

CNR No. DLNE01-004136-2021

SC No. 436/2021

State v. Rohit etc.

FIR No. 148/2020

PS Gokalpuri

20.11.2023 (At 11:25 AM)

Present: **Sh. D.K. Bhatia**, Ld. Special PP for the State alongwith ACP Sh. Abhishek Gupta, Insp. Parveen Kumar and IO/ASI Sushil Kumar.

Accused Rohit, Jatin Panwar and Jitender @ Jitu, in person on bail.

Sh. Vimal Kumar Singh, ld. counsel for Rohit.

Sh. Sonu Kushwaha, ld. proxy counsel for **Sh. Arun Sheoran**, ld. counsel for Jatin Panwar.

Ms. Priyanka, ld. proxy counsel for Jitender @ Jitu.

One report has been received from ld. DCP (N/E) along with a report from SHO. In that report, request has been made to accept the third supplementary chargesheet.

I have perused the report of SHO as annexed along with the report sent by ld. DCP (N/E). In nut-shell, the final picture as depicted in that report is that there were 25 complaints clubbed for investigation in this case, including FIR. Inadvertently, in the rukka the first IO had made a wrong endorsement regarding time and date of the incident of complainant Rizwan to be 25.02.2020 at around 7 PM. Rizwan in his complaint had mentioned the date and time of 24.02.2020 of 7 PM. Between this date and last date of hearing, police officials had again looked into the complaints and it was realised that 22 complaints pertained to the date of 24.02.2020.

In respect of two (2) complaints, made by Raja Ram and Irshad already two separate cases bearing FIR No.114/20 and FIR No.32/20 were registered in same PS. Though, these incidents also allegedly took place on 24.02.2020 itself. In respect of complaint made by Imran Malik another FIR No.120/20 was registered in the same PS, wherein the incident had allegedly taken place on 25.02.2020 at night.

In this report in the concluding part, SHO has mentioned that 22 complaints are to be prosecuted in this case. It is further mentioned that there are some eyewitnesses and there are some such witnesses who furnished the information of date and time on the basis of third source (term used in the report is public view). It is further mentioned that for the reasons best known to these complainants, they did not divulge information regarding those sources of information to the police.

Thus, the aforesaid report of SHO itself shows that still there are complaints, in respect of which these chargesheets (main and supplementary) are being pressed against the accused persons, without having any concrete material to even confirm the exact time and date of those incidents though admissible evidence. Hearsay evidence is not admissible evidence. Moreover, investigating agency already concluded in advance to chargesheet the accused persons in respect of all these 22 complaints. Though, they did not have such evidence with them to connect the accused with all these incidents.

Today an application has been filed by SHO, thereby seeking permission for further investigation, referring to same complainants who were not present at the place of incidents at their respective premises and who relied upon their neighbours to furnish date and time of the incidents. It is stated in the application that for the purpose of clarification further investigation is required.

The situation mentioned in the application is not disputed by me, but what disturbs me is that investigating agency has already announced its conclusion in respect of 22 complaints (sought to be prosecuted in present case on the basis of chargesheets including 3rd supplementary chargesheet), even without having the evidence with it, to support such conclusion. This is not a legal exercise. This exercise is apparently with a pre mind set to keep clubbed all these complaints in this case, without having any legal basis to club them in the present FIR. As per law, unless there was material with

investigating agency to show and say that incident reported in additional complaints were in continuity of action of the incidents as reported by Rizwan, they had no ground to club those complaints in the present FIR. The present mind set shows the adamant approach to keep investigating all these additional complaints under one FIR itself, ignoring the mandate of law, that too after announcing the conclusion of investigation through chargesheets about complicity of accused persons in all these complaints.

This court cannot be a party to such illegal approach of investigating agency and hence, this application is rejected and disallowed. Rather, SHO is directed to take back all the additional complaints for registration of separate case on the basis of the same and conducting investigation in accordance with law. This court had to give such kind of directions in other cases also and it was expected that such exercise should have been undertaken on the part of investigating agency on their own, rather than awaiting such directions from the court in each case.

Present case shall be entertained only in respect of complaint of Rizwan. A list of witnesses shall be filed by IO and Id. Special PP accordingly, to mention the relied upon witnesses in respect of complaint of Rizwan. On next date, arguments shall be heard on the point of charge limited to the complaint of Rizwan.

Put up for arguments on the point of charge on 13.12.2023. On next date, SHO shall file a compliance report.

(PULASTYA PRAMACHALA)
ASJ-03(NE)/KKD Courts/Delhi
20.11.2023