

CC No. 1390/20
PS Karawal Nagar
Haji Hashim Ali and Ors. Vs. North East Delhi and Ors.

01.02.2021

Present: Ld. Counsel Sh. Aditya Sammaddar for complainant.

1. I have heard the arguments on application u/s 156 (3) Code of Criminal Procedure and record has been carefully perused. I have also perused contents of video footage provided in a pendrive filed in the court on 27.01.2021, as intimated by Reader.

2. There are several incidents which are mentioned in the application as alleged to have occurred during the Delhi riots in February 2020. During arguments on the application, Ld. Counsel for the complainant clarified that the present application is being pressed only for the incident of burning and desecration of Madina Mosque, Shiv Vihar Delhi on 25-26.02.2020. After clarification regarding the cause of action on which the present application U/s 156 (3) Cr.P.C is being pressed, Ld. Counsel for the complainant Sh. Aditya Sammaddar also sent his statement in writing made on behalf of the complainants, through email in this regard. **As the present application is being pressed only regarding damage to the mosque, there is no need to deliberate upon the other alleged incidents like alleged burning of the house of complainant and acid attack on person namely Vakeel Ahmad.**

3. As per the facts in the complaint, on 25.02.2020 at about 5:45 – 6:00PM about 20-25 people gathered in the Madina Masjid Gali. Applicants could identify those persons as they were residents of the same locality. The

accused persons were armed with lathies, sticks, rods, acid and petrol bottles. Those accused persons/ rioters started to break into the mosque and started destroying everything they could lay their hands on. Some of them took inside the premises of the mosque, two LPG cylinders and put them on fire resulting in explosion and huge fire inside the mosque. On the morning of 26.02.2020 one of the accused climbed on top of Madina masjid and started chanting 'Jai Shree Ram' and then went on to hoisting the saffron flag over the masjid which resulted in a tensed environment.

4. Status report has been filed by police and it is mentioned in the status report that the complaint made by the complainant Hashim Ali regarding the destruction in his house has been clubbed with the FIR 72/2020 Police Station Karawal Nagar which was registered on the complaint of Sh. Naresh Chand and therein accused Hashim Ali is an accused. It is also mentioned that on the basis of CCTV footage provided by son of the complainant Naresh Chand in case FIR No. 72/2020, complainant Hashim Ali was arrested in that case as he was clearly seen in the CCTV footage instigating the mob. It is further mentioned in the ATR that a separate complaint is already given by wife of Vakeel Ahmed who was injured in acid attack on 25.02.2020 and the same is clubbed in case FIR No. 138/2020 Police Station Karawal Nagar and investigation is going on in that case. It is further mentioned that after his release on bail in case FIR no. 72/20, PS Karawal Nagar, complainant no. 1 in this case namely, Haji Hashim Ali, gave another complaint i.e. regarding arson, sabotage and blast in Madina Masjid, Shiv Vihar and the same is also clubbed with FIR no. 72/20 and no concrete evidence has come on record against the persons alleged till now and no relevant footage has been provided by complainants regarding the arsons/sabotage/looting in Madina Mosque.

5. In my considered opinion, FIR is to be registered if a cognizable offence is made out. As per the allegations contained in the complaint regarding the incident of fire etc. in the Madina mosque, Shiv Vihar, cognizable offence is clearly made out and a proper investigation is required as it cannot be said that all the evidences are within the reach of the Complainant, even though he has named some of the persons allegedly involved in the offence. It is true that the complaint regarding the cause of action pressed before this court was given in the police station on 25.06.2020, with delay of about four months and it is also observed that one of the complainants in the present case, is an accused in FIR no. 72/20, PS Karawal Nagar, dated 28.02.2020. However, at this stage, I am of the considered view, that veracity of the allegations made by complainants can not be looked into.

6. In these circumstances, it would be appropriate that an FIR is registered in this matter as well, and a complete investigation is carried out. In these circumstances, SHO PS Karawal Nagar is directed to register an FIR on the facts of the present case under appropriate sections of law without being influenced by the sections, if any mentioned in the application and take up the investigation. It is, however, made clear that this order is no direction to the SHO to immediately arrest the accused. The SHO /Investigating Agency should first investigate the matter and find out whether actually any offence has been committed or not. It is now a settled proposition of law that the power of arrest is different from justification to do so. Reference in this regard is made to Court on its motion Vs. C.B.I., Vol. 109, DLT 04, page, 494.

7. A copy of this order be sent to SHO PS Karawal Nagar, Delhi, along with original Complaint. Ahlmad is directed to retain the photocopy of the original complaint on record. Since the complaint in question contains several incidents and complainants pressed this applicant u/s 156(3) Cr.PC

only in respect of incident dated 25-26/02/2020 in relation to desecration and damage caused to Madina Maszid, SHO/IO is at liberty to record fresh statement of complianant no.1/any of the complainants for registration of FIR or to make the complaint dated 25.06.2020 as made to the police, as the basis for registration of FIR. Complainants are directed to co-operate with the investigating agency. The application is disposed of accordingly.

Now for come up for compliance report on 09.02.2021. Copy of order be uploaded on the official website.

(Mayuri Singh)
ACMM/North-East/Karkardooma/Delhi-
01.02.2021