

Case No. 1582/2020
FIR No. 63/2020 (38)
State Vs. Nurbek Dosmukanbet Uulu PS
Crime Branch, South East

ORDER

1. Vide this order, I shall decide on the point of charge qua accused Nurbek Dosmukanbet Uulu in the present case.

2. The facts that are emanating from the chargesheet are that on 21.03.2020, the authorities of the Markaz at Tabligh Jamaat Headquarters were contacted by Delhi Police in view of the Corona Virus Pandemic and persons namely, Mufti Shahzad was apprised of the situation arising out of the spread of COVID -19 and was directed to send foreign devotees back to their respective countries. It has been further stated in the chargesheet that in view of the corona virus pandemic, Govt of India had ordered a complete lockdown of the entire country on 24.03.2020 for a period of 21 days w.e.f. 25.03.2020 and pursuant to the same ACP/ Lajpat Nagar, New Delhi vide order no. 684713/ACP/Lajpat Nagar, New Delhi dated 24.03.2020 promulgated prohibitory orders under Section 144 Cr.P.C., thereby restricting social/ political/ religious gathering in the area and to take safety measures by following measures of social distancing for prevention/treatment i.e., home quarantine/ isolation etc. The chargesheet further mentions that the menace and hazard of COVID-19 infection was verbally conveyed to Maulana Mohd. Saad and the management of Markaz on several occasions, including meetings at Police Station Hazrat Nizammuddin and that the meeting held at Police

Station Harzat Nizamuddin held on 24.03.2020 was attended by Mohd Ashraf, Mufti Shehzad, Dr Jishan, Mursaleen Saifi, Mohd. Salman and Yunus. It is alleged that despite the aforesaid, the management of Markaz did not inform any health department or other Government agency about the huge gathering inside the Markaz and deliberately, willfully, negligently and malignantly disobeyed the lawful directions promulgated in this regard by the Government of India, Government of NCT of Delhi, ACP Lajpat Nagar and SHO PS-Hazrat Nizamuddin. The chargesheet further states that written notices vide no. 293-SHO/HND, dated 24.03.2020 and 717/SCACP/ Lajpat Nagar, New Delhi dated 28.03.2020 were issued to Maulana Saad and the management of Markaz, however they refused to pay any heed and the premises was inspected by SDM/ Defence Colony on various dates including 26.03.2020, 27.03.2020, 28.03.2020, 29.03.2020 and also on 30.03.2020. It is also alleged that around 1300 devotees from various states of India as well as Foreign Countries were found residing in the premises without maintaining any social distancing from each other and no one was following the directions such as use of facial mask, hand sanitizers etc. It has been mentioned in the chargesheet that during investigation, it was confirmed that the present accused along with other co-accused persons did not follow or comply with the directions of the authorities despite having knowledge of the corona virus pandemic and 6 persons who were a part of the religious congregation lost their lives due to corona virus infection. The chargesheet further mentions that 32 persons out of the 1500 persons staying at the Markaz were found having symptoms of corona virus on 28.03.2020 and were shifted to hospitals and that further by 31.03.2020, 207 persons had been admitted in various hospitals and around

860 people were quarantined. The chargesheet also mentions that in addition to 6 deaths, 477 persons who had participated in the religious congregation tested positive for corona virus. As per the chargesheet, the present accused along with other co-accused persons during investigation accepted that they had participated in the Tablighi Jamaat Markaz and had remained at the Banglewale Masjid for some time and that the investigation further had revealed that the foreign nationals in the present case including the present accused were visiting India on Missionary Work for Tablighi Jamaat with the purpose to propagate and profess the principles and doctrines of Tablighi Jamaat and they attended the congregation at Nizamuddin Alami Markaz which is a religious gathering for the purpose of voluntarily participating in preaching missions by arriving in India on a tourist visa or e visa instead of obtaining missionary visa. Also, it has been alleged that a large number of foreigners from Indonesia, Malaysia and other countries had arrived in India and some of these foreigners acted as carriers of the infectious corona virus and that on 19.03.2020, the authorities of Markaz were contacted by CDMO office which received information that an Indonesian National has tested positive for corona virus in Telangana with a travel history to Delhi in a group on 09.03.2020 to participate in the Tablighi Jamaat, Banglewali Masjid Markaz , Hazrat Nizamuddin and it was formed to the CDMO office by Mohd. Shehzad of Banglewali Masjid Markaz that there were hardly any people in the Masjid and that none of them were showing any symptom of corona virus infection. Further, as per the chargesheet on 21.03.2020, the authorities of Markaz at Tablighi Jamaat headquarters were contacted by Delhi Police and Mufti Shahzad of the Markaz was asked to take immediate action for preventing the

spread of disease and also to send the foreign devotees back to their countries and other Indians to their respective states, however, no such direction was followed and the accused along with other co-accused persons refused to comply with the lawful directions of the authorities resulting in loss of lives and imminent danger to the lives of the others.

3. It has been argued on behalf of Ld. SPP for the State that the chargesheet and the documents attached along with the same show sufficient prima facie evidence to proceed against the accused persons. It has been argued that the MHA circular and documents placed on record show that the accused persons who were foreign nationals had arrived in India on the strength of tourist visa and were involved in Tablighi work. He further argued that as per paragraph 1.25 of the Visa Manual the, the foreign nationals granted any type of Visa and OCI Card holder were not permitted to engage themselves in Tablighi work unless they were granted specific permission in accordance with paragraph 19.8 of the Visa manual. He further argued that the register seized during investigation, the copy of which has been attached along with the chargesheet reflects that participation of the accused persons who were foreign nationals in Tablighi Jamaat Work. He has further argued that requisite complaints have been filed along with the chargesheet. Ld.

SPP has also argued that social distancing and other guidelines were not followed, which was specifically directed to be done by the order of ACP Lajpat Nagar under Section 144 Cr.P.C and that large gathering were being held without following the norms of social distancing and other safety directions. It

is further submitted that the orders of the MHA and ACP Lajpat Nagar were all in public domain and therefore, it cannot be said that the same were not in the knowledge of the accused persons. It has been further argued that the accused persons had both malignantly and negligently participated and gathered inside the Markaz, thereby, increasing the spread of Corona Virus infection. He further argues that each of the accused person was responsible for himself and for the others in these pandemic times.

4. Per contra, it has been argued by Ld. Senior Counsel appearing on behalf of accused persons that the chargesheet is silent as to the role of any of the accused persons so chargesheeted and also does not provide any specific act done by them to invoke provisions of any of the sections alleged against them. It has been further argued that no document or order filed along with the chargesheet have been specifically been marked to any of the accused persons to show their knowledge of the MHA orders or the order of ACP Lajpat Nagar. It has been further argued that as per the visa guidelines available on the MHA website, the accused persons were not barred from visiting and attending any religious place including the Tablighi jamaat and there is no evidence to show as per the chargesheet and documents attached that any of the accused persons had preached or professed or was involved in any Tablighi work. It has been argued that separate complaint had to be filed under the Disaster Management Act, 2005 and the Epidemic Act, 1897 and the same could not have been filed along with the chargesheet as has been done in the present case. It has been further argued by Ld. Senior Counsel that there is no evidence either ocular or documentary to show that the accused persons were loitering

around or had violated any condition of the lockdown and had further submitted that this case was a case of force of circumstances. It has been further argued that there is no evidence on record to show that any of the accused persons were continuously present inside the Markaz as has been alleged and that there is no proof of the same. It has been further argued that Section 271 IPC applies to vessels and therefore is not applicable in the present case. With respect to 269 IPC and 270 IPC it has been argued by Ld. Senior Counsel that the chargesheet is silent as what was the negligent act done by the accused persons and what was the overt act done by them to malignantly spread the infection of Corona Virus. It has been submitted by Ld. Senior Counsel that the court is required to sift the evidence at the stage of framing of charges and if two views are possible even at the stage of framing of charge, the view favoring that of the accused should be taken. It has been further argued that reading of the chargesheet and documents attached prima facie show that there is insufficient evidence and no documents to show that the present accused had stayed at the Markaz and had intentionally, negligently and malignantly spread the disease.

5. Both Ld. SPP for the State as well as Ld. Senior Counsel for accused persons have relied upon certain judgments in support of their case.

6. Perusal of the record shows that qua the present accused, the entire chargesheet and documents attached thereto, neither shows his presence or participation at the Markaz during the relevant period. There is also no document on record to suggest that he was one of the participants who was involved in Tabligh work as are the allegations in the present case. Neither the

copy of the register seized and placed on record nor the list of SDM providing the details of the persons who were sent from the Markaz either to hospitals or quarantine centers or the list of persons who were part of the Markaz and were tested for the Covid19, specifically mentions the name of the present accused, so as to even show his prima facie involvement or presence as alleged in the chargesheet at the Tablighi Jamaat Markaz. Even for this court to proceed further, there has to be some prima facie evidence against the accused which is not so in the present case. Reliance is placed on the judgment of ***Union of India vs. Prafulla Kumar Samal and Ors. AIR 1979, SC 366***, wherein it has been held that *“the court has the power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case against the accused is made out or not. It has been further held that where the materials placed before the court disclosed a grave suspicion against the accused, which has not been properly explained, the court will be full justified in framing a charge and proceedings with the trial. It was further held that by and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before to him give rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. It has further held that presumption, however, strong could not take place of proof.”*

7. In the absence of any record or any credible material placed before this court in the present chargesheet or any of the documents attached along with it, so as to proceed further against the accused as already discussed above accused namely Nurbek Dosmukanbet Uulu is hereby discharged from all offences in the present case. 8. Ordered accordingly.

(Gurmohina Kaur)
(Chief Metropolitan Magistrate)
SED/New Delhi/24.08.2020