

IN THE COURT OF VINOD YADAV: ADDL. SESSIONS JUDGE-03:
(NORTH-EAST): KARKARDOOMA DISTRICT COURTS: DELHI

Sessions Case No.29/2021	
State V/s	(i) Shah Alam, Aged about 26 years, S/o Shri Kallan Saifi, R/o House No.A-1/112, Gali No.3, Nehru Vihar, Delhi. Profession/Occupation: Carpenter.
	(ii) Rashid Saifi, Aged about 23 years, S/o Shri Yamin Saifi, R/o House No.A-1/135, Gali No.3, Nehru Vihar, Delhi. Profession/Occupation: Private Job.
	(iii) Shadab, Aged about 26 years, S/o Shri Nafis Ahmad, R/o House No.A-1/2107, Gali No.4, Nehru Vihar, Delhi. Profession/Occupation: Accountant.
FIR No.109/2020	
PS Dayalpur	
U/s 147/148/149/427/436/120-B IPC	

02.09.2021

PHYSICAL HEARING

Present: Shri Amit Prasad, Ld. Special PP for the State alongwith IO, ASI Surender Pal Singh.

Shri Dinesh Tiwari, Ld. Counsel for all the three accused persons namely Shah Alam, Rashid Saifi and Mohd. Shadab.

ORDER ON CHARGE

Today the matter is listed for order on the point of charge. The

arguments on charge had already been heard in detail in the matter on the last date of hearing, i.e on 27.08.2021. The arguments were advanced by Shri D.K Bhatia, learned Special PP, who had been briefed by the IO because Shri Amit Prasad, learned Special PP was stated to be unwell on account of back pain. In the interest of justice, this Court reserved liberty for Shri Amit Prasad, learned Special PP to seek opportunity of advancing further arguments, if any in the matter and/or file written arguments supported by case law. Today Sh.Amit Prasad, Ld.Special PP has advanced arguments.

2. (a) Before adverting to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 04.03.2020 on the basis of a written complaint dated 01.03.2020 (vide DD No.54-B), made by one Om Singh, S/o Shri Sumer Singh, r/o B-338, Gali No.15, Bhajanpura, Delhi; wherein, he stated that on 24.02.2020, a riotous mob after looting about Rs.6,000/- cash from his paan-khoka, situated in front of E-5, Karawal Nagar road, Delhi had set the same on fire, as a result of which he suffered financial loss to the tune of around Rs.55,000/- to Rs.60,000/-.

(b) Thereafter, during the course of investigation, seventeen (17) different complainants also approached the investigating agency with somewhat similar sort of complaints/grievance, which were clubbed with the instant case FIR. The details of said complaints are as under:

(i)	Complainant Shakil S/o Shri Abdul Hameed, r/o C-23, Gali No.3/3, C-Block, Chauhan Bangar, Garhi Mendu, Seelampur, Delhi-53 in his written complaint (received vide Diary No.127, dated 04.03.2020) stated that on 24.02.2020, his TSR bearing Regn. No.DL1RU/7559, which was lying parked at Sherpur Chowk, Dayalpur was set on fire by the riotous mob.
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(ii)	Complainant Ms.Anjum, D/o Mohd. Yamin, r/o House No.A-12, Gali No.5, Chandu Nagar, Delhi in her written complaint (received vide Diary No.425R, dated 17.03.2020) stated that on 24.02.2020, a riotous mob looted her said house and took away her sewing machine.
(iii)	Complainant Sheruddin, S/o Shri Kamruddin, r/o House No.331, Gali No.1B, near Ayesha Masjid, old Mustafabad, Delhi in his written complaint (received vide Diary No.135R, dated 04.03.2020) stated that on 24.02.2020, his auto-parts shop situated at Chandu Nagar, Gali No.5, main Karawal Nagar, Delhi was looted by the riotous mob.
(iv)	Complainant Abid Khan, S/o Shri Ahmed Ali Khan, r/o House No.144/42, Gupta Market, Gali No.5, Chandu Nagar, Delhi in his written complaint (received vide Diary No.259R, dated 07.03.2020) stated that on 24.02.2020, a riotous mob had set on fire his scooty (Hero Duet) bearing No.DL5SA/3738 and DL5SCE/0384 (Destiny 125), as a result of which he suffered huge financial loss.
(v)	Complainant Sushil Kumar, S/o Late Harvansh Singh, r/o House No.C-13, Gali No.5, Karawal Nagar Road, Chandu Nagar, Delhi in his written complaint (received vide Diary No.166R, dated 05.03.2020) stated that on 24.02.2020, a riotous mob had broken/damaged the window screens and lights of his car (make i-20 Magna), bearing Regn. No.DL12CG/4926, which at the relevant time was lying parked outside his house in the gali.
(vi)	Complainant Zarif, S/o Shri Sharif, r/o House No.19, Gali No.5, Gupta Market, Chandu Nagar, Delhi in his written complaint (received vide Diary No.330R, dated 11.03.2020) stated that on 24/25.02.2020, a riotous mob after barging into his said house had looted two golden bracelets (kangan),one necklace and cash amounting to Rs.2.00 lakhs. He further stated that the said riotous mob had also looted two motors of the cooler, costing about Rs.3.00 lakhs.
(vii)	Complainant Ms.Naeema, W/o Mohd. Asgar, r/o House No.A-10, Gali

	No.5, Gupta Market, Chandu Nagar, Delhi in her written complaint (received vide Diary No.305R, dated 11.03.2020) stated that on 24.02.2020, a riotous mob after vandalizing her said house had looted cash amounting to Rs.15,000/-, brass utensils, two gold ear rings and two mobile phones.
(viii)	Complainant Ms.Sahista, W/o Shri Saad, r/o House No.A-10, Gali No.5, Gupta market, Chandu Nagar, Delhi in her written complaint (received vide Diary No.292R, dated 09.03.2020) stated that on 24/25.02.2020, a riotous mob after breaking open the locks of her said house had looted cash and jewellery articles lying therein.
(ix)	Complainant Mohd. Anwar, S/o Mohd. Mukhtiyar, r/o House No.C-40, Gali No.4, Chandu Nagar, Delhi in his written complaint (received vide Diary No.149R, dated 04.03.2020) stated that he had been running a shop by the name of “ Mashoor Chicken Biryani ” at Gupta Market, Chandu Nagar. He further stated that on 24.02.2020, a riotous mob had looted two commercial cylinders, one fridge and other eatables from his said shop, as a result of which he suffered financial loss to the tune of around Rs.1,00,000/-.
(x)	Complainant Mohd. Ansar, S/o Shri Arshad, r/o House No.C-40, Gali No.5, Chandu Nagar, Delhi in his written complaint (received vide Diary No.148R, dated 04.03.2020) stated that his mobile shop, being run from the aforesaid address was looted by the riotous mob on 24.02.2020, as a result of which he suffered financial loss to the tune of around Rs.3.00 lakhs.
(xi)	Complainant Ashok Kumar, S/o Shri Sukhwasi Rathore, r/o House No.B-2/183, Gali No.2, Chandu Nagar, Delhi in his written complaint (received vide Diary No.322R, dated 11.03.2020) stated that on 24.02.2020, a riotous had broken/damaged his scooty bearing Regn. NO.DL5SCH/2691, which was lying parked outside his said house at the relevant time.

(xii)	Complainant Shakeel Ahmed, S/o Shri Jameel Ahmed, r/o House No.A-423, Gali No.20, Brijpuri, Delhi in his written complaint (received vide Diary No.133R,dated 04.03.2020) stated that he had been running a shop by the name of “Sania Imported Silaai Machine” from the said address, which was looted and the articles lying therein burnt by the riotous mob, between 9.00 PM-10.00 PM on 24.02.2020.
(xiii)	Complainant Mohd. Salman, S/o Shri Khudus Khan, r/o House No.C-40, Gali No.5, Chandu Nagar, Delhi in his written complaint (received vide Diary No.144R, dated 04.03.2020) stated that he had been running a shop by the name of “Sancharika Communication” at Gupta Market, main Karawal Nagar road. He further stated that on 24.02.2020, a riotous mob after breaking open the shutter of his aforesaid shop, looted cash and various articles lying therein, as a result of which he suffered financial loss to the tune of around Rs.4.00 lakhs.
(xiv)	Complainant Ms.Sajida, W/o Mohd. Shadik Ali, r/o House No.41-D-1, Mata Wali Gali, Chandu Nagar, Karawal Nagar Road, Delhi in her written complaint (received vide Diary No.409R, dated 19.03.2020) stated that on the night of 24.02.2020, at about 9.00 PM, a riotous mob had vandalized and looted his rehri of bangles, as a result of which she suffered financial loss to the tune of around Rs.50,000/-.
(xv)	Complainant Smt.Rani, W/o Shri Ram Lal, r/o House No.279, Gali No.5, Gunga Vihar, Delhi in her written complaint (received vide Diary No.454R, dated 19.03.2020) stated that on 24.02.2020, a riotous mob had pelted stones upon her said house, due to which the water tank got broken and bathroom (constructed on the roof) suffered damages.
(xvi)	Complainant Zeeshan, S/o Shri Fazlu Rehman, r/o House No.E-1/1280, Gali No.18/3, Nehru Vihar, Delhi in his written complaint (received vide Diary No.223R, dated 02.03.2020) stated that his furniture shop, situated at B-2/10, between Gali No.6 and 7, main Sherpur Chowk, Delhi was

	looted by the riotous mob on <u>25.02.2020</u> , as a result of which he suffered financial loss to the tune of around Rs.20.00 lakhs.
(xvii)	Complainant Hadees, S/o Shri Khatir Miyan, r/o House No.C-80, Chandu Nagar, Delhi in his written complaint (received vide Diary No.194R, dated 06.03.2020) stated that his aforesaid house is a three storied building and on the ground floor, there is a garage shop, which had been let out on rent. He further stated that his said house was set on fire by the riotous mob on 24.02.2020 due to which three vehicles which at the relevant time were lying parked in the said garage also caught fire and blasted off, as a result of which the roof of his building also ripped apart and consequently he suffered huge financial loss.

3. The learned counsel for the accused persons has made a strong pitch *inter alia* submitting that the instant matter is a perfect recipe for discharge of accused persons on account of the following reasons:

(i) It is argued that accused persons have been falsely implicated in the matter by the investigating agency, being resident(s) of the same area/locality. Their false implication is further evident from the fact that there is an “***unexplained delay***” of about eight days in registration of FIR as the alleged incident(s) in the matter took place on 24.02.2020; whereas, the case FIR in the matter was registered on 04.03.2020. The accused persons have neither been specifically named in the FIR nor any specific role has been assigned to them in the matter. As a sequel thereto, it is further contended that investigation in the matter has not been conducted in an impartial and fair manner and persons belonging to a particular community have been falsely roped in by the investigating agency.

(ii) Neither complainant Om Singh nor the other seventeen

complainants have specifically named/identified the accused persons in their respective written complaints. They have even not specifically named/identified the accused persons in their respective statements recorded under Section 161 Cr.P.C by the IO during the course of investigation.

(iii) Out of the alleged riotous mob of 150-200 persons, only three accused persons have been chargesheeted in the matter. Till date, the investigating agency has not been able to identify/apprehend any other accused person in the matter, which is very surprising and clearly points out towards their false implication.

(iv) It is very strenuously argued that severe prejudice has been caused to the accused persons by the unholy alacrity on part of the investigating agency to club the complaints of two different dates, i.e of 24.02.2020 and 25.02.2020. To be specific, it is argued that complainant Zeeshan, S/o Shri Fazlu Rehman in his complaint (received vide Diary No.223R, dated 02.03.2020) categorically stated that his furniture shop, situated at B-2/10, between Gali Nos.5 & 6, main Sherpur Chowk, Delhi was looted by the riotous mob on 25.02.2020; whereas, all the remaining complainants have talked about the incident(s) of 24.02.2020. As a corollary thereof, it is further contended that even the area of operation of alleged unlawful assembly (as stated in eighteen complaints) is quite large, extending from Chand Bagh puliya till Sherpur Chowk, which comes to around 1.5 sq.kms and thus, it is highly improbable that the same unlawful assembly had been operating in such a large area, that too on two different dates. Even no investigation on the aspect of different unlawful assemblies operating in the area/locality has been carried out by the investigating agency. As such,

the aforesaid action (clubbing complaints of different dates) on the part of investigating agency is not only illegal, but also against the settled principles of criminal jurisprudence.

(v) It is contended that there is no independent eye witness account of the incident(s) in question. As a sequel thereto, it is emphasized that there is no CCTV footage/video-clip of the alleged incident(s) available on record to confirm the presence of accused persons at the spot/scene of crime (SOC) on the date and time of incident(s). As regards the CDR location of the accused persons, it is very strongly contended that same is of no help to the investigating agency as they are residents of the same area/locality and CDR does not show real time location of the user, it shows only approximate location. Even no recovery of any sort has been effected from any of the accused persons.

(vi) It is next very strenuously contended that Constable Pawan (No.1139/NE) is a “*planted witness*” as had he witnessed the incident(s), he would have immediately reported the matter to the Police Station on 24.02.2020 itself and should not have waited till the recording of his statement under Section 161 Cr.P.C in the matter on 05.04.2020 by the IO. No cogent/plausible explanation in this regard has come from the side of prosecution. As a sequel thereto, it is very strongly contended that all the three accused persons were initially arrested in case FIR No.101/2020, PS Khajuri Khas (which is a police station having contiguous jurisdiction) on 09/10.03.2020 and thereafter their formal arrests were made in this case. The disclosure statement of the accused persons with regard to commission of offence(s) in this case was never recorded in case FIR No.101/2020, PS Khajuri Khas, then why he waited till 05.04.2020 to name/identify the

accused persons in the case in hand, when both the police stations are adjacent to each other. Was it on account of some kind of divine intervention (*noor-e-elahi/aakashvaani/logos/tau*).

(vii) The police case against the accused persons is false on account of absence of judicial “**Test Identification Parade**” (TIP), when they are sought to be identified from amongst a large number of so called rioters. Reference in this regard has been made to the judgment of “*Usmangani @ Bhura Abdul Gaffar & Anr. V/s State of Gujarat*”, decided on 09.08.2018 by Hon’ble Supreme Court in *Crl.Appeal No.1041/2061* to emphasize that *identification of a few select persons in a large mob by a witness, in the absence of TIP cannot inspire the confidence of Court.*

4. (i) Per contra, learned Special PP for the State while throwing light on the background of the incidents has very vehemently argued that the protests against Citizenship (Amendment) Act (CAA) were going on for last one and half month in the area of PS Dayalpur at Chand Bagh and Brijpuri Puliya alongwith the other area of North East Delhi. On 23.02.2020, protests turned violent and protesters at Chand Bagh spread on Wazirabad Road and Karawal Nagar Road as well, upto Sherpur Chowk and Mahalaxmi Enclave. The communal riots continued till 26.02.2020. During this period, a number of cases of riots have been registered at PS Dayalpur and other police stations of North East District. A heavy damage to government and public property and loss of life was reported and paramilitary forces had to be deployed to control law and order situation in the area.

(ii) **As regards the case in hand**, it is submitted that the police somehow came to know that accused persons were involved in the rioting activity

in the area and as such, they were formally arrested in the instant matter in Mandoli Jail on 22.04.2020.

5. The evidence available against the accused persons has been specified as under:

(a) Role of accused persons	They have been found to be “ active members of the riotous mob ” on the date(s) and time of incident(s), who took active participation in vandalizing and putting on fire the house(s)/shop(s) of complainants.
(b) Ocular evidence	All the three accused persons have been categorically named/identified by police witness namely Constable Pawan (No.1139/NE) vide his statement recorded under Section 161 Cr.P.C in the matter on 05.04.2020, who was posted as “ Beat Constable ” in the area/locality in question at the relevant time.
(c) Technical Evidence	Accused Shah Alam had been using mobile phone number 9810364264; accused Rashid Saifi had been using mobile phone number(s) 9910480788 and 9540942934; while accused Shadab had been using mobile phone numbers 9953593240 and 8851024815 on the date(s) and time(s) of incident(s) and the CDR locations of the said mobile phones duly confirms their position at or around the spot/SOC at the relevant time. In this regard, learned Special PP has specifically drawn my attention to the CDR locations of the accused persons running from page 24 to page 50 of the chargesheet.
(d) Involvement in	Besides the case in hand, accused persons are also

other cases	involved in several other cases of rioting in the area of PS Dayalpur and PS Khajuri Khas.
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6. (i) As regards the contention of the learned counsel that the complainant(s) did not specifically name/identify the accused persons in their respective written complaints and there being delay in registration of FIR, it is argued that the communal riots in North-East Delhi were very unprecedented; people were very much scared; police personnel were busy in maintaining law and order duty, rescuing the victims and stopping further damage to the life, limb and property(ies) in the area; there was curfew like atmosphere at or around the area and the people were so shocked and traumatized that it took several days for them to muster courage to come out and report the matter to the police when the situation became normal. It is contended that since the police personnel remained busy in maintaining law and order, the matters were not promptly reported to the police station. Except for the statements of police personnel, there is hardly any statement of victim(s)/public witnesses which could throw light as to whether the same unlawful assembly of rioters from a particular religion operated on 24.02.2020 as well as on 25.02.2020. It is submitted that presence of accused persons at the spot/SOC at the relevant time is getting confirmed from their CDR location(s) and the same finds corroboration from the statement of Constable Pawan (No.1139/NE), who was lying posted as “**Beat Constable**” in the area/locality in question at the relevant time and his statement cannot be thrown into dustbin at this initial stage. As a sequel thereto, it is contended that this is not the appropriate stage to dwell upon the said issue(s) and the same would be taken care of during the course of trial.

(ii) As regards non-availability of any CCTV footage in the matter, it is emphasized that dreary days of 24.02.2020 and 25.02.2020 saw parts of North-East Delhi gripped by a communal frenzy, reminiscent of carnage during the

days of partition. The rioters had broken down virtually every CCTV in the vicinity and had damaged the DVRs thereof on 24.02.2020 and 25.02.2020 and as such, it is quite possible that on this account no CCTV footage is available in the matter.

7. Lastly, it is submitted that at the stage of consideration on charge, the court is not supposed to meticulously judge the evidence collected by the investigating agency and has to take *prima facie* view thereupon.

8. I have given thoughtful consideration to the arguments advanced at bar by both the sides. I have also carefully gone through the chargesheet filed in the matter.

9. The law with regard to framing of charge is fairly settled now. In the case of “**Kallu Mal Gupta V/s State**”, 2000 I AD Delhi 107, it was held that while deciding the question of framing of charge in a criminal case, the Court is not to apply exactly the standard and test which it finally applied for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the investigating agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction. **What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence.**

10. Furthermore, in case titled as, “**Umar Abdula Sakoor Sorathia V/s Intelligence Officer Narcotic Control Bureau**”, JT 1999 (5) SC 394 it was held that, “it is well settled that at the stage of framing charge, the Court is not

expected to go deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame the charge and proceed to the trial”.

11. It is well-settled law that at the time of framing of charge the FIR and the material collected by the investigating agency cannot be sieved through the cull ender of the finest gauzes to test its veracity. A roving inquiry into the pros and cons of the case by weighing the evidence is not expected or even warranted at the stage of framing of charge (reliance **Sapna Ahuja V/s State**”, **1999V AD Delhi p 407**).

12. Now, reverting back to the case in hand. Following important facts are worth noticing in the case:

(i) Admittedly, the accused persons have neither been specifically named in the FIR nor any specific role has been assigned to them in the matter. Furthermore, all the eighteen complainants have not at all specifically named/identified any of the accused persons in their respective written complaints made to the investigating agency in the matter. They have not even specifically named/identified any of the accused persons in their respective statements recorded under Section 161 Cr.P.C by the IO/investigating agency.

(ii) No recovery of any sort has been effected from any of the three accused persons.

(iii) There is no independent eye witness account of the incident(s) available on record.

(iv) There is no CCTV footage/video-clip of the incident(s) in question available on record to confirm the presence of accused persons at the spot/SOC at the relevant time. As regards the CDR locations, this Court cannot loose sight of the fact that accused persons are residents of the same area/locality and it is quite natural if their CDR locations are found in the said area. The investigating agency has failed to prove that the accused persons were on constant move/regularly shuffling their positions in their locality/area on the date of incidents. As such, the CDR locations of the accused persons being found in the area/locality in question is of no consequence to the prosecution.

(v) The learned Special PP has further not been able to give a cogent explanation as to why the incident of 25.02.2020 (as narrated by complainant Zeeshan) has been clubbed with the incident(s) of 24.02.2020, as told by the other complainants. The prosecution has miserably failed to establish from the record that same unlawful assembly of rioters had been operating in the area on 24.02.2020 as well as 25.02.2020. On the other hand, learned defence counsel has been able to show from the record that the area of operation of the so called unlawful assembly is quite large, extending from Chand Bagh puliya till Sherpur Chowk, which comes to around 1.5 sq. kms and thus, it is highly improbable that the same unlawful assembly had been operating in such a large area, that too on two different dates. Be that as it may, no investigation on this important aspect has been carried out by the investigating agency. In view of the aforesaid, I find substance in the submissions of learned defence counsel that the step of investigating agency of clubbing complaints of two different dates altogether is not only illegal, but also against the settled principles of criminal jurisprudence.

(vi) There is no evidence regarding the criminal conspiracy against the

accused persons. Their CDRs have been obtained by the police, however, there is nothing to show therefrom that they were either in touch with each other or the other accused persons, who are there in larger conspiracy matter (FIR No.59/2020, PS Crime Branch). There is no material to even remotely show that they had participated in the criminal conspiracy. There is no witness to this effect.

13. (i) It is a matter of record that initially the accused persons were arrested in case FIR No.101/2020, PS Khajuri Khas (which is a police station having contiguous jurisdiction) on 09/10.03.2020 and thereafter their formal arrest was effected in the instant matter on 22.04.2020 in Mandoli jail. The disclosure statement of the accused persons was never recorded in case FIR No.101/2020, PS Khajuri Khas with regard to commission of offence(s) in this case, then how Constable Pawan (No.1139/NE) came to know about the involvement of accused persons in this case on 05.04.2020. I have gone through the disclosure statement of accused persons recorded in case FIR No.101/2020, PS Khajuri Khas, wherein they had named some other accused persons to be their associates, but the said other persons have not been involved in this case for no apparent intelligible differentia regarding their roles. Even the learned Special PP has not been able to accord a cogent explanation to the specific query put by this Court in this regard. As a diligent police official, it was the duty of Constable Pawan to have immediately reported the matter to IO/PS Dayalpur about the incidents in question, which he never did. Instead he never bothered to himself report about the incident(s)/accused persons at PS Dayalpur and it was only during the course of recording of his statement under Section 161 Cr.P.C by the IO on 05.04.2020, that for the first time he inculcated the accused persons in the instant matter. This silence and delay on the part of Constable Pawan is not only fatal to the case of investigating agency, but it also gives an impression that he

has been “**planted/ introduced**” in the case to solve eighteen complaints in one shot.

(ii) As a sequel thereto, it is further noted that besides the three accused persons, till date the investigating agency has not been able to identify/apprehend any other accused persons in the matter from the riotous mob of 150-200 persons, which speaks volumes about the efforts put in by it in this regard.

14. It is really painful to note that the supervising officers have miserably failed to supervise the investigation in the matter, as contemplated under Delhi High Court Rules, especially Rule Nos.10, 13 and 14 of Part A, Chapter 11, Volume-III as also Rule 3 Volume III Chapter 12. For ready reference, the said Rules are re-produced hereunder:

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Chapter 11

Part – A

*10. **Procedure of Magistrate granting remand**—A Magistrate authorising the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub-Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate. (Section 167). The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.*

*13. **Police diary to be kept and sent up regularly**—Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day’s diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to the inspection of these*

diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.

14. Duty of Magistrates to Supervise Police investigation—
Magistrates are bound to see that the provisions of the Code are attended to, any departmental practices notwithstanding. The law has provided that the Magistrate should either expressly order (Section 202), or receive immediate intimation of (Section 157) every criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise. Every First Information Report received by a Magistrate of the 1st Class under Section 157 of the Code shall be entered in Registers No. XXIII and XXIV of First Information Reports prescribed in Rules and Orders of the High Court, Volume VI, Part B. The Magistrate concerned shall see that these registers are maintained by the Ahlmad attached to his Court properly and every entry pertaining thereto is correct. He shall also ensure the observance of the following instructions with regard to the maintenance of both the aforesaid registers:—

- 1. Two separate registers. No. XXIII and XXIV, should be kept for each police station to avoid confusion.*
- 2. The date and time of the receipt should be entered in the copy of the First Information Report by the Magistrate in his own hand and signed or initialled immediately on receipt of the same, and this should not be left to the ministerial staff.*
- 3. Entries in registers should be made according to serial number of the First Information Report. If a later "First Information Report" is received and the earlier one is not forthcoming, the column for the entry of earlier report should be left blank and a reminder issued to the Station House Officer concerned. In this way one can find at a glance the numbers of the First Information Reports which may not be forthcoming on a particular date.*
- 4. The dates of presentation of challans and registration of case should invariably be entered in Register No. XXIV in*

the relevant column.

5. The registers should be inspected by the presiding Officer at least once a month to ensure their proper maintenance and be signed by him in token of having done so.

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Chapter 12

3. Use of Police diary by Court—As to be manner in which Police diaries may be used by Courts, the following remarks should be borne in mind:

The Provision of Section 172, that any Criminal Court may send for the Police diaries, not as evidence in the case but to aid it in an inquiry or trial empowers the Court to use the diary not only for the purpose of enabling the Police officer who compiled it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages the intervals which may have elapsed in it, and the steps by which a confession may have been elicited, or other important evidence may have been obtained. The Court may use the special diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the State and the accused.

Should the Court consider that any date, fact or statement referred to in the Police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact or statement, and must, before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

Criminal Courts should avail themselves of the assistance of Police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence, and should call for diaries for this purpose.

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15. Volume-III, Chapter 4 of Delhi High Court Rules, dealing with the investigation of riots cases reads as under:

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3. Court's duty to ascertain the true version—*The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true (cf. 2 P.R. 1913).*

4. Right of self-defence—*When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the Court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (see Section 96-106, Indian Penal Code).*

5. Separate trials when both parties are prosecuted—*When both parties to a riot are prosecuted, the two cases must be tried separately and evidence in the one case cannot be treated as evidence in the others even with the consent of the parties (IV. I.L.R. Lahore 376). Similarly, judgments in such cases should be written separately and care should be taken to see that the evidence in the one case is not imported into the judgment in the other. Sometimes Courts consider it convenient to dispose of such cases in a single judgment, but doing so they are liable to mix up the evidence in the two records. Even when the Lower Courts are careful enough not to mix up the evidence, the mere fact of their having written one judgment furnishes the convicts with a ground of appeal that the directions of their Lordships of the Privy*

Council in Madat Khan v. The King Emperor (I.L.R. VIII Lahore 193), have not been followed. Such objections have to be heard, examined and decided and a good deal of the time of the appellate Court is thus wasted.

7. An unlawful assembly, its common object and use of violence must be proved—A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in Section 141 of the Indian Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use of force or violence in the charge, so that the essential ingredients of the offence are not lost sight of. A lucid statement of the law of unlawful assembly and riot by Plowden, J., will be found in 4 P.R 1889.

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16. This case is at the stage of charge and elaborate scrutiny of material is not permissible until and unless it is a case of grave suspicion. The scope of the charge has been considered by the Hon'ble Supreme Court of India in **“Dilawar Balu Kurane V/s State of Maharashtra”, 2002 (2) SCC 135**, that at the stage of charge, the court is not required to undertake an elaborate enquiry and record a finding regarding guilt or otherwise of the accused. If there is a strong suspicion about the involvement of the accused, it is not open to the court to discharge him. It is further held in **“State of Bihar V/s Ramesh Singh” 1977 (4) SCC 39**, that at the stage of charge, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But, at the initial stage, if there is a strong suspicion, which leads the court to think that there is a ground for presuming that the

accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross examination or rebutted by the defense evidence if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. Though a strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

17. The Hon'ble Supreme Court of India also considered the scope of Section 227 Cr.P.C. in **“Union of India V/s Prafulla Kumar Samal”, (1979) 3 SCC 4** and enunciated the following principles:

- (i) 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.
- (ii) 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.
- (iii) 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.

- (iv) 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. After considering the scope of Section 227, it is observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging there from taken at their face value establish the ingredients constituting the said offence."

18. The scope and ambit of Section 227 has again been considered in **“Niranjan Singh K.S. Punjabi V/s Jitendra Bhimraj Bijjaya”**, (1990) 4 SCC 76 in para 6, wherein it was held that:

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“6....Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exist sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution.”

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19. In **“Soma Chakravarty V/s State through CBI”, (2007) 5 SCC 403**, it was held as under:

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"10. The settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. As such, charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exists some materials there for. Suspicion cannot alone, without anything more, form the basis therefore or held to be sufficient for framing

charge."

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20. In **"P. Vijayan V/s State of Kerala and Anr."** (2010) 2 SCC 398, it has been held that:-

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"10. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

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21. It is further held in **"State of Maharashtra V/s Priya Sharan Maharaj & Ors."** AIR 1997 SC 2041 that at the stage of framing of the charge, the court has to consider the material with a view to finding out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceedings against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

22. As such, in view of the law laid down in aforesaid judgments, the court has power to sift the material collected by the prosecution to find out whether there is prima facie case against the accused or not. The court has to be satisfied that there is a ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The court's enquiry must not be directed to find out whether the case will end in conviction. However, though revolving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that un-rebutted material will lead to a conviction. If at the stage of section 227 or 228

the scales are even then the Court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done at the conclusion of trial only. If there is a strong suspicion which leads to court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. **But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion, but not grave suspicion against the accused, the Court will be within its right to discharge the accused.** Suspicion has to be strong grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered but the court cannot make roving inquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value for the material cannot be gone into this stage.

23. It is pertinent to mention here that when two separate complaints disclosing cognizable offences are filed by two different complainants, there is no provision under which the investigating agency can club such complaints and carryout investigation. With a view to understand the law applicable in such cases, this Court went through a series of judgments, details of which are as under:

- (i) **T.T Antony V/s State of Kerala, (2001) 6 SCC 181;**
- (ii) **C. Muniappan & Ors. V/s State of Tamilnadu, (2010) Vol.IX SCC 567;**
- (iii) **Amitbhai Anilchandra Shah V/s CBI & Anr., (2013) 6 SCC 348;**
- (iv) **Babubhai V/s State of Gujarat & Ors., (2010) 12 SCC 254;**
- (v) **Arnab Ranjan Goswami V/s Union of India; decision dated 19.05.2020, passed by Hon'ble Supreme Court of India in WP**

(Crl.) No.130/2020;

(vi) Anju Chaudhary V/s State of UP & Anr., (2013) 6 SCC 384.

24. A reading of the aforesaid judgments reveals that the issue of clubbing and joining the investigation of different complaints with one FIR is basically to protect the accused, if the offence is same. Firstly, if offence is the same, then number of complainants may not be important/material. Secondly, if the accused comes before the Court after being named in two or more FIRs at preliminary stage, then he is not subjected to multiple trials for the same offence. Then, as a measure of fairness of investigation, principle of sameness and to obviate the possibility of abuse of investigating powers, the investigation can be clubbed into one chargesheet.

25. In order to see whether the concept and principle of fair investigation would have varying impact, the relevant points of consideration for the same could be:

- (a) Whether the complainant has approached the Court for fair investigation or the accused?
- (b) What is the nature of violence/incident?
- (c) If multiple FIRs have been registered for various offences relatable to a common violence which took place around the same time, has the police registered one mother FIR and tagged all other complaints with it?
- (d) When there are multiple FIRs for violent behaviour of riotous mob, does the police has unrestricted power to register/not to register the FIR(s) in manner the police wants?

26. To understand different situations, the following picture emerges.

S.No.	<u>COMPLAINANT PERSPECTIVE</u> (Situations when the Complainant approaches the Court for fair investigation and issue of clubbing FIR)			
	Complainant	Incident	Accused/Set of Accused	FIR
1.	Same in more than one Complaints	Incident is the 'same' and it fits into the 'sameness principle'	<u>Same or not disclosed.</u>	The police/court will permit/ confine the 'investigation' to one FIR/ one trial.
2.	Same in more than one Complaints	Incident is not the 'same' and it does not fit into the 'sameness principle'	Accused/set of accused are disclosed <u>not disclosed</u>	Separate investigations should be done and there should be separate trials.
3.	Different Complainants	Incident is not the 'same' and it does not fit into the 'sameness principle'	Accused/Set of Accused are <u>not disclosed by both or One Complaint discloses the accused another does not</u>	The police should register separate FIR, so that separate trials take place.
	<u>ACCUSED PERSPECTIVE</u> (When the accused approaches the court for fair investigation and issue of clubbing the FIRs Entire idea is to seek protection from double jeopardy)			
	Accused	Incident	Complainant	Investigation and FIRs
1.	<u>Same</u>	Incident is the 'same' and it fits into the 'sameness	<u>Same Or Different</u>	The court will permit/ confine the investigation'

		principle’ (<u>and the incident has happened at one place</u>)		to one FIR
2.	<u>Same</u>	Incident is different and it does not fit into the ‘sameness principle’	Complainant is <u>Same or different</u>	Investigation and FIR may be different leading to two different trials.
3.	<u>Chain of incidents at different places originating through common cause of action [may be hatered through electronic media at different places]</u>	Incidents are at different places affecting different victims	<u>Complainants are different</u>	Separate FIRs and investigations.

27. In *Anju Chaudhary (Supra)* in a case involving some of the similar facts, the Hon'ble Supreme Court of India has been pleased to categorically lay down that clubbing of complaints with a single FIR and not registering separate FIR is possible only when the facts of a given case indicate proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. The relevant extracts of the judgment are reproduced herein as under:

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“44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principle and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences “committed in the course of the same transaction”.

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28. In the North-East District of Delhi, about 750 cases were registered, out of which maximum cases are triable by this Court. This is the sole court dealing with all the matters of riots cases in North-East Delhi. Around 150 cases have been received by this Court for trial after committal. The charges in about 35 cases only have so far been framed. A few matters have been remanded back to the learned MM as no offences triable exclusively by the Court of Sessions were found to be made out. There are a large number of accused persons who have been languishing in jail for the last about 1½ years merely on account of the fact that the trial in their cases are not being initiated. The police seems to be still busy in filing supplementary chargesheets therein. The precious judicial time

of this Court is being wasted in giving dates in those cases. A lot of time of this Court is being consumed by the cases like the present one, where there is hardly any investigation carried out by the police. The eighteen complaints appears to have been solved merely by filing this chargesheet without any real effort being made to trace out the eye witnesses and technical evidence. This does not appeal to senses that nobody watched such a large crowd of rioters when they were on a spree of vandalism, looting and arson. The complaints were required to be investigated with a fair amount of sensitivity and skillfulness, but the same is missing in this investigation. Recording of statement of identification of Constable Pawan on 05.04.2020 is be all and end all of the entire investigation. This Court cannot permit such cases to meander mindlessly in the corridors of judicial system, sweeping away precious judicial time of this Court when the same is open and shut case. The casualty in the matter is the pain and agony suffered by eighteen complainants/victims, whose cases have virtually remained unsolved, as firstly no FIR on their complaints were ever registered; their complaints were clubbed without there being any justification for the same in law; callous and indolent investigation; lack of supervision by the superior officers of the investigation and criminal wastage of the time and money of the tax payer.

29. I am further not able to restrain myself from observing that when history will look back at the worst communal riots since partition in Delhi, it is the failure of investigating agency to conduct proper investigation by using latest scientific techniques, will surely torment the sentinels of democracy. The sort of investigation conducted in the instant case and the lack of supervision thereof by the superior officers clearly depicts that the investigating agency has merely tried to pull the wool over the Court's eyes and nothing else.

30. From the detailed discussion on the facts of the instant case held hereinabove, I am pained to note that no real/effective investigation in the matter has been carried out and merely by recording the statement of Constable Pawan (No.1139/NE), that too at a belated stage, especially when the accused persons were already under arrest in case FIR No.101/2020, PS Khajuri Khas, the investigating agency has just tried to dispose of/solve the case in hand by clubbing different complaints and even clubbing the complaint of Zeeshan qua the incident dated 25.02.2020 with the remaining complaints of 24.02.2020. The evidence brought on record by the investigating agency in the case in hand miserably falls short for framing charges against the accused persons.

31. Accordingly, all the three accused persons namely (i) **Shah Alam**, S/o Shri Kallan Saifi; (ii) **Rashid Saifi**, S/o Shri Yamin Saifi; and (iii) **Shadab**, S/o Shri Nafis Ahmad are discharged from the case. Their bail bond(s) stand cancelled, sureties stand discharged. Original documents, if any, either of the accused persons or their sureties in the instant case be returned to the rightful owner forthwith after retaining a photocopy thereof on record.

32. File be consigned to Record Room after compliance of the provisions of Section 437-A Cr.P.C.

Announced in the open Court on 02.09.2021

(Vinod Yadav)
Addl. Sessions Judge-03 (North-East):
Karkardooma District Courts: New Delhi