

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

Criminal Revision No.24/2020

State

(Through Inspector Pramod Joshi,
SHO, PS Gokalpuri)

.....Appellant

Versus

Nishar Ahmed

.....Respondent

26.04.2021

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri D.K Bhatia, Ld. Special PP for the State/appellant.

Shri M.R Shamshad, Ld. Counsel for the respondent alongwith
respondent in person.

ORDER

This is a Criminal Revision Petition filed by the State against order dated 26.10.2020, passed by learned Metropolitan Magistrate-03 (North-East), Karkardooma District Courts, on an application under Section 156 (3) Cr.P.C filed by the respondent (hereinafter referred to as the “**impugned order**”).

2. The arguments in the present petition were heard in detail on various dates of hearing. The record of case FIR(s) No.78/2020, 82/2020 and 106/2020, all pertaining to police station Gokalpuri has been perused.

3. This revision petition poses a very interesting point of law, which this Court has been facing in a number of cases of riots in North-East Delhi; wherein, several complaints pertaining to a particular area have been clubbed with a single

FIR. It has been noticed by this Court that in several cases, as many as twenty five (25) complaints have been clubbed with a single FIR having different dates of incidents, different complainants, different witnesses and different set of accused persons.

4. 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 (CrI.) No.130/2020;**
- (vi) **State V/s Khimji Bhai Jadeja, (2019) 261 DLT 430 (DB) and;**
- (vii) **Anju Chaudhary V/s State of UP & Anr., (2013) 6 SCC 384.**

5. 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.

6. 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 relating 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 have unrestricted power to register/not to register the FIR(s) in manner the police wants?

7. 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 carry out investigation. 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	Incident is not the 'same' and it does not fit	Accused/set of accused are disclosed <u>not</u>	Separate investigations should be done

	Complaints	into the 'sameness principle'	<u>disclosed</u>	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</u> by both or One Complaint discloses the accused another does not	The police should register separate FIR, so that separate trials take place.
<p><u>ACCUSED PERSPECTIVE</u></p> <p>(When the accused approaches the court for fair investigation and issue of clubbing the FIRs Entire idea is to seek protection from double jeopardy)</p>				
	Accused	Incident	Complainant	Investigation and FIRs
1.	<u>Same</u>	Incident is the 'same' and it fits into the 'sameness principle' (<i>and the incident has happened at one place</i>)	<u>Same Or Different</u>	The court will permit/ confine the investigation' 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</u>	Incidents are at different places	<u>Complainants are different</u>	Separate FIRs and

	<p><u>originating through common cause of action [may be hated through electronic media at different places</u></p>	<p>affecting different victims</p>		<p>investigations.</p>
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8. With the aforesaid legal position in mind, let us have a brief recapitulation of the facts of this case.

9. The respondent filed a complaint dated 04.03.2020 with SHO, PS Gokalpuri, *inter alia* setting out that on 25.02.2020, at about 10.00 AM, a riotous mob consisting of persons from a particular community vandalized and looted his house, which included accused persons namely Dinesh @ Michael, Sahil @ Babu, Tinku, Sandeep @ Mogli and other persons. The said mob after committing dacoity at his residence put on fire two motorcycles belonging to him, lying parked outside his house. He made a video-film of the aforesaid incident and submitted the same to the police.

10. With regard to similar allegations, one complainant namely Aas Mohammad had already filed a complaint dated 29.02.2020; whereupon, on 02.03.2020, case FIR No.78/2020 had already been registered at PS Gokalpuri. In the said complaint, complainant Aas Mohammad had not disclosed the name of any person. In fact, he clearly stated that he was not present at the spot at the time of incident.

11. As per the case set up by the respondent, he had to run away from his house to protect his life and the lives of his other family members. He was very scared. When he approached the police, he was asked by the police to give a very

short complaint, that too regarding theft only. The respondent was so shocked after the aforesaid incident that he had to leave his house and put up at Idgah camp at Mustafabad, where a special camp was set up to obtain the complaints of riot victims. Here, at this camp, he gave a detailed complaint dated 18.03.2020, *inter alia* explaining in detail the incident watched by him dated 24.02.2020 in the evening, wherein under a conspiracy one Vikas Kashyap DJ wallah had put up a large public address system at Gokalpuri pulia near toll tax, where 200-250 people had gathered. Here, several persons were there, including Goli Tikkiwallah, Gaurav Dhabra, Mukesh Masterji, Kanhiya Lal and other persons whom he recognized by face, but did not know their names. From the said public-address system, a clarion call was being given to the persons of a particular community to go and vandalize and put on fire the houses of persons of other community. Thereafter, he watched that late in the evening after getting enraged because of incitement so given, the said persons (riotous mob) vandalized the houses and shops of other community and put the same on fire. Thereafter, he also watched another unlawful assembly (riotous mob), duly armed with weapons and petrol bombs (Molotov cocktail) committing looting, vandalization and arson at the houses belonging to a particular community and even his own house was vandalized. He categorically saw the house of one Illiyas being put on fire. The shop of one Salman was also put on fire.

12. As such, in his aforesaid complaint, he gave details of the members of unlawful assembly of both days, i.e on 24.02.2020 and 25.02.2020 and their acts. His aforesaid complaint was clubbed with the complaint of Aas Mohammad, without realising that his complaint disclosed the acts of two dates and not of 25.02.2020 alone.

13. It has been averred that thereafter threats started pouring in from the persons named by him with regard to incident dated 24.02.2020. He was criminally intimidated and attempts were made to force him to withdraw the

names of persons mentioned in his complaint and to move away from his house after selling it at throw-away price. The respondent again approached the police, *inter alia* levelling the allegations of criminal intimidation by way of his complaint dated 23.05.2020, but the said complaint was neither investigated nor any kind of security was provided to him by the police.

14. Thereafter, the respondent was constrained to approach the Hon'ble Principal District & Sessions Judge (North-East), Karkardooma District Courts, being Chairperson of "**Witness Protection Committee**", seeking protection and the said Committee consisted of two other members, i.e Shri Ved Prakash Surya, DCP (North-East) and Shri V.K Sharma, Chief Public Prosecutor.

15. The respondent was not communicated anything about the registration of FIR on his complaint(s) dated 04.03.2020, 18.03.2020 and 23.05.2020 and as such, he was constrained to approach the Hon'ble High Court of Delhi by way of Criminal Writ Petition bearing No.995/2020, with the prayer directing registration of FIR(s) on his aforesaid complaints and to furnish copies thereof to him. During the course of hearing in the aforesaid writ petition, on 01.07.2020 for the first time, it was communicated to the Hon'ble High Court by the learned counsel for the State that his complaint dated 18.03.2020 had been clubbed with case FIR No.78/2020, PS Gokalpuri and he had been made witness in other three case FIRs. The Hon'ble High Court of Delhi was pleased to dispose off the aforesaid writ petition with the direction(s) to the State to furnish complete chargesheet of three cases wherein the respondent had been made a witness and copy of FIR No.78/2020, during the course of that day. The respondent was granted liberty in case his grievance remained un-redressed to approach the appropriate forum in relation to all the prayers which were made in the writ petition.

16. It is the case of the respondent that despite the aforesaid directions passed by the Hon'ble High Court of Delhi, he was not supplied either the copy of FIR or the copies of chargesheets in three other cases, as a consequence whereof he was constrained to approach the learned Chief Metropolitan Magistrate (North-East), in terms of the liberty granted to him by the Hon'ble High Court of Delhi, by way of a petition under Section 156 (3) Cr.P.C on 16.07.2020, with a prayer for registration of FIR(s) on his complaints and investigation thereof against the accused persons named therein. He made all the persons as respondents in the said petition.

17. Reply was filed by the State to the said petition, *inter alia* admitted having received all the three complaints of the respondent as well as further averments made by him in the aforesaid petition, but it was subsequently stated that the complaints dated 04.03.2020 and 18.03.2020 of the respondent had been clubbed with case FIR No.78/2020 and no substance was found in his other complaints (regarding criminal intimidation) and killing of women of a particular community by the riotous mob. It was, however, submitted that conspiracy behind the riots was being investigated by the Crime Branch and Special Cell of Delhi Police and supplementary chargesheet would be filed in the matter.

18. After hearing arguments of both the sides, the learned Metropolitan Magistrate vide impugned order was pleased to allow the petition of the respondent and gave directions to SHO, PS Gokalpuri to lodge separate FIRs on the complaints of complainant within five days of receiving copy of order; but in the meantime State approached this Court by way of present revision petition and this Court had stayed the operation of impugned order by order dated 19.11.2020 and the said stay is continuing till date.

19. The learned Metropolitan Magistrate in the impugned order considered the law laid down by the Constitution Bench of the Hon'ble Supreme

Court in case titled as, “**Lalita Kumari V/s Govt. of UP**” (2014) 2 SCC Page 1; **Babubhai V/s State of Gujarat** (supra); and **Anju Chaudhary V/s State of UP** (supra) by quoting the relevant extracts therefrom.

20. The learned Special PP for the State has very vehemently argued that the State was well within its rights to have clubbed the complaints of complainant dated 18.03.2020 with FIR No.78/2020 on the **principle of sameness**, as laid by the Hon’ble Supreme Court in the case of **Anju Chaudhary** (supra). No substance was found in complaint dated 23.05.2020 and further averments made by the respondent in his petition under Section 156 (3) Cr.P.C and as such, separate FIR(s) were not registered in the matter in view of the law laid down in the case of **T.T Antony** (supra).

21. With a view to appreciate the contentions of State, this Court called for the records of case FIR(s) No.78/2020, 82/2020 and 106/2020 and perused the same. In case FIR(s) No.82/2020 and 106/2020, the respondent is merely shown as witness; whereas, in case FIR No.78/2020, he is one of the three complainants. This Court failed to understand as to how the complaint of respondent dated 18.03.2020 could have been clubbed with case FIR No.78/2020, when this complaint disclosed commission of cognizable offences on two dates by two different unlawful assemblies. A deep analysis of the chargesheet shows that as many as eleven (11) DDs about the incident(s) of stone pelting, rioting, arson, trespassing and dacoity, all dated 25.02.2020 were clubbed in the single case, but there was no DD entry with regard to incident of rioting dated 24.02.2020. However, it was noticed that one DD No.64A, dated 24.02.2020, bearing time of 05:10:20 seconds was also clubbed alongwith the other DDs. The complaint raised in the said DD was with regard to accumulation of people of a particular community, who were about to start riots. No investigation was conducted with regard to the allegations made by the respondent. There is not even mention about complaint dated 23.05.2020 of the complainant in the entire chargesheet.

22. The complaint dated 23.05.2020 clearly makes out the allegations of criminal intimidation of the respondent by the persons named by him in his complaint dated 18.03.2020, which in any case could not have been part of the same transaction; whereupon, case FIR No.78/2020 was registered. During the course of the arguments, learned Special PP duly admitted that atleast separate FIR should have been registered by the police on complaint dated 23.05.2020. The respondent in his petition under Section 156 (3) Cr.P.C has given clear allegations against the persons named in complaint dated 18.03.2020 in a tabular format, but the police did not pay any heed thereto and no investigation whatsoever was conducted thereupon.

23. In the end, learned Special PP very vehemently argued that even if no separate FIR has been registered on the complaints of respondent dated 18.03.2020 and 23.05.2020, he is free to approach the learned Metropolitan Magistrate under Section 200 Cr.P.C.

24. I am afraid that the last argument of learned Special PP is against the “**principle of fairness**”, as enunciated by the Hon’ble Supreme Court in **Babubhai’s** case (supra) and “**principle of sameness**”, as enunciated in **Anju Chaudhary’s** case (supra).

25. In view of my analysis given in preceding paragraph No.7, the complaint of complainant/respondent dated 18.03.2020 clearly disclosed commission of cognizable offences, separate from the complaint of Aas Mohammad, on which case FIR No.78/2020 was registered. The complaint of respondent dated 23.05.2020 again disclosed a separate cognizable offence and as such, separate FIR(s) on the aforesaid complaints should have been registered by the police. I did not find even semblance of investigation with regard to the criminal conspiracy hatched by the persons named in complaint dated 18.03.2020, by either the local police who investigated the matters under consideration as well

as by Special Cell, which investigated the case of larger conspiracy, i.e FIR No.59/2020, PS Crime Branch. Even the offence of criminal conspiracy has not been invoked in any of the cases where either the respondent is complainant or witness. There is clear diversions of action/investigation by the police in the cases under consideration and case FIR No.60/2020, PS Dayalpur (**HC Rattan Lal murder case**), where the persons who participated at the protest site in the capacity of organisers have been made accused persons. There are clear allegations by the respondent against the named police official(s) of PS Gokalpuri, who had refused to register FIR on his complaint and forced him to give merely complaint of theft (complaint dated 04.03.2020).

26. Therefore, I do not find any substance in the present petition filed by the State. The investigating agency has evidently been found to be on the wrong side of law. This Court has found in several cases of riots in the entire length and breadth of police stations in North-East Delhi that there was complete lack of supervision of the investigation(s) by the senior police officers of the District. All is not over yet. If the senior officers now look into the matter(s) and take remedial measures required in the matter(s), so that justice could be given to the victims.

27. The impugned order is well reasoned, there is no error of either fact(s) or law or lack of propriety therein and the same requires no interference from this Court in exercise of revisional powers. The revision petition is accordingly dismissed, being meritless.

28. Interim order dated 19.11.2020 stands cancelled.

29. A copy of this order be sent to learned trial court alongwith the trial court record.

30. A copy of this order be also sent to both the parties through electronic mode. A copy of this order be also sent to Commissioner of Police, Delhi Police for issuing appropriate direction(s) to re-assess the investigation(s) conducted in host of riots' cases in North-East Delhi and order for remedial action(s) immediately, so that the said matters can have effective trial before the Court of law.

31. The revision file be consigned to Record Room.

**Announced in the Court on 26.04.2021
(Through Webex Video Conferencing)**

**(VINOD YADAV)
ASJ-03 (NORTH-EAST)/KKD COURTS/DELHI**