

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

SC No. 163-2020 (RIOTS CASE)

FIR No. 59/2020

PS- Crime Branch, Delhi (Investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B r/w

109/114/124-A/147/148/149/153A/
186/201/212/295/302/307/341/353/39

5/419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4
Prevention of Damage to Public Property Act,1984 and Section 25/27
Arms Act

State Vs. Tahir Hussain & Others

04.09.2024

ORDER

1) There are four applications, as moved by the applicants/accused persons Athar Khan, Asif Iqbal Tanha, Meeran Haider and Natasha Narwal & Devangana Kalita, with almost a common prayer, whereby they wish the Court to ask the prosecuting agency to disclose if the investigation is complete, so that the court can proceed with the arguments on charge.

2) It is submitted by the applicants that the FIR was registered on 06.03.2020 and after invoking the provisions of UAPA on 19.04.2020, the main charge-sheet was filed on 16.09.2020, after more than six months from the date of registration of the FIR. Further, thereafter the first supplementary charge-sheet was filed on 22.10.2020, the second supplementary charge-sheet was filed on 23.02.2021, the third supplementary charge-sheet was filed on 02.03.2022 and the fourth supplementary charge-sheet was filed on 07.06.2023. It is submitted that the last supplementary charge-sheet i.e.

the fourth supplementary charge-sheet was filed after three years and three months from the date of FIR but still, the investigating agency mentioned in this supplementary charge-sheet also that the investigation u/s.173 (8) of Cr.P.C was still continuing and the result thereof would be submitted before the court in due course. It is averred that the court had listed the matter for arguments on charge, despite the fact that according to the investigating agency, the investigation of the case is still pending and as per the settled principles of law, the matter cannot be proceeded for framing of charge and trial, unless the investigation is complete. Further, it was mentioned by the prosecution in reply to the applications of the accused persons u/s. 207 Cr.P.C., that the complete documents could not be supplied as the investigation was still pending and as such the consideration of charge was supposed to be deferred until the completion of investigation and consequent thereto the supply of documents to the accused persons. Further, if the applicants address arguments on charge on the basis of the present material on record and point out the lacunas in the case of the prosecution, the prosecution may fill up those lacunas by filing another supplementary charge-sheet and the same will cause prejudice to the accused persons. Under these facts and circumstances, the applicants pray to direct the investigating agency to inform the court the overall status of the investigation and to give a clear statement if the investigation is complete, so that the matter can be proceeded for consideration of charge.

3) In a common reply to all the applications, the prosecution submits that the present applications are not maintainable as the Code of Criminal Procedure 1973 does not provide any provision which

entitles the applicants to seek clarity as to the status of the investigation. Further, Section 173 (8) of Cr.P.C confers power to conduct further investigation even after submission of the police report as contemplated u/s. 173 (2) of the Code. Further, there is no restriction on the number of filing of supplementary charge-sheets and the investigating agency can file any number of charge-sheets, if the same are required keeping in view the facts and circumstances of the case. Further, there is sufficient material and evidence on record for commencing arguments on charge but the accused persons are delaying the arguments by pressing the present applications.

4) In support of their arguments, Id. Counsel for the applicants mainly rely upon the judgment of Hon'ble High Court of Delhi i.e. **State Vs. Mohd. Qasim and Others, 2023 SCC Online, Delhi 1835** and further on the following different judgments of the Hon'ble Supreme Court and the Hon'ble High Courts:

- i) Vinubhai Haribhai Malviya & Ors. V. State of Gujarat & Anr. (2019) 17 SCC 1
- ii) Soma Enterprise V. CBI (Delhi High Court, W.P. (Crl.) 1800/2022, decided on 31.05.2023)
- iii) Lokesh v. State of Karnataka & Ors. (Karnataka High Court, Crl. Petition 284/2020, decided on 26.07.2022)
- iv) Dilawar v. State of Rajasthan (2018) 16 SCC 521
- v) Udai Singh Meena v. State of Rajasthan (Rajasthan High Court, S.B. Criminal Misc. petition 853/2022, decided on 31.01.2022)
- vi) Sujit v. State of Karnataka (Karnataka High Court, WP 15144/2021 interim order dtd. 17.05.2022)

- vii) Vinay Tyagi Vs. Irshad Ali (2013) 5 Supreme Court Cases 762
- ix) Smita Pansare V. State of Maharashtra {2016 SCC Online Bom 1539} [para 3]
- x) Raman Bhuraria v. ED [2023(4)High Court Cases (Del)197] [para 67, SLP filed by ED dismissed on 12.12.2023]
- xi) State of West Bengal v. Salap Service [1994 Supp (3)SCC 318] [para2,3]

5) On the other hand, Id. Special Public Prosecutor rely upon the following judgments:

- i) Central Bureau of Investigation Vs. Kapil Wadhawan and Another (2024)3 Supreme Court Cases 734
- ii) Desaraju Venugopal Vs. Central Bureau of Investigation 2022 SCC Online Del 5188
- iii) Arun Ramchandran Pillai Vs. Central Bureau of Investigation 2024 SCC Online Del 4343
- iv) Padma Sundara Rao and Others Vs. State of T.N. and others (2002) 3 Supreme Court Cases 533:

6.1 In their applications, the allegation of the applicants is that the main charge-sheet was filed by the investigating agency on 20.11.2020, whereas, the fourth or the last supplementary charge-sheet was filed on 08.06.2023 i.e. after more than two and a half years of filing the main charge-sheet and the investigating agency cannot be allowed to keep on filing the supplementary charge-sheets and the investigation must end at some point of time. Further, until the investigation is complete, the court cannot proceed to consider the matter for charge.

6.2 The prosecution in its reply contends that Section 173 (8)

Cr.P.C confers power on the investigating agency to conduct further investigation even after submission of the police report as contemplated u/s. 173 (2) Cr.P.C and there is no restriction on number of filing the supplementary charge-sheets.

6.3 On this aspect, sub section (8) of Section 173 Cr.P.C. clearly provides that there is no restriction on filing of supplementary charge-sheets but it also provides that the same can be filed only if further evidence is obtained by the prosecuting agency.

6.4 After considering the said provision, the court agrees with the contention of the prosecution that even after filing the charge-sheet or police report u/s. 173 (2) Cr.P.C, supplementary charge-sheets can be filed. The provision, however, makes it clear that the only restriction with the investigating agency is that the supplementary charge sheets can be filed only with regard to the material or evidence which is collected afresh and not on the basis of the evidence which is already there in the possession of the investigating agency. Thus, even after filing of the main charge-sheet, if the investigating agency comes across fresh evidence, it is within its rights to file supplementary charge-sheets on the basis of the newly collected evidence.

7.1 Now, as contended by the applicants, the main question before the court is, if the prosecution should disclose whether the investigation is complete and the case is ripe for consideration on charge.

7.2 It is the allegation of the applicants that in the main charge-sheet as well as in all the supplementary charge-sheets, the investigating agency has mentioned that the investigation is still continuing, whereas, there should be an end to it somewhere and if

according to the investigating agency the investigation is still continuing, the Court cannot proceed to consider the matter for charge.

7.2 On the other hand, Ld. Special Public Prosecutor submitted that there is sufficient material before the court to proceed with the matter for consideration on charge and by moving the present applications, the applicants are unnecessarily delaying the matter. Ld. Public Prosecutor also submitted that the court had already fixed the matter for arguments on charge but as the applicants have moved the present applications, the matter got delayed.

7.3 No doubt, that for considering any matter on charge, the Court should only have sufficient material before it and some material like FSL reports etc. which is left in the charge-sheet may come later on, but the situation in the matter in hand is different. It is not the case here that after considering the matter for charge and after initiation of the trial, the Court will wait for a few formal reports on some facts, but the situation here is a bit peculiar, that the prosecution, even in the last supplementary charge-sheet has stated in general, that the investigation u/s. 173 (8) Cr.P.C is still continuing and the result thereof shall be submitted before the court in due course.

7.4 Although the applicants have relied upon several judgments of the Hon'ble Supreme Court and different Hon'ble High Courts but the Hon'ble High Court of Delhi in **State Vs. Mohd. Qasim and Others** has discussed many of them and made this aspect very clear and as such this court need not discuss the other judgments, as relied upon by the applicants and the prosecution.

7.5 In this judgment, the Hon'ble High Court of Delhi specifically framed a question: whether there is any necessity to lay down a procedure for the investigating agency to put the entire

investigated material before the court and inform the court that they have concluded the investigation before arguments on charge are heard.

7.6 The Hon'ble High Court then answered the said question and it would be appropriate here to reproduce the relevant paras of the judgment as under:

“40. It should not have escaped by the parties as well as the Court that the investigating agency had yet not concluded its investigation, the FSL report was still awaited and that the statements of the witnesses were still being recorded by the police. The Court could have asked the investigating agency to inform it as to when they will conclude the investigation against the present accused persons.

41. As per Section 173(8) Cr.P.C., there is no bar for the police to file a supplementary charge-sheet. In the present case, the second supplementary charge-sheet already stood accepted wherein it was clearly mentioned that the third charge-sheet will be followed and it was duly accepted by the learned Trial Court. The third charge-sheet could not be discarded in law.

“42. However, as far as propriety of doing so, when arguments on charge had been part heard is concerned, this court also holds a view that **at the stage of framing of charge, the Court's may put a question after filing of the charge-sheet and before hearing arguments, and the prosecution will inform the Trial Courts as to whether the case was ripe for hearing arguments on charge and as to whether the charge-sheet has been finally filed against the accused, against whom a Court is proceeding to hear arguments on charge.**”

7.7 The Hon'ble High Court has thus made it amply clear that after filing of the charge-sheet and before hearing arguments on charge, the Court may put a question to the prosecution and the prosecution will inform the court as to whether the charge-sheet has been finally filed against the accused persons and whether the case is ripe for hearing arguments on charge.

7.8 As far as the case in hand is concerned, keeping in view the mentioned judgment of the Hon'ble High Court of Delhi and the peculiar facts and circumstances of the case, the court holds that the prosecution must inform the court if the charge-sheet has been finally filed and the case is ripe for hearing arguments on charge.

8) Now, it is important to note here that in its written submissions, as filed by the prosecution, it is mentioned that the investigation qua the accused persons is complete, which must mean that the investigation is complete qua all the accused persons as charge-sheeted till date and not only against the applicants and as such the prosecution has disclosed that the investigation is complete and the matter is ripe for hearing arguments on charge.

9) It is, thus, ordered that the prosecution may start addressing arguments on charge on the next date of hearing when the case is already fixed.

10) Applications are accordingly disposed of.

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Delhi : 04.09.2024