

**IN THE COURT OF MS. DIVYA MALHOTRA
ADDITIONAL CHIEF JUDICIAL MAGISTRATE-01: ROUSE
AVENUE DISTRICT COURTS: NEW DELHI.**

DLCT120001582024



**CR Case No. 9/2024
CNR No. DLCT12-000158-2024
FIR No. 211/2011
u/s 188 IPC
PS : Connaught Place
State vs. Arvind Gaur & Ors.**

CR Case No.	: 09/2024
CNR No.	: DLCT12-000158-2024
Date of Offence	: 29.11.2011
Date of Filing	: 27.11.2012
Names and Details of Accused Persons	: 1) Arvind Gaur s/o Sri Nandan r/o 1/5243, Balbir Nagar, Gali No. 8, Shahdara, Delhi. 2) Neeraj Kumar Pandey s/o Deena Nath Pandey r/o 259, Nirman Apartments, Mayur Vihar, Phase I, Delhi. 3) Swati Maliwal (Member of Parliament) d/o Sangeeta Maliwal r/o 3B, Tower A-2, Central Govt. Type-VII

		Flats, DDU Marg, New Delhi.
Offence Complained of	:	u/s 188 IPC
Plea of the Accused Persons	:	Pleaded not guilty
Final Order	:	Acquitted
Date of Judgment	:	30.09.2024

J U D G M E N T

In 2011, a series of protests and demonstrations took place across India, popularly known as “Anna Andolan” or “India Against Corruption Movement”. Present prosecution has been launched against the three accused persons on allegations of having led one of such protests in violation of Prohibitory Order promulgated by the then ACP, Connaught Place.

CASE OF THE PROSECUTION

1. In brief, prosecution has alleged that on **29.11.2011** (*in short the “date of offence” or “date of incident”*) at around **4.45 p.m.**, the accused persons *Arvind Gaur, Neeraj Kumar Pandey* and *Swati Maliwal*, alongwith one *Sachin Tomar (not chargesheeted)* in furtherance of their common intention led a group of 100-125 people and assembled at the Inner Circle, Connaught Place, New Delhi (*in short the “spot”*), raising anti-government and pro-Lok Pal Bill slogans despite there being a Prohibitory Order **u/s 144 of the Code of Criminal Procedure, 1973** (*in short “Cr.P.C.”*) **Ex.PW4/A2** dated 18.11.2011 issued by Mr. Hareesh H.P., the then ACP, Connaught Place. Their protest caused traffic jam at the Inner Circle, Connaught Place and despite being warned about such order, they did not leave the spot thereby committing offence punishable

u/s 188 rws 34 of the Indian Penal Code, 1860 (*in short "IPC"*).

2. On the basis of these allegations, the subject FIR dated 29.11.2011 **Ex. PW11/B** was lodged against the accused u/s 188 IPC on the complaint/*tehrir* **Ex. PW13/A** of **PW13 ASI Pramod**. After conclusion of the investigation, charge-sheet was filed against the abovesaid three accused whilst the remaining alleged person Sachin Tomar could not be identified and hence, not charge-sheeted.

NOTICE

3. After completion of necessary formalities, including supply of copy of the charge-sheet and other documents to the accused u/s 207 Cr. P.C., notice of the accusation for the offence u/s 188 IPC was served upon them **u/s 251 Cr. P.C.** to which they pleaded not guilty and claimed trial.

4. For ready reference, the relevant extract of notice dated **21.10.2014**, is reproduced herein-below:

" ..that on 29.11.2011 at 04.45 pm onwards at Inner Circle, Connaught Place, New Delhi you all alongwith your unknown associate in furtherance of you common intention knowing that by an order U/s 144 Cr.P.C. promulgated by ACP, Connaught Place who was lawfully empowered to promulgate such order disobeyed the directions given in the said order which caused obstruction and annoyance to the general public and thereby committed offence punishable u/s 188 IPC...."

TRIAL

Prosecution Evidence

5. In order to prove its case, prosecution examined a total of **thirteen witnesses** of which twelve were police witnesses who were posted at P.S. Connaught Place on the date of incident. The testimonies

of prosecution witnesses are summarized herein below :

6. Beat Patrolling Officers at Palika Bazar : PW1 HC Tara Chand, PW6 HC Balbir, PW8 Constable Narender Kumar and PW13 SI (Retd.) Pramod Kumar were on patrolling duty at Palika Bazar on the date of incident. Their testimonies are more or less similar. All the accused were either correctly identified by these witnesses in the Court or in some cases, their identity (*accused Swati Maliwal*) was not disputed.

6.1 PW1 HC Tara Chand : He deposed that at about 04:45 P.M., some 100-125 people shouting anti -government, pro - Jan Lokpal Bill and “*Anna Hazare Zindabad*” slogans gathered at Inner Circle, Connaught Place and pasted banners and posters at the grill of Central Park; that their presence caused traffic jam at the Inner and Outer Circle; that they were asked to remove from the spot but they stated that they will continue till 7 pm; that **PW13 ASI Pramod** sent information to the SHO; that SHO and ACP arrived at the spot; that they tried to persuade the crowd to stop the demonstration but to no avail and that **PW6 Ct. Balbir** recorded the video of the incident with a **private camera**.

6.1.1 He further deposed that during the demonstration, he came to know the names of the leaders of protest as Arvind Gaur, Swati, Sachin Tomar and Neeraj; that the ACP, Connaught Place gave Notice to all the demonstrators about invocation of Order under Section 144 Cr.P.C. in the area despite which the demonstrators continued the protest till 07:00 P.M./07:30 P.M.; that **PW13 ASI Pramod** prepared *tehrir/rukka*; that the witness took the same to the Duty Officer for registration of FIR; that the investigation was marked to **PW13 ASI**

Pramod and that upon his return from the PS, he along-with IO ASI Pramod Kumar searched for all accused persons at the spot and their associates but all in vain.

6.2 **PW6 HC Balbir** : His testimony is on similar lines as PW1. He also recorded the video of the incident at the request of IO/PW13 ASI Pramod and on 30.11.2011, he handed over the CD of video **Ex. PW4/A** prepared by him to the IO *vide* Seizure Memo **Ex.PW6/A** who sealed it by using his seal “PK”. He also placed on record the Certificate u/s 65B of the Indian Evidence Act in support of the CD *vide* **Ex.PW4/B**. He identified the place of incident shown in the videos and also stated that he had made the videos through his **mobile phone**.

6.3 **PW8 Constable Narender Kumar** : He has deposed on similar lines as PW1 and PW6. He also deposed that he came to know the names of all the accused persons as the leaders of the protest at the spot.

6.4 **PW13 SI (Retd.) Pramod Kumar** : He is the **Investigating Officer** (*or* “IO”) of the case. His testimony is on similar lines as above three witnesses. He deposed that he had tried to pacify the situation and asked the three accused to leave the spot due to invocation of Section 144 Cr.P.C. in the area but that the protesters instead of paying heed to him, sat on the road in front of Central Park causing traffic jam; that he immediately shared this information through wireless to the other police staff; that the then SHO of PS Connaught Place reached the spot along-with his police staff; that the SHO also tried to make all accused persons along-with their unknown associates understand that Section 144 Cr.P.C. was imposed in the area and carrying out any kind of protest in the said

area was illegal and they should leave but all in vain; that the incident was videographed by **PW6 Constable Balbir** through his **private camera**; that it was informed by all the protesters that they all will continue their protest till 6.30-7.00 P.M.; that the then ACP, Connaught Place also reached the spot along-with his police staff and he also made the same plea to the crowd; that no physical force was used against the demonstrators to remove them from the spot and that they all left the spot at around 6.30-7.00 P.M. on their own.

6.4.1 He has also deposed about the procedural aspects of investigation carried by him including preparation of *rukka* **Ex.PW13/A**; handing over of the same to **PW1 HC Tara Chand**; return of **PW1** to the spot with the original *rukka* and copy of the FIR **Ex.PW11/B**; preparation of site plan of the spot **Ex.PW13/B**; efforts made by him to search all accused and their associates; recording of statements of witnesses under section 161 Cr.P.C.; production of CD **Ex.PW4/A** containing footage of the incident by **PW6 Constable Balbir** on 30.11.2011; its seizure *vide* **Ex.PW6/A**; obtaining Sanction under section 195 Cr.P.C. **Ex.PW12/A**; placing the Prohibitory Order **Ex.PW4/A2** through which Section 144 Cr.P.C. was imposed in the area/spot on record etc. He also deposed that he had tried to search for the accused persons along-with other police staff but all in vain. He made all the three accused Arvind Gaur, Neeraj Pandey and Swati Maliwal join the investigation but the other offender Sachin Tomar could neither be identified nor apprehended hence, was not chargesheeted.

7. Cross-Examination : All the above witnesses were duly cross-examined on behalf of the accused persons. Their cross-examination mainly harped around the fact that the Order under Section

144 Cr.P.C. was not promulgated in the manner prescribed by law; that the departure and arrival entries from and to the Police Station were not on record; that the certificate under Section 65-B Evidence Act **Ex.PW4/B** was not in compliance of requirements of law; that the camera used for videographing the incident was not seized or sent to FSL for examination; that the videos **Ex.PW4/A** otherwise also did not show the presence of the accused persons at the spot or raising of any slogans by public or any traffic jam caused at the spot; that there was no documentary evidence to establish the presence of the accused persons at the spot and they were not apprehended from the spot; that point no. 8 of Prohibitory Order **Ex.PW4/A2** which required the information to be published through Press and by affixing copies on the Notice Board of the Government Offices was not complied with; that the accused persons had been wrongly identified in the Court at the behest of the IO; that the accused had been falsely roped in for political reasons or their involvement in social activism; that PW12 and PW13 had refreshed their memory before coming to the Court; that the site plan **Ex. PW13/B** did not show the place of traffic jam or the place of protest; that ACP being a material witness was not examined and that all the police witnesses had made material improvements in their respective testimonies.

8. Other Patrolling Officers : PW2, PW3, PW4 and PW5 are the police officials who were present at different areas of Connaught Place.

8.1 PW2 ASI Rakesh Kumar : On the date of incident, he was present in the beat area of F-Block, Connaught Place. On hearing slogans, he went to Central Park Gate, Inner Circle in front of Palika Bazar, Connaught Place, New Delhi where he saw a gathering of 100-

125 protesters and other police officials being already present. His testimony on what happened on that day, is on similar lines as the other police officials *viz a viz* the efforts made by PW13 ASI Pramod to disperse the crowd; information being given to the crowd about proclamation issued under Section 144 Cr.P.C.; arrival of ACP and SHO at the spot etc. He named accused Arvind Gaur and Swati Maliwal being part of the protest. He also deposed that the police officials detained 3-4 unknown protesters. **He correctly identified the accused no.1 and 2 in the Court whereas the identity of accused no. 3 Swati Maliwal was not disputed.**

8.2 **PW3 SI Ashok Kumar** : He was present in the beat area of A Block, Connaught Place and has deposed on same lines as **PW2** regarding the events that transpired on the date of incident *i.e.* including detention of 3-4 protesters by the police officials. He named Arvind Gaur, Neeraj and Swati Maliwal alongwith Sachin Tomar as the protesters and **identified Arvind Gaur and Neeraj in the Court whereas the identity of accused no. 3 Swati Maliwal was not disputed.**

Both PW2 and PW3 were duly cross-examined.

8.3 **PW4 HC Ajay Panwar** : He was on beat patrolling duty at A Block, Connaught Place on the date of incident and has deposed on similar lines as PW1 and PW2. He further deposed that the protesters sat on the road of the Inner Circle, Connaught Place causing huge traffic jam. After watching the five video clips from the CD that was apparently prepared by PW6 HC Balbir he identified the spot and the CD was exhibited as **Ex.PW4/A. He correctly identified the accused in the**

Court.

8.3.1 During his cross-examination, the witness deposed that the police officials were giving warning to the protesters on loud speakers and admitted that the same was not stated in his statement u/s 161 Cr.P.C. He also stated that he could not say and later on even admitted, that written warning was not displayed on the spot about imposition of section 144 Cr.P.C. in the area. He also admitted that no person was arrested from the spot.

8.4 **PW5 SI Jai Singh** : He was on beat patrolling duty in the area of Regal Cinema and Pind Balluchi Restaurant, Connaught Place. He deposed on similar lines as PW4. He deposed that all the accused persons sat on the road of Inner Circle, Connaught Place and continued their protest due to which the road at Inner Circle causing traffic jam in the area. He named all the accused persons as the leaders of the protest and **correctly identified them in the Court.**

8.4.1 During his cross-examination, the witness deposed that IO had giving warning to the protesters verbally in high pitched voice. He also admitted that no written warning was displayed on the spot about imposition of section 144 Cr.P.C. in the area. He also admitted that no person was arrested from the spot.

9. Other Police Officials

9.1 **PW9 Constable Pradeep** : He was conducting the duty of operator and was attached with the SHO PS Connaught Place on the date of incident when around 5.00 P.M., he received a wireless message regarding the gathering of 100-150 people at Gate No.1 of Palika Bazar

at Inner Circle, Connaught Place and at the Main Entrance, Central Park, Connaught Place. He shared this information with the then SHO who immediately moved towards the above-said spot. His remaining testimony is on similar lines as other police officials/witnesses as to what happened thereafter. He identified accused Arvind Gaur in the Court but **failed to identify accused no. 2 Neeraj Kumar Pandey** citing lapse of time. The identity of accused no. 3 Swati Maliwal was not disputed.

9.1.1 During his cross-examination, the witness deposed that SHO had informed the gathering about imposition of Section 144 Cr.P.C. in the area with the help of a loudspeaker while the other police officials had informed the gathering by going to them individually. He further stated that police officials had shown the banner displaying the imposition of Section 144 Cr.P.C. to the crowd after taking the same out of the police vehicle but admitted that no such banner was seized in his presence. He admitted that he had not stated such facts in his statement u/s 161 Cr.P.C or in his examination -in -chief.

9.2 **PW10 ASI Dinesh Kumar** : He produced **Ex.PW10/A**, the destruction Order no. 3404-3473 issued by the then Dy. Commissioner, New Delhi District *viz a viz* the Prohibitory Order under Section 144 Cr.P.C.

9.3 **PW11 Retired ASI Nepal Singh** : On 29.11.2011, he was posted at PS Connaught Place as Duty Officer. He deposed that he received *rukka* from PW1 HC Tara Chand and had prepared FIR **Ex.PW11/B (OSR)**. He also placed supporting Certificate under Section 65-B of Indian Evidence Act *vide* **Ex.PW11/C** on record.

10. SHO PS Connaught Place

10.1 PW12 (Retired) ACP Sukhdev Singh : He was the SHO PS Connaught Place on the date of incident. He deposed that at about 5:05 PM, he was on patrolling duty in the area of Connaught Place along-with other police staff and on receipt of information through wireless message, he immediately proceeded to Inner Circle, Connaught Place. At the spot, he met ASI Pramod, Ct. Balbir, HC Tara Chand and Ct. Narender who apprised him about the situation. He heard all accused persons along-with their unknown associates raising anti-government and pro-Anna Hazare slogans. He addressed all accused persons with the help of a loud-hailer that section 144 of Cr.P.C. was imposed in the above-said area *i.e.* Inner and Outer Circle of the Connaught Place and he also showed all the protesters the banners carried by him regarding the above-said imposition. He also found that one banner mentioning imposition of Section 144 Cr.P.C. was already affixed/placed at Gate No. 1, Central Park, Connaught Place, New Delhi. He indicated the said banner to all accused persons along-with their unknown associates to inform them that the gathering was illegal and their protest should end.

10.2 Despite his repeated warnings, all accused persons continued their protest and did not leave the spot and rather blocked the Inner Circle and also occupied the road and sat on the same, which caused huge traffic jam. After some time, the then ACP of Connaught Place also reached the spot and he also similarly addressed all the accused persons but they continued their protest. PW6 Ct. Balbir videographed the incident of protest. In the meantime, some of the protesters spread in the area of Inner and Outer Circle. He deposed that the accused were continuously addressing and instigating the gathering and that the crowd left the spot at about 7:15 P.M.

10.3 He identified the signatures of ACP Hareesh H.P. on the notification under Section 144 of Cr.P.C. *vide* no. 1075-1103/SO/ACP, Connaught Place dated 18.11.2011 **Ex.PW4/A2** and on sanction under Section 195 of Cr.P.C. dated 19.11.2012 **Ex.PW12/A**. **He correctly identified the accused.**

11. Cross-Examination :- All the above-said witnesses were duly cross-examined on behalf of the accused persons on similar lines as the previous witnesses. In particular, PW12 Retd. ACP Sukhdev Singh was questioned as to whether he had refreshed his memory before entering the Court, to which the witness had answered in affirmative. His remaining part of the cross-examination harped around the additions that he had made in his examination-in-chief regarding use of loud-hailers for making announcements regarding the Prohibitory Order; display of banners in the area and instigation by the accused persons to the gathering. He was also questioned regarding the non-fulfillment of the requirement of law in using the prescribed methods for disseminating the information of Section 144 Cr.P.C. The witness also admitted during cross-examination that there was no material to show that the promulgation of Section 144 Cr.P.C. was carried out as per law or as per para no. 8 of **Ex.PW4/A2**. He also stated that PW6 Constable Balbir had recorded the video of the incident through his mobile phone.

12. Public Witness

12.1 PW7 Durga Nand Jha : He is the only public witness examined by the prosecution. He deposed that on the date of incident, he was working as Counter Clerk at the pre-paid counter of auto and taxi services, Palika Bazar; that on 29.11.2011, at about 5 p.m. around 100-150 protesters gathered at Inner Circle, Central Park, Connaught Place

who were protesting and supporting Anna Hazare protest and were also supporting Jan Lokpal Bill; that due to the said protest, traffic jam was caused at Inner Circle, Connaught Place; that the police officials arrived at the spot and tried to convince the above-said supporters but all in vain; that the said protest continued for about one hour and the said protest ended after the police officials arrived at the spot.

12.1.1 The witness failed to identify either of the accused persons in the Court citing lapse of time and as there was a huge gathering of people on the date of incident. Leading questions as well as cross-examination like questions were put to the witness by the Ld. APP for the State.

12.1.2 During his cross-examination, he stated that he worked on daily wages under the control, supervision and pay roll of Delhi Traffic Police. He also stated that no announcement was made through speakers nor any banner or poster reflecting the imposition of Section 144 Cr.P.C. was affixed.

STATEMENT OF ACCUSED

13. After examination of all the Prosecution witnesses, prosecution evidence was closed and statements of all accused persons were recorded under Section 281 r/w/s 313 Cr. P.C. whereby all incriminating evidence was put to them.

13.1 Accused stated that they were innocent and had been falsely implicated in this case due to political reasons. In particular, **accused no.1** stated that he was a **social activist** and that he had been wrongly identified for political reasons and had no role to play in the present case.

Accused no. 2 on the other hand, denied his presence at the spot and stated that he neither participated nor was involved in any of the alleged protest. He also stated that there was no notice of promulgation of Order under Section 144 Cr.P.C. and that the witnesses had falsely identified him at the behest of the IO. **Accused no. 3** also stated that she was a **social activist** and a **public figure** and thus, had been identified by the witnesses at the behest of the IO.

14. Despite opportunity, accused persons preferred not to lead any evidence in their defence. Accordingly, DE was closed and matter was fixed for final arguments.

ARGUMENTS

15. Ld. Counsels for the accused persons have more or less addressed similar arguments. In short, it is argued that the prosecution has miserably failed to establish the identity or presence of all the accused persons at the spot; that the videography **Ex.PW4/A** has not been proved as per law and the supporting Certificate u/s 65B Evidence Act *vide* **Ex.PW4/B** is not in compliance of law; that the videos otherwise also do not show the presence of either of the accused persons at the spot; that there are only bald oral testimonies of police witnesses, unsupported and uncorroborated by any documentary evidence against the accused; that it is a case of selective prosecution where the prosecution has deliberately left out from chargesheeting suspect Sachin Tomar; that no investigation has been carried to establish the identity and presence of the accused persons at the spot as apparent from testimony of IO/PW13 who admitted to not having noted down even the names of the accused persons at the spot; that even Judicial Test Identification Parade was not done to prove identification; that the concerned ACP Hareesh

H.P. who issued the prohibitory Order has not being examined; that the witnesses refreshed their memories outside the Court; that the Order under Section 144 Cr.P.C. was not as per law and that there was no imminent danger and that the ingredients of Section 188 IPC have not been met.

15.1 Written arguments have also been filed on behalf of accused no.1. Citations have been filed by all the accused persons.

15.2 Ld. APP for the State on the other hand has argued in favor of the conviction of the accused persons. He has argued that all the Prosecution witnesses have reiterated the entire evidence as brought in the charge-sheet and identified the accused persons in the Court and hence, on account of the consistent testimonies of the witnesses, the case stands duly proved against the accused persons. Thus, on account of Complaint of ACP under Section 195 Cr.P.C. **Ex. PW12/A** read with Prohibitory Order **Ex.PW4/A2** and uniformity in the testimonies of the Prosecution witnesses, the guilt of the accused persons stand duly established and hence, they should be convicted and given maximum punishment.

CITATIONS

16. Ld. Counsels for the accused persons placed reliance on the following judgments to buttress their arguments :

Accused no.1

S.No.	Case Title	Citation
1.	Jeet Ram v State of Himachal	MANU/HP/0091/2003

	Pradesh	
2.	Mahender Daulatram v State of Maharashtra	MANU/MH/4790/2023
3.	Ramlila Maidan incident v Home Secretary, UOI	MANU/SC/0131/2012
4.	Niharendu Dutt Majumdar v Emperor	AIR 1939 Cal 1703
5.	State v Rajender Pal Gautam & Others	MANU/OT/0120/2022
6.	Harbeer Singh v Sheeshpal	(2016) 16 SCC 418
7.	Ashok Vishnu Devare v State of Maharashtra	(2004) 9 SCC 431
8.	Baldev Singh v State of Punjab	(2014) 12 SCC 473
9.	Govindaraju v State	(2012) 4 SCC 722
10.	Takhaji Hiraji v Thakore Kubersin Chamansing and Ors.	(2001) 6 SCC 145

Accused no. 2

S.No.	Case Title	Citation
1.	Mazdoor Kisan Shakti Sangathan v UOI and Anr.	(2018) 17 SCC 324
2.	Bhoop Singh Tyagi v State	2002 (62) DRJ 870 (DB)
3.	Ramlila Maidan incident v Home Secretary, UOI	(2012) 5 SCC 1
4.	Babulal Parate v State of Maharashtra and Others	1961 SCC OnLine SC 48

Accused no. 3

S.No.	Case Title	Citation
1.	Dr.Sunil Kumar Sambhudayal Gupta and Ors.	Criminal Appeal no. 891 of 2004
2.	Khushal Chand v The State (NCT of Delhi)	CrI. Appeal no. 109 of 2008
3.	Chandrapal Singh v State of UP	2024: AHC : 12519

4.	M.S. Ahlawat v State of Haryana and Another	(2000) 1 SCC 278
5.	Standing Order no. 309 of the Delhi Police	-
6.	Arvind Kejriwal and Ors. v Govt of NCT of Delhi	Criminal Revision No. 23/2021

Heard. Perused.

FINDINGS

17. To recapitulate, the case of the prosecution is that the accused persons in furtherance of their common intention knowingly contravened the Order u/s 144 Cr.P.C. **Ex. PW4/A2** (*hereinafter the "Prohibitory Order"*), by holding a protest with 100-125 people at the Inner Circle, Connaught Place which caused traffic jam and annoyance to the public. In order to prove its case, prosecution has examined some thirteen witnesses, out of which twelve were police witnesses and one was a public witness. All the witnesses were apparently present at the spot and witnessed the incident.

17.1 Having gone through the record, I find certain pitfalls in the case of the prosecution. Same can be broadly categorised as below:

A. Non-Communication of the Prohibitory Order

18. The order in question which is alleged to have been violated by the accused persons was issued by Sh. Hareesh H.P., the then ACP , Sub-Division, Connaught Place bearing no. 1075-1103 SO-ACP/Con.Place, dated 18.11.2011 **Ex.PW4/A2**. The order *interalia* prohibited holding of any public meeting, processions, demonstrations &

dharnas; assembly of 5 or more persons; carrying of banners, placards; shouting of slogans etc. in any public place in the area and building surrounded by Outer Circle, Connaught Place and was made effective for a period of 32 days from 21.11.2011 till 22.12.2011 (*incorrectly written as 22.12.2012*). It is alleged that by carrying the protest on 29.11.2011, the accused persons violated the directions issued by the public servant *vide Ex. PW4/A2* and hence committed an offence u/s 188 r.w.s. 34 IPC.

18.1 The Prohibitory Order **Ex. PW4/A2** was issued by invoking **Section 144 Cr.P.C.** which allows the authorities mentioned therein to issue order in urgent cases of nuisance or apprehended danger by directing any person *inter alia* to abstain from certain act etc. For ready reference, the abovesaid provision is reproduced herein below:-

18.1.1 144 : Power to issue order in urgent cases of nuisance or apprehended danger -

1. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section [134](#), direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.
2. An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed Ex-parte.
3. An order under this section may be directed to a particular

individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

4. No order under this section shall remain in force for more than two months from the making thereof;
Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.
5. Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.
6. The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to Sub-Section (4).
7. Where an application under Sub-Section (5), or Sub-Section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

18.2 The consequences of disobedience of such order are contained in Section 188 IPC. It states:

188 : Disobedience to Order duly Promulgated by Public Servant -

Whoever, **knowing** that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons **lawfully employed**, be

punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

18.3 In case titled “*Manjit Kumar Singh v. State of Bihar and Anr.*”, 2010 (9) R.C.R. (Criminal) 749, the ingredients of Section 188 IPC were stated to be as -

- (i) that there must be **an order promulgated by a public servant**;*
- (ii) that the public servant must have **lawfully empowered** to promulgate such order;*
- (iii) that a person having **knowledge of some order** and directed by such order (a) to abstain from a certain act, or (b) to take certain order with; certain property in his possession or under his management, has **disobeyed** such direction and*
- (iv) that such disobedience causes or tends to cause (i) obstruction, annoyance, or injury, or risk of it, to any person **lawfully employed**, or (ii) danger to human life, health or safety, or (iii) a riot or affray etc.*

18.4 The prosecution in the present case was launched on the basis of the complaint/*rukka* of PW13 ASI Pramod **Ex.PW13/A** complaining that the accused persons were leading a group of 100-125 people, raising slogans and carrying banners and had assembled at some distance on the footpath of the Inner Circle, Connaught Place and despite

repeated warnings from the IO, SHO as well as ACP about invocation of Section 144 Cr.P.C. in the area, they did not leave the spot until 07:00 PM., causing traffic jam in the area. On the basis of these allegations, FIR Ex. PW11/B u/s 188 IPC was registered. In order to attract the offence u/s 188 IPC, it is necessary that the accused must have “knowledge” of the Prohibitory Order. The order must be widely published and must also be personally communicated to the accused. Aforesaid manner of publication or service of order is provided u/s 134 Cr.P.C.

Section 134 . – Service or notification of order.

1. The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.
2. If such order cannot be so served, it shall be **notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up** at such place or places as may be fittest for conveying the information to such person.

18.5 Infact, there is also a **Standing Order No. 309** issued by the **DCP (Headquarters) dated 31.01.2003 : Regulation of Processions and Rules**, which prescribes the mode of service of the order passed under Section 144 Cr.P.C. It *interalia* states as follows :

XXXX

Arrangement at the place of demonstration should include the following :

- (i) **Display of banner indicating promulgation of Section 144 Cr.P.C.**
- (ii) **At least 2 video graphers be available one either side of the demonstration to capture both demonstrators as well as police response/action.**
- (iii) **Loud hailers should be available.**
- (iv) **Repeated use of PA system** by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum/deputation etc or court arrest peacefully. Announcements should be

videographed.

(v) If they do not follow appeal and turn violent declare the assembly unlawfully on PA system and videograph.

(vi) Warning of PA System prior to use of any kind of force must be ensured and also videographed.

(vii) Announcement for injured to take them to hospital for medical aid use of stretchers to carry the injured up to the vehicle/ambulance etc and videographed.

(viii) In case of arrest/detention of MPs, MsLA, MsLC, information to be given to concerned department, speaker, Lok Sabha Chairman, Rajya Sabha, Speaker Assembly by quickest means both in writing and on wireless.

(ix) Special attention be paid while dealing with women's demonstrations only women police to take them.

(x) During registration of case evidence regarding use of stone, lathis, dandas etc to be videographed and taken into possession from the site.

18.6 It is the first and foremost defence of the accused that the mandate of law has not been followed as far as the notification of the order was concerned. Such objection appears to be correct when the entire record is seen.

18.6.1 Except for bald oral statements of the police witnesses, there is nothing on record to show as how the Order was communicated to the public at large or the crowd that had gathered at the spot. Even though all the above modes *i.e.* announcement through loud-hailers; use of PA system; display of banners etc, for communication of the Prohibitory Order had to be cumulatively followed in terms of Section 134 Cr.P.C. and Standing Order No. 309, here there is no evidence to show that even one of such modes were used for disseminating information about the Order. The FIR **Ex. PW11/B**, which is the beginning point for the launch of the prosecution against the accused persons, only states that *the group was told about the order by the police officials by standing in front of them*. Some of witnesses have also deposed that the IO and SHO either

used high pitched voice or personally went to the crowd to inform them about the Prohibitory Order. Even if such version is accepted to be correct, the procedure I am afraid, is not as per the mandate of the law. Although **PW12** (Retd.) **ACP Sukhdev Singh** during his examination in chief deposed that he had used loud hailers to address the gathering and had also carried as well as seen display boards affixed at Central Park regarding the imposition of Section 144 Cr.P.C. in the area, these statements that have come up for the first time only during trial. There is no reference of use of any such modes in the entire chargesheet let alone any iota of evidence being produced in support thereof. Besides, there are no photographs to show the presence of banners nor any seizure by the IO. Therefore, the inclusion of such statements for the first time in the examination-in-chief by the witness is an improvisation and appears to be an afterthought.

18.6.2 It is also alleged by the defence that the Prohibitory Order **Ex. PW4/A2** was not issued in compliance of law as it did not reflect the imminent danger that necessitated the issuance of such Order. Perusal of Paras 2 & 3 of the impugned Order however records that in light of reports of likelihood of protests etc. in the area which could cause obstruction to traffic, danger to human safety and disturbance of public tranquility, the order is issued to prevent danger to human life and disturbance of public tranquility which *prima facie* reflects the application of mind by the public servant in issuing such order. Still, it is not sufficient that an Order u/s 144 Cr.P.C. is promulgated by the concerned authority and there is a disobedience of such order. What is imperative is that the accused must also have the knowledge of the order promulgated by the public servant and the disobedience must lead to consequences mentioned in section 188 IPC. It is mandatory and a pre-

requisite, failing which the provisions of Section 188 IPC cannot be attracted.

18.7 The compliance of the above provisions regarding knowledge of the accused regarding the existence of the Order is strict and has to be necessarily asserted and proved. No presumption of having gained knowledge of the said order can be raised against or attributed to the accused in the absence of its actual proof. Infact, **para 8** of the Order **Ex. PW4/A2**, itself required the notice to be “*published for the information of public through Press and by affixing copies on the boards of all District Addl. CPs/ DCPs/ DCPs/Police Stations concerned...*” etc., but no evidence has been brought on record to show that it was so published and the same is also admitted by the witnesses during their deposition in the Court.

18.8 In a similar but olden case titled “**Niharendu Dutt Majumdar and Ors. vs Emperor**”, AIR 1939 Cal 703, the order of conviction was set aside under section 188 IPC observing that the communication of the order under section 144 CrPC had not been established. Hon’ble Calcutta High Court had observed that:-

*“4. On the second point, the learned Deputy Legal Remembrancer conceded that he had no evidence apart from the evidence relating to what took place at the actual meeting. **It is said that the petitioners knew of the order because they were told of it by the Sub-Inspector while the meeting was actually going on.** The evidence on the point is extremely scanty and is to be found in the deposition of P.W. 1, P.W. 3 and P.W. 4. P.W. 1, the Sub-Inspector, says that he ordered the crowd to disperse as they had assembled in violation of the order. The order was given in an audible voice and part of the crowd actually dispersed. It is, of course, difficult for him to say whether the order was audible to other persons or not. P.W. 3, the Town Inspector, corroborates this account of the action taken by the officer-in-charge of the thana and adds that petitioner 1 and five other persons were addressing the meeting at the time. P.W. 4 merely says that the police arrived and*

began to move people telling them that there was a Section 144 Order. It appears therefore that his version is not quite the same. From this evidence it is abundantly clear that no personal communication was made to any of the petitioners. There is no distinct evidence as to the relative positions of the petitioners and the thana officer in the crowd. The learned Judge did not consider whether it necessarily follows that petitioner 1 heard what was said by the Sub-Inspector at a time when he himself was actually delivering a speech. The prosecution really did not take sufficient trouble to see that the evidence on this very essential point was sufficient and clear.”

*“Before it can be said that the petitioners had knowledge of the order, it must be shown that its terms were communicated to them. Instead of doing that, the Sub-Inspector merely gave his own interpretation of it, which is quite a different thing. We must accordingly accept the contention raised in the second ground that **there is no evidence upon which it can be held that the petitioners had any knowledge of the order.** The rule is accordingly made absolute, the convictions and sentences are set aside and the petitioners are discharged from their bail.” (emphasis supplied).*

18.9 Similarly, in the landmark *Ramlila Maidan Case* (*supra*), the Hon’ble Apex Court observed that :-

“24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application.”

“The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualises as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.”

“Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and

directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. These features must co-exist at a given point of time in order to enable the authority concerned to pass appropriate orders.”

“Moreover, an order under Section 144 Cr.P.C. being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of the Cr.P.C., such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction.”

“Reasonable notice is a requirement of Section 144 of Code of Criminal Procedure” (emphasis supplied)

18.10 Thus, it is mandatory for the prosecution to prove beyond reasonable doubt that the Prohibitory Order was duly communicated to the protesters and despite such communication, they violated the directions given in such order and that their action led to one of the consequences as mentioned in Section 188 IPC. Mere disobedience of such order cannot be made punishable under section 188 IPC unless it is also shown that such disobedience caused any obstruction, annoyance or injury to a person lawfully employed. In this connection, only *simplicitor* statements are made that the protest led to traffic jam in the area without producing any corroborative piece of evidence in support. The only piece of documentary evidence produced by the prosecution are few videos apparently taken by **PW6 Constable Balbir**, which digital evidence does not fulfill the requirements of law in so far as proof of secondary evidence is concerned but which even when taken at its face value, do not show any obstruction or traffic jam being caused in the area and

therefore, does not favor the case of the prosecution.

18.11 Thus, it is held that there is a complete non-compliance of the mandate of law regarding the manner of communication of the Prohibitory Order and the ingredients required for attracting the offence under Section 188 IPC have not been fulfilled.

B. Material Improvements and Contradictions in Testimonies

19. Even though the reasons discussed above are sufficient to discard the prosecution case, there are other inconsistencies and loopholes in the case of the prosecution that may be discussed. Barring **PW7 Durganand Jha**, all the witnesses in the present case are police witnesses who were either already present at the spot or arrived later on upon receipt of information of the protest. Their statements recorded u/s 161 Cr.P.C. are cyclostyled which they have more or less reiterated in their testimonies in the Court barring a few exceptions which may be noted.

19.1 The witnesses that were examined by the prosecution in the beginning such as **PW1 HC Tara Chand; PW2 ASI Rakesh Kumar & PW3 SI Ashok Kumar**, deposed nothing in their examination-in-chief regarding the use of any of the prescribed modes such as loud hailer; display through banner etc., for communication of the Prohibitory Order to the public. They simply stated that the crowd was *asked to stop the demonstration* so as not to cause traffic jam (*see testimony of PW1*) and that the *SHO and ACP informed the protestors personally* that the proclamation u/s 144 Cr.P.C. had been issued in the area (*see testimonies*

of PW2, PW3 & PW4). However, once the questions on this aspect *i.e.* regarding the manner in which the Prohibitory Order was made known to the public, started recurring in cross-examination, all the subsequently examined police witnesses started improving their versions over their previous statements recorded u/s 161 Cr.P.C.

19.2 In particular, **PW4, PW6 PW8, PW9** improved their versions by stating in their cross-examination that loudspeakers and/or banners displaying imposition of Section 144 Cr.P.C. were also used, even though such assertions were completely missing in their previous statements. The biggest improvisation, however, has occurred in the testimony of **PW12 (Retd.) ACP Sukhdev Singh**, the then SHO of PS Connaught Place who in his examination -in - chief itself deposed that he had used loud-hailers and showed banners to the protesters for informing them about the imposition of prohibitory order in the area and that he also saw banners being affixed at the Gate of Central Park, which assertions were neither made in his statement u/s 161 Cr.P.C. or in any other document filed with the chargesheet. The improvements made by witnesses at such a critical juncture are material in nature and go to the root of the matter because the proper communication of the Order u/s 144 Cr.P.C. was one of the quintessential requirements for attracting the offence u/s 188 IPC and the accused have time and again questioned the manner of communication of the Order to the public.

19.3 The fact that such improvements were made to fill lapses in the prosecution case, is also evidenced from the fact that there is no documentary evidence on record to show that the Standing Order No. 309 of the Delhi Police requiring *interalia* display of banner indicating promulgation of Section 144 Cr.P.C.; presence of at least 2 videographers

to capture the incident; availability of loud-hailer; repeated use of PA system by officer etc., or mode prescribed u/s 134 Cr.P.C. was followed.

19.4 There is no denying the general principle that minor contradictions or improvements that do not go affect the merits of the case, should not be made the basis of discrediting a witness. However, when such improvements not only appear to be material but also an attempt to create evidence, they should be seen with circumspect and testimony of such a nature is not worthy of relied upon. In the case at hand, the inclusion of such statements in the deposition of witnesses who have been examined later in point of time and towards the end of the trial, leaves no doubt that they are an an after-thought and an attempt to fill the lacunas in the case.

19.5 Apart from the improvements made by the above-said witnesses in respect of the mode of communication of the Prohibitory Order, there is also contradiction in the testimony of witnesses regarding the device which was used for recording video of the incident. As per the prosecution, PW6 Ct. Balbir recorded video through his private camera, the contents of which wer later transferred to a CD *vide* **Ex. PW4/A**. Same is reiterated by PW1 and IO/ PW13 in their respective testimonies. However, in his own testimony, PW6 deposed that he had recorded the video with his “mobile phone” and had then transffered it to a CD. This statement is not only in contradiction to statement of other witnesses who supposedly saw him recording the incident as well as the FIR, but also the own previous statement of the witness u/s 161 Cr.P.C. where he had stated that he recorded the video through a private camera. The inconsistency in statements has not been explained by the prosecution and it makes the Certificate u/s 65B, Evidence Act **Ex. PW4/B** where it

is certified that the video was recorded through mobile phone also unworthy of being relied upon, among other reasons.

19.6 Infact, the Certificate **Ex. PW4/B** is otherwise also cryptic in nature as it does not explain the chain of custody of the device in which the video was recorded nor was it sent to the FSL so as to rule out the possibility of tampering; the details of the computer system in which it was transferred etc., whereby the CD **Ex.PW4/A** is otherwise also inadmissible.

20. In crux, all the police witnesses appear to be interested witnesses in the case. They have either materially improved their versions during trial or in some cases, given contradictory statements (*such as PW6*). The substantial improvements made by the witnesses over their statements u/s 161 Cr.P.C. do not inspire confidence and make their testimonies unworthy of being relied upon.

C. Failure to Establish Identity of the Accused

21. Any fact which helps establish identity of a thing or person which would substantially help in adjudicating the case becomes relevant in evidence. There is no restriction on facts that may be given or the mode through which the identity of the person may be established in the Court. To connect the accused with the alleged crime, the prosecution has alleged that the names of the accused persons were ascertained at the spot itself whereby they have been specifically named in the FIR. Almost all the police witnesses have identified the accused persons in the Court as being part of the protest or “leaders” of the protest on the date of incident. However, it is a matter of record that none of them was arrested

from the spot. Same is reiterated in the testimonies of **IO/PW13 ASI Pramod Kumar** and **PW1 HC Tara Chand** who stated that after the registration of FIR, they went to the spot and searched for the accused but all in vain. Yet, somehow, the IO was able to join the accused during investigation.

21.1 Nothing has come on record as to what steps were taken and what efforts were made by the IO to establish the identity of the accused before chargesheeting them in the case, considering that they were not apprehended from the spot. It is not alleged that the details of the protesters, more specifically the accused persons, were noted down by the IO or any other police official at the spot itself. It is also not alleged that the accused persons were known to the police from before enabling them to identify them later. Apparently, notice u/s 41A Cr.P.C. was also not served upon them. Thus, there is no documentary evidence to establish either the presence or identity of the accused at the spot. The only documentary piece of evidence which could have thrown some light *viz a viz* the presence of the accused at the spot were the videos **Ex. PW4/A** which were allegedly taken by PW6 Ct. Balbir at the spot, which are already held to be inadmissible and unreliable above. Even otherwise, the videos do not show the presence of either of the accused at the spot and only show crowd holding placards at the footpath and admittedly, none of the accused can be seen in such videos. This then begs the question as to how the police were able to identify the accused as being part of the crowd in the absence of any prior information about them. The entire charge-sheet is totally silent on this aspect of the investigation as also admitted by the IO during his cross-examination.

21.2 In any criminal proceedings, establishing the identity of the

accused in connection with the crime is one of the most crucial aspects for proving the case. Even though the police officials have unanimously identified the accused persons as being present at the spot in their respective testimonies, considering the lapse of time which is almost 12-13 years from the date of the purported offence till the commencement of deposition of majority of the police witnesses in the Court, by which time it is only natural for anyone to forget the faces of persons who are not known to them from before especially considering the huge number of gathering that was involved, the credibility of the witnesses on the point of identification in the Court becomes questionable.

21.3 The Court is cognizant of the fact that the testimony of a police witness is not to be discarded merely because they have an interest in the case, here what is noteworthy is that the only independent witness PW7 Durga Nand Jha, who appeared from the side of the prosecution, has failed to identify the accused persons in the Court citing lapse of time. Thus, in the given circumstances and in the absence of any independent corroboration regarding the identity of the accused persons and also the loopholes in the investigation where nothing has been brought on record to show as to how the IO was able to connect the accused with the crime, I do not find the testimonies of the police witnesses on this aspect as worthy of being relied upon.

21.4 Thus, it is held that the quintessential link connecting the accused with the crime is missing in the case and the prosecution has failed to establish the presence of the accused at the alleged crime scene.

Other objections:

22. Other than above, the defence has also raised some more objections in the case. One such objection being that the witnesses particularly the SHO PW12 and IO PW13 refreshed their memory before entering the Court which was admitted by them during their cross-examination and thus, they are tutored witnesses. Further, the judicial Test Identification Parade (*TIP*) of none of the accused persons was carried out.

22.1 *TIP* is not a *sine qua non* for identification of the accused in every case and there are other ways also by which identity can be established. In any case, the faulty nature of the investigation in regard to the identification and establishing presence of the accused persons at the spot and the credibility of the witnesses on the aspect of identification of the accused in the Court have already been discussed above in favor of the accused. Therefore, the objections raised by the defence in this regard have no bearing in changing the ultimate fate of the case.

CONCLUSION

23. To sum up, in order to prove its case, first and foremost the prosecution was required to show that the order was promulgated in the manner prescribed by law and the accused persons had knowledge of the Prohibitory Order despite which they disobeyed the same. Same is lacking in the present case. Infact, most of the witnesses, including the public witness PW7, have admitted during their cross-examination that such directions were not followed. Thus, besides the materially improved bald testimonies of some of the police witnesses which are held to be unreliable, prosecution has not produced even an iota of evidence to

show that the mandate of law particularly, Section 134 Cr.P.C. and the Standing Order No. 309 of the Delhi Police requiring *interalia* display of banner indicating promulgation of Section 144 Cr.P.C.; presence of atleast 2 videographers to capture the incident; availability of loud-hailer; repeated use of PA system by officer etc., was followed whereby offence u/s 188 IPC is not made out. Besides, the prosecution has also not been able to establish the presence of the accused at the spot beyond reasonable doubt, the benefit of which has to be granted to the accused.

23.1 The burden of proving its case always lies upon the prosecution and the guilt of the accused has be proved beyond reasonable doubt in every case.

For the reasons assigned hereinabove, the prosecution has miserably failed to prove its case whereby all the accused *namely Arvind Gaur, Neeraj Kumar Pandey and Swati Maliwal stand acquitted of the offence u/s 188/34 IPC.*

Accused persons to furnish bail bonds in terms of Section 437A Cr.P.C.

Announced in the open Court.

(Divya Malhotra)
ACJM-01/RADC/New Delhi
30.09.2024