

CT Case No. 2578/2020

Mohd. Waseem vs. State through SHO & Ors.

PS Jyoti Nagar

18.01.2025

ORDER

1. Vide this order an application filed by the complainant under Section 156(3) of the Code of Criminal Procedure, 1973 (“CrPC”) is decided.
2. Briefly stated, the allegations in the complaint are that on 24.02.2020 the complainant left his house around 03:30 PM in search of his mother amidst the riots’ situation; there was unrest and discord amongst people outside. When the complainant reached near Kardampuri Puliya, he saw that an unlawful assembly had gathered on the road; its people wore saffron scarf and saffron clothes; they stood with the Delhi Police Officials. The complainant reached one Mohalla Clinic to look out for his mother whereupon he identified one Kapil Mishra as the complainant had seen him on News. The alleged accused Kapil Mishra has gathered with an unlawful assembly and allegedly led the unlawful assembly. The unlawful assembly was out of control and it is further alleged that a loud-speaker was handed over to the alleged accused Kapil Sharma by a Delhi Police Official himself. It is alleged that Kapil Mishra had fired gun-shots at the protestors and the accomplices of the alleged accused Kapil Mishra and other rioters, started shooting, throwing stones, petrol bombs etc. on the protesters. Then the police started firing tear gas shells on the protesters with a thick cannon gun which resulted in a dense smoke. The complainant tried to escape from the rioting area but fell down. It is alleged that the policeman had caught the complainant and started abusing and beating him. The complainant saw that the personnel of Delhi Police were fully supporting the alleged accused Kapil

Mishra and his companions. Policemen were also pelting stones on the Muslims, and firing bullets. Due to the above attack, the protesters, women, children escaped from there to save their lives and thereafter, a majority of rioters led by with Mr. Kapil Mishra also went towards Chand Bagh shouting slogans. Soon after the abovementioned incident SHO PS Jyoti Nagar came and told his fellow policemen to throw the complainant the same place where his fellow-mates were lying. Then four of the policemen picked the complainant and threw him at the place where other injured people were lying already. These policemen started beating them and asking them to sing the national anthem and also made them chant slogans of Jai Shri Ram, Vande Mataram, etc. and two-three policemen were also making video of this incident. It is alleged that the SHO further told them to stop making all videos and bring petrol quickly. A policemen saw someone making a video from the roof of a house, and so he informed the SHO of the same.

2.1. Thereafter, all the injured were dumped into the SHO's vehicle; the vehicle stopped little later and the SHO got off. Many of the persons from the crowd who appeared to be known to the SHO shook hands with him and when they saw the complainant and other injured people lying in the car, they tried to pull them out from the car. The SHO stopped them by saying that some people had made video of these people along with the police, so now they cannot be killed. Thereafter, SHO PS Jyoti Nagar got down there and told other policemen to drop the complainant and other injured people to the GTB hospital and SHO & Policemen took the complainant along with other injured people to GTB hospital. Upon reaching the hospital, one of the policemen who brought the complainant to the hospital made a call to someone and gave his phone to the doctors, who was being referred to as "sir" by the doctors. The doctors took signatures of the complainant on a paper; the complainant was crying out loud in pain, but instead of treating

him, doctors started pressing his wounds. Doctors did not treat the complainant, however they further inflicted pain upon their wounds. At the same time, complainant's father also reached the hospital. Thereafter, the complainant and one other person named Rafiq were put in a car and sent to PS Jyoti Nagar. Complainant's father also came to the police station. After a while, Faizan was also brought to the police station who was howling in pain. Even in the lockup, many police officials took turns to mercilessly beat all of them. Then around 09:00 PM SHO Jyoti Nagar came into the lockup and started kicking and abusing the complainant and others. At that time, a policeman who accompanied the SHO pointed towards the complainant and said that the father of this boy is standing outside, and he is quite small. After about half an hour, the complainant was taken out and handed over to his father; he could not even walk on his feet. At that time, SHO PS Jyoti Nagar, told complainant's father that if he wants, he can shoot him now and show him dead in the riots. However, *"I am leaving your son on the condition that whatever has happened today will not be disclosed to anyone ever, instead you always will say that have to say that police have saved your life and other injured people, otherwise, I will destroy you and your whole family"*.

2.2.It is alleged that on 04.03.2020, SHO Tomar of PS Jyoti Nagar visited the complainant's house at around 12 Noon and ordered him to go to PS Bhajanpura at 02.00 p.m. As even then complainant's health was very bad, so his father requested that his son is not in a condition to move but SHO Tomar said that *"I want him there dead or alive"*. He was also told to bring someone from outside his family to PS Bhajanpura, therefore, the complainant's father requested and took one of neighbours to PS Bhajanpura. On reaching, PS Bhajanpura, the complainant saw that the same police official from PS Jyoti Nagar who had taken him to the hospital forced the neighbour to write incorrect things on the dictation and also forced the

complainant and his father to sign on that paper, which they had to sign out of fear; the complainant and his father signed silently out of fear.

2.3. It is also alleged that two days after the incident, the complainant was again called by the police from PS Jyoti Nagar, where the policemen told him to tell people who were sitting with SHO PS Jyoti Nagar inside in his office, that SHO Sahab had saved his life and police has helped them and not given them any trouble and they have no complaints against the police, rather they are thankful to the police. After that the complainant was taken to SHO PS Jyoti Nagar's room where two people were sitting along with the SHO, then those two people inquired the complainant of the incident of riots, the complainant in fear told the same story about which he was threatened to narrate. Thereafter, the complainant was taken to a different room where SHO PS Jyoti Nagar came and gave him such tight slap that he fell. This caused a lot of mental trauma to the complainant, his health worsened and hence, his family took him to St. Stephen's Hospital. Thereafter, about 4-5 days later the police again called him to PS Jyoti Nagar where Rafi was present, and some journalists of India TV with his cameraman were also present. The Complainant and Rafi spoke on the camera as per the directions of the SHO. Again, after 3-4 days this was repeated outside PS Jyoti Nagar on the camera for Zee News. Even after that, police and sometimes have been continuously threatening them to leave the city.

2.4. It is also alleged that on 10.07.2020, the complainant sent a complaint through e-mail regarding registration of FIR and later to the Commissioner of Police, DCP North-East District, Joint CP North Region, NHRC, Chairman NCM etc. but the police have not taken any action so far. On 21.07.2020 the complainant sent a written complaint to DCP Special Cell, DCP Crime, Joint Commissioner of Police and Home Minister requesting for safety of life as the accused were threatening him for dire consequences.

However, till date neither any protection is given to the complainant, nor an FIR has been registered. Thereafter, the complainant had sent a written letter to the SHO PS Jyoti Nagar Delhi via speed post on 17.09.2020 requesting therein to take appropriate legal action and to lodge FIR against the accused persons but still nothing has been done by the police. Therefore, it is prayed that the police be directed to lodge an FIR under relevant sections and investigate the matter.

3. Action Taken Report (“ATR”) was called from the concerned SHO. As per the ATR, apart from providing facts pertaining to the date of alleged incident it has been reported that allegations against SHO PS Jyoti Nagar and staff are baseless and incorrect. During his stay in PS Jyoti Nagar, no police personnel beat Mohd. Wasim.
4. Ld. Counsel for the complainant has already argued at length on various occasions even on the aspect whether sanction is required before proceeding further or not. Apart from describing the facts pertaining to the allegations, it has been argued, *in nutshell*, that cognizable offences were committed by the alleged accused persons and despite that FIR has not been lodged by the police officials. It is a clear mandate as per the judgment passed by the Hon’ble Supreme Court of India that once an information of commission of cognizable offence is given to a police official, he is bound to register FIR and then conduct investigation but here in the ATR, the Inquiry Officer has saved the alleged accused by merely denying the allegations. Further, the ATR is totally silent about accused no.3. The hate crimes committed by the accused no.3 are now in public domain. He clearly incited the people of one community to commit crime against the other community, but he is running Scot free and no case. has been registered against him. Hence, *prima facie*, cognizable offences have been made out in the present case and the police is required to register an FIR and investigate the matter.

5. In *M/s Skipper Beverages Pvt Ltd vs State, 2001 IV AD (Del) 625*, it was held as under:-

"7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 20001 (1) Supreme Page 129 titled " Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."

6. It is a trite law that the power under Section 156(3) CrPC is to be resorted to, after consideration of various factors and the term 'may' used in the provision empowers the Magistrate to use discretion, which should not be used in a mechanical manner rather the Magistrate should apply his mind while doing so. The Magistrate should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case merely because an application has also been filed under Section 156(3) of CrPC that the Magistrate should direct the Police to investigate the crime even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. Reliance here is also places upon *Shri Subhkaran Luharuka vs. State ILR (2010) VI DELHI 495 and Mohd. Salim vs. State 2010 SCC OnLine Del 1053*.

7. An unfortunate black spot in the history of modern India was created from 24.02.2020 to 26.02.2020 when large-scale communal riots took place in the North-East and Shahdara Districts of Delhi (apart from other districts), wherein a huge number of FIRs were registered. There was a large-scale conflict between pro-Citizenship Amendment Act (CAA) group and anti-CAA group, which led to large-scale arson, vandalism, injuries to persons and killings. The situation in Delhi during the aforesaid riots was chaotic. The rioters had converted themselves into various unlawful assemblies and had committed large-scale violence. The police force remained largely busy in controlling the law-and-order situation as well as taking action to prevent further damage to the life and property of persons. Rioters committed acts of violence in different areas against persons from other community.
8. Now in the factual matrix of the present case, there are three aspects of allegations levelled against the alleged accused persons which are discussed hereinafter.

Allegations qua alleged accused no. 3

9. One aspect of allegations is against alleged accused no.3. Scathing remarks which have the effect of affecting communal harmony are undemocratic and uncalled for from a citizen of this country where principles like Secularism hold the value of basic feature imbibed in the Constitution. Freedom to express oneself is indeed allowed to be enjoyed by the citizens to the fullest possible extent, yet with every right there is a corresponding duty attached. The principle behind Section 153A IPC is to preserve religious/communal harmony and it is the duty of every citizen that while he enjoys his right to express himself, he preserves religious harmony. This indeed is the positive aspect of Secularism.
- 9.1. While the ATR in the present matter was called regarding the complete

allegations made by the complainant, but it seems that the IO was more concerned about the police officials and either he failed to make inquiry against the alleged accused no.3, or he tried to cover up the allegations against the said accused. The ATR is completely silent qua him. The Constitution of India guarantees equal protection of law and equality before law and no citizen of India enjoys any special treatment from the rule of law. The alleged accused no.3 is in public eyes and is prone to more scrutiny; such persons in the society direct the course/mood of the public at large and thus, responsible behaviour within the ambit of the Constitution of India is expected from such persons. Be that as it may, in light of the judgment passed by the Hon'ble High Court of Delhi in *Manjinder Singh Sirsa vs. State of NCT of Delhi and Ors* MANU/DE/0057/2024 (Neutral Citation: 2024:DHC:115) the alleged accused no.3 being a former MLA, only Special Courts can try offences against sitting or former MPs/MLAs. Hence, the complainant must approach the concerned court qua alleged accused no.3.

Allegations pertaining to Riots on 24.02.2020

10.It is an admitted as well as judicially noticeable fact that various FIRs pertaining to different incidents of mob violence and riots that took place on 24.02.2020 and 25.02.2020 were lodged and one such FIR which pertains to similar allegations has already been lodged vide FIR No. 75/2020 PS Bhajanpura. The Hon'ble High Court of Delhi is also seized of the issue pertaining to FIR No. 75/2020 and vide judgment dated 23.07.2024 in *Kismatun vs State of NCT of Delhi through Home Department & Ors.* (Neutral Citation: 2024:DHC:5390), the investigation of the said FIR has been transferred to CBI. The relevant paragraph pertaining to the directions by the Hon'ble Court is as follows:

“35. In the circumstances, this court is persuaded to dispose-of the petition, by directing that investigation in case FIR No. 75/2020 dated 28.02.2020 registered at P.S.: Bhajanpura under sections 147, 148, 149 and 302 of the Indian Penal Code, 1860 shall forthwith stand transferred

to the Central Bureau of Investigation, New Delhi („CBI”) for further investigation, in accordance with law. It is also directed that the CBI would be entitled to add to the FIR any other offence(s) as may be found to be made-out in the case. It is made clear that the investigation conducted thus far by Delhi Police, as well as all material and evidence collected and all statements recorded by them, shall form part of the records of the case, and shall be dealt-with conjointly with the material, evidence and statements that the CBI would collect/record in the further investigation.”

10.1. Hence, since investigation of the said FIR, which has somewhat similar allegations of riots as alleged in the present case, has been transferred to CBI and this Court also lacks jurisdiction as far as place of incident is concerned, which lies within the jurisdiction of PS Bhajanpura, this Court is of the view no further directions can be passed by this Court and complainant can very well join investigation or take appropriate steps before the concerned investigating agency.

Allegations qua SHO Mr. Tomar and other police officials

11. The third and last aspect of the allegations made by the complainant pertains to public servants i.e., the police officials on duty including the SHO PS Jyoti Nagar on the date of alleged incident.

11.1. While issue of sanction was raised by Ld. Predecessor of this Court and even this Court heard submissions on that aspect. This Court agrees with the submissions of Ld. Counsel for the complainant that no sanction is required for proceeding further against the police officials as the alleged acts/offences committed by the police officials do not fall within the ambit of them discharging their official duties.

11.2. In *Devinder Singh and Ors. vs. State of Punjab through CBI MANU/SC/0450/2016 (Neutral Citation: 2016 INSC 335)* while extensively discussing the law requiring sanction u/s 197 CrPC, it was held by the Hon'ble Apex Court:

“35. This Court has held that in case there is an act of beating a person suspected of a crime of confining him or sending him away in an injured condition, it cannot be said that police at that time were engaged in investigation and the acts were done or intended to be done under the provisions of law. Act of beating and confining a person illegally is outside the purview of the duties.

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37. The principles emerging from the aforesaid decisions are summarized hereunder:

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far, its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.”

11.3. The ATR filed by the IO merely denies the allegations but has failed to provide any substantive steps taken for conducting preliminary inquiry which is not even mandatory in each case as per the judgement passed by the ***Hon’ble Apex Court in Lalita Kumari vs Government of UP***. The ATR is also silent on the aspect of CCTV footage pertaining to the date of alleged incident, which should have been inquired by the IO. Thus, inquiry pertaining to alleged acts/offences against the complainant has not been conducted properly.

12. Clearly, the SHO PS Jyoti Nagar, Mr. Tomar (complete name with post not provided) and other unknown police officials engaged themselves in hate crimes against the complainant/victim and they cannot be protected under the garb of sanction as alleged offences committed by them cannot be said to have been committed while acting or purporting to act in the discharge of their official duty.

13. Thus, FIR be registered under sections 295-A/323/342/506 IPC against the SHO PS Jyoti Nagar (Mr. Tomar) who was holding the said post in February-March 2020. Current SHO is directed to depute a responsible officer not below the rank of Inspector to conduct investigation in the present matter and role of other unknown police officials involved in the commission of alleged offences can be ascertained during investigation.

Application u/s 156(3) stands disposed of accordingly.

**(UDBHAV KUMAR JAIN)
JMFC-04/SHD/KKD
18.01.2025**