

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

RIOTS CASE

**CNR No. DLSH-01-00-7631-2020
Crl. Revision No. 102-2020**

STATE

**Through Station House Officer,
P.S. Jafrabad, Delhi**

....Revisionist

Versus

SALIM

**Son of Nazmuddin
Resident of D-57,
Yamuna Vihar Road,
North-Ghonda
Delhi-110094**

.....Respondent

Date of assignment	:	04.12.2020
Date of Arguments	:	24.07.2021
Date of Pronouncement	:	25.08.2021

ORDER

1. The State/police has preferred the present revision petition under Section 397 of Code of Criminal Procedure (hereinafter referred to as Cr.P.C), 1973 seeking calling of records of the Criminal Complaint titled as

“Salim vs. State” in CC No. 1119/2020 and setting aside of order dated 23.11.2020 passed by the Court of Sh. Fahad Uddin, Ld. Metropolitan Magistrate-IV, Shahdara District, Karkardooma Courts, Delhi whereby an application under Section 156(3) Cr.P.C, filed by respondent herein, was allowed.

2. Notice of the revision petition was issued to the respondent. Reply was filed by the respondent. Written clarifications were given by the revisionist. Trial Court record was also requisitioned.

3. **STAND OF THE REVISIONIST**

(a) Ld. Special Public Prosecutor had argued that the Ld. Counsel for the respondent had played fraud upon the Ld. Trial Court leading to the impugned order for registration of the FIR. The respondent has failed to disclose to the Ld. Trial Court that with reference to the same occurrence FIR No. 64/20 was registered with P.S Bhajanpura inter alia for the gunshot injury to Mohd. Nasir which is the part of the cause of action on which the complaint of the complainant is based. The complaint of the present respondent was clubbed with the FIR No. 109/2020, P.S. Jafrabad which is registered on the complaint of one Ashqeen since the same pertains to the same place, both the occurrences pertained to the same day and complaint was also filed on the same day. It was also argued that Mohd. Nasir had also moved the court under Section 156(3) Cr.P.C. Order for registration of FIR was obtained and which has been challenged before the Ld. Sessions Court.

(b) It was also argued that respondent is an accused in four FIRs No. 66/20, 56/20, 72/20 & 75/20. The persons arrayed as an accused by the respondent are complainant/witnesses in various FIRs in which the respondent faces prosecution. Moreover, the CCTV footage and the complaint of the respondent have marked discrepancies particularly about the time of the incident. It was also argued that the respondent did not meet the Investigating Officer nor video footage was made available to him. The Ld. Trial Court has also not taken cognizance of the action taken report filed by the I.O. It is based upon these objections that the present revision petition has been filed.

(c) Written clarifications were made on the query of the Court and it was submitted by the Ld. Special Public Prosecutor that inadvertently the Investigating Officer in the reply before the Ld. MM did not state that the complaint of respondent Salim had been clubbed with FIR No. 109/20 , P.S. Jafrabad and this fact came to light after the passing of the impugned order by Ld. MM.

Ld. Special Public Prosecutor has relied upon following judgments :-

*i) Judgment of Hon'ble Supreme Court of India passed in **Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others**, Crl. Appeal No. 781 of 2012 delivered on March 19 2015 :-*

ii) Judgment of Hon'ble Punjab & Haryana High Court passed in Pyara Singh Sra vs. State of Haryana and Others, 2011 SCC Online P & H 8486;

iii) Judgment of Hon'ble Allahabad High Court passed in Vinod Kumar vs. Smt. Mohrawati, Criminal Misc. Case No. 659 of 1989 decided on January 24, 1990.

4. STAND OF THE RESPONDENT

Ld. Counsel for respondent had argued that revision petition is not maintainable as no right of police has finally been determined and absolutely no prejudice has been caused to the police. All the allegations in the revision petition have been denied. It was argued that neither the police nor the Special Public Prosecutor can be aggrieved by the registration of an FIR and the present revision petition is an attempt to protect the accused persons from prosecution. It was also argued that the issue of complaint of the present respondent being clubbed with the FIR No. 109/20, PS. Jafrabad was never agitated before the Ld. Magistrate. It was argued that before moving the Ld. Magistrate for registration of an FIR under Section 156 (3) Cr.P.C on 18.03.2020, a complaint was made to the police on 01.03.2020 and to the DCP on 17.03.2020 and these all were prior in time to any of the cases in which he is involved as per police. Moreover, the FIR No. 109/20 was registered on a complaint received on a day after the complaint filed by the present revisionist and thus, the present complaint is unrelated to the contents described in FIR No. 109/20 and bar of Section 162 Cr.P.C will not

apply. It was also argued that FIR is required to be registered on his complaint so that the truth can come out and the revision petition filed by the State be dismissed.

Ld. Counsel for respondent has also relied upon following judgments :-

i) Judgment of Hon'ble Supreme Court of India passed in **Pooja Pal vs. Union of India And Others**, (2016) 3 Supreme Court Cases 135 :-

ii) Judgment of Hon'ble Supreme Court of India passed in **Kari Choudhary vs. Mst. Sita Devi And Others**, (2002) 1 Supreme Court Cases 714 :-

iii) Judgment of Hon'ble Supreme Court of India passed in **Babubhai vs. State of Gujarat And Others**, (2010) 12 Supreme Court Cases 254 :-

iv) Judgment of Hon'ble Supreme Court of India passed in **Upkar Singh vs. Ved Prakash And Others**, (2004) 13 Supreme Court Cases 292 :-

v) Judgment of Hon'ble Supreme Court of India passed in **Anju Chaudhary vs. State of Uttar Pradesh And Another**, (2013) 6 Supreme Court Cases 384 :-

vi) Judgment of Hon'ble Supreme Court of India passed in a case titled as **Kailash Gour & Ors. vs. State of Assam**, Criminal Appeal No. 1068 of 2006 delivered on December 15, 2011 :-

vii) Judgment of Hon'ble Supreme Court of India passed in a case titled as **Harendra Sarkar vs. State of Assam**, Criminal Appeal No. 907 of 2006 decided on 02.05.2008 :-

viii) *Judgment of Hon'ble Madhya Pradesh High Court in a case titled as **Tulsiram vs. State of M.P. and Others**, 192 SCC Online MP 199: 1993 CrL LJ 1165;*

5. Arguments were heard on behalf of revisionist by Sh. Anuj Handa, Ld. Special Public for State and for respondent by Sh. Mehmood Pracha, Ld. Counsel for the respondent. I have perused the record and also the judgments filed on behalf of revisionist and respondent.

6. Since the present revision petition under Section 397 Cr.P.C has been filed, it would be apposite to refer to the said Section.

Section 397 in The Code Of Criminal Procedure, 1973

397. Calling for records to exercise powers of revision.

*(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the **correctness, legality or propriety of any finding, sentence or order**, - recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*

(2)The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3)If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Thus, it is clear that this Court in this revision petition has to satisfy itself about the correctness, legality or propriety of the impugned order dated 23.11.2020.

7. THE RELEVANT FACTS IN SEQUENCE

(a) The respondent Salim filed a complaint to the SHO, P.S. Jafrabad vide DD No. 45-B dated 01.03.2020 detailing about attempt on his life by certain named and unnamed people on 24.02.2020 at around 9.25 PM during the riots. It also referred to attack on his house, firing, stone pelting and intimidation. He had also dialed at 100 number to inform the police.

(b) The said information was also later mailed to the DCP (North-East), Delhi by the respondent Salim.

(c) Thereafter, when the First Information Report (FIR) was not registered, the complainant/respondent, on 18.03.2020, moved an application under Section 156(3) Cr.P.C for registration of the FIR and the same was marked to the concerned Ld. Metropolitan Magistrate (MM in

short).

(d) Vide impugned order dated 23.11.2020, Ld. MM Sh. Fahad Uddin directed for registration of an FIR at the earliest under the appropriate Sections of law on the basis of the allegations made in the complaint by the complainant/respondent Salim.

(e) Against the said impugned order, the present revision petition has been filed.

8. (a) Thus, what this Court in exercise of its power in revision under Section 397 Cr.P.C has to see is whether the impugned order dated 23.11.2020 suffers from any incorrectness, illegality or impropriety impelling this Court to set-aside the said same.

(b) I have meticulously gone through the entire impugned order. The impugned order clearly notes that the application under Section 156(3) Cr.P.C was moved by the respondent Salim after his complaint to the police for registration of the case went unheeded. An action taken report was duly called from the concerned Police Station and a status report was consequently filed. Arguments were heard on behalf of both prosecution and respondent Salim. The impugned order also refers to all the relevant judgments including *Lalita Kumari vs. Govt. of UP & Ors.* It also details how consequent to the disclosure of the cognizable offence in the

complaint, FIR ought to be registered. Hence, after due consideration of the material on record and the relevant law on the subject, Ld. Metropolitan Magistrate passed the impugned order dated 23.11.2020 directing for the registration of the FIR. It must be mentioned here that though the complaint was filed on 18.03.2020, the impugned order dated 23.11.2020 was passed not in a haste but after taking some time and going through the arguments of both the sides and the material on record.

Despite scrutinizing the entire impugned order, this Court found itself at its wits end to locate any infirmity in the said order. The impugned order is lucid and germane to the record of the case. No fault could be found with the said order. May I add here that the status report filed by the police before the Ld. Magistrate could have led to no other conclusion than the one arrived at by the Ld. Magistrate.

(c) At this stage, apposite it would be to refer to the status report filed by the SHO, P.S. Jafrabad and the same is as follows :-

In the Reply/ATR filed by the Investigating Officer (I.O)/SHO concerned, it is stated that a complaint of the complainant dated 01.03.2020 was received in PS. Jafrabad. The said complaint was marked to ASI Rakesh Kumar for inquiry. ASI Rakesh Kumar contacted the complainant Saleem on his phone a number of time and also visited the complainant's house but the complainant did not meet there and informed him that he is out of home and the complainant did not co-operate. It has been stated in the

status report that the complainant has named Subash Tyagi as accused but on 24.02.2020, the rioters had put Tyagi's motorcycle on fire and broken the glasses and lights of his house and for this FIR No. 65/20 under Section 147/148/149/186/353/332/436 IPC & 3, 4 PDPP Act was registered at P.S Bhajanpura. Further, the complainant has named one Supreme as accused in the complaint/application under Section 156(3) Cr.P.C who provided CCTV footages of the riots to the police and in the said footage the complainant Saleem alongwith his brothers was found to be involved in the riots. Regarding accused Hari Om, it is stated in the status report that his Dhaba situated at Yamuna Vihar Road was put on fire and was ransacked by the rioters and for this FIR No. 165/20 under Section 147/148/149/436/380 IPC was registered at P.S Bhajanpura. So far as accused Jaibeer named by the complainant Saleem in the application is concerned, his medical store, car and house was put on fire and ransacked for which FIR No. 66/20, P.S. Jafrabad was registered. It is further stated in the status report that the complainant Saleem and his associates were seen in the video provided by accused Supreme S/o Chandra on the basis of which complainant Saleem was arrested in FIR No. 66/20 under Section 147/148/149/452/427/436/307/34 IPC on 19.03.2020 at the instance of Jaibeer. The complainant Saleem was required and registered in FIRs No. 56/20, 72/20, 75/20 and 122/20. It is further stated in the status report that from the CCTV footages obtained, it was found that complainant Saleem was involved in the riots and the complainant has filed a false complaint to save himself. Complainant Saleem was arrested on 19.03.2020 in FIR No.

66/20 and thereafter, filed the present application under Section 156(3) Cr.P.C in the Court. After the inquiry conducted, no cognizable offence was found to be made out and hence, no FIR has been registered in the said matter.

(d) On the bare perusal of the reply filed by the I.O/SHO concerned, the reason assigned for not registering the case is because the alleged accused persons are complainants and witnesses in other cases. It does not dwell into the allegations contained in the complaint of the respondent Salim at all. In fact, the entire focus is upon the complainant and accused rather than the alleged offence. Without an investigation which can only begin after registration of a case, the allegations are given a quietus. It must be stated, in no uncertain terms, that before the Ld. Magistrate not only did police object to the registration of the FIR but also side stepped the graveman of the allegations contained in the complaint of respondent Salim.

(e) The Ld. Special Public Prosecutor, in the face of such reply filed by the Investigating Officer, leading to the impugned order, has tried to improve the version by conceding to the appropriateness or correctness of the impugned order but challenging it on the ground that the Court order was passed based upon material which was not produced before the Court. It was argued that the Investigating Officer inadvertently did not state in his status report that the complaint of respondent Salim has been clubbed with FIR No. 109/20, P.S. Jafrabad and they are under investigation. This stand

is ludicrous as it is preposterous. If this is to be accepted at face value, then what it means is that the Investigating Officer/SHO concerned did not even know from March till November 2020 during which they filed reply and participated in the proceedings before the Ld. MM, that this complaint has been clubbed with FIR No. 109/20 which was under investigation and it was only at the time of filing of the present revision petition did they somehow come to realize that they are already investigating the matter. This leads to a conclusion that though the case is being investigated by the police, the police did not itself know that they were investigating the case and when told came to realize that it is investigating the matter, the details of which they do not know. Since the police did not itself know that they were investigating the case, the natural corollary is they could not have informed the Court or the complainant/respondent about the same.

(f) There is a specific complaint of the complainant/respondent in the present matter/case. In fact, the stand of the prosecution in the present revision petition is contrary to the stand in the proceedings before Ld. Metropolitan Magistrate. It was stated before the Ld. Magistrate that there is no requirement of an FIR and the conduct of the complainant is doubtful. However, in the present revision petition, as argued, the complaint of the complainant/respondent Saleem is clubbed with FIR No. 109/20, P.S. Jafrabad and is being investigated. The assertion of clubbing of cases or the inquiry of the present complaint of Saleem was neither put before the Ld. Metropolitan Magistrate by the Investigating Officer or by the prosecution

and if the investigation was being done or clubbing had happened, it must have been known to them.

This Court does not want to get into the question whether this complaint can be clubbed with FIR No. 109/20 as no such clubbing existed on record till passing of the impugned order which is legally correct.

(g) Another issue of FIR No. 64/20, P.S Bhajanpura regarding the same occurrence and the cause of action as the present complaint is not to be gone into as that FIR is allegedly for the gunshot injury to Mohd. Nasir.

9. If, as alleged, there are certain discrepancies/inconsistencies or falsity in the version of the complainant, then all these things can be ascertained during the investigation of the case itself. However, on the legal footing, the case of the prosecution does not stand the test of law. The Court has a limited jurisdiction and there is no merit in the revision petition as canvassed.

What emerges from the above discussion is that the complaint of the respondent Salim discloses cognizable offences requiring separate investigation and the Ld. MM correctly passed the impugned order dated 23.11.2020.

10. As a cumulative effect of the above discussion, this Court is of the opinion that there is no illegality, impropriety or infirmity in the impugned

order dated 23.11.2020 passed by Ld. Metropolitan Magistrate-IV, Shahdara District, Karkardooma Courts, Delhi. Revision petition has no merits. Same is accordingly dismissed. Accordingly, the DCP (North-East), Delhi is directed to get the FIR registered within 07 days from the receipt of this order, in terms of complaint made by respondent Salim under appropriate Sections of law.

TCR be sent back along with copy of the order.

File be consigned to Record Room after due formalities.

Copy of this order be emailed to the Ld. Special Public Prosecutor for State/revisionist, Ld. Counsel for respondent and Ld. Joint Commission of Police, Delhi as also to the DCP (North-East) Delhi for information and compliance.

Announced in Open Court
on 25.08.2021

(Amitabh Rawat)
Addl. Sessions Judge-03 (Shahdara)
Karkardooma Courts, Delhi