

**IN THE COURT OF MS. DIVYA YADAV**  
**JUDICIAL MAGISTRATE FIRST CLASS-04 (SOUTH-WEST)**  
**DWARKA COURTS: DELHI**

State Vs. : Shabnam Hashmi & Anr.  
FIR No. : 442/2020  
U/s : 269/188/34 IPC r/w Section 3 of Epidemic Act  
P. S. : Dwarka South



1. CNR No. of the Case	: DLSW020249052021
2. Date of commission of offence	: 31.10.2020
3. Date of institution of the case	: 17.06.2021
4. Name of the complainant	: ASI Murli Singh
5. Name of accused, parentage &	: 1) <b>Shabnam Hashmi</b> R/o C-94, Akash Ganga Apartment, Sector-6, Dwarka, New Delhi. 2) <b>Seema Joshi</b> R/o Dwarka South, New Delhi.
6. Offence complained of	: <b>269/188/34 IPC r/w Section 3 of Epidemic Act</b>
7. Plea of the accused	: Pleaded not guilty
8. Final order	: Acquittal
9. Date of final order	: 15.12.2025.

**Argued by:- Mr. Amit Sehrawat, Ld. APP for the State**  
**Mr. S. Baneerji and Ms. D. Tulsiyani, Ld. Counsels for both**  
**accused.**

## JUDGMENT

### BRIEF STATEMENT OF REASONS FOR THE DECISION:

#### **FACTUAL MATRIX:**

1. Briefly stated, the case of the prosecution is that on 31.10.2020 at about 3:30 pm in front of Rajkiya Pratibha School, Sector-10, Dwarka, New Delhi within the jurisdiction of PS Dwarka South, both the accused persons in furtherance of their common intention, along with other people were found without mask and without social distancing were protesting on the streets without permission during the Lock-down, which was in violation of Notification No. Order no.9890-9890/R-ACP Dwarka dated 15.10.2020 promulgated by a public servant lawfully empowered to promulgate such order and which both the accused persons knew to be likely to spread the disease which is dangerous to human life and environment. As such, it is alleged that the accused persons have committed the offence punishable under section **269/188/34 IPC r/w Section 3 of Epidemic Act** for which FIR No. 442/2020 was registered at the police station Dwarka South, New Delhi.

#### **INVESTIGATION AND APPEARANCE OF ACCUSED:**

2. After registration of the FIR, the Investigating Officer (hereinafter, "IO") undertook investigation and on culmination of the same, the chargesheet against the accused persons was filed. The court took the cognizance against the accused persons and summons were issued to the accused persons . On their appearance, copies of the chargesheets were supplied to the accused persons in terms of section 207 of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C"). On finding a prima facie case against the accused

persons, charge under section 269/188/34 IPC r/w Section 3 of Epidemic Act was framed against the accused persons on 15.09.2023. The accused persons pleaded not guilty and claimed trial.

### **PROSECUTION EVIDENCE:**

3. During the trial, prosecution led the following oral and documentary evidence against the accused to prove its case beyond reasonable doubt:-

<b><i>ORAL EVIDENCE</i></b>	
PW-1	HC Om Prakash
PW-2	ASI Murli Singh
PW-3	HC Gaje Singh
PW-4	ASI Satish Kumar
PW-5	Mr. Rahul
PW-6	W/SI Asha
<b><i>DOCUMENTARY EVIDENCE</i></b>	
Ex. PW1/A	FIR no. 442/2020
Ex. PW1/B	Endorsement on original rukka
Ex.PW1/C	Certificate u/s. 65B of I.E. Act
Ex.PW4/A (OSR)	Order no. 9890-9980/R-ACP, Dwarka dated 15.10.2020
Ex.PW5/A	Footage containing in CD

4. **The PW1 HC Om Prakash in his examination in chief has deposed that** on 31.10.2020, he was posted at P.S Dwarka South as a DO from 4.00 PM to 12.00 midnight and at about 8.30 PM, Ct. Gaje Singh brought one rukka for registration of FIR which was sent by ASI Murli. Thereafter he registered present FIR. The same is **Ex.PW1/A** which bears his signature at point A (OSR). Thereafter he made his endorsement on the original rukka. The same is **Ex.PW1/B** which bears his signature at point A. PW1 has deposed that the certificate u/s 65B of Indian Evidence is **Ex.PW1/C** bearing his signatures at

point A. Thereafter, he handed over the copy of FIR and original complaint to Ct. Gaje Singh to be handed over to ASI Murli for investigation. **In his cross-examination**, PW1 has admitted that certificate u/s 65B of IEA submitted by him there have no details of the model number of the computer or printer used by him. He voluntarily stated that same is not required. He denied the suggestion that certificate u/s 65B submitted by him is not in compliance with the provision of section 65B 4(C) of Indian Evidence Act.

**5. The PW2 ASI Murli Singh in his examination in chief has deposed that** on 31.10.2020, he was posted as ASI at PP Sector 10 PS Dwarka South and on that day he alongwith Ct. Gaje Singh were performing duty in the Sector 10 Dwarka and while patrolling when they reached in front of Pratibha School Sector 10 at about 3.30 PM, they saw that some ladies were having some posters in their hands and they were not wearing mask on their faces as per the guidelines of the Covid-19. They were also not following the social distancing as per the guidelines of Covid-19. PW2 further deposed that two ladies namely Shabnam and Seema were leading the group. He asked those two ladies about the permission for the protest. They were not having any permission to protest from the appropriate authority. He informed about the said facts to the In-charge PP Sector 10 and SHO PS Dwarka South. SHO and PP Sector 10 In-charge came at the spot and videography of the spot was got done. The ladies put up the masks after they were asked to wear the mask properly. CD available on record is run on the system. CD is working properly. At the 49 seconds, witness pointed out towards one lady (who is wearing white colour clothes) who is without mask and states that she is Seema. Witness further deposed that said lady revealed her name to him as Seema on 31.10.2020. At the 51 seconds, witness pointed out towards one lady, wearing blue colour kurti and white colour payjama and states that she is Shabnam. PW2 has further deposed that

the said lady revealed her name to him as Shabnam on 31.10.2020. Some more persons were seen not wearing the masks. In the CD, it can be seen that social distancing was not maintained during protest. Same was objected to by Ld. defence counsel as certificate u/s 65B IEA qua CD was not on the file. PW2 has further deposed that he prepared the rukka **Ex.PW1/A** bearing his signatures at point A and he handed over the same to Ct. Gaje Singh for registration of FIR. He went to the PS and after getting the FIR registered, returned to the spot alongwith W/SI Asha Dalal to whom the investigation was marked. The site plan was prepared at his instance which is **Ex.PW1/B** bearing his signatures at point A. The said witness has correctly identified the accused persons present in the court. **In his cross-examination**, he admitted that duty register maintained for patrolling/beat duty and that no DD entry regarding his patrolling duty on 31.10.2020 is on record. Inspector Ram Niwas was the SHO of PS Dwarka South on 31.10.2020. He does not recall if SI Rakesh Kumar was still posted at PS Dwarka South at 31.10.2020. He further admitted the suggestion that when the charge-sheet was filed in the month of September 2021, the SHO was changed to Inspector Rakesh Kumar and that he has not mentioned the number of ladies present in front of Pratibha School at Sector 10 on 31.10.2020 and that he had not seized any posters and banners from the spot. He further admitted the suggestion that he did not record the statement of any participants involved in the protest. He had never seen the accused Seema and Shabnam prior to the protest on 31.10.2020. The meaning of word *Dariyaft* as used in his rukka is inquiry. He had asked the names of accused persons from them only. Other ladies also told him the name of accused persons as Seema and Shabnam. Accused persons themselves told him that they were leading the protest (confronted with statement u/s 161 Cr.PC dated 31.10.2020 and examination in chief recorded in court where witness not stated that accused themselves leading the protest). He does not remember the name of the ladies who told him that the

name of the accused persons on 31.10.2020. He had not got conducted the Covid test done of any persons involved in the protest or the accused persons before preparing the rukka. Order no.9890-9890/R-ACP Dwarka dated 15.10.2020 was promulgated under section 144 Cr.PC. He admitted the suggestion that there is no mention of Epidemic Disease Act. He had informed the accused about the contents of the order and that he had not mentioned this fact in his rukka or in his examination in chief or statement u/s 161 Cr.PC. He was at a distance of 4-5 steps from the accused when the inquiries were made from them on 31.10.2020. He does not know the name of the private photographer who done the videography at the spot or not. Video is played in the CD and at 1.58 seconds and he cannot identify the lady whose upper part can only be seen (wearing blue colour cloth). At this stage video is played in the CD and at 24.30 to 24.35 seconds. He cannot identify the lady who wearing blue colour cloth. At this stage video is played in the CD and at 38.35 seconds. The lady wearing the mask is accused Shabnam Hashmi. He denied the suggestion that he did not identify accused Seema Joshi in the video and the lady wearing blue karta with black mask is accused Seema Joshi and that accused Seema Joshi is completely difference persons from Seema Vashishtha named in the rukka made by him and that he had registered a false complaint at the behest of superior officer who hold a grudge against the accused Shabnam for being a politically and socially active citizen raising her voice against lawlessness in Dwarka and promoting issue of women safety and that he was aware that SI Rakesh Kumar had earlier registered another FIR bearing no.222/2020 PS Dwarka South against the same accused Shabnam Hashmi for her social activism in Dwarka and that accused persons made every effort to follow covid guideline and can be seen wearing a mask at all times during the protest or that did not knowingly violate any order and that he could not have calculated the distance between the accused person and he was relying on guess

work for the same and that he was deposing falsely to support the prosecution case.

**6. The PW3 HC Gaje Singh in his examination in chief has deposed that** on 31.10.2020, he was posted as Constable at PS Dwarka South. He deposed that on that day he alongwith ASI Murli Singh were performing patrolling duty in Sector 10 Dwarka and at about 3.30 PM when they reached at Pratibha School, Sector 10 they saw some ladies were gathered there and they were carrying postures and placards. Some women were not wearing mask. They were also not following the norms of social distances as per guidelines of Covid 19. They were also sloganeering. They were asked to provide the permission if any but they failed to show them any permission regarding the gathering at the spot. PW3 further deposed that the names of ladies who were leading the gathering are Shabnam Hashmi and Seema Vashishta. Then SHO and then Chowki Incharge PP Sector 10 also arrived at the spot and the videography and photography of the spot were carried out by the private photographer. ASI Murli prepared rukka and handed over the same to him for registration of FIR. He went to the PS and after getting the FIR registered, he alongwith SI Asha returned to the spot as investigation was marked to W/SI Asha. Said witness has correctly identified both the accused persons. **In his cross-examination,** he has deposed that he cannot tell whether his departure entry regarding his patrolling duty alongwith ASI Murli Singh of dated 31.10.2020 is on judicial record or not. He admitted the suggestion that he has not recorded the statement of any persons in the present case and that no banners, posters and placards were seized by the IO in his presence. He deposed that he had never seen nor met the accused before 31.10.2020. He further deposed that the address of the accused Shabnam Hashmi was disclosed by some lady present at the spot to ASI Murli. He admitted the suggestion that he has not stated this fact in his statement u/s

161 Cr.PC as well as in his examination in chief. He does not know the name of lady who revealed the address of accused Shabnam to ASI Murli. Covid test was not conducted by the police officials of ladies who gathered at the spot on 31.10.2020. He was not aware about the condition no.2 of the order dated 15.10.2020 now Mark X. When he returned to the spot with SI Asha the crowd has started dispersing. No statements of any public witness were recorded in his presence. He denied the suggestion that accused Shabnam and Seema were not violating any covid guidelines or the order dated 15.10.2020 Mark X and that he was having prior knowledge about the identity of the accused Shabnam Hashmi since earlier FIR No.222/22 u/s 188 IPC had been registered against the same accused in PS Dwarka South and that the present case has been falsely registered against the accused persons because they are socially active citizens in Dwarka and their work in public interest causes some embarrassment to the police and that he could not have calculated the distances between the accused persons and that only relying on guess work and that he is deposing falsely.

**7. The PW4 ASI Satish Kumar in his examination in chief has deposed that** he has brought the order no.9890-9980/R-ACP Dwarka dated 15.10.2020. and the said order was made by then ACP Mr. Rajinder Singh. Original order is shown and same is same as that which is present in the file. Order is **Ex.PW4/A** (OSR). He deposed that the sanction u/s 195 Cr.PC was given in the present by the then ACP Mr. Sunil Kumar Singh and the same is part of the record office, same is now Mark Z. **In his cross-examination,** he has admitted that fact that no date is mentioned in the document Mark Z and that no order number is mentioned at point A in the Mark Z or dispatch number is also mentioned in the document Mark Z and that I never worked with Mr. Sunil Kumar, the then ACP.



8. **The PW5 Mr. Rahul Pal in his examination in chief has deposed that** in the year 2020, he was asked by the owner of the shop namely Sh. Rajeev to go in front of the Pratibha School and video record of the activities occurring in front of the said school. Thereafter he visited the said place and made video on his camera make Canon and provided one copy of same on CD to the police official. He further deposed that he had given true copy of the video recorded on the canon camera by him. No tampering was done with the video recorded on the camera or with the copy of the same provided on the CD to the police. At this stage, witness produced one certificate u/s 65B of IEA qua the footage provided by him on the CD. The said CD is Ex.PW5/A bearing his signatures at point A. At this stage, CD available on the record is run on the system and same has run smoothly. Footage is shown to the witness and he asked whether the footage is shown to him was the video recorded as mentioned by him hereinabove. Witness answers in affirmative. **In his cross-examination**, he admitted the suggestion that document Ex.PW5/A is undated document and that IO has not recorded his statement. He further deposed that on 31.10.2020 he reached around lunch time at the spot. He recorded the video for half an hour to one hour. He admitted that suggestion that he has not brought any document to show that he is employee at Creative Studio. He admitted the suggestion that footage recorded in the camera is stored in memory card and that there is no mention of memory card in Ex.PW5/A. At this stage, video is played from CD on record and witness admitted that suggestion that in the video there are multiple short clips which have been merged and it is not in continuous recording. He further admitted the suggestion that video clips were merged in the shop by some other person and he has not prepared the CD which has been filed on record. He voluntarily deposed that he has only recorded the video. He do not remember when he signed the certificate Ex.PW5/A. He denied the suggestion that he did not visit the spot on 31.10.2020 and that he has not

recorded the video which has been filed in the court and that he is deposing falsely at the behest of the IO since no certificate u/s 65B of IEA had been prepared or procured by the IO during the investigation to fill up the lacuna in the case.

**9. The PW-6 SI Asha in her examination in chief has deposed that** on 31.10.2020, she was posted at PS Dwarka South as W/PSI. She has deposed that the further investigation of the present case was marked to her. After registration of the present case, she alongwith Ct. Gajey Singh reached at the spot where they met ASI Murli Singh. She prepared site plan of the place of incident at the instance of ASI Murli Singh, same is already Ex. PW1/B and bearing her signature at point B. She further deposed that ASI Murli Singh also handed over her a CD of incident, which is already Ex. PW5/A. She recorded the statement of ASI Murli Singh u/s. 161 Cr.P.C. She tried to trace the accused person but nobody found there. It was late night timing and they returned to PS Dwarka South and thereafter, she recorded the statement of Ct. Gaje Singh u/s. 161 Cr.P.C. Upon information of ASI Murli Singh, she reached at the address of accused person namely Sabnam Hashmi and Seema Joshi and bound down them after serving notice u/s. 41A Cr.P.C, same are **Ex. PW6/A and Ex. PW6/B** and bearing her signature at point A. She placed on record permission u/s. 195 Cr.P.C to prosecute accused persons from ACP concerned, already Mark-Z and order u/s. 144 Cr.P.C of concerned ACP dated 15.10.2020, which is already Mark-X. After conclusion of investigation, she prepared charge-sheet against accused persons and filed before the court. She correctly identified both the accused persons present in the court. **In her cross-examination,** she deposed that she was also present at the time when accused persons were walking around the place of incident before registration of FIR. She admitted the suggestion that the name and address of accused Shabnam Hashmi is mentioned in the FIR of the

present case and that she did not examine any public witness in the present case. She did not examine any person who suffered any danger, injury, harm, obstruction or annoyance caused by the accused person. She admitted the suggestion that she does not have any personal knowledge about the videographer who prepared CD of the incident already Ex. PW5/A and that ASI Murli Singh has not stated in his statement u/s. 161 Cr.P.C and her examination in chief recorded before the court that he had given any CD to her. She admitted the suggestion that there is no seizure memo on record of the CD or she had not sent the CD of incident to FSL for its authenticity and that she did not seize any banner or poster from the accused persons. She also admitted the suggestion that she did not get conducted any COVID test of the accused persons and that the order Ex. PW4/A is not an order under the Epidemic Diseases Act and that there is no date, order number or dispatch number at point A in document Mark-Z and that there is no seizure memo for the document Mark-Z on record. She does not remember whether she made any effort to procure the Certificate u/s. 65 B of I.E. Act qua the CD of incident already Ex. PW5/A. She was sent to the spot by the directions of SHO concerned before the registration of FIR. She does not remember whether she made any effort to inquire from the authorities whether the accused persons had taken permission for the event at the spot. She admitted the suggestion that during investigation, she had not come across letter dated 28.10.2020 submitted at the office of DCP, Dwarka and letter dated 28.10.2020 at the office of District Magistrate, South-West, Delhi, said documents are Mark D1 and D2 respectively. She further admitted the suggestion that she has not placed any material on record with the challan to demonstrate that the order Ex. PW4/A was duly circulated for public information. She denied the suggestion that she has deliberately conducted shoddy investigation with the intention of falsely implicated the accused persons and that ASI Murli Singh did not handed her any CD and that she has

produced Rahul Pal PW5 as an afterthought to cover the lacuna in the investigation and that the accused persons were wearing masks and did not knowingly violate the order Ex. PW4/A and that the accused persons had informed the relevant authorities about the event and were exercising their fundamental rights and that she is deposing falsely.

### **STATEMENT OF THE ACCUSED AND DEFENCE EVIDENCE**

10. Thereafter, before the start of defence evidence in order to allow the accused persons to personally explain the incriminating circumstances appearing in evidence against them, the statement of the accused persons were recorded without oath under section 281 r/w section 313 CrPC, wherein they stated that they are innocent and has falsely been implicated in the present case. Pursuant thereto, they stated that they do not wish to lead defence evidence.

### **ARGUMENTS**

11. I have heard the Ld. APP for the State and Ld. Counsel for the accused persons at length. I have also given my thoughtful consideration to the material appearing on record.

12. It is argued by the Ld. APP for the State that all the ingredients of the offence are fulfilled in the present case. He has argued that prosecution witnesses have categorically deposed about the commission of offence and there is no ground to disbelieve their testimony. He further contends that the documentary evidence has proved the offence beyond reasonable doubt. As such, it is prayed that the accused be punished for the said offences.

13. *Per contra*, the Ld. counsel for the accused persons has argued that the State has failed to establish its case beyond reasonable doubt. The Ld.

counsel further argued that the entire case of the prosecution is false and fabricated and the same is evident from the material inconsistencies and contradictions borne out from the material on record. It is argued that the prosecution has failed to discharge the burden cast upon it. As such, it is prayed that the accused persons be acquitted for the said offences.

#### **INGREDIENTS OF THE OFFENCE:**

14. In the instant case, the accused persons have been charged for the offences under section 269/188/34 IPC r/w Section 3 of Epidemic Act. It would be appropriate to reproduce Sections which are as under:

***Section 269 IPC : Negligent act likely to spread infection of disease dangerous to life.—***

*Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

***Section 188 IPC : Disobedience to order duly promulgated by public servant.—***

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

*life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Explanation.— It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm. Illustration : An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.*

***Section 3 epidemic disease act : Penalty.***

*1. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).*

*2. Whoever,—*

*(i) commits or abets the commission of an act of violence against a healthcare service personnel; or*

*(ii) abets or causes damage or loss to any property, shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees*

*(iii) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”*

15. In order to prove the fact that accused persons had committed the abovesaid offences, the prosecution has to establish its case beyond doubt. Needless to mention, in criminal law, the burden of proof on the prosecution is that of beyond reasonable doubt. The presumption of innocence of the accused has to be rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the accused. The evidence in the present case is to be weighed keeping in view the above legal standards.

#### **APPRECIATION OF EVIDENCE:**

16. In order to prove the case of the prosecution for the offences punishable under sections 269/188/34 IPC r/w Section 3 of Epidemic Act, the prosecution has to prove the ingredients of the same. Before appreciating the evidence, brought on record by the prosecution, a reference be made to the law of appreciating evidence of the witnesses. Before appreciating the evidence, brought on record by the prosecution, a reference be made to the law of appreciating evidence of the witnesses. The Hon'ble Delhi High Court in case titled as ***Satish Bombaiya vs. State, 1991 JCC 6147***, had observed :

*"While appreciating the evidence of a witness, approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed then undoubtedly it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether earlier evaluation of evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here and there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of*

*the matter, would not ordinarily permit rejection of the evidence as a whole. The main thing to be seen is, whether those inconsistencies go to the root of the matter or pertained to the insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the inconsistencies in the evidence. In the latter, however no such benefit may be available to it. That is a salutary method of appreciation of evidence in criminal cases.”*

17. I have heard the arguments as advanced by the Ld. APP for the State and the Ld. counsel for the accused persons and have also perused the record.
18. In a criminal trial, the onus remains on the prosecution to prove the guilt of accused beyond all reasonable doubts and benefit of doubt, if any, must necessarily go in favour of the accused. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused.
19. In the instant case the IO has not got conducted the covid-19 test of the accused persons and as such there is nothing on record which can suggest that the accused persons were covid-19 positive and could spread the said disease and accordingly, the ingredients of section 269 IPC are not fulfilled.
20. The CD of the alleged incident placed on record by the IO has not been formally seized by him, there is no seizure memo of the same on record and the same was not sent to FSL.



21. The PW5 Rahul and the shopkeeper were never examined by the IO during investigation and no statement u/s 161 CrPC was recorded. The PW5 deposed that document Ex.PW5/A is undated document and that IO has not recorded his statement. He further deposed that on 31.10.2020 he reached around lunch time at the spot. He recorded the video for half an hour to one hour. He deposed that he has not brought any document to show that he is employee at Creative Studio. He deposed that footage recorded in the camera is stored in memory card and that there is no mention of memory card in Ex.PW5/A. The video was played from CD on record and in the video there are multiple short clips which have been merged and it is not in continuous recording. He admitted the suggestion that video clips were merged in the shop by some other person and he has not prepared the CD which has been filed on record. The IO did not examine the person who prepared the CD. The testimony of PW5 is contradictory in itself as firstly he has stated that he recorded the video for half an hour to one hour but later when the video was played he admitted the suggestion that in the video there are multiple short clips which have been merged and it is not in continuous recording. He admitted the suggestion that video clips were merged in the shop by some other person and he has not prepared the CD which has been filed on record. Accordingly, the certificate u/s 65B IEA cannot be relied upon as the CD has not been prepared by him. Further, the same is undated. There is no mention of the memory card in the certificate. In the absence of the proper certificate u/s 65B IEA the electronic evidence cannot be relied upon.

22. The IO has not filed any DD entry of the patrolling duty to establish the presence of the complainant at the spot.

23. The IO has not seized any banners and posters from the site which were used by the accused persons. The IO has not examined any other participants or made them witnesses in the present case.
24. The promulgation could not be proved as the same is not a valid document as the same undated, there is no dispatch number, the signatures of the ACP, Dwarka has also not been proved by the PW 4. Accordingly, it cannot be said that the said promulgation was formally issued by the ACP, Dwarka and hence ingredients of section 188 IPC are not fulfilled.
25. Considering the abovesaid facts and circumstances, the prosecution has failed to inspire confidence of this court and to prove its case against the accused persons.

### CONCLUSION

26. It is a cardinal principle of criminal jurisprudence that prosecution has to prove its case beyond reasonable doubt by leading reliable, cogent and convincing evidence. It is a settled proposition of criminal law that in order to successfully bring home the guilt of the accused, prosecution is supposed to stand on its own legs and it cannot derive any benefits whatsoever from the weakness, if any, in the defence of the accused. Accused is entitled to the benefit of every reasonable doubt in the prosecution story and any such doubt in the prosecution case entitles the accused to acquittal.
27. To recapitulate the above discussion, to bring home the guilt of the both the accused persons, the prosecution was required to prove the ingredients of the offence punishable under section 269/188/34 IPC **rw section 3**

**Epidemic act** beyond reasonable doubt. There is no evidence to link both the accused persons with the crime charged against them.

28. Resultantly, both the accused person namely **Shabnam Hashmi and Seema Joshi** are hereby found not guilty and are hereby acquitted of the offence under Section 269/188 /34 IPC r/w Section 3 Epidemic act.

Announced in the open court on 15.12.2025 in the presence of the accused persons.

**Note:-** This judgment contains 19 pages and each page has been signed by the undersigned.

(Divya Yadav)  
Judicial Magistrate First Class-04,  
Dwarka, Delhi/15.12.2025