Kumar S/o. Sh.
Ramji Prasad

20. Rohit Kumar S/o. Sh.
Davender Singh

21. Ranjeet Mandal S/o. Sh.
Prakash Mandal

22. Keshav Nandan S/o. Late
Sh. Vidya Lal

23. Anil Kumar Rajput S/o.
Sh. Bharat Singh

24. Krishan Pal S/o. Sh.
Murli

25. Hasiv Ul Hasan S/o. Sh.
Nafis Ul Hasan

26. Adarsh Tiwari S/o. Sh.
Sanjay Tiwari

27. Sagar Babbar S/o. Sh.

Manohar Lal Babbar

28. F. Ismailee S/o. Sh. F. Asattar

29. Mahendra Kaushik S/o Late Sh. Partama Sharma

30. Meenakshi w/o Sh. Narender Kumar

31. Ekta Jain W/o Late Sh. Ravi Jain

32. Nirmala Kumari W/o Sh. Sanjay Kumar

33. Rekha Goyal d/o Sh. Anil Goyal

34. Sanju Jain W/o Sh. Anil Jain

35. Afroza W/o Sh. Firoz Khan

36. Sandhya Panwar W/o Late Sh. Bhagwan Singh Panwar

37. Savita W/o Late Sh. Kamaljeet

38. Sonia W/o Sh. Balram

7 State represented by

: Sh. Lalit Pingolia, Ld. APP

8	Offence complained of	: U/s. 188/34 IPC
9	Plea of accused	: Pleaded not guilty
10	Arguments heard on	: 04.11.2022
11	Final order	: Acquitted
12	Date of judgment	: 25.11.2022

BRIEF FACTS AND REASONS FOR DECISION

1. The brief facts of the case of prosecution are that on 01.07.2020, at about 11.45 AM, near Rouse Avenue School, DDU Marg, New Delhi, all accused persons with common intention gathered for protesting in view of rising prices of petrol and diesel and started sloganeering despite the fact that police officials including the concerned SHO and ACP explained to accused persons that on account of spread of COVID-19 pandemic, such kind of gathering, protest, rally was not allowed and even the then ACP announced through loud speaker that section 144 Cr.P.C. was in force in entire Delhi and such a gathering was not allowed, however, accused persons did not understand and continued sloganeering and thereby, disobeyed the Order under section 144 Cr.P.C, bearing number 6390-6460/ACP/Kamla Market dated 01.07.2020 of the then ACP, Sub-Division, Kamla Market, Delhi, whereby such gathering and large congregations was prohibited. Thereafter, the present FIR got registered against accused persons

for offence U/s. 188/34 IPC.

NOTICE

2. Prima facie case of commission of offences under Section 188/34 IPC was made out against all accused persons and notice u/s 251 Cr.P.C was framed upon all the accused persons on 15.03.2022 wherein they pleaded not guilty and claimed trial.

EVIDENCE LED BY THE PROSECUTION

3. The prosecution has examined 06 witnesses.

PROSECUTION WITNESS

PW1	ASI Vinod Kumar	Duty Officer
PW2	SI Yogendra Kumar	Complainant and 1 st IO of the case
PW3	HC Amit Kumar	Assisted the IO
PW4	Kumar Abhishek	Proved complaint u/s 195 Cr.PC
PW5	SI Bijender Singh	2 nd IO of the case
PW6	Retd. ACP Anil Kumar	Proved order of prohibition u/s 144 Cr.P.C Vide no. 6390-6460-ACP/KM dated 01.07.2020

4. **Prosecution has relied upon the following documents:-**

Exhibited by	Contents	Exhibits
PW1	Endorsement on Rukka	PW1/A
	FIR	PW 1/B
PW2	Certificate u/s 65A of IEA Rukka	PW1/C PW2/A
	Notice u/s 41A Cr.PC	PW 2/1 to PW2/38
	Pabandinama	PW2/1A to PW2/38A
PW4	Complaint u/s 195 Cr.PC	PW 4/A
PW6	Order of prohibition u/s 144 Cr.P.C Vide no. 6390-6460- ACP/KM dated 01.07.2020	PW 6/A

5. **PW-1 ASI Vinod Kumar** deposed that on 01.07.2020, he received a rukka from HC Amit and he made endorsement on rukka and proved the same as Ex. PW1/A and on the basis of rukka, he registered the FIR and also proved the same as Ex. PW1/B and after the registration of FIR, he handed over the copy of FIR and original rukka to HC Amit and also issued the certificate u/s 65B of IEA and proved the same as Ex. PW1/C.

6. **PW-2 SI Yogendra Kumar** deposed that on 01.07.2020 at

around 11:45 AM, he received information from the public persons that some volunteers of Aam Aadmi Party (AAP) were going to protest against the price rise of petrol and diesel and PW2 was also informed that Aam Aadmi Party volunteers were going to gather at Aam Aadmi Party Office, DDU Marg and from there they will march towards the Bhartiya Janta Party (BJP) Office. PW2 SI Yogender Kumar stated that he conveyed this information to the SHO of I.P. Estate and ACP Kamla Market and other police staff and authorities. Thereafter, police staff including PW2 assembled near Rouse Avenue School near about 200 meters away from the BJP office and put barricades on both side of the DDU Marg and thereafter, 5-7 minutes later, Delhi Government Minister Rajender Pal Gautam along with some supporters reached near Rouse Avenue School, where barricades were placed and they were trying to march towards the BJP Office. PW2 stated that the protesters including accused persons were stopped by the police and the then ACP Anil Kumar briefed them that Section 144 Cr.PC is imposed in Delhi and due to pandemic of Covid-19, such gathering was not allowed, but the crowd did not listen and continued sloganeering against the price rise of petrol and diesel.

PW-2 SI Yogendra Kumar further deposed that on the instructions of the senior police officers, he alongwith HC Amit and other police staff stopped the protesters and detained them and noted down the names of the protesters who were present at the spot and thereafter, the protesters, who were detained, were taken to the

police station Rajender Nagar in a bus. PW2 stated that he prepared the rukka as Ex. PW-2/A and the same was handed over to HC Amit for registration of FIR and after about one and a half hour, HC Amit came back at the spot and handed over to him the original rukka and the copy of FIR. PW2 further deposed that he alongwith HC Amit reached at PS Rajender Nagar and interrogated the persons who were detained in this case at PS Rajender Nagar and served notice u/s 41A Cr.PC to accused persons which are Ex. PW-2/1 to Ex.PW2/38 and also filled the “Pabandi Nama” of the detained accused persons which are Ex. PW2/1A to PW-2/38A. PW2 further deposed that he alongwith HC Amit went to police station I.P. Estate and got his statement u/s 161 Cr.PC recorded. PW2 further stated that out of the 53 persons detained, only 38 reached at the PS and he made efforts to trace remaining 15 persons but to no avail.

7. **PW-3 HC Amit Kumar** deposed on similar lines as PW2 SI Yogender Kumar.
8. **PW-4 ACP Kumar Abhishek** deposed that at the request of IO, he gave the complaint u/s 195 Cr.PC and proved the same as Ex. PW4/A.
9. **PW-5 SI Bijender Singh** deposed that the further investigation of the present case was marked to him by the concerned SHO and he inspected the file and obtained the

complaint u/s 195 Cr.PC from ACP Kamla Market and prepared the charge-sheet and submitted the same before the concerned court.

10. **PW-6 Retd. ACP Anil Kumar** deposed that on 01.07.2020, he issued an order of prohibition u/s 144 Cr.P.C Vide no. 6390-6460-ACP/KM dated 01.07.2020 restricting the free movement of public keeping in view the lockdown due of Covid-19 epidemic announced by Government of India and this notification was given wide publicity by sending copy of this notification to 27 departments and the direction was given to these 27 departments to affix the abovesaid notification on their respective notice boards. Also, the information regarding the notification was transmitted to the public via Doordarshan. PW6 further stated that the copy of this notification was also sent to the Information and Broadcasting Ministry as well as the Delhi Government to be circulated amongst the media and the PRO of Delhi Police had also shared this notification with the media and the copy of this notification was also sent to all the MCD, NDMC, DDA, PWD and Delhi Contentment Board for compliance. PW6 proved the abovesaid order as Ex. PW-6/A.

11. Thereafter, PE was closed on **14.07.2022**.

EXAMINATION OF ACCUSED U/S 313 Cr.P.C.

12. Statement of accused persons u/s 313 Cr. P.C were recorded separately on 27.07.2022, 16.08.2022 and 27.08.2022 respectively, wherein accused persons *inter alia* stated that this is a false and frivolous case against them due to political rivalry. They opted not to lead defence evidence.
13. I have heard the final arguments of Ld. APP for State and Ld. Counsels for all accused persons.

FINAL ARGUMENTS

14. The Ld. APP for the State has argued that the testimonies of prosecution witnesses are consistent and corroborate each other and the prosecution has been able to prove the guilt of the accused persons beyond doubt.

The Ld. Defence counsel on the other hand has argued that there are serious inconsistencies in the deposition of prosecution witnesses and therefore, benefit of doubt should be given to the accused persons and they should be acquitted in the present case.

LEGAL PROVISIONS

15. **Section 144 in The Code Of Criminal Procedure, 1973:-
Power to issue order in urgent cases of nuisance or apprehended danger.**

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any

affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5).....

**Section 188 in Indian Penal Code states that:-
Disobedience to order duly promulgated by public servant.—**

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with 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.

Section 34 IPC defines Acts done by accused persons in

furtherance of common intention:-- When a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.

Standing order No. 309 passed by DCP(Head Quarters) Delhi dated 31/01/2003. In super-session of existing circulars on regulation of processions in the city, the following instructions are issued:

Arrangement at the place of demonstration should include the following:-

(i) Display of banner indicating promulgation of Section 144 Cr.P.C.

(ii) At least 2 video graphers be available on either side of the demonstration to capture both demonstrators as well as police response/action.

(iii) Loud hailers should be available.

(iv) Repeated use of PA system by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum/deputation etc or court arrest peacefully. Announcements should be videographed.

(v) If they do not follow appeal and turn violent declare the assembly unlawfully on PA system and videograph.

(vi) Warning on PA System prior to use of any kind of force must be ensured and also videographed.

(vii) Announcement for injured to take them to hospital for medical aid use of stretchers to carry the injured up to the vehicle/ambulance etc and videographed.

(viii) In case of arrest/detention of MPs, MsLA, MsLC, information to be given to concerned department, Speaker, Lok Sabha Chairman, Rajya Sabha, Speaker Assembly by quickest means both in writing and on wireless.

(ix) Special attention be paid while dealing with women's demonstrations only women police to take them.

(x) During registration of case evidence regarding use of stone, lathis, dandas etc to be videographed and taken into possession from the site.

COURT OBSERVATIONS:

16. After going through the material on record including the testimony of prosecution witnesses, this court makes the following observations:-

(a) The accused persons have been charged with offence u/s 188 IPC read with section 34 IPC for violations/non compliance of the directions given vide Notification order No. 6390-6460/SO/ACP/Kamla Market District dated 01/07/2020. Vide the abovesaid order all social/political/sports/cultural/religious/other

gatherings and large congregations were prohibited and this order was to remain in force from 01/07/2020 to 31/07/2020 to contain the spread of Covid-19 epidemic.

(b) In order to attract provisions of Section 188 Cr.P.C the prosecution has to show beyond doubt that:-

- (i) There was an order promulgated by public servant locally empowered to promulgate such order;
- (ii) By such order a person or group of persons is abstained from certain acts;
- (iii) The person or group of persons having knowledge of the order disobeys such directions;
- (iv) Such disobedience causes or tends to cause obstructions, annoyance or injury or risk of obstructions, annoyance or injury to any person lawfully employed.

(c) It is the case of the prosecution that all the accused persons violated the directions given under the above-said notification and had assembled to protest against the price rise of petrol and diesel. It is further alleged that the police officers including the ACP communicated the prohibition order passed u/s 144 Cr.PC to the crowd, however, the crowd failed to disperse. The prosecution has not placed on record any evidence to prove the factum of communication of the prohibition order and there is no

videography / photographs placed on record on this point.

(d) PW-2 SI Yoginder Kumar, who is the complainant in the present FIR has deposed that on 01.07.2020 he was present at the spot and he along with other police officials had tried to stop the protesters but they did not listen and continued sloganeering against the price rise of petrol and diesel after which police officials detained the protesters and they were taken to PS Rajinder Nagar and notice u/s 41 A Cr.P.C was served upon them.

(e) The prosecution has not placed on record anything to show that public address system was used by the police to give any warning to the public or to show that the persons who had gathered were apprised about the imposition of Section 144 Cr.PC and in what mode and manner this was communicated. Videography would have not only shown that large number of crowd had gathered at the spot and helped ascertain their identity, but also would have shown that they were apprised properly about the imposition of Section 144 Cr.PC. Also the police officials failed to comply with the Standing Order 309 of the Delhi Police which enjoins that there should be a display banner indicating Section 144 Cr.PC. No photographs/ videography has been placed on record by the prosecution in this regard.

It is only after the assembly of persons do not respond after communication of the prohibition order that it can be termed as

“unlawful”. There is no substantial evidence relied upon by the prosecution to show that the order was duly communicated to the persons at the spot.

(f) Even if this court believes that the prohibition order was necessitated due to advent of Covid-19 epidemic and so there were valid reasons for issuing the order of prohibition issued by the ACP, Kamla Market, on 01/07/2020 u/s 144 Cr.P.C vide Notification No. 6390-6460-ACP/Kamla Market, still the prosecution has to prove beyond doubt whether the above-said prohibition order was duly communicated to the protesters before they were detained and FIR was registered against them especially since no such prohibition order was in place in the area on 29/06/2020 and 30/06/2020. Also the prosecution has to prove beyond doubt that the accused persons were part of the illegal gathering and were present at the spot in violation of the abovesaid Notification.

(g) PW2 SI Yoginder Kumar in his deposition has stated that he detained around 53 person from the spot but only 38 persons reached PS Rajinder Nagar and the remaining 15 protesters could not be traced despite best efforts.

(h) PW2 SI Yoginder Kumar who is not only the complainant but is also the first IO who carried out most of the investigation in the present matter admitted in his cross-examination that he did not

prepare any video of the incident at the spot and did not take any photographs of the barricades or banners or protesters at the spot. PW-2 has also stated that some of the protesters were wearing masks at the spot and has further admitted that he did not make any efforts for carrying out the judicial TIP of any of the accused persons to get their identity established especially since some of them were wearing masks and their faces were not clearly visible.

(i) PW2 SI Yoginder Kumar has admitted in his cross-examination that he did not mention the bus number in which the accused persons were taken to PS Rajinder Nagar from the spot and has also not made the driver of the bus as a witness in the charge-sheet. Also PW2 has admitted that he did not make any DD entry of his arrival in PS Rajinder Nagar. Also the prosecution has not mentioned any police staff of PS Rajinder Nagar in the list of witnesses to support their case and to show that the accused persons were brought to and detained at PS Rajinder Nagar. This fact further weakens the case of the prosecution as it casts doubts on the version of the prosecution that the accused persons were detained and taken by bus to PS Rajinder Nagar.

(j) There are some inconsistencies in the deposition of the prosecution witnesses. PW-2 SI Yoginder Kumar has in his deposition stated that HC Amit noted down the names and mobile numbers of the protesters, however, PW3 HC Amit in his cross-

examination has stated that he did not record the names and mobile numbers of any of the protesters and stated that many of the protesters were wearing mask. Also PW-2 SI Yoginder Kumar in his cross-examination has stated that the SHO and the ACP Kamla Market made announcements on PA System about the imposition of section 144 Cr.P.C in the area, however, neither the SHO PW-4 Kumar Abhishek nor the ACP PW-6 Anil Kumar have stated anything on this point. Infact PW-6 ACP Anil Kumar in his cross-examination has stated that he had not given any directions that the order u/s 144 Cr.P.C be communicated to the public via loudspeakers, hoardings/banners. Also PW-1 ASI Vinod Kumar in his cross-examination has stated that PW-2 SI Yoginder Kumar did not come to the PS I.P. Estate in the whole day and only HC Amit had come for registration of the FIR. This fact is inconsistent with the deposition of PW-2 SI Yoginder Kumar that he recorded the statement of HC Amit later on 01/07/2020 at PS I.P. Estate.

(k) There is no CCTV footage placed on record by the prosecution obtained from PS Rajinder Nagar to show the arrival of PW-2 SI Yoginder Kumar and HC Amit Kumar or to show that the accused persons were brought and detained at PS Rajinder Nagar. Moreover, there is no DD entry placed on record by the prosecution to show the arrival of above-said police officials at PS Rajinder Nagar.

(l) There is no compliance by the police officials of the directions given by the DCP (HQ) vide Standing Order No. 309 wherein the DCP concerned had directed the police officials to make arrangements at the place of demonstration including-

(i) Barricading

(ii) Display of banner indicating promulgation of section 144 Cr.P.C.

(iii) To make available atleast two videographers on either side of the demonstration to capture both demonstrators as well as police response/action.

(iv) Loud hailers should be made available.

(v) Repeated use of PA system by responsible officer appearing the demonstrators and the announcement should be videographed.

(vi) In case the demonstrators do not follow the directions given by the police officials and turned unlawful then that should be videographed.

(vii) In case of arrest/detention of MP, MLA, MLC, information is to be given to concerned departments, speaker of Lok Sabha, Chairman Rajya Sabha by quickest means possible.

(viii) Special attention be paid while dealing with women, demonstrator and only female police officials are to be tackle women protesters.

(m) Out of total 38 accused persons, 8 accused persons are

females, however, the prosecution has not mentioned a single female police official in the list of the witnesses to show that females protesters were detained. In case there was no female police official present then the prosecution has failed to explain how the females protesters were detained and if so, by whom.

(n) No video footage regarding the assembly has been placed on record by the prosecution which severely hampers the case of the prosecution as the video footage could have not only proved the identity of the accused persons at the spot but would also have shown that they were informed by the police regarding promulgation of prohibition order u/s 144 Cr.P.C and the crowd despite having knowledge of the said Notification continued to gather in violation of the said Order.

(o) The accused persons have taken the defense that they were not present at the spot on the day of the incident and infact they never went to the police station. The accused persons in their statements u/s 313 Cr.P.C have stated that the IO had come to their house/offices and got signature on some blank documents and they were never detained nor taken to PS Rajinder Nagar.

(p) PW-2 SI Yoginder Kumar has in his cross-examination stated that the order regarding imposition of section 144 Cr.P.C was received in the PS at 10 a.m on 01/07/2020. Further more, PW-3

HC Amit Kumar in his cross-examination has stated that he came to know about the imposition of section 144 Cr.P.C in the area when the IO was preparing the rukka in the present case. PW-6 the then ACP Kamla Market, Amit Kumar in his cross-examination had admitted that there were no prohibitory order in place on 29/06/2020 and 30/06/2020 and the Notification was issued by him in the morning of 01/07/2020.

(q) Even if this court accepts the version of the prosecution at face value then also it is clear that there were no prohibitory orders in place on 30/06/2020 and the said orders were received at PS Kamla Market in the morning of 01/07/2020 and the police officials including HC Amit Kumar were not aware of this prohibitory order at the time of the gathering of alleged accused, so the accused persons cannot be expected to have prior knowledge of this prohibitory order issued u/s 144 Cr.P.C at the time of their gathering and the onus was on the prosecution to show that the accused persons were not only present at the spot, gathering in large groups but also were communicated and informed about the Notification No. 6390-6460-ACP/Kamla Market issued by the ACP concerned u/s 144 Cr.P.C. This the prosecution could have proved via video recordings/CCTV footage, which the police officials failed to collect in utter non compliance of the directions given by the DCP (H.Q) in Standing order No. 309 as well as the directions given by the **Hon'ble Supreme Court in Ramlila Maidan**

incident case (2012) 5 SCC-1. PW-2 SI Yoginder Kumar in his cross-examination has admitted that there was no display board or banner at the spot to indicate that section 144 Cr.P.C was imposed in the area.

(r) In Niharendu Dutt Majumdar And Ors. vs Emperor, AIR 1939 Cal 703, the Hon'ble Calcutta High Court set aside the order of conviction under section 188 IPC observing that the communication of the order under section 144 Cr.PC had not been established. The Hon'ble Calcutta High Court had observed that, "On the second point, the learned Deputy Legal Remembrancer conceded that he had no evidence apart from the evidence relating to what took place at the actual meeting. It is said that the petitioners knew of the order because they were told of it by the Sub-Inspector while the meeting was actually going on. The evidence on the point is extremely scanty and is to be found in the deposition of PW-1, PW-3 and PW-4. PW-1, the Sub-Inspector, says that he ordered the crowd to disperse as they had assembled in violation of the order. The order was given in an audible voice and part of the crowd actually dispersed. It is, of course, difficult for him to say whether the order was audible to other persons or not. From this evidence it is abundantly clear that no personal communication was made to any of the petitioners. There is no distinct evidence as to the relative positions of the petitioners and the thana officer in the crowd. The learned Judge did not consider

whether it necessarily follows that petitioner 1 heard what was said by the Sub-Inspector at a time when he himself was actually delivering a speech. The prosecution really did not take sufficient trouble to see that the evidence on this very essential point was sufficient and clear.

The above-mentioned judgment is applicable to the present case as in this case also the prosecution has not placed on record any evidence like videography/photographs on the essential point of communication and PW2 has stated that the ACP had communicated the prohibition order issued u/s 144 Cr.PC to the members of the crowd, however, the PW6 Retd. ACP Anil Kumar has not stated anything regarding the abovesaid communication.

(s) In **Ramlila Maidan Incident (2012) 5 SCC 1**, Hon'ble Supreme Court has referred to an order of Delhi Police i.e.the Standing Order 309 which contemplates that there should be display of banner indicating promulgation of Section 144 Cr.P.C., repeated use of Public Address system by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum, their deputation etc. or court arrest peacefully and requires such announcement to be videographed. It further contemplates that if the crowd does not follow the appeal and turns violent, then the assembly should be declared as unlawful on the PA System and the same should be videographed. Warning on PA system prior to use of any kind of

force is to be ensured and also videographed. But in the present case there is hardly any compliance to the terms of this Standing Order and no photography / videography has been done by the police officials.

(t) The complainant SI Yogender Kumar is also the first IO who carried out most of the investigation in the present matter. This also casts a doubt on the independent and unbiased nature of the investigation.

(u) The prosecution has not been able to conclusively established the presence of the accused persons at the spot as no TIP proceedings were carried out by the 1st IO nor by the 2nd IO and the prosecution witnesses have themselves stated that many of the protesters/ accused persons were wearing masks and so their faces were not clearly visible. Moreover, there is inconsistency whether the police officials noted down the names and mobile numbers of the protesters / accused persons at the spot on the day of incident as PW2 SI Yogender has stated that PW3 HC Amit had noted down the names, however, PW3 HC Amit denied the same and infact stated that only 1st IO SI Yogender had noted down the names. Also the prosecution witnesses have admitted that there were 53 accused persons who were detained at the spot and taken by bus, however, only 38 reached PS Rajender Nagar. Had the IO noted down the names and mobile numbers of all the protesters/ accused persons,

then, the IO would have had no difficulty in tracing the remaining 15 accused persons.

(v) In the whole charge-sheet, there is not a single mention of a lady police officer and no lady police officer was made a witness by the prosecution. This despite the fact that there were multiple female protesters/ accused persons who as per the prosecution's case were detained at the spot. The non-mention of any lady police official goes against the case of the prosecution as it shows that there were either no female protesters at the spot who were part of the unlawful gathering or that the detention of the women protesters/accused persons was illegal, flouting the well laid down principles regarding the arrest and detention of women accused persons.

(w) The communication of the prohibition order issued by the ACP u/s 144 Cr.PC is an important factor. The case of the prosecution is that there were around 50-60 persons present at the spot and they failed to disperse despite being informed about the above stated notification, however, there are inconsistencies in the testimonies of the prosecution witnesses in this regard and the absence of the videography / photographs on this point compels this court to give the benefit of doubt to the accused persons as the police officials did not act in accordance with the Guidelines framed by the DCP (HQ), Delhi for execution of such orders.

17. After going through the material on record including the testimonies of prosecution witnesses and other material placed on record by the prosecution, this court is of the view that there are material contradiction in the testimonies of the prosecution witnesses and there are serious lacunas in the investigation carried out by the police officials ignoring well laid down principles and legal precedents and the directions given by their own senior police officials. Also this court observing that the Notification Vide no. 6390-6460-ACP/KM dated 01.07.2020 was issued on the same date as the date of gathering and no time has been specified in the abovesaid notification, it can reasonably be believed that the accused persons were not aware of the abovesaid notification and there is no proof showing that the accused persons were informed either by loudspeakers/ banners/ placards regarding imposition of the prohibition issued under Section 144 Cr.PC prohibiting large gatherings. So, this court giving accused persons benefit of doubt is of the view that the prohibition order issued under section 144 CrPC was not validly communicated to the accused persons. Since the above-mentioned order was not validly communicated therefore, this court is of the view that the ingredients of Section 188 IPC is not attracted and so the accused persons of this case cannot be said to have committed any offence under section 188 r/w 34 IPC.

18. For the reasons mentioned above, this court acquits all the accused persons for offence u/s 188/34 IPC. They are directed to furnish bail bonds and surety bonds in compliance of u/s 437-A Cr.PC.

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**Announced in the open
court on 25.11.2022**

**(VAIBHAV MEHTA)
ACMM-03, RADC
New Delhi**