2024:DHC:9820

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 18th October, 2024***
Pronounced on: 17th December, 2024

+ CRL.REV.P 1155/2023 & CRL.M.A. 29526/2023

SALIM MALIK @ MUNNA .....Petitioner

Through: Ms. Nitya Ramakrishnan, Sr. Adv. Mr. Archit Krishna, Ms. Tamanna Pankaj, Ms. Stuti Rai and Ms. Pooja Mehta, Advocates.

versus

STATE (NCT OF DELHI) ....Respondent

Through: Mr. Madhukar Pandey, SPP along with Mr. Aviral Bansal and Mr. Daksh Sachdeva, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("***Cr.P.C.***") assails the order on charge ("***impugned order***") dated 24th July 2023, passed by Additional Sessions Judge-03 ("***ASJ***"), North East, Karkardooma Courts in SC No. 121/2021, titled '***State v. Rafat and Ors***' arising out of FIR No.136/2020, registered at Police Station ('***P.S'***) Dayalpur. By this order, charges were framed against petitioner under Section

147, 148, 427, 435, 436, 450 read with Section 149 and 188 of the Indian Penal Code, 1860 ("***IPC***").

2. The gravamen of petitioner's challenge is that the charges framed against petitioner are based on inadmissible disclosures, delayed and unreliable witness statements, and lack of cogent evidence linking him to the alleged offences of arson and vandalism at Fair Deal Cars Pvt. Ltd. ("***the showroom***"). Petitioner contends that the material on record does not establish any overt act or common object shared with the unlawful assembly.

Factual Background

3. As per the case of prosecution on 24th February 2020, a PCR call was received regarding incidents of rioting and arson at the showroom, located on Main Wazirabad Road, opposite Petrol Pump, Bhajanpura, Delhi. Subsequently, Sub-Inspector ("***SI***") Shiv Charan reached the site and found the showroom damaged and set on fire by a mob.

4. On 28th February 2020, the General Manager of the showroom Mr. Rajesh Singh, filed a written complaint stating that the showroom had been closed on 24th February 2020 due to riots in the area. He further stated that on 25th February 2020, around 6:00 PM, he received a phone call informing him about the arson. Based on this complaint, coupled with crime scene inspection and other information, an FIR was registered on 5th March 2020 at P.S Dayalpur under Sections 147, 148, 149, 427, 436, and 437 of IPC.

5. A separate complaint dated 27th February 2020 was filed by Mr. Vikas, an employee of the showroom, alleging that mob had set his motorcycle on fire. Prosecution claims that during the investigation, efforts were made to identify the

petitioner through CCTV footage, social media videos, and public testimonies, and the public was requested to provide any relevant material.

6. The first charge sheet was filed on 4th May 2020 before the Duty Magistrate, Karkardooma Courts, for offences under Sections 147, 148, 149, 427, 435, 436, and 120B IPC, against four individuals (excluding the petitioner). The Chief Metropolitan Magistrate ('***CMM***') took cognizance on 18th December 2020 and committed the case to the Court of Sessions on 29th January 2021.

7. Petitioner was arrested on 30th October 2020 at Mandoli Jail, Delhi, more than eight months after the alleged incident. He was later granted bail on 25th November 2020, with ASJ observing that petitioner was neither named in the FIR nor specifically implicated in any overt act related to the incident.

8. On 26th March 2021, first supplementary charge sheet, naming 36 accused persons, including the petitioner, was filed. Petitioner was later granted bail in another related FIR.

9. The second supplementary chargesheet, filed on 7th May 2022, included allegations against six additional accused and added Sections 188 IPC and 34 IPC. A complaint under Section 195 Cr.P.C. was also filed. The case was committed to the Court of Sessions by the Ld. Chief Metropolitan Magistrate (CMM) on 5th July 2022.

10. On 5th August 2023, the Investigating Agency filed a third supplementary chargesheet against five accused persons. Petitioner was not named in this chargesheet.

11. Observations made by the Sessions Court noted that the prosecution's evidence included police witnesses who identified the petitioner as part of the mob involved in the riots. It observed that specific overt acts by each accused are not required to establish their membership in an unlawful assembly under Section 149 IPC. Sessions Court found that evidence on record suggested, that petitioner was present as part of an unlawful assembly that engaged in rioting, vandalism, and arson. Sessions Court also stated that CDR analysis, being supplemental evidence, cannot independently prove or disprove allegations without corroboration from surrounding facts.

12. Prosecution's case against petitioner is primarily based on alleged witness statements and CDR analysis, which suggest his presence near the protest site and claimed he participated in meetings with alleged conspirators. However, the petitioner asserts that the allegations lack specific details and credible evidence to link him to the acts of arson or rioting.

Submissions on behalf of Petitioner

13. Senior Counsel for petitioner contended that prosecution's case rests on the allegation that petitioner was part of a conspiracy to set fire to the showroom on 24th February 2020 and was present in the rioting mob that executed the arson. However, the Sessions Court, in its order dated 24th July 2023, concluded that there was no evidence to support the charge of conspiracy under Section 120B IPC. This finding, not being challenged by the prosecution, has attained finality. Counsel argued that despite this the Sessions Court erroneously held that the petitioner "*may have been present*" at the site of offence, a conclusion that is inconsistent with the court's own observations that petitioner's role was limited to addressing protestors, before the mob became violent.

14. Counsel emphasized that petitioner's role, as described in prosecution evidence, was confined to delivering speeches at protests against the Citizenship Amendment Act, 2019 ("***CAA***") and National Register of Indian Citizens ("***NRC***").

15. Senior Counsel for petitioner states that the prosecution's reliance on witness statements under Section 161 Cr.P.C, consistently included the description of petitioner as a speaker addressing the protestors from a dais, physically separated from rioting mob by a large crowd. Notably, no witness alleged that the petitioner descended from the dais or actively participated in the mob violence. Witness relied on by prosecution are mentioned hereunder, which clearly states the role and participation of petitioner:

i) Statement of **HC Sunil**: HC Sunil alleged that the petitioner was involved in the management of the protest site at Chand Bagh. His statement, recorded three months after the alleged incident, included vague references to the petitioner's role in incitement but lacked specific details or evidence of the speech content.

ii) Statement of **HC Gyan Singh**: Similar to HC Sunil's statement, HC Gyan Singh claimed that the petitioner was involved in the management of the protest site. However, no specific or corroborated evidence was provided regarding the content, timing, or impact of any alleged incitement.

iii) Statement of **Ct. Mukesh**: Constable ("***Ct.***") Mukesh's statement, recorded eight months after the incident, alleged that the petitioner participated in incitement activities. However, it lacked specific details,

such as the date, time, or content of any speech allegedly delivered by the petitioner.

iv) Statement of **Zahid Hasan**: Zahid Hasan alleged that the petitioner incited the mob on 24th February 2020. However, no specific details, such as the time, place, or content of the alleged incitement, were provided. The statement also did not connect the petitioner to the showroom.

16. Petitioner remained on the dais, physically separated from the mob by a large crowd of protestors, as confirmed by police witnesses. The petitioner was neither accessible to the police, attempting to mediate, nor alleged to have descended from the dais to join or direct the mob. As per the principles in ***Masalti v. State of U.P***. (1964) 8 SCR 133, and ***Musa Khan v. State of Maharashtra*** (1977) 1 SCC 733, the application of Section 149 IPC requires evidence of presence and common object, which is absent in this case.

17. The statements of witnesses, including public witness Zahid Hasan and police officials Ct Mukesh, Ct Gyan Singh, Ct Sunil, and HC Sunil, recorded on 7th May 2020, are verbatim identical and insufficient to establish a connection between the petitioner and the mob's actions. These statements attribute only the role of a speaker to the petitioner and fail to demonstrate any intent, presence, or participation in the arson at showroom

18. For Section 149 IPC to apply, it must be shown that the petitioner was present at all crucial stages, shared the common object of the unlawful assembly, and had knowledge or intent regarding the specific act committed by the mob. This principle has been reiterated in ***Pandurang Chandrakant Mhatre and Ors. v. State of Maharashtra*** (2009) 10 SCC 773, and ***State of Maharashtra v.***

Ramlal Devappa Rathod and Ors. (2015) 15 SCC 77. In the absence of such evidence, the charge under Section 149 IPC is unsustainable.

19. The main charge sheet filed on 4th May 2020 did not implicate the petitioner. Subsequent statements recorded on 7th May 2020 and 30th October 2020 make vague and belated references to the petitioner's alleged involvement, which amount to improvements and cannot form the basis for framing charges. As held in ***Harbeer Singh v. Sheeshpal & Ors***. (2016) 16 SCC 418, such delayed statements lack evidentiary value.

20. Petitioner submits that while the scope of revision may be limited, an order framing charges is open to challenge where it suffers from legal infirmities. The Supreme Court in ***Sanjay Kumar Rai v. State of Uttar Pradesh & Anr***. 2021 SCC OnLine SC 367, emphasized that a revision petition is maintainable when charges are unsustainable based on the material on record.

21. Counsel for petitioner contends that the prosecution has failed to establish petitioner's presence in the mob, intent, or participation in the alleged offences. The evidence only places the petitioner as a speaker addressing a lawful protest. The impugned order thus suffers from grave errors of law and fact, necessitating revision to prevent a miscarriage of justice.

Submissions on behalf of the State

22. Special Public Prosecutor ("***SPP***") for the State submits that it is well-settled law that a detailed enquiry into the merits of the case cannot be undertaken at the stage of framing of charges. It is submitted that petitioner's challenge to the framing of charges lacks merit as the allegations and evidence brought on

record clearly indicate the petitioner's role in the commission of the alleged offences.

23. Reliance is placed on the judgment of the Supreme Court in ***State of Tamil Nadu v. N. Suresh Rajan & Ors***. 2014 SCC OnLine SC 10, wherein the Court, emphasized that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate them to determine whether the facts, taken at face value, disclose the existence of all the ingredients constituting the alleged offence. At this stage, the probative value of the materials is not to be examined, nor is the court expected to conduct a mini-trial.

24. SPP further contends that the jurisdiction under Section 397 of the Code of Criminal Procedure, 1973, is extremely limited. This Court, in ***Taron Mohan v. State*** (2021) SCC OnLine Del 312, reaffirmed that revisional powers are confined to examining the legality and propriety of the proceedings and do not permit a detailed re-evaluation of evidence. Relevant paragraph is extracted as under:

> "*9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence*."

(emphasis added)

25. SPP submits that the Trial Court, in the present case, has correctly appreciated the evidence on record and framed charges against petitioner after concluding that the material on record was sufficient to raise a strong suspicion of his involvement in the alleged offences. He further draws attention to the decision of the Supreme Court in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari & Anr***., (2022) SCC OnLine SC 1057, to submit that the framing of charges requires only the existence of strong suspicion against the accused and does not necessitate proof of allegations.

26. SPP states that in the present case, petitioner's involvement can be clearly made out from the statements of Ct. Sunil, Ct. Mukesh, Ct. Gyan, HC Sunil, and Zahid Hasan of 24th February 2020. These statements unequivocally establish that petitioner was actively instigating an unlawful assembly at the protest site by raising inflammatory slogans and delivering hate speeches aimed at provoking violent rioting. This incitement led to acts of stone-pelting and attacks on police personnel using sticks, rods, and other objects, resulting in extensive damage and arson to both public and private property.

27. The investigation further reveals that petitioner was not only one of the organizers of the protests at Chand Bagh but also played a pivotal role as a conspirator. Along with co-accused individuals, he is alleged to have hatched a deliberate and calculated conspiracy that culminated in widespread riots in the Chand Bagh and Dayalpur areas. It has been specifically noted that a meeting was convened on 22nd February 2020 at Chand Bagh, which was attended by petitioner along with other co-accused. During this meeting, plans involving violence, arson, and the destruction were reportedly discussed. The discussions

included arrangements for finances, procurement of arms, petrol bombs, and planned destruction of CCTV cameras to further the conspiracy.

28. Moreover, CCTV footage collected during the investigation substantiates the prosecution's case of a premeditated conspiracy. The footage indicates coordinated efforts to mobilize rioters with the intent not only to incite riots but also to attack law enforcement personnel. Additionally, the Call Detail Record ("***CDR***") analysis corroborates prosecution's claims by placing petitioner at or near the scene of the rioting incident during the relevant timeframe. SPP further states that out of 15 witnesses, 12 witnesses have already been examined, and eight dates have been allotted for completion of trial between 07th January 2025 to 30th January 2025.

29. At this initial stage of proceedings, the statements of prosecution witnesses recorded during the investigation must be accepted at face value. These statements, at this stage, cannot be disregarded or dismissed without being subjected to cross-examination, which will be during the trial. The role of petitioner, both as an instigator and a conspirator, requires a holistic assessment rather than a fragmented view, as the trial is yet to commence in full.

30. SPP while opposing the contentions of the petitioner, has relied on the following categorical statements recorded under Section 161 Cr.P.C., which establish the direct involvement of the petitioner, Salim Malik @ Munna, in the incidents of violence, rioting, and conspiracy:

i) As per the statement of **Ct Sunil**, he affirmed that on 24th February 2020, he was deployed at the Chand Bagh protest site for maintaining law and order, where the situation was tense as protestors attempted to block

Wazirabad Road. He identified the petitioner and others actively delivering inflammatory speeches to incite the mob. Acting on the instructions of ACP Anuj, Ct Sunil and another officer approached the petitioner, who was inciting the mob through hate speech. Following this, the mob engaged in stone pelting, damaged CCTV cameras, and attacked police personnel, leading to injuries. The statement further reveals that the petitioner, along with others, was seen participating in the burning of the showroom and other properties around 2:00–2:30 P.M. He was identified as an instigator in setting fire to other vehicles and buildings. Additionally, in his supplementary statement, Ct Sunil highlighted that the petitioner, along with others, played a role in organizing and instigating riots through coordinated efforts.

ii) As per the statement of **Ct Mukesh,** corroborated that on 24th February 2020, the petitioner was present at the protest site and delivered hate speeches along with others, provoking the mob into attacking police personnel and vandalizing public and private properties, including the showroom and other establishments. He narrated that the mob, instigated by the petitioner and others, violently attacked the police, which led to the death of HC Ratanlal. Further, Ct Mukesh explicitly identified the petitioner and others at the scene as participants in the violent rioting and arson. His supplementary statement affirms that the petitioner and one Ayub had been part of the mob since the morning of 24th February 2020 and were actively instigating riots by setting properties ablaze.

iii) As per the statement of **HC Sunil**, stated that the petitioner, along with co-accused, delivered inflammatory speeches at the Chand Bagh

protest site, provoking the mob into rioting and damaging public infrastructure, including CCTV cameras. He identified the petitioner at the scene, where the mob set fire to the showroom and a truck near Victoria School, resulting in large-scale damage and injuries. He further confirmed that the petitioner's hate speeches were directly responsible for escalating the mob's aggression and initiating violence.

iv) As per the statement of **Ct Gyan**, he identified the petitioner among others delivering inflammatory speeches at the protest site. His statements corroborate the accounts of Ct Sunil and HC Sunil regarding the instigation and escalation of violence. He confirmed that the petitioner, along with the mob, vandalized CCTV cameras and participated in the arson of the showroom and other properties. The role of the petitioner, as described by Ct Gyan, was instrumental in mobilizing the mob to commit acts of violence, including attacks on police personnel and arson.

v) As per the statement of **Zahid Hasan**, a public witness, corroborated that petitioner, along with co-accused, delivered inflammatory speeches that incited the mob to riot. He stated that the mob attacked police personnel and engaged in extensive vandalism and arson, targeting nearby shops and establishments. Zahid Hasan identified the petitioner and others as instigators of the violence at the protest site.

vi) The CDR analysis places the petitioner in and around the protest site at Chand Bagh during the riots on 24th February 2020. This corroborates the statements of witnesses and establishes his physical presence at the scene of violence.

31. The cumulative testimony of these witnesses and the corroborative evidence of CDR records point to the active role of petitioner in inciting, instigating, and participating in the riots on 24th February 2020. His involvement extends beyond mere presence, as he was identified as an organizer and a conspirator whose inflammatory speeches and actions directly contributed to the escalation of violence, loss of life, and extensive damage to property. These statements, at this preliminary stage, substantiate the case of the prosecution and justify the continuation of proceedings against the petitioner.

32. SPP submits that the material collected during the investigation, including witness statements, CCTV footage, and CDRs, forms a *prima facie* case against the petitioner. At the stage of framing charges, the court is required to take the evidence on record at face value and determine whether there is sufficient ground for proceeding to trial. The reliance placed by the petitioner on the judgment of ***Masalti v. State of Uttar Pradesh*** (*supra*) is misplaced, as the principles laid down therein pertain to the evaluation of evidence at the final stage of trial, not at the stage of framing charges.

Rejoinder on behalf of Petitioner

33. Counsel for the Petitioner states that the prosecution's reliance on the supplementary statement of Ct Mukesh, recorded on 30th October 2020, nearly eight months after the alleged incident and coinciding with the petitioner's arrest, is highly questionable. It is emphasized that Ct Mukesh's initial statement under Section 161 Cr.P.C., recorded on 7th May 2020, fails to attribute any specific role or active involvement of petitioner in the acts of arson or mob violence. The subsequent supplementary statement, containing an entirely new narrative, lacks

corroboration and is insufficient to sustain the grave suspicion required to frame charges.

34. Counsel further contends that even if the supplementary statement is taken at its face value, it establishes at best a case of suspicion and not the *grave suspicion* mandated for framing charges. Reliance is placed on the judgment of the Supreme Court in ***Union of India v. Prafulla Kumar Samal and Anr.*** (1979) 3 SCC 4, wherein it has been held that while the trial court may sift the evidence at the stage of framing charges, the material must disclose grave suspicion against the accused that remains unexplained. In the present case, the evidence on record does not rise to this standard, and consequently, the framing of charges against the petitioner would be unjustified. Relevant paragraph of the said decision is extracted as under:

> "*10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*"
>
> (emphasis added)

35. Furthermore, counsel for petitioner states that in cases involving Section 149 IPC, the principle of vicarious liability requires robust material establishing active participation or common intention, as reiterated in ***State (NCT of Delhi) v. Amit @ Mintu & Another*** 2018 SCC OnLine Del 12076. Relevant paragraph is extracted as under:

> "5. *It is settled position of law that the charge has to be framed not only on suspicion but grave suspicion of involvement of the accused in the commission of the offence. Respondent No. 2 is not named in the FIR and his name has surfaced in the statement made by the father of the complainant.*"
>
> (emphasis added)

36. The statements relied upon by the prosecution are vague, delayed, and unsupported by independent or corroborative evidence, thereby failing to meet the required threshold. It is respectfully submitted that the allegations against the petitioner are speculative at best, and in the absence of a *prima facie* case, petitioner is entitled to a discharge in the present matter.

Analysis

37. Petitioner assails the order on charge passed by the ASJ on 24th July 2023. The incident in question relates to 24th February 2020 reported at P.S Dayalpur regarding a riot and arson at a Maruti car showroom in Bhajanpura, during the riots that erupted at that time in parts of Delhi during protests against the CAA/NRC.

38. Prosecution relies essentially on the statement of Ct. Mukesh recorded on 30th October 2020. He stated that he was the beat officer at Chand Bagh and was involved in the investigation. He stated that on 24th February 2020, he had gone to the protest site where persons were protesting against CAA/NRC and anti-police provocatory speeches were going on, which included the petitioner. At about 2:00-2:30 P.M. after inciting, as other eyewitnesses, they burnt down the car showroom. The original complaint was given by Rajesh Singh, who was the General Manager of the showroom, alleging that on 25th February 2020, he was called to inform that the showroom was set on fire, which caused a loss of about Rs.3.5 Crores. Petitioner was implicated through the first supplementary charge sheet dated 26th March 2023.

39. The Sessions Court perused the statements of witnesses and materials placed on record. In paragraph 25 of the impugned order, a tabulation has been given in relation to the witnesses who gave statements to identify the accused persons in the mob. The mention of petitioner is at Serial. No.6, and the witnesses cited against him are Zahid Hassan, Mukesh, Sunil, HC Sunil and Gyan Singh. There are 50 accused noted in the said table. It may be useful to extract the relevant conclusions drawn by the Sessions Court for ease of reference:

> "*26. It is apparent that each and every accused has been identified by one or another eye witness. They are police witnesses, whose presence was natural as they were on*

duty during the riot prevailing period in North East area. Hence, I find that the argument of defence that these witnesses are stock witnesses is not tenable at this stage. The credibility of these witnesses cannot be looked into at the stage of trial. It was so observed by Supreme Court in the case of Prafulla (supra) as well. At present, it is sufficient to find that all the accused except Aftab have been identified by Ct. Sunil, Ct. Mukesh, Ct. Gyan Singh, HC Sunil and Zahid Hasan (public witness), as member of the mob behind the riotous incidents at that place, including the incident at the car showroom in question.

27. As far as inordinate delay in registration of FIR is concerned, the alleged incident happened on 24.02.2020 and complaint was made on 28.02.2020. FIR was registered on 05.03.2020. It is well known that riots were prevailing in North East Delhi upto 26.02.2020. Police was dealing with this problem, coupled with problem of Covid-19 Pandemic. There may be any other the reason also for delay in registering FIR, which can be explained at the time of trial. Therefore, the argument of defence regarding delay in registration of FIR is not sufficient to discharge the accused persons.

29. As far as specific role of every accused person is concerned, I find that it is not so required to explain overt act on the part of every member of an unlawful assembly. The evidence on the record prima facie shows that accused persons were part of unlawful assembly, which was present there at the spot and which came into action with common object to go on rampage, damage the properties. In pursuance to that common object, they set fire in Fair Car Deal Showroom. Section 149 IPC provides that every member of such assembly is liable for an offence committed by any member of unlawful assembly, in prosecution of the common object of that assembly. Therefore, the argument of defence regarding absence of a specific role assigned to particular accused is insignificant."

(emphasis added)

40. The Sessions Court discharged the petitioner of the offences punishable under Section 120B (*Criminal Conspiracy*) on the basis that the mob had gathered on the service road near Main Wazirabad Road, where speeches were being addressed by different speakers in the name of protest against CAA/NRC, but the mob became violent subsequently and started indulging into riot, vandalism and arson. The Trial Court noted that the element of prior agreement could not, therefore, be inferred. However, charges were framed under Sections 147/148/427/435/436/450 IPC, read with Sections 149/188 IPC.

41. Petitioner's case for quashing the charge of the impugned order *qua* petitioner is essentially based on the statements of the police witnesses recorded on 07th May 2020. Senior counsel for petitioner provided a dissection, in particular of the statement recorded of Ct. Mukesh. As per that statement, it was contended that petitioner was on the stage giving protest speeches, and when the police personnel tried to approach him, he was unreachable because of the crowd. Subsequently, there was a mob that was collected at Main Wazirabad Road, which then indulged in rioting and arson, which included burning of the showroom. The focus of petitioner's counsel was that there is no connection between the petitioner being seen on stage and being part of the mob since Ct. Mukesh also said that the speakers had not descended from the dais. Petitioner was, however, implicated by a subsequent statement made after five months in October 2020, specifying that he was part of the mob.

42. A careful perusal of the statement of Ct. Mukesh, on which the petitioner heavily relied upon, does not, in the opinion of the Court, at least *prima facie*,

completely exclude the possibility of presence of petitioner at the site of the incident or as part of the mob. As per Ct. Mukesh's statement, the presence of the petitioner at the stage, is clearly indicated. It also indicates that when the protesters surrounded them, there was tussle amongst the crowd, the police personnel had to escape, and incident of the showroom happened a bit later. In a statement recorded subsequently in October 2020, Ct. Mukesh states that post the provocatory speeches and incitement, the petitioner was present at about 2:00-2:30 P.M. towards the showroom and indulged in arson and rioting.

43. At this stage, where there is a statement of Ct. Mukesh on record, which makes a specific allegation *inter alia* against petitioner, this Court is of the opinion that the view of the Sessions Court was not incorrect in framing the charges.

44. The State has correctly relied upon the decision in ***State of Tamil Nadu v. N. Suresh Rajan & Ors.*** (*supra*) and in ***Manendra Prasad Tiwari*** (*supra*) where the Supreme Court has stated that at the stage of charge, the Court is to examine materials only with a view to achieving a *prima facie* satisfaction of the commission of the offence. It was further stated that in a revision petition seeking the quashing of charge the Court should not interfere unless there are strong reasons to hold in the interest of justice and to avoid abuse of process of the Court. The Supreme Court highlighted that such quashing of orders on charge can only be passed in "*exceptional cases*" and on "*rare occasions*".

45. Relevant paragraph of ***State of Tamil Nadu v. N. Suresh Rajan & Ors.*** (*supra*)is extracted as under:

"*29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.*"

(emphasis added)

46. Relevant paragraph of ***Manendra Prasad Tiwari*** (supra) is extracted as under:

"*21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court,*

yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [see State of Delhi v. Gyan Devi, (2000) 8 SCC 239].

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the

> *material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.*"
>
> (emphasis added)

47. Faced with a situation where there were huge numbers of people collected together as part of the mob and that the petitioner was a significant and identified face, it cannot be said that the Sessions Court, in its analysis, could not form an opinion that was a strong suspicion that the accused had committed an offence. The reliance of the Sessions Court on the decision in ***State of Maharashtra v. Ramlal Devappa Rathod*** (*supra*), is also instructive. The Supreme Court was dealing with a case of mob violence resulting in murder and relying upon the previous decision of the Supreme Court in ***Masalti v. State of U.P*** (*supra*) stated as under:

> "*24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more*

than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider

"whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly", (AIR p. 211, para 17)

This Court at SCR pp. 148-49 in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] observed that his participation as a member of the unlawful assembly

> *ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well-known maxim that "evidence has to be weighed and not counted" as statutorily recognised in Section 134 of the Evidence Act*."
>
> (emphasis added)

48. What is relevant in the observations by the Supreme Court in ***State of Maharashtra v. Ramlal Devappa Rathod*** (*supra*) is that in certain situations, it would be difficult to assert and assess with certainty that all persons in part of the mob shared the same common object and were liable for acts committed by some persons in the part of the mob. While there could be room for entertaining a doubt that certain persons could not be attributed to having done any specific overt acts, the test in ***Masalti v. State of U.P*** (*supra*) was to determine the liability of those against whom there was no allegation of committing an overt act but were only part of as members of the unlawful assembly. However, it was pointed out that it would not apply to cases where specific allegations of overt acts constituting the offence had been made. The Supreme Court further stated that ***Masalti v. State of U.P*** (*supra*) did not qualify the well-settled principle where a conviction can be founded upon the testimony of even a single witness if it establishes, in

clear and precise terms overt acts constituting the offence. Relevant paragraph is extracted as under:

> "*26. We do not find anything in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] which in any way qualifies the well-settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes in clear and precise terms, the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] is required to be applied while dealing with cases of those accused who are sought to be made vicariously responsible for the acts committed by others, only by virtue of their alleged presence as members of the unlawful assembly without any specific allegations of overt acts committed by them, or where, given the nature of assault by the mob, the Court comes to the conclusion that it would have been impossible for any particular witness to have witnessed the relevant facets constituting the offence. The test adopted in Masalti [Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226: (1964) 8 SCR 133] as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness. The trial court was therefore perfectly right and justified in relying upon the testimony of sole witness PW 12 Sarojini and the High Court completely erred in applying the test laid down in Masalti [Masalti v. State of U.P., AIR 1965 SC 202: (1965) 1 Cri LJ 226: (1964) 8 SCR 133]. The view taken by the High Court being completely erroneous and unsustainable, in this appeal against acquittal, we have no hesitation in setting it aside and restoring that of the trial court. Out of eight accused found guilty by the trial court, going by the testimony of PW 12 Sarojini, only six*

> *of them that is to say Accused A-1, A-2, A-3, A-12, A-29 and A-30 had caused final assault on Tanaji which resulted in his death. The other two accused, according to the witness had set the house of Shivaji on fire and had not participated in the final assault. We therefore grant them benefit of doubt and confirm their acquittal. However, as regards other six accused, they having pursued, taken out Tanaji by lifting him from the house of Hemla and thereafter assaulted him in the field adjacent to the house, the case of the prosecution as against them stands completely proved.*"
>
> (emphasis added)

49. The issue, therefore, at this stage when the trial is yet to complete, would be whether this Court can reach a finding that the testimony of the police witnesses is to be completely ignored, and that the Court must make an assessment at the stage when the trial is not complete, that there is no accusation of any overt act against the petitioner.

50. Evidence is yet to be tested in the trial, which is at the stage of completion. As per the counsel for the State, out of 15 witnesses, 12 witnesses have already been examined, and eight dates have been allotted for completion of trial between 07th January 2025 to 30th January 2025.

51. In ***State of Rajasthan v. Ashok Kumar Kashyap*** (2021) 11 SCC 191, the Supreme Court stated that the Court's role while framing charges or discharging an accused is limited to determining that the prosecution's material, taken at face value, establishes sufficient grounds for proceeding, without delving into merits, conducting a mini-trial, for assessing the probative value of the evidence. Relevant paragraphs are extracted as under:

> *"13. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 CrPC. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all.*
>
> *……*
>
> *15. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.*
>
> *16. We are not further entering into the merits of the case and/or merits of the transcript as the same is required to be considered at the time of trial. Defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application."*
>
> (emphasis added)

52. Any decision by this Court in its revisional jurisdiction to discharge the accused by setting aside the Trial Court's order on charge, at the stage when the trial is just about to conclude, would be unmerited. The evidence, which either

the prosecution or the defence relies upon, will be filtered, distilled and tested in the crucible of the trial.

53. The Supreme Court, in a recent decision in ***Om Prakash Yadav v. Niranjan Kumar Upadhyay & Ors***. 2024 INSC 979, in a case involving a challenge to proceedings arising out of an FIR registered under Sections 147/148/149/302/307 IPC, observed after traversing through the previous decision of the Court, that "*Courts must avoid the premature staying or quashing of criminal trials at the preliminary stage since such a measure may cause great damage to the evidence that may have to adduced before the appropriate Trial Court.*"

54. In the view of the above assessment, this Court does not find any impropriety, illegality or infirmity with the impugned order passed by the Sessions Court.

55. Accordingly, the petition is dismissed.

56. Pending applications (if any) are disposed of as infructuous.

57. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 17, 2024/MK/tk