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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07.08.2020

+ W.P.(CRL) 1120/2020 & CrI.M.A. 9876/2020

SAHIL PARVEZ & ANR.

..... Petitioners

Through Mr.Mehmood Pracha, Adv. with
Mr.Shariq Nisar, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through Mr.Chetan Sharma, ASG with
Mr.Amit Mahajan, CGSC, Mr.Rajat
Nair, SPP & Mr.Dhruv Pande, Adv.
for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

The hearing has been conducted through video conferencing.

1. Vide the present petition, the petitioners prays as under:

- a. *Issue a Writ of Certiorari or any other Writ in the nature of Certiorari quashing Order dated 08.07.2020 passed by the Special CP (Crime & Economic Offences Wing) Sh.Praveer Ranjan;*
- b. *Issue a Writ of Mandamus or any other Writ in the nature of*

Mandamus directing the respondents to produce all documents relating to the appointment of all Special Prosecutors as referred to in order dated 08.07.2020 passed by the Special C.P. (Crime & Economic Offences Wing) Sh.Praveer Ranjan;

- c. Issue a Writ of Quo Warranto or any other Writ in the nature of Quo Warranto requiring the respondent no.4 Special C.P. (Crime & Economic Offences Wing) Sh. Praveer Ranjan to show the authority under which order dated 08.07.2020 was issued by him; and*
- d. Direct respondent no.3 to initiate disciplinary inquiry against respondent no.4 for passing illegal orders.*

2. The Petitioners are aggrieved by the issuance of the aforesaid order dated 08.07.2020 by Respondent No.4, as the said order has a direct bearing on the investigation and adjudication of the criminal cases relating to deaths of their immediate family members.

3. As alleged in the present petition communication dated 08.07.2020 by respondent no. 4 has been issued to the investigating officers and teams while the investigation pertaining to carnage that took place in North East Delhi, is still underway. The said order was reported in an Article published

on 15.07.2020 by the Indian Express titled '*RESENTMENT IN HINDUS ON ARRESTS, TAKE CARE: SPECIAL CP TO PROBE TEAMS*'.

4. Mr.Pracha, learned counsel for the petitioner submits that such an order was indeed issued by respondent no.4 as was confirmed by the office of the Commissioner of Police, Delhi, in their response dated 15.07.2020 on Twitter. The Article pertains to the ongoing investigation, arrests and prosecution by the Delhi Police in cases relating to the carnage in North East Delhi and *inter-alia* reports that order dated 08.07.2020 addressed to subordinate officers heading probe teams and signed by respondent no.4 cites an "*intelligence input*" about the riot-related arrests of "*some Hindu youth from Chand Bagh and Khajuri Khas areas of Northeast Delhi*" and goes on to state that arrests of "*some Hindu youth*" has led to a "*degree of resentment among the Hindu community*". The said order proceeds to direct that "*due care and precaution*" must be taken while making such arrests. The order also states that "*community representatives are alleging that these arrests are made without any evidence and are even insinuating that such arrests are being made for some personal reasons.*" The order goes on to name two Muslim men and states: "*In the same area, resentment among Hindu community is also reported for alleged police inaction*" against the

two, “*who are alleged to have been involved in mobilizing members of Muslim community during Delhi riots and anti-CAA protests*”.

5. He further submits that Senior officers heading probe teams have also been asked to “*suitably*” guide the Investigating Officers while the investigation is still pending. The order further states that “*Due care and precaution be taken while arresting any person. All evidences including direct and technical evidences be properly analysed and that all the arrests are backed by sufficient evidence be ensured. No arbitrary arrest should be made in any case and all evidences must be discussed with Special PPs (public prosecutors) assigned for each case,*” it states, adding: “*Supervisory officers ACPs/DCPs —SIT & Additional CP/Crime (Headquarters) may guide the IOs (investigating officers) suitably.*”

6. Mr.Pracha further submits that the letter dated 08.07.2020 and subsequent tweet on 15.07.2020 give direct message to the subordinate officer that due care be taken in case of arresting Hindu people. It simultaneously conveys that the same precaution may not be taken while arresting the Muslim people.

7. On the last date of hearing, i.e. 31.07.2020, this Court specifically asked respondent no.4/Special CP, who was present through video

conferencing, that what was the occasion to issue such an order. He replied that on receipt of input it, is a usual practice that is followed to guide the subordinate officers to deal with the cases in a proper manner.

8. Letter dated 08.07.2020 issued by the respondent no.4 is reproduced hereunder:

“ORDER

Subject: Input regarding North-East Delhi Riots.

As per an intelligence input, arrests of some Hindu youth from Chand Bagh and Khajuri Khas areas of North-East Delhi recently in connection with Delhi riots has led to a degree of resentment among the Hindu community there. Community representatives are alleging that these arrests are made without any evidence and are even insinuating that such arrests are being made for some personal reasons. In the same area, resentment among Hindu community is also reported for alleged police inaction against Mohd.Rashid s/o Mohd. Shafique and Mohd.Azam Khan of Gali No.1, E Block, 25 Foota Road of Chand Bagh; who are alleged to have

been involved in mobilizing members of Muslim community during Delhi riots and anti-CAA protests.

Due care and precaution be taken while arresting any person. All evidences, including direct and technical evidences, be properly analysed and that the arrests are backed by sufficient evidence be ensured. No arbitrary arrest should be made in any case and all evidences must be discussed with Special PPs assigned for each case.

Supervisory officers including the ACsP/DCsP-SIT & Addl. CP/Crime (HQ) may guide the IOs suitably.”

9. As stated by respondent no.4, first para of the aforesaid order is input received from intelligence in writing and the second para is the instructions to the subordinate officers stating that due care and precaution be taken while arresting any person. All evidences, including direct and technical evidences, be properly analysed and that the arrests are backed by sufficient evidence be ensured. No arbitrary arrest should be made in any case and all evidences must be discussed with Special PPs assigned for each case.

10. Mr.Pracha has raised an objection that nowhere in Cr.P.C. or any other provision of law it is stated that the evidences must be discussed with

Special PPs assigned to each case.

11. Mr.Chetan Sharma, learned Additional Solicitor General and Mr.Amit Mahajan, SPP appearing on behalf of the respondents also have not disputed the fact that neither in Cr.P.C. nor under any other provision of law there is any mention of requirement for such a discussion. However, in case legal opinion is required, the police may seek legal opinion from the Prosecution Department on the particular issue. The same is not applicable when the evidence is on record and it is totally the prerogative of the IO of the case to decide which evidence should be part of the chargesheet.

12. Moreover, it is not in dispute that the incident of riots in Delhi took place from 24.02.2020 to 26.02.2020 and all the cases in relation to the said riots were registered before issuance of the letter dated 08.07.2020. In some of these cases, chargesheet has already been filed. In FIR No.52/2020, wherein father of petitioner no.1 was killed, as stated by Mr. Mahajan, that 16 accused (Hindu) were arrested and in FIR No.70/2020, wherein mother of petitioner no.2 was killed, six accused (Hindu) were arrested.

13. He further submits that till date 535 Hindus and 513 Muslims have been chargesheeted in all the cases. Thus, no prejudice has been caused pursuant to letter dated 08.07.2020 and through clarification and correction

response dated 15.07.2020.

14. Before parting with the present petition, this Court hereby makes it clear that the IOs of the cases shall deal with the cases in accordance with law and shall not take into consideration about instructions issued vide order dated 08.07.2020, whereby it is stated that the evidences must be discussed with Special PPs assigned to each case.

15. Since in my considered opinion, the accused persons have already been chargesheeted before issuance of letter dated 08.07.2020, no prejudice has been caused.

16. It is not out of place to mention here that while issuing any instructions especially in such type of situation, the respondents shall take due care, however, in any eventuality, instructions may be issued within the powers mentioned under section 36 Cr.P.C.

17. The passing of this order will not put an embargo on the petitioners to avail any remedy available under the law.

18. It is further make it clear that subordinate courts shall not get influenced by the observations made by this Court in disposing of the present petition.

19. This Court noticed while going through the present petition that the

electronic/print media has published some news which is against the letter and spirit of the order dated 08.07.2020 issued by respondent no.4.

20. Therefore, it is suggested that media being the fourth pillar of democracy, news should be clear after verifying the facts so that no prejudice is caused to anyone or hatred is spread among communities in this country.

21. It is further suggested that the investigating authorities must not create any bias on the basis of any instruction issued by the senior officers which is not recognized under any law.

22. The observations made by this Court will not cause any prejudice to respondent no.4 or any other police officers and shall not come in the way of their service in future in any manner.

23. In view of above, the petition is disposed of.

24. Pending application stands disposed of.

25. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 07, 2020/ab