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

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Judgment delivered on: 20.08.2018

+ CRL.M.C. 1448/2018 & CRL.M.A. 5265/2018

RAJESH SINGH

..... Petitioner

versus

THE STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Rakesh Mittal, Adv.

For the Respondent: Mr. Kamal Kr. Ghai, APP for the State with IO

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

20.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner seeks quashing of FIR No. 331/2003 under Section 411 of the IPC registered at Police Station Kotwali, Delhi.
2. The allegations in the FIR are that an information was received that surgical supplies meant for Govt. Departments and hospitals were being stolen and diverted. A raid was conducted and at the premises of a co-accused, drug items and surgical supply items were recovered from the said person. It is alleged that the co-accused disclosed the

name of the petitioner.

3. The petitioner is alleged to have been apprehended on a public street i.e. Road No. 5, Andrews Ganj, New Delhi and the following goods were allegedly recovered from his possession:-

- 1) *One Box Containing 45 Nos. Venflon I.V. Cannula 20G/26/N 1.0 x32 mm 54 ml/min lot No. 3J0841 Mfg. 9/03, Ref. No. 391492 Manufactured by M/s. Becton Dickinson India (P) Ltd. The box is started with R.P. Centre supply not for sale marked (1).*
- 2) *One Box Containing 42 Nos. Venflon I.V. Cannula 20G, 1.25 In, 1.0 x32 min 54 ml/min Lot No. 3J0841 Mfg. 9/03, Ref. No. 391492 Manufactured by M/s. Becton Dickinson India (P) Ltd. The box is started with R.P. Centre supply not for sale marked (2).*
- 3) *One box of lister make sterile surgical blade containing 42 blades of batch No. 21EPDA of No. 22 manufactured by M/s. Magna Marketing D-3, Ref. No. 3 Udyog Kang Site 5 Kanpur-22. The box is stamped AIIMS SUPPLY NOT FOR SALE. Marked (3)*

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. Firstly; there is nothing to connect the petitioner with the subject articles and secondly; there was nothing to show that the said articles were stolen property.

5. It may be pertinent to note that the main co-accused i.e. Pradeep Kumar Bhargava from whose premises several drug articles were

recovered had approached the Court for compounding of the said offence and FIR qua him was compounded and fine of Rs. 12,000/- was imposed.

6. Learned counsel for the petitioner submits that since the petitioner is innocent and has been framed and there was no question of accepting the subject offence and approaching the trial court for compounding.

7. It may be noticed that vide order dated 04.09.2015, the revisional court in a revision petition filed by the petitioner impugning order on charge dated 29.06.2015 has held that the proceedings conducted by the trial court and the charge framed against the petitioner under Drugs & Cosmetics Act 1940 was illegal and against the mandate of Section 32 of the Drugs & Cosmetics Act 1940 and accordingly charges framed under the Drugs & Cosmetics Act 1940 *qua* the petitioner were deleted. The petitioner has been charged only of the offence punishable under Section 411 of the IPC (i.e. dishonestly receiving stolen property).

8. Since the allegations is that the petitioner was in receipt of the stolen property which was stolen from AIIMS, the office of Deputy Commissioner of Police on 11.12.2003 sent a communication to Medical Superintendent, AIIMS informing him that the above reported articles were recovered from the accused and specifically raised the following queries:-

1. *Whether the above item was received in your hospital for the official use.*

2. *If yes, provide the details thereof. The name of the department where this item was issued for the use be also provided.*

3. *Whether any police report regarding the theft or misappropriation was ever lodged by the authority. If yes, kindly provide the details.*

4. *The identity of the person liable for the theft/misappropriation of the above article be also fixed.*

9. It may be noticed that an investigation was carried out by the AIIMS with regard to two articles which were alleged recovered from the possession of the petitioner and the conclusion with regard to “One box of lister make sterile surgical blade” inter alia is as under:-

“Observations

- *The item in question is Non Accountable, relatively inexpensive.*
- *The pattern of use was commensurate with the quantity indented in all areas investigated.*
- *At the time of issue of items on indent to user areas, in a hospital of this size, it is not possible to record the Batch No. of each and every item on the indent, book, thus making it impossible to trace the items of a particular batch number right upto the end user level.*
- *The total quantity of BP Blades seized is 42 only. 100 packets, each containing 100 blades, i.e. a total of 10,000*

Blades were received in this Hospital of the Batch No. in question. The cost of each blade amounts to Rs.1.28p. The total cost of the seized item belonging to this hospital would not exceed Rs.55/-.

Conclusion

There does not appear to be organized large-scale pilferage of the particular item from the Stores or User Area. From the available records, it is impossible to ascertain at this stage whether small quantities of the item (as reflected in the list forwarded by the crime branch) have been removed from any of these areas. In the light of the above, it is proposed to reply to the queries in the Crime Branch letter mentioned above thus:-

a) The surgical item, forwarded by Crime Branch, viz., Batch No. 21 EPDA of Lister Make Sterile Surgical Blade No. 22 was received in the hospital for official use.

b) Details of receipt of the items:-

<i>Sl. No.</i>	<i>Item and Batch No.</i>	<i>Quantity</i>	<i>Date of Receipt in Store</i>	<i>Challan No.</i>	<i>Supply Order No.</i>
<i>1.</i>	<i>Lister Make Sterile Surgical Blade No. 22 21 EPDA</i>	<i>10,000 (100 Packets, each packet containing 100 blades</i>	<i>24.06.03</i>	<i>Challan No. 3453</i>	<i>Supply Order No. 710/H/SSK/03-04 dated 13.06.03</i>

Since issue to user areas are not done by Batch Nos. it is not possible to pin point the Deptts. to whom the item bearing the above batch no. was issued. However, the abovementioned items are generally used in a wide area encompassing, OT complexes, Causality, Wards Investigation Areas, ICU etc.

- c) Police has been approached by the AIIMS Main Hospital with a request to provide the details of the items seized based on Newspaper Reports vide this Hospital Letter addressed to Dy. Commissioner of Police, Darya Ganj, New Delhi dated 12th June, 03. Photocopy of AIIMS Main Hospital Letter is attached for ready reference vide Annexure 'A'.*
- d) It is impossible to detect pilferage of such small quantities as has been brought to light from user areas and to ascertain the identity of any person involved.*
- e) CTC (certified true copies) of Supply order and Delivery Challan of the item in question are attached vide Annexures 'B' & 'C' respectively are records pertaining to receipt of the items. Since items are not issued as per batch, no record of issuance of these items to specific user areas and their consumption can be provided.*

Submitted for directions please."

10. With regard to other item i.e. 87 Nos. Venflon I.V. Cannula, a notice was issued by the office of the Deputy Commissioner of Police on 01.12.2003 to Medical Superintendent, R.P. Centre, AIIMS and after investigation it was reported on 23.12.2013 that the said item has not been received in the said Centre against any supply.

11. Perusal of the report submitted by AIIMS in so far as the surgical blade shows that a total cost of the surgical blade alleged seized from the petitioner does not exceed Rs. 55/- and AIIMS after investigation reported that the items in question is Non-accountable, relatively inexpensive and the pattern of use was commensurate with the quantity indented in all areas investigated. With regard to the other article i.e. *Venflon I.V. Cannula*, AIIMS has reported that no such item was received in the Centre against any supply.

12. Section 411 of the IPC reads as under:-

“Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

13. The necessary ingredient of section 411 of the IPC is that the property must be stolen.

14. The allegations against the petitioner are that the petitioner was found in possession of property which was allegedly stolen from AIIMS. AIIMS, after inquiry conducted has not stated that any of the articles allegedly recovered from the petitioner were stolen from their stores. The subject FIR was registered in the year 2003. The petitioner has already suffered trial for nearly 15 years. It is informed that out of 20 witnesses only two witnesses have been examined till date.

15. Keeping in view the facts and circumstances and also the fact that AIIMS has not claimed the articles recovered from the petitioner were stolen from their stores and the fact that the petitioner has suffered trauma of trial for over 15 years. I am of the view that it is a fit case for exercising power under Section 482 Cr. P.C. and it would be expedient and in the interest of justice that the subject FIR is quashed qua the petitioner..

16. In view of the above, the present petition is allowed. FIR No. 331/2003 under Section 411 of the IPC registered at Police Station Kotwali, and the proceedings emanating there from are accordingly quashed qua the petitioner.

17. The petition is allowed in the above terms.

18. Order *Dasti* under the signatures of the Court Master.

AUGUST 20, 2018
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SANJEEV SACHDEVA, J