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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 624/2016
STATE (GNCT OF DELHI) Petitioner
Through: Ms. Neelam Sharma, APP for State.
versus

DALIP @ ASHOK Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
24.11.2016

Crl. M.A. 18339/2016

Delay condoned.

Application is disposed of.

Crl. L.P. 624/2016

FIR No. 24/2013 under Sections 379/411/413 IPC was registered at police station Shastri Park, on the complaint of Jatin Gupta. It is noted in the FIR that mobile phone was not recovered in this case. A separate FIR No. 28/2013 under Section 413 IPC was registered against the respondent at police station Shastri Park. In the said FIR, it is noted that mobile phone stolen from Jatin Gupta was recovered from the possession of respondent. In the said FIR, respondent was already convicted under Section 413 IPC on the same set of evidence led in the present case with regard to recovery of

mobile phone. Respondent was also involved in other FIRs with respect to stolen properties. Section 413 IPC provides that whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Trial court has held that respondent could not be convicted under Section 413 IPC on the same set of evidence more so when he was already convicted under Section 413 IPC in FIR No. 28/2013 in respect of the recovery of the same mobile phone. Trial court has also noted that petitioner had failed to prove charges under Sections 379/411 IPC by leading any cogent evidence. I do not find any force in the contention of learned APP that since stolen mobile phone was recovered from the respondent *ipso facto* an inference can be drawn that he has stolen the same. The view taken by the trial court is a possible view and is not perverse.

In view of the above discussions, petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 24, 2016

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