

**IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

CNR No. SH01-00-1452-2021 (Riots Case)
SC No. 70-2021
FIR No. 145/2020
P.S. Welcome
U/S. 143/144/147/148/149/307 IPC & 27 Arms Act
State Vs. Imran @ Teli & Babu

01.03.2021

In Attendance :- Sh. Saleem Ahmed representing the State.

Imran *alias* Teli and Babu, the accused persons.

Babu has come again to the court. This time accompanied with Imran *alias* Teli to plead for discharge. The State presents the case for charging them both for the offences under Section 143/144/147/148/149/307 Indian Penal Code and Section 27 of Arms Act.

STATE :- The accused Babu and Imran alias Teli must be charged with, for having joined and being members of unlawful assembly armed with weapons and participating in the rioting on 25.02.2020 at near Maujpur Red Light. They despite warning by the police, refused to leave the area, on the face of a Prohibitory Order under Section 144 Cr.P.C, since 24.02.2020. They have also committed the offence of having disobeyed the orders duly

promulgated by the public servant.

ACCUSED:- It is false.

COURT :- What is the law on charge?

Hon'ble Supreme Court of India in ***Bhawna Bai vs. Ghanshyam And Others.***, (2020) 2 Supreme Court Cases 217 said and I quote :

16. After referring to Amit Kapoor, in *Dinesh Tiwari v. State of Uttar Pradesh and another* (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 Crl.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17.For framing the charges under Section 228 Crl.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* (2000) 1 SCC 722, while exercising power under Section 228 Crl.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the

trial court framing the charges against the accused-respondent Nos.1 and 2 under [Section 302 IPC](#) read with [Section 34 IPC](#) and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

COURT :- Statement of Ct. Satish recorded on 26.03.2020 and 08.04.2020 are incriminatory against the accused persons. He is the Beat Constable deputed on duty at the time of riots at Maujpur Red Light on 25.02.2020 and saw the rioters armed with stones and turning a blind eye to the Prohibitory Order under Section 144 Cr.P.C and express directions of the police and in that group of rioters, was Imran alias Teli (by name) and Babu (later on by identification).

The criteria under the law is made. There is prima facie case and sufficient grounds for presuming that both accused persons have committed the offence under Section 143/144/147/148 IPC being a part of unlawful assembly, armed with weapons and committing rioting on 25.02.2020 at Maujpur Red Light.

COURT :- Are these the offences for which accused persons are before this Court ?

STATE :- No.

The offences are Magistrate triable but the accused persons

have done an act with intention or knowledge to cause the death of Rahul and Rahul had suffered a gunshot injury.

Read in Conjunction with Section 149 IPC, both of them must be charged under Section 307 IPC read with Section 149 IPC and also Section 27 of Arms Act.

COURT :- The gunshot injury is stated to be caused to Rahul but where is he. His statement is not on record. The police have, after long investigation, concluded that the Rahul, who is stated to have been shot by the mob/rioters comprising the accused persons, had given a wrong address as also a wrong mobile phone number in his Medico Legal Case (MLC). So by the time, police arrived at the hospital, the alleged victim Rahul had vanished. It is not as if Rahul gave any initial statement and then vanished. The State is categorical in saying that the police never saw Rahul.

That being the case, who is going to say that who shot whom and by whom and where. The alleged victim has never been seen by the police. He has never given any statement about any gunshot injury or about any mob/rioters. So how is Section 307 IPC made out against the accused persons when the victim is absent from even the police investigation. How is the gunshot injury established. There is no murmur of that.

There is only one police witness Ct. Pushkar but even he does

not make any direct or even tangential reference to the firing by rioters or gunshot injury caused to alleged victim Rahul or even to the accused persons firing causing injury to the victim. With the case of the prosecution as it is, Section 307 IPC is out of bounds. With nothing in the charge-sheet to dig in, no case under Section 307 IPC is made out and there is no ground for presuming that these two accused persons have committed the offence of attempt to murder as defined under Section 307 IPC.

COURT :- Is there any recovery of any weapon from accused persons ?

Is there any recovery of ammunition or cartridge caused to the victim ?

No.

Even charging of accused persons under Arms Act has to be met disapprovingly. Cognizance was not taken for want of Section 39 Arms Act. It is, in any case, superfluous as no case under Section 27 of Arms Act is made out itself.

STATE :- The accused persons were part of the rioting mob and thus, it must be presumed that they committed the offence or Section 307 IPC. Suspicion points out towards the accused persons.

COURT :- The criminal jurisprudence says that there must be some material against the accused persons to frame a charge. Presumption can't be

stretched to take the shape of proof/evidence. The charge-sheet depicts nothing for charging them under Section 307 IPC or Arms Act.

Dostovsky in, “ Crime and Punishment” says “ From a hundred rabbits you can't make a horse, a hundred suspicion don't make a proof”.

Thus, both the accused persons are discharged of the offences under Section 307 IPC & Arms Act.

COURT :- The next point for consideration is should we frame charge against the accused persons for other offences of unlawful assembly and rioting ?

Section 228 Code Of Criminal Procedure, 1973 is the answer.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

Thus, I am of the opinion that there is ground for presuming that the accused persons have committed the offence but not exclusively triable by the Court of Sessions. As a result thereof, the present case is transferred back to the concerned designated Magisterial Court through the Ld. District & Sessions Judge, Shahdara District, Karkardooma Courts, Delhi.

Both Imran @ Teli and Babu mark their appearance at the said court on 08.03.2021 at 2.00 PM. Ordered accordingly.

Copy of this order be e-mailed to the Ld. Counsel for accused persons, Ld. Special Public Prosecutor and the SHO concerned. Copy of this order be also e-mailed to Joint Commissioner of Police (Eastern Range), Delhi.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 01.03.2021