

DLNE010009742021



**IN THE COURT OF SH. PULASTYA PRAMACHALA
ADDITIONAL SESSIONS JUDGE-03,
NORTH-EAST DISTRICT,
KARKARDOOMA COURTS: DELHI**

CNR No. DLNE01-000974-2021

SC No. 124/21

State v. Akil Ahmad @ Papad & Ors.

FIR No.71/20

PS Dayalpur

U/s.147/148/149/188/436/427/323/341/120-B/34 IPC & 3/4
PDPP Act

In the matter of: -

STATE

Versus

- 1. Akil Ahmed @ Papad**
S/o. Sh. Jamil Ahmed,
R/o. H.No.1692, Gali No.17,
Rajiv Gandhi Nagar,
New Mustafabad, Delhi.
- 2. Raheesh Khan @ Raisu Khan**
S/o. Sh. Rafiullah,
R/o. H.No. A-140, Gali No.5,
25 Futa Road, Chand Bagh, Delhi.
- 3. Irshad**
S/o. Sh. Ikram,
R/o.H.No.1194, Gali No.14,
Rajiv Gandhi Nagar,
New Mustafabad, Delhi.

16.08.2023

ORDER ON THE POINT OF CHARGE

Vide this order, I shall decide the question of charges against accused **1. Akil Ahmad @ Papad, 2. Rahish Khan, and 3. Irshad.**

- 1.** Brief facts of the present case are that on 25.02.2020, DD No. 14-A was recorded in PS Dayalpur at about 09:50 AM, so as to record the information received from a caller that vehicles parked inside Victoria School, Brijpuri, Wazirabad Road, were set on fire. This call was assigned to ASI Surender Pal, who visited that place. He found a huge mob assembled at that place. These persons were raising slogans in favour of and against CAA. SHO and other senior officers were also present there, who were trying to disperse this mob, however, the mob started pelting stones on the police team. The mob also vandalized the vehicles passing by that place. This mob also set on fire the vehicles parked in front of Victoria Public School. The mob was carrying weapons like stone, rod, danda etc. and they blocked the road. ASI Surender Pal prepared rukka on the basis of his aforesaid observations, on 28.02.2020 and present FIR was accordingly registered u/s. 147/148/149/436/427/323/341/34 IPC and 3/4 PDPP Act.
- 2.** Further investigation was assigned to SI Shiv Charan Meena. During investigation, IO prepared site plan of the place of incident i.e. Main Wazirabad Road, Victoria Public School, Delhi. During the investigation, IO clubbed several complaints as made by Farooq Ahmad, Shahbaz Malik, Nadeem Farooq and Jai

Shankar Sharma, in the present case. Statement of one police official Ct. Piyush Pratap was also recorded by IO, who claimed to have identified three persons among the rioters, during his duty on 25.02.2020. IO obtained CDR of the mobile number being used by accused persons. IO came to know about arrest of accused persons by Insp. Ashish (Crime Branch), in FIR No.84/20, PS Dayalpur and on 16.04.2020, all three accused persons were arrested in Mandoli Jail. It appears that subsequently investigation was again handed over to ASI Surender Pal, who had recorded statement of Ct. Piyush.

3. After completion of investigation, IO/ASI Surender Pal prepared a chargesheet on the basis of materials collected against accused Akil Ahmed @ Papad, Rahish Khan and Irshad for offences punishable u/s.147/148/149/436/427/323/341/120B IPC & 3/4 PDPP Act. This chargesheet was filed on 14.07.2020 before Duty MM (North East), Karkardooma Courts, Delhi. Thereafter on 09.12.2020, ld. CMM, North East District, Karkardooma Court, Delhi, took cognizance of aforesaid offences. On 01.02.2021, case was committed to the court of sessions by ld. CMM (N/E). Thereafter on 08.11.2021, first supplementary chargesheet along with complaint u/s. 195 Cr.P.C. and certain documents, was filed by SI Rajiv Kumar before Duty MM (N/E). On 15.02.2022, ld. CMM (N/E) sent this supplementary chargesheet to the court of sessions. Thereafter on 16.02.2023, second supplementary chargesheet along with certain documents and fresh statements, was filed directly before this court.

Arguments of Defence

I heard ld. Special PP and ld. defence counsels on the point of charge. I have perused the materials on the record.

4. **Mohd. Hasan**, ld. counsel for accused Akil Ahmed @ Papad argued that Ct. Piyush did not take name of Akil in his first statement. This witness referred to burning of vehicle only. Therefore, no case for offence u/s. 436 IPC was made out. He further argued that time of incident was not clarified by the witnesses. He submitted that police took up two incidents for prosecution in this case and three dates have been mentioned in respect of these incidents. He submitted that the prosecution record itself shows contradictions to make the case of prosecution doubtful.
5. **Ms. Shabana**, ld. counsel for accused Raheesh Khan and Irshad submitted that four complaints were clubbed in this case to cover up two places of incidence. She further submitted that complainants referred to the time period of intervening night of 24/25.02.2020 for the incidents. She further submitted that chargesheet mentions that Ct. Piyush saw all the incidents on 26.02.2020. These all contradictory evidences show that accused persons were falsely implicated in this case. It was further argued that Ct. Piyush in his statement dated 30.03.2020, mentioned dated of incident as 25.02.2020. In this statement, he took five names. Subsequently in the year 2023, same witness improved his statement to say that accused persons were in the mob at 09:30 AM on 25.02.2020. In the same fashion, statement of other witnesses were also changed to say that incidents had taken place

on 25.02.2020. Even statement of previous IO/Surender Pal was framed to say that Ct. Piyush had informed him date of 25.02.2020, but he wrongly recorded other date and name of other accused persons. She further stated that only two eye witnesses Ct. Piyush and Chavvi have been cited in this case. The statement of Chavvi does not show particular of any FIR and it does not mention time of the incident. Both the defence counsels, thus, submitted that it is a fit case for discharge of the accused persons.

6. An application u/s. 227 Cr.P.C. was moved in the past on behalf of accused Akil Ahmad so as to seek his discharge on the grounds that statement of alleged police witness referred to a different period of time of the incident and the CDR relied upon by the prosecution tends to exonerate the applicant.

Arguments of Prosecution

7. **Sh. Madhukar Pandey**, Id. Special PP argued that the subsequent statement given by complainants, Ct. Piyush and first IO/Surender clarify the time of incidents and on the basis of the same, there remains no doubt regarding involvement of the accused persons in the present case.

Appreciation of arguments, facts and law: -

8. First of all, I shall refer to the provisions dealing with the alleged offences and other relevant offences.
 - Section 3 PDPP Act provides punishment for committing mischief causing damage to public property.
 - Section 4 PDPP Act provides punishment for committing mischief causing damage to public property by fire or explosive substance.

- Section 34 IPC defines act done by several persons in furtherance of common intention.
 - Section 147 IPC provides punishment for guilty of rioting.
 - Section 148 IPC provides punishment for committing riot being armed with a deadly weapon or with any-thing which being used as a weapon, is likely to cause death.
 - Section 149 IPC provides liability of each member of unlawful assembly for any offence committed by any member of that assembly in prosecution of the common object of that assembly or within knowledge of members of that assembly to be likely committed in prosecution of that object.
 - Section 188 IPC provides punishment for disobedience to order duly promulgated by public servant.
 - Section 323 IPC provides punishment for voluntarily causing hurt.
 - Section 341 IPC provides punishment for wrongful restraint any person.
 - Section 427 IPC provides punishment for committing mischief and thereby causing loss or damage to the amount of fifty rupees or upwards.
 - Section 436 IPC provides punishment for committing mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property.
9. The ingredients of offence defined under Section 120-B IPC were explained by Supreme Court in ***Lennart Schussler v. Director of Enforcement, (1970) 1 SCC 152*** in following manner: -

“9. It now remains to be seen whether the alleged agreement which A-1 and A-2 arrived at in Stockholm in 1963 and again in Madras in 1965, would, if established, amount to a criminal conspiracy. The first of the offence defined in Section 120-A of the Penal Code which is itself punishable as a substantive offence is the very agreement between two or more persons to do or cause to be done an illegal act

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or a legal act by illegal means subject however to the proviso that where the agreement is not an agreement to commit an offence the agreement does not amount to a conspiracy unless it is followed up by an overt act done by one or more persons in pursuance of such an agreement. There must be a meeting of minds in the doing of the illegal act or the doing of a legal act by illegal means. If in the furtherance of the conspiracy certain persons are induced to do an unlawful act without the knowledge of the conspiracy or the plot they cannot be held to be conspirators, though they may be guilty of an offence pertaining to the specific unlawful act. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established. It is also clear that an agreement to do an illegal act which amounts to a conspiracy will continue as long as the members of the conspiracy remain in agreement and as long as they are acting in accord and in furtherance of the object for which they entered into the agreement.”

10. Before, I analyse and appreciate the facts and evidence of this case, it is relevant to refer to the complaints made by the complainants and their statements subsequently recorded u/s. 161 Cr.P.C.
11. Complainant Farooq Ahmed Nawab was manager of Victoria Public Senior Secondary School, situated at A-5, Brijpuri, Wazirabad Road, Delhi-94. In his complaint dated 27.02.2020 (recorded vide DD No.11-B dt. 27.02.2020 and Dy. No.5 dt.02.03.2020), Farooq Ahmed alleged that in the intervening night of 24/25.02.2020 rioters set on fire two buses make and model Swaraz Mazda bearing registration no. DL-1PB-9321 and DL-1PB-9352, which were parked outside aforesaid school. In this incident, engine, seats, body and tyres, were completely burnt into ashes. They also broke the all glasses of aforesaid school building. It was further alleged that in the intervening night of 25/26.02.2020, the rioters completely burnt two other vehicles i.e. Santro Car bearing registration no. DL-5CQ-6863

and Maruti Suzuki van bearing registration no. DL-1K-6994, which were parked inside aforesaid school campus. It was further alleged that the rioters also vandalized and damaged Principal Office and Manager Office, of aforesaid school. In his statement dated 05.03.2020, recorded u/s.161 Cr.P.C. Farooq Ahmed stated same facts as alleged in his aforesaid complaint except that in the aforesaid night riot was going on, against and in favour of CAA/NRC. In his subsequent statement dated 05.02.2023, he stated that he was in trauma at the time of incident and he reported the date of incident as intervening night of 24-25.02.2020. He further stated the correct date and time were 25.02.2020 at around 9-10 AM. Farooq further stated that at that time he along with his son Nadeem, was present on the terrace of his house. It was further stated that he took photographs of his burnt school and two vehicles bearing no. DL-1PB-9321 and DL-1PB-9352 from his Samsung mobile. He got developed the same from Deepak Photo Studio, Gokalpuri and handed over the same to IO of this case. It was further stated that said mobile phone was crashed and same was not available with him.

12. Complainant Nadeem Farooq, s/o. Sh. Farooq Ahmed Nawab, in his complaint dated 29.02.2020 (recorded vide DD No.21-B and Dy.No.37), alleged that in the intervening night of 24/25.02.2020, a riotous mob entered into his school i.e. Victoria Public Senior Secondary School, situated at A-5, Brijpuri, Wazirabad Road, Delhi-94. They damaged his car make and model Ford Endeavour bearing registration no. DL-10CH-9129 and broke the glass and body of his car. In his statement dated 05.03.2020,

recorded u/s.161 Cr.P.C. Nadeem Farooq stated same facts as alleged in his aforesaid complaint except that in the aforesaid night riot was going on against and in favour of CAA/NRC. In his subsequent statement dated 05.02.2023, he stated that he was in trauma at the time of incident and he wrongly reported the date of incident as intervening night of 24-25.02.2020, while the correct date and time were 25.02.2020 at around 9-10 AM. Nadeem stated that at that time he was present on the terrace of his house. He further stated that he took photographs of said burnt vehicle from the Samsung mobile of his father Farooq Ahmed, got developed the same from Deepak Photo Studio and handed over the same to IO of this case. It was further stated that said mobile phone was crashed and same was not available with him.

13. Complainant Jai Shankar Sharma was working as Manager in Aman Motors Workshop situated at A-7, Khasra No.30/2, Main Wazirabad Road, Brijpuri, Delhi. In his complaint (recorded vide DD No.32-B dated 02.03.2020 and Dy. No.86 dated 03.03.2020), Jai Shankar Sharma alleged that in the intervening night of 24/25.02.2020, between around 12 AM to 1:30 AM, mob of unknown persons thrown petrol bombs in aforesaid workshop through windows and set it on fire. It was further alleged that in that incident, 10-15 motorcycles as well as scooters caught fire, which were parked inside aforesaid workshop. In his statement dated 05.03.2020, recorded u/s.161 Cr.P.C. Jai Shankar Sharma stated same facts as alleged in his aforesaid complaint except that in the aforesaid night riot was going on, against and in favour of

CAA/NRC. In his subsequent statement dated 05.02.2023, he stated that he became nervous at the time of incident and he wrongly reported the date and time of incident as intervening night of 24-25.02.2020 at about 12-01:30 AM, while the correct date and time were 25.02.2020 at around 9-10 AM. Jai Shankar Sharma further stated that he took photographs of his burnt workshop and 10-15 motorcycles from his Samsung mobile and taken out printouts of the same from the printer installed at his home. He handed over of those photographs to IO. It was further stated that said mobile phone was crashed and photos were not available. Jaishankar Sharma also stated that he was unable to identify any person from aforesaid mob, due to large crowd of rioters.

- 14.** Complainant Shahbaz Malik, in his complaint dated 02.03.2020 (recorded wide DD No. 39B dated 02.03.2020 and Dy No. 125 dated 05.02.2020), alleged that in the intervening night of 24/25.02.2020, rioters mob damaged his car make and model Innova Crysta bearing registration no. DL-14CE-6530, which was parked inside the Victoria Public Senior Secondary School. In this incident the rioters broke the glass and body of his car. In his statement dated 05.03.2020, recorded u/s.161 Cr.P.C. complainant, Shabaz Malik stated same facts as alleged in his aforesaid complaint except that in the aforesaid night riot was going on, against and in favour of CAA/NRC. However, in his subsequent statement dated 05.02.2023, he stated that he became nervous at the time of incident and he wrongly reported the date of incident as intervening night of 24-25.02.2020, while the

correct date was 25.02.2020. It was further stated that on that day, at the time of protest against and in favour of CAA/NRC, when he was present at aforesaid school, at around 9-10 AM, he saw a large number of persons coming from the side of Chand Bagh. They damaged glasses of his vehicle bearing no. DL-14CE-6530, which was parked inside aforesaid school. It was further stated that he got developed photographs of said vehicle from Deepak Photo Studio, which were taken by him from the Samsung mobile of Manager Farooq Ahmed of aforesaid school and handed over the same to IO of this case. It was further stated that said mobile phone was crashed and photos were not available. Shabaz Malik also stated that he was unable to identify any person from aforesaid mob, due to large crowd of rioters.

15. In his statement dated 25.06.2020, recorded u/s. 161 Cr.P.C. Sh. Deepak Kumar stated that he was working as driver in Victoria Public School. He identified burnt Swaraz Mazda Buses bearing no.DL1PB9321 and DL1PB9352 as well as Maruti Van and a Santro Car bearing no.DL5CQ6863, in Wazirabad Pit.
16. In his statement dated 10.08.2020, recorded u/s. 161 Cr.P.C. Sh. Chavvi Shyam stated that on 25.02.2020 due to riot, he was going on foot to his plastic godown situated in gali no.2, Dayalpur. At around 9-10 AM, he saw gathering/mob of around 1000-1200 persons outside Victoria School, who were committing vandalism and arson in aforesaid school. He saw some persons from aforesaid mob proceeding ahead. Out of fear, he hid himself on the other side of road. When, they proceeded ahead committing vandalism, arson and loot, he returned home.

It was further stated by him that he had identified face of some of the rioters among them namely Raees, Akil Ahmad and Irshad, who were already known to him. Chavvi Shyam further stated that earlier he had seen these persons while roaming around the area. During protest, they used to come and Chavvi Shyam had seen them several times, while he used to go his godown.

17. IO also recorded statement u/s. 161 Cr.P.C. of PCR callers namely Devender Kumar, Rahul and Neeraj Jain, who had made call at 100 number regarding incident dated 25.02.2020.
18. In his statement dated 30.03.2020, recorded u/s. 161 Cr.P.C. Ct. Piyush Pratap stated that on 25.02.2020 he was on duty on Wazirabad Road near Victoria School. Along with him, staff of outer force was also present there. He saw large number of rioters in nearby streets and on the road going towards Chand Bagh. They were pelting stones, doing arson and damaging private and government properties. Some persons among that mob, were instigating that mob to commit arson and stone pelting. At around 09:30 AM mob of other rioters came from the side of Chand Bagh and they also started arson and stone pelting. They also started stone pelting towards police team. That mob set on fire the vehicles parked inside aforesaid school and thereafter, set on fire the vehicles parked on Service Road Brijpuri and Service Road Yamuna Vihar. That mob also started vandalizing nearby shops. Ct. Piyush further stated that among those rioters, he identified three rioters namely Chand Mohammad Mukhtiyar, Raheesh Khan and Firoz. In his subsequent statement dated 16.04.2020, recorded u/s. 161 Cr.P.C. Ct. Piyush stated that

during the course of his visit at Mandoli Jail on 16.04.2020, he identified accused Akil Ahmad @ Papad, Raheesh Khan and Irshad, who had indulged into incidents of vandalism and stone pelting in Victoria School on 25.02.2020, during protest against and in favour of CAA/NRC. They were also pelting stones on police team as well as on passing by vehicles. Ct. Piyush further stated that they were also damaging and setting on fire the vehicle parked towards Yamuna Vihar. He further stated that being Beat Constable, these three persons were well known to him, who along with mob indulged into incident of vandalism and arson on 25.02.2020. However, in his subsequent statement dated 05.02.2023, Ct. Piyush stated that on 25.02.2020 he was on duty along with outer force at Victoria School, during CAA/NRC protest. On that day, at around 09:30 AM rioters came from the side of Chand Bagh, entered into Victoria School and started vandalism and arson. Ct. Piyush further stated that he identified accused Akil @ Papad, Irsad and Raheesh Khan and he had informed about aforesaid incident and name of accused persons to IO/ASI Surender Pal on 30.03.2020.

- 19.** In their statement dated 16.04.2020, recorded u/s. 161 Cr.P.C., ASI Ravinder Kumar, HC Devender, Ct. Azad, Ct. Amit, and Ct. Sandeep stated that on 11.03.2020, they being member of Crack Team, were accompanying Insp. Ashish Kumar in the investigation of FIR No.84/20. During that investigation on 11.03.2020, they identified accused Raheesh Khan @ Raees, who was seen during riot in Chand Bagh, while he was inciting the riot, pelting stones, doing arson and loot. These police witnesses

further stated that they were performing law and order duty since prior to this day, along the site of protesters against CAA/NRC and during that period they had seen this accused who used to come there. They had also seen continuous participation of this accused in that protest. These witnesses further stated that this accused was continuously seen on 24-25-26.02.2020 supporting the rioters and committing nuisance. It was further stated that they got arrested this accused by Insp. Ashish Kumar. These witnesses further stated that in same fashion on 01.04.2020, on the basis of identification they got arrested accused Irshad, who was accompanying accused Raheesh Khan. On 10.04.2020, these witnesses accompanied Insp. Ashish and got arrested accused Akeel Ahmad @ Papad, who used to ply taxi at Bhajanpura Stand and was already known to these witnesses. It was further stated by these witnesses that these three accused persons had confessed their involvement in the incident of the present case taken place at Aman Motors Showroom and Victoria Public School.

- 20.** In his statement dated 16.04.2020, recorded u/s. 161 Cr.P.C. Insp. Aashish Kumar stated that he was IO in FIR No.84/20, PS Dayalpur and he had arrested several accused persons in that case. It was further stated by him that during investigation Crack Team identified accused Akeel Ahmad @ Papad, Raheesh Khan @ Raees and Irshad, who confessed their involvement in the incident dated 25.02.2020 committed at Victoria Public School and Aman Motors Showroom. Insp. Ashish Kumar telephonically informed about the same to IO/ASI Surender Pal, of this case.

21. In his statement dated 05.02.2023, recorded u/s. 161 Cr.P.C. ASI Surender stated that on 30.03.2020 Ct. Piyush gave statement that on 25.02.2020 at around 09:30 AM, Ct. Piyush was on duty along with outer force at Victoria School. Ct Piyush further stated before him that a large number of protesters against CAA/NRC came from the side of Chand Bagh, entered into Victoria School and they started vandalism and arson. Ct. Piyush had identified three rioters namely Akil @ Papad, Irsad and Raheesh Khan, among those protesters. This witness/ASI Surender further stated that due to clerical mistake name of two accused namely Chand Mohammad Mukhtyar and Firoz, were wrongly typed in the statement of Ct. Piyush. This witness/ASI Surender further stated that by mistake wrong date of incident as 26.02.2020 was typed, while the correct date and time of incident were 25.02.2020 at around 09:30 AM.
22. It is relevant to mention that the first chargesheet was signed by SHO and ACP on 13.07.2020, wherein all three accused persons were chargesheeted. In this chargesheet, IO referred to complaints made by all the complainants, wherein they had mentioned the time of alleged incidents to be during intervening night of 24/25.02.2020. Complainant Farooq Ahmed also referred to subsequent incident allegedly taken place during intervening night of 25/26.02.2020. While referring to statement given by Ct. Piyush Pratap, IO mentioned date of his duty as 26.02.2020. Till this time, the stand of prosecution regarding time and date of alleged incidents was intervening night of 24/25.02.2020. The evidence against accused persons to show

them as culprits behind the alleged incidents, was in the form of statement of Ct. Piyush Pratap as recorded u/s. 161 Cr.P.C. on 30.03.2020. In this statement, Ct. Piyush Pratap had not mentioned the dated of 26.02.2020, rather he had mentioned the date of 25.02.2020 and time of 09:30 AM, when he had seen the mob of rioters pelting stones and setting vehicles on fire inside and outside Victoria School. However, he had mentioned name of Chand Mohammad Mukhtyar, Raheesh Khan and Firoz, to be identified by him in this mob. Along with these names, their addresses were also mentioned and parentage of two persons namely Raheesh Khan and Firoz was also mentioned. However, IO chargesheeted three different persons as accused persons, who were not named in that statement. The realization of any typographical mistake, as shown to be made by IO/ASI Surender Pal in his statement dated 05.02.2023 was much subsequent to filing of aforesaid chargesheet. Apparently at the time of preparing this chargesheet, names of chargesheeted accused persons were no where mentioned anywhere in any evidence related to identification of the culprits. Their names were only mentioned by the police witnesses of FIR No.84/20, wherein these accused persons were initially arrested by Insp. Ashish Kumar.

23. The stand of prosecution regarding time of alleged incidents remained same in the first supplementary chargesheet as well, which was filed by SI Rajiv on 08.11.2021. In this supplementary chargesheet, IO also referred to subsequent statement given by one other witness namely Chavvi Shyam, who claimed to have

seen rioters outside Victoria School on 25.02.2020 between 9-10 AM. He also claimed to have seen three accused persons to be present among those rioters. IO further took stand in the supplementary chargesheet that complainant Farooq Ahmad had also alleged about incident of arson in the intervening night of 25/26.02.2020 and he reported that same was being separately investigated and a separate chargesheet would be filed in respect of the same.

24. Thereafter, certain developments took place during hearing on the point of charge before the court. On 10.09.2021, this court mentioned that chargesheet revealed incidents of two dates i.e. intervening night of 24/25.02.2020 and intervening night of 25/26.02.2020. The court referred to status report filed by IO in respect of the same. The crux of said status report was that a separate chargesheet was to be submitted in respect of incident of intervening night of 25/26.02.2020. The above mentioned first supplementary chargesheet was filed after this particular hearing before the court. Thereafter on 01.04.2023, while hearing arguments on the point of charge, this court referred to the background and time of incident for which FIR in this case was registered. The court further referred to the time of alleged incidents as reported in different complaints clubbed in this case and posed certain questions before prosecution for the purpose of clarification.

25. Questions posed by this court were as follows:-

- If the FIR was registered in respect of a particular information received and consequent observations made by ASI Surender Pal on 25.02.2020 at 09:50 AM and thereafter, thereby

resulting into FIR in this case, why the incident allegedly taken place prior in time was needed to be clubbed in this case.

- Did Delhi Police receive any information of any incident of riot during the night hours of 24.02.2020 and early morning hours of 25.02.2020 in respect of any riotous act in the particular place i.e. Victoria Public School and nearby places and was any FIR registered on the basis of those informations received?
- Is there any evidence on the record to show that which particular mob had committed which particular act (in view of the fact as mentioned in the rukka herein that there were mobs in favour of and against CAA at that place)?
- Further questions shall be raised as per the response received from the prosecution.

26. Report was filed by Insp. Karamveer Singh to respond to aforesaid questions, but vide order dated 22.05.2023, this court recorded that none of the three queries were answered in that report. Thereafter, once again another report was filed on 18.07.2023, wherein reference to subsequent statements given by Ct. Piyush, ASI Surender and the complainants, were referred to say that same satisfied the queries raised by this court.

27. I shall analyse the evidence accordingly in the background of above-mentioned situations. First of all, it is well apparent that till the time court started raising questions over date and time of incidents clubbed for prosecution in this case, stand of IO as reflected from main chargesheet and the first supplementary chargesheet remained that except for one, all other incidents as reported by different complainants took place in the intervening night of 24/25.02.2020. Thereafter, application u/s. 227 Cr.P.C. on behalf of accused Akil Ahmad came on the record. IO was now compelled to look back into the evidence projected in this

case in support of chargesheeting the accused persons. Thereafter, even though neither any permission was sought from the court, nor granted by the court, IO/SI Rajiv went on to record fresh statement of all the complainants in respect of time of the alleged incidents. It was a rare kind of coincidence that all these different complainants suffered same kind of problem i.e. shock/trauma for reporting wrong date and time in their complaints and realizing such trauma after around three years from making their respective complaints, in order to give a changed version of date and time of the alleged incidents. Such developments and the alleged trauma need to be appreciated in the background of proceedings taken place in this case.

28. When the FIR was registered in this case mentioning time of alleged incident to be 25.02.2020 at about 9 AM to not known, it was incorrect and illegal action on the part of the then IO to club the complaints reporting the incidents of such time, which were prior to the time of incident recorded in the rukka prepared by ASI Surender Pal for registration of this case.
29. Clubbing of several complaints could have only legal basis, when the time and place of incidents were reportedly same, so as to show the possibility of continuous action on the part of same culprits resulting into such different incidents. It is case of prosecution itself and well known fact that riots in North-East Delhi continued for time period with effect from 24.02.2020 till 26.02.2020. For apparent legal reasons, different FIRs were registered for different incidents of vandalism or arson or injury to any person, even if taken place in one particular area, but at

different point of time. Unless there be a case of continuous criminal activity by same mob, vicarious liability by virtue of Section 149 IPC could not have been imputed to any person, simply on the basis of plea and evidence that he was member of riotous mob at some point of time in such area. That is why separate investigation into separate cause of action, is required under the law. Section 220 Cr.P.C. also refers to one series of acts which are so connected together as to form the same transaction, resulting into more offences than one and committed by the same person, to justify one trial of such person for every such different offences.

- 30.** In the present case, there was no such reporting to police at the time of clubbing above mentioned complaints in the present case that same mob had been indulging into vandalism and arson since the intervening night of 24/25.02.2020 till the time of information recorded vide DD No.14-A on 25.02.2020 at 09:50 AM. Therefore, when there were specific observations of ASI Surender Pal regarding criminal acts seen by him while visiting the place near Victoria Public School on 25.02.2020 after 09:50 AM, only those cause of action could have been taken up for investigation in this case, which had connection with the incidents mentioned in the rukka. There could not have been any presumption that the mob active during intervening night of 24/25.02.2020, was the mob during reporting of information vide DD No.14-A.
- 31.** Police still investigated aforesaid complaints with reported time of intervening night of 24/25.02.2020 in this case and gave

conclusion of such investigation alleging that accused persons were behind such incidents. However, their such conclusion as reported in main chargesheet and first supplementary chargesheet was erroneous for two reasons. First of all, name of these accused persons was nowhere mentioned in the statement of Ct. Piyush recorded by that time. Secondly, the time of incidents seen by two alleged eyewitnesses i.e. Ct. Piyush and Chavvi Shyam, was 9-10 AM of 25.02.2020, rather than intervening night of 24/25.02.2020. The subsequent statements of the complainants were thus, recorded, only to cover up above mentioned lacuna in the case of prosecution and to justify chargesheeting the accused persons in this case. Interestingly, the complaints and initial statement of same complainants as recorded on 05.03.2020 and of Ct. Piyush as recorded on 30.03.2020, are also relied upon evidence by the prosecution in this case (that being so cited in the chargesheets). Thus, there is a conflict between two set of relied upon evidence of the prosecution in respect of date and time of the alleged incidents. IO did not come up with any such evidence to show that the subsequent statement of these witnesses, were the correct statements. If, I look into the subsequent statements in the back drop of above-mentioned developments taken place during court proceedings, then I do find it more probable that the subsequent statements based on rare kind of same coincidence taking place with four different person (as already mentioned herein above), were artificially prepared with only objective to cover up the lacuna and mindless action of chargesheeting accused persons in this case.

32. Moreover, IOs of this case ignored the observations recorded in the rukka and in the first statement of all the complainants, that there were mobs raising slogan in favour of and against CAA/NRC. This fact is very important to realise that they were two different and rival mobs. IOs remained silent over the question as to which particular incident was caused by a particular mob. If several incidents took place in and around Victoria Public School at the hands of riotous mob, the job of IO was to ascertain the composition of such mob during each of such incidents. If a person ceases to be member of an unlawful assembly, then he cannot be made responsible for any act done by that mob in absence of such person. S.149 requires conscious presence of a person in the unlawful assembly at the time of commission of alleged offence, in order to make that person vicariously liable for such offence. Therefore, presence of accused persons in the riotous mob during each of the incidents probed in this case, was required to be established.
33. I am conscious of the law that at this stage of consideration on charge, I am not supposed to go into the probative value of evidence produced by prosecution. However, as already pointed out herein above, one set of relied upon evidence of the prosecution contradicts the subsequent set of evidence. Therefore, even if look into evidence of illegally clubbed complaints in this case, I find that there is no other evidence to confirm correctness and authenticity of subsequently procured evidence, which were so procured even without following the procedures of law u/s.173(8) Cr.P.C. and thus, the evidence

placed on the record, besides being silent in respect of vital questions raised herein above, contradict each other. In these circumstances, instead of having a grave suspicion against the accused persons for their involvement in the alleged incidents as reported by four complainants as well as for their involvement in the incidents as observed by ASI Surender Pal in the rukka, I am having suspicion for IO having manipulated the evidence in the case, without actually investigating the reported incidents properly.

34. Therefore, all the accused persons are discharged in this case. It is worth to mention here that this order of discharge is being passed on account of realizing that the reported incidents were not properly and completely investigated and that the chargesheets were filed in predetermined, mechanical and erroneous manner, with subsequent actions to only cover up the initial wrong actions. Hence, matter is referred back to police department to make assessment of the investigation done in this case and to take further action in conformity with law, to take the above mentioned complaints to a legal and logical end.

Ordered accordingly.

PULASTYA
PRAMACHALA
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by PULASTYA
PRAMACHALA
Date:
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Announced in the open court (PULASTYA PRAMACHALA)
today on 16.08.2023 ASJ-03(North East)
(This order contains 23 pages) Karkardooma Courts/Delhi