

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 2232 OF 2004

Dr. Bandunana Manikrao Sabnis	]	
Age : 51 years, residing at 13, Avanti	]	
Narayan Dabholkar Marg	]	
Mumbai – 400 006.	]	...Applicant.

VERSUS

The State of Maharashtra	]	
(at the instance of Dy. S.P., State CID	]	
(Crime), Mumbai Squad, Mumbai vide	]	
FI.R. No. 171 / 90 of Byculla Police Station.	]	...Respondent.

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Mr. Karl P. Rustom Khan i/b. Mr. Sudeep Passbola, Advocate for Applicant.
Mr. Vinod Chate, APP for Respondents - State.

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CORAM : S. S. SHINDE J.
RESERVED ON : 30th July, 2019.
PRONOUNCED ON : 11th October 2019.

JUDGMENT

1. This Criminal Application takes exception to the order dated 10th and 11th December 2003 passed by the learned Additional Sessions Judge, Greater Bombay rejecting the Revision Application No.287 of 2003 filed by the Applicant herein along with other two Accused being aggrieved by the order dated 06th March 2003 passed by the learned Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai. By order dated 06th March 2003 the learned Magistrate has rejected the Application filed for discharge under Section 239 of the Criminal Procedure Code by Accused Nos.3 to 5.

2. Background facts for filing the criminal application are as under :-

It is the case of the Applicant that, the Applicant herein is the original accused No.4. The Applicant along with accused Nos.1 to 3 and 5 is being prosecuted by the Respondent for commission of offences punishable under Section 420 read with 120-B of the Indian Penal Code (hereinafter referred to as 'IPC') in the Court of the learned Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai in C.C. No. 377/P/2002.

3. It is the case of the Applicant that, on the basis of the complaint of one Mayagonda Yashwant Patil, a Police Inspector attached to State CID (Crime), Thane Unit, the Byculla Police Station registered an offence vide C.R. No.171 of 1990 on 29th March, 1990 against M/s. Golden Fibre Dressing Syndicate having its office situated at 105, Shymaldas Gandhi Marg, Mumbai – 400 006 under Section 420 read with 120-B of the IPC. It is alleged that the accused in pursuance to their conspiracy supplied less quantity and substandard Bandage cloth to the J.J. Hospital, and thereby cheated the Government to the tune of Rs.1,950.70/-. It is alleged by the complainant that an information was received by the officers of Anti-corruption Bureau, Bombay that M/s. Golden Fibre Dressing Syndicate was a contractor for item No.420 i.e. Bandage cloth Bleached under Schedule F (II) of the Government of India Gazette to the Government

Hospitals, Colleges, Zilla Parishads, ESIS Hospitals etc. in Maharashtra for a period between 1st February 1987 to 30th January 1989. It is further the case of the complainant that M/s. Golden Fibre Dressing Syndicate, and its distributors M/s. Deepali Enterprises, and M/s. Janta Sales were supplying this Bandage cloth as per the Government Rate Contract and as per the specification of the item No.420. It is alleged that these Firms have not supplied Bandage cloth in accordance with specifications laid down and substandard and less quality material was supplied to the J.J. Hospital, Byculla, Mumbai. It is alleged that the said information was verified on 4th April 1989 by ACP Shri. Kolekar, Navale, Sawant, P.I. Zade, Bhat, Jambhulkar and other staff of the Anti-corruption Bureau, and in presence of Panchas the Bandage cloth lying at J.J. Hospital, Byculla, Mumbai, which was supplied by M/s. Golden Fibre Dressing Syndicate was taken charge of under a Panchnama. In all there were 87 “Thans”. It is alleged that upon weighing the said “Thans”, they were found to be of less weight and substandard quality. It is alleged that Bandage cloth ought to have weighed 94221 gms. But was found weighing 28815 gms. Causing loss of 65406 gms valued at Rs.1,950.70/-. It is alleged that M/s. Golden Fibre Dressing Syndicate had supplied the Bandage cloth ad-measuring 50,000 meters on 14th February 1989 and another 50,000 meters on 2nd March 1989 to the Officer / Store in – charge of the J.J. Hospital, which was accepted by them, and utilized it for Hospital purposes except the 87 “Thans”, which were found on the date of search

i.e. 4th April 1989. It is also alleged that the Firm had raised bill of material supplied, and payment was made by cheque. It is alleged by the complainant that this Firm namely M/s. Golden Fibre Dressing Syndicate, and other persons conspired together, and cheated the Government of Maharashtra, and therefore PSI Patil on behalf of the Government lodged the complaint.

4. It is the case of the Applicant that, original accused Nos.1 and 2 are the Partners of M/s. Golden Fibre Dressing Syndicate. The Applicant (Orig. Accused No.4) and accused Nos.3 and 5 at the relevant time were in the Service of the J.J. Group of Hospitals. Accused Nos.3 and 5 continue to be in the Service at Solapur & Aurangabad respectively. Accused No.5 is a Pharmacist GSS Class 2 at the J.J. Group of Hospitals, Mumbai. Accused No.3 is a Compounder. The Applicant is at present a Professor of surgery attached to V. N. Medical College, Yawatmal. At the relevant time, the Applicant was an Associate Professor of surgery at Grant Medical College, J.J. Group of Hospitals, and In-charge of surgery Unit, and was responsible for Management of OPD Ward, and carrying out operations, and teaching medical students. In addition to this the Applicant was allotted duty to assist the Dean in Administration, and as such was asked to look after surgical stores.

5. It is the case of the Applicant that, under the manual of office procedures for Purchase of Stores by Government Department dated 21st February 1978, the actual purchases by the various Departmental Heads and Heads of offices is regulated. The Central Stores Purchases Organization (CSPO) continues to shoulder the overall responsibility of laying down policy in respect of the Government Purchases, and also fixing the rate contracts wherever necessary. The Director General of Supplies, and Disposal Rate Contracts also continues to operate as before. The aforesaid Manual of the Government of Maharashtra embodies the principles policy, and sets day-to-day guidelines for the officers and staff. The Director Industries, Central Stores Purchase Organization maintains a list of contractors, who are registered with them. The CSPO lists certain items in this category for entering into a contract with suppliers for meeting the requirement of Departments, and offices within fixed period i.e. year or two at the fixed price. In such a contract, no commitment is made as to the quality. It is for the stores to draw against the contract during the validity period of the said contract. The contractor is bound to accept the order, which may be placed upon his Firm during the period of contract. Under the Rate Contract for the period 1st February 1987 to 31st January 1989 M/s. Golden Fibre Dressing Syndicate were approved as suppliers of certain items including Bandage cloth bleached as per the Schedule F (II) of the Government of India Gazette for supplying this item to all Civil Hospitals in Maharashtra covered under the Directorate of Health

Services of Bombay, and other institutions in Maharashtra, except Bombay, Greater Bombay and Thane District. The Applicant states that as and when the requirement arises in the Stores, the Store In-charge in consultation with the Dean, and Stores Committee decides to purchase the items required for the stores. The Stores In-charge then places an order on the basis of quantity proposed by the Pharmacist, and the order is placed to the lowest Rate Contract Firm on the Panel. The said order is placed through the Institutional Head. Upon receipt of the order, the contractor awarded Rate Contract supplies the items along with the Report of the Chemical Analyst, in the present case as required under Schedule F (II) of the Government of India Gazette. Upon receipt of the said item, in the present case Bandage cloth bleached, the same is accepted by the Compounder, and the Pharmacist and accepted as they are accompanied with the necessary Test Report of Chemical Analyst. It is a duty of the contractor awarded Rate Contract to provide the necessary certification from the Analyst, and in the present case the Bandage cloth was received by the J.J. Group of Hospitals along with Report of the Analyst.

6. It is the case of the Applicant that, as the Bandage cloth was received with Analyst's Report / Certificate, the same was accepted, and used by the Hospital. A true copy of the Certificate of Test, and Analysis by the Analyst of Manufacturer in respect of the Bandage cloth supplied by M/s. Golden Fibre

Dressing Syndicate sent along with Bandage cloth supplied by them is taken charge of under Panchnama dated 4th April 1989.

7. It is the case of the Applicant that, the cloth which was received by the Hospital was thicker, and the average sinking time of the sample drawn was about 10 seconds, and therefore against the norms stipulated by the Government of India Gazette dated 1st May 1984. The Applicant further states that the entire case of the prosecution is malafide, and politically motivated. The present complaint was lodged at the behest of N.D. Patil, the then Leader of the peasants, and workers party and the whole idea behind unnecessary, and unwarranted controversy was to blacklist M/s. Golden Fibre Dressing Syndicate so that the Rate Contract can be awarded to some other Firm. It is significant to note that, the Gazette of India dated 1st May 1984 which is referred by the Chemical Analyser, does not refer to any sinking time for the Bandage cloth. The sinking time is prescribed only for Bandage Gauze, and not the Bandage cloth. It is a common sense that Gauze is applied directly to the wound, and therefore it should be thin and good absorber, and therefore its sinking time should be less than 10 seconds. Bandage cloth, on the other hand is applied above the Bandage Gauze, and cotton and therefore does not directly come in contact with the wound, and therefore no sinking time is prescribed for the same.

8. It is the case of the Applicant that, under Rule 21.60 (regarding inspection of goods), it is specifically stated that no inspection is necessary if the goods are bearing ISI mark or Quality of Mark of Central Government Quality marking Scheme. Schedule F (II) mark is the quality mark of the State Government Quality Marking Scheme, and therefore as the Bandage cloth supplied by the rate contractor was accompanying the said certificate, no inspection was necessary by the receiving officers.

9. It is the case of the Applicant that, in this case the Investigating Officer twice sought sanction for prosecution of the applicant, and accused Nos.3 and 5 from the Secretary Medical Education and on both the occasions, the said sanction was refused as there was no *prima facie* case made out against the Applicant in light of the aforesaid submissions. However, on the third occasion sanction has been granted without assigning any reason by the Joint Secretary of Medical Education after change of assignment. A careful perusal of the charge-sheet, F.I.R. and the accompanying documents reveals that there were no grounds to proceed.

10. The charge against the accused was groundless, and therefore the Applicant and accused Nos.3 and 5 approached the learned Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai for discharge under Section 239 of the

Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.). The prosecution filed their say to the said discharge application through the learned Assistant Public Prosecutor. The learned Metropolitan Magistrate 17th Court, Mazgaon, Mumbai after hearing the Advocate for the applicant, and accused Nos.3 and 5 and also the learned Assistant Public Prosecutor for the State was pleased to reject the Application of the applicant for discharge vide order dated 06th March 2003.

11. Being aggrieved by the order of the learned Magistrate, the applicant and accused Nos.3 and 5 thereafter approached the Court of Sessions for Greater Mumbai and preferred Criminal Revision Application No.287 of 2003. The said Criminal Revision Application No.287 of 2003 was however, dismissed by the learned Additional Sessions Judge for Greater Mumbai, vide order dated 10th and 11th December 2003.

12. Being aggrieved and dissatisfied by the aforesaid order dated 06th March 2003 passed by the learned Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai in C.C.No.P/377/2002, rejecting the application of the applicant, and accused Nos.3 and 5 for discharge, and further aggrieved by the order of the Additional Sessions Judge for Greater Mumbai dated 10th and 11th December

2003, upholding the order of the learned Metropolitan Magistrate, the applicant has approached this Court.

13. Learned counsel appearing for the Applicant / Original Accused No.4, made following submissions :-

Applicant is being prosecuted by Respondent for the commission of offences punishable under Section 420 r/w 120-B of the IPC in the Court of learned Metropolitan Magistrate, 17th Court, Mazgaon in CC No. 377/P/2002. An order dated 03rd February 1989 was placed by the J.J. Hospital, for the supply of 1 lac meters of Bandage cloth from a rate contractor appointed by the Government of Maharashtra, namely Golden Fibres and Dressing Syndicate. The said order was processed at the instance of the Applicant which allegedly bears of his signature.

14. Learned counsel appearing for the Applicant / Original Accused No.4 submits that, pursuant to the demand order, the appointed rate contractor, i.e., Golden Fibres and Dressing Syndicate, allegedly delivered sub-standard quality and less quantity of Bandage cloth than what was required as per the Drugs and Cosmetics Rules. As per delivery challans dated 02nd March 1989 and 12th February 1989 the goods were sent to the J.J. Hospital, Mumbai beared bundle

numbers 5888 and 5889 respectively. There is confirmation of the delivery and the acknowledgement by the J.J. Hospital of the same. Upon a raid being carried at the J.J. Hospital, the alleged sub-standard goods (Bandage cloths) came to be seized and it was found that the Bandage cloth ought to have weighed a minimum of 94,221 gms; however, it weighed 28,815 gms thereby, causing a loss of 64,406 gms valued at Rs.1,950/- to the Government. The only allegation against the Applicant is that, he misused his position as an employee of the J.J. Hospital, and intentionally and knowingly received sub-standard quality of the Bandage cloth from the rate contractor, i.e., Golden Fibres and Dressing Syndicate.

15. The test relied upon by the Chemical Analyser to assess the quality of the Bandage cloth is *prima facie* incorrect. The prosecution is relied upon the provisions of the Standards of Surgical Dressing issued on 01st May 1984 under the Drugs and Cosmetics Rules, 1945 to establish that the Bandage cloth supplied to the J.J. Hospital was of sub-standard quality. As per the said rules there are specific standards laid down for Bandage cloths, and absorbent gauzes. According to these standards, there is a prescribed form of description that each product has to comply to. It is pertinent to note that, with respect to Bandage clothes there is no “absorbency” standard to conform to. As per that standard, the average sinking time should not be more than 10 seconds. As per the said rules, the

standard for absorbency is only stated under the column of absorbent gauzes. It is submitted by the learned counsel for Applicant that, the same test cannot be used for Bandage cloths. Despite this difference, the Chemical Analyser has relied on the standard meant for absorbent gauzes to test the Bandage cloths. The report of the Chemical Analyser is also annexed with the charge-sheet. Apart from the absorbency test that was incorrectly carried out by the Chemical Analyser there is nothing on record for the prosecution to establish that the Bandage cloths supplied to the J.J. Hospital were of sub-standard quality.

16. At the relevant time, Applicant was an Associate Professor of Surgery, in-charge of surgery unit, and was responsible for Management of the OPD Ward, and carrying out operations and teaching medical students. In addition to this, Applicant was allotted the duty to assist the Dean in Administration and was asked to look after surgical stores. One of the conditions stipulated by the J.J. Hospital, at the time of placing an order from a rate contractor is that the products should comply with the specifications laid down as per the Drugs and Cosmetics Rules, 1945 and the same should be accompanied with a certificate of analysis. This condition is found on the order slip dated 03rd February 1989, wherein it is explicitly stated that, the products should conform to the said specifications as stipulated by law. Thus, the onus lies on the rate contractor from the very beginning to conform with the standards and specifications.

17. The delivery of goods containing Bandage clothes, the rate contractor, i.e., Golden Fibres and Dressing Syndicate, also sent a corresponding certificate of analysis for each bundle of Bandage cloth that was delivered. The certificate of analysis dated 04th January 1989 and 15th January 1989 sent by the rate contractor clearly states that, the Bandage clothes delivered to J.J. Hospital are complying with F (II) specifications laid down in the Standards for Surgical Dressings. Moreover, the statement of the expert appointed by the rate contractor explicitly states that, the Bandage clothes delivered to the J.J. Hospital were in compliance with the specifications laid down in the Standards for Surgical Dressing.

18. The statement of Bhandu Nakatte, who is an officer of the FDA states that, if goods as stated in the issue at hand are bound to be of sub-standard quality then the manufacturer is said to be liable under the Drugs and Cosmetics Act. The statement of Suresh Sarawadekar, who was a Pharmacist in the J.J. Hospital states that, the medical in-charge should have checked the quality of the goods received from the rate contractor, and states that the bills for payments to the rate contractor were signed by the Applicant. The statement of Namdeo Vengurlekar, who was a Ward boy in J.J. Hospital states that, he had never seen the Applicant checking the products. The statement of Meena Kalkar, who was a

medical store in-charge at the time of the raid. Though names of the Applicant does not state having any knowledge of who is responsible for checking the products. She merely states that, Applicant was in-charge of the entire surgical floor of which the surgical store was part of. As a matter of fact, the guidelines and the rules which govern the medical stores in Hospitals explicitly make the Pharmacist the one who is charge of administration and functioning of the medical store. However, there was no such requirement for the Applicant who was the Associate Professor of Surgery to inspect and check the quality of goods that are received by the medical store. Moreover, even the statement of Ranga Shrinivasan does not implicate the Applicant.

19. The above statements are only highlighted that the person in-charge of the medical store should have been responsible for checking the quality of the goods upon their receipt. However, the learned Sessions Judge has failed to take into consideration that the onus of managing the medical stores, and the day-to-day functioning of the medical stores is carried out by the Pharmacist, and the Head of the Pharmacology Department respectively. The Pharmacist and the person in-charge of the medical store in the case at hand at the relevant time was Accused No.5, i.e., Vishnu Dashrathe, and the Head of the Pharmacology Department was Dr. N.R. Sable whose name is explicitly stated by an employee of the J.J. Hospital. Despite there being explicit duties allotted to each employee of

the Hospital as per the said rules and guidelines with respect to the functioning of the medical stores, the prosecution has failed to take into account any of this. Most importantly, the person who is actually in-charge of the day-to-day functioning, and one who is possibly responsible for not checking the quality of the Bandage clothes upon receipt has not even been investigated into by the prosecution.

20. Therefore, even if it is to be assumed for the sake of arguments that, the onus lied on the employees of the J.J. Hospital to check the quality of the goods received, it can not be said that the onus lied on the applicant. When the rules, and guidelines governed by the hospital explicitly state the day-to-day functioning of the medical stores will be looked into by the Head of the Pharmacology Department, and the Pharmacist, there cannot be an additional burden casts upon the Applicant merely because the prosecution feels it necessary to do so. The job of the applicant, as far as the medical stores are concerned, was to process orders and issue bills pertaining to such orders. There is not even an iota of evidence in the charge-sheet which casts even a remote sense of responsibility upon the Applicant to have checked the quality of the Bandage clothes upon their receipt.

21. There is no *prima facie* material on record which indicates that, Applicant had ordered the Bandage cloths from the rate contractor with the intention or knowledge that the firm will be selling sub-standard quality, and quantity of products whereby causing loss to the Government. The learned Sessions Judge has vaguely observed that, the persons who receive the goods, and thereafter process the papers which leads to payment to the contractor are *prima facie* answerable. However, under what circumstances, and who to what extent is responsible is not at all considered by the learned Sessions Judge. Merely because Applicant has been arraigned as an accused person does not mean that, there is *prima facie* material against Applicant. The learned Sessions Judge has erred in holding that it is impossible to consider the role of each accused person. The Applicant submits that, there was ample material in the charge-sheet which carved out the specific roles that were attributed to each employee as far as supervising, and administering the day-to-day functioning of the medical stores in the J.J. Hospital. The learned Sessions Judge has entirely overlooked the rules, and guidelines imposed by the Government.

22. It is further submitted that, to hold a person guilty of cheating as defined under Section 415 of the IPC, it is necessary to show that, he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. The ingredients of the offence of cheating are (i)

that there should be a fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived.

23. It is further submitted that, in the case of *Devendra Kumar Singla Vs. Baldev Krishnan Singla*, reported in *(2005) 9 SCC 15*, one of the most important ingredients of the offence of cheating is the *mens rea* of the accused at the time of making the inducement. In the case in hand, there is nothing brought on record that the Applicant had any intention or knowledge to receive sub-standard quality of Bandage cloths, and paying in excess of what was provided to the J.J. Hospital, thereby causing a loss to the Government. Even if it is to be assumed that the staff of the Hospital should have checked on the quality of the Bandage cloth on its arrival / receipt, Applicant urges the Court to consider that the onus to maintain, administer, supervise and to carry out day-to-day functioning of the medical stores in the J.J. Hospital was not in the hands of the Applicant. It is pertinent to mention here that, Applicant was only assigned the job of processing orders of goods, and issuing relevant payments upon receipt of the goods. There is nothing in the charge-sheet which highlights that Applicant carried the responsibility to check the quality of goods upon their arrival in the medical store.

24. Apart from two statements and the report of the C.A., the learned Sessions Judge has not considered any other material to decipher whether there is any *prima facie* role attributed to Applicant as per the charge-sheet. On one hand, the learned Sessions Judge observes that, the case in hand is not one under the Drugs and Cosmetics Act, and hence the argument of the manufacturer being held liable under the Drugs and Cosmetics Act does not stand. However, on the other hand, the tests used by the CA in its report which is relied upon by the learned Sessions Judge arises out of the Standards laid down under the Drugs and Cosmetics Rules, 1945. The learned Sessions Judge has interpreted the application of the Drugs and Cosmetics Act in a very limited sense so that the Report of the CA can be used against Applicant.

25. The basic ingredients of the offence of criminal conspiracy as per Section 120-B of the IPC are (i) the agreement must relate to doing, or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. Therefore, it is essential that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.

26. Learned counsel appearing for the Applicant / Original Accused No.4 relying on the Judgment of the Hon'ble Apex Court in the case of **Yogesh @ Sachin Joshi Vs. State of Maharashtra**, reported in **(2008) 10 SCC 394**, submits that an agreement is essential, mere knowledge or even discussion of the plan is not, per se, enough. To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. It is true that, in some cases it may not be possible to prove the agreement between them by direct proof. In such cases, the existence of incriminating circumstances can be relied upon to draw inference. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

27. It is further submitted that, there is nothing in the charge-sheet which even remotely suggests that there existed a meeting of minds between the Applicant, and the other co-accused persons. Firstly, the rate contractor was one that was appointed by the Government of Maharashtra itself. Secondly, there are no incriminating circumstances surrounding the receipt of sub-standard Bandage cloths from which inference can be drawn to make out a *prima facie* case against Applicant. The witnesses relied upon by the learned Sessions Judge only mention the Applicant's name as one who was in charge of the entire Surgery floor, and one who would process orders and corresponding payments. Most of the witnesses

state that, Accused No.5 was the one who was in-charge of the medical store from which the Bandage cloth was found. The statements, and other material on record do not *prima facie* establish that there existed any form of meeting of minds between the Applicant and other co-accused persons for the supply, and receipt of sub-standard quality of Bandage cloth. Therefore, the ingredients of the offences under Section 420 r/w 120-B of IPC are not made out against Applicant.

28. It is further submitted that, it has been held in *Yogesh @ Sachin Joshi (supra)* that, test to determine a *prima facie* case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. However, if two views are equally possible, and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. Similarly, the case at hand is at most one of suspicion as opposed to one of grave suspicion. There is nothing incriminating in the charge-sheet against Applicant. In fact, based on the guidelines, and rules Governing the J.J. Hospital as well as the Rules stating the F (II) Specifications of Standards for Surgical Dressing, and statements of majority of the witnesses it can be construed that the onus of checking the quality of the Bandage cloths did not lie with the

Applicant, and most importantly no intention or knowledge of such sub-standard quality being received by the J.J. Hospital can be attributed to Applicant.

29. Learning counsel appearing for the Applicant / Original Accused No.4 prays that, this Court may be pleased to quash and set aside the impugned order dated 10th December 2003, and Criminal proceedings pending against the Applicant in Criminal Case No. 377/P/2002 before the learned Magistrate, 17th Court, Mazgaon, Mumbai.

30. The learned APP appearing for the Respondent/State submits that there is sufficient material on record to connect the Applicant and other accused with the crime. The charge-sheet has been filed against the accused on the said material. It is submitted that there is an adequate material to frame the charge against the accused under Section 420 r/w 120-B of the Indian Penal Code. It is also submitted that the Applicant was an instrumental for supply of and/or acceptance of sub-standard quality of the goods and less quantity of goods thereby causing loss to the government. It is also submitted that during the raid conducted by the Anti Corruption Bureau at the premises of J.J. Hospital after information to Dean, the stock was checked and under panchanama it was seized. The sub-standard goods were received in J.J. Hospital from the Accused Nos.1 and 2. It is further submitted that the Applicant has signed the order form and

bill for payment after verification. The learned APP submitted that as there was *prima facie* case made out against the Applicant, therefore, sanction has been granted by the Joint Secretary. There are grounds and material against the Applicant to frame the charge. The learned APP, relying upon the provisions of the Drugs and Cosmetics Rules, submits that the bandage cloth supplied to J.J. Hospital was of substandard quality. He submitted that the Applicant, who was in-charge of the Medical Store, is responsible for checking the quality of the goods upon their receipt. He submits that it is clear from the statements of the witnesses recorded during investigation that the Applicant had fraudulent and dishonest intention in receiving substandard quality of bandage cloth. The material collected by the prosecution clearly indicates that there are incriminating circumstances surrounding the receipt of substandard bandage cloth from Accused Nos.1 and 2. He, therefore, submits that the onus of checking the quality of the bandage cloth was on the Applicant. The material produced by the prosecution on record shows that Applicant had an intention and/or knowledge in receiving sub-standard quality of goods and therefore, there are ingredients of offence under Section 420 r/w 120-B against the Applicant. He lastly submits that the Criminal Application may be rejected.

31. Heard the learned counsel for the parties. Perused the pleadings in the Application as also grounds taken therein and the annexures thereto. Also

perused charge-sheet and its accompaniments and the reasons assigned by the Courts below in the impugned orders.

32. The Anti-corruption Bureau, Bombay on the basis of the information received that the authorized rate contractor M/s. Golden Fibre and Dressing Syndicate has not supplied the bandage cloth according to the specifications laid down, and supplied sub-standard and less quantity of the bandage cloth to the J.J. Hospital Bombay. The officers of the ACB verified the said information, and thereafter a raid was conducted at the J.J. Hospital Bombay, and during search found that the goods was of less quantity and of sub-standard, therefore, concerned records / documents / papers etc. were taken charge under a detailed panchanama by the ACB. During the course of inquiries by the ACB, it is revealed that the bandage cloth which was ought to have weighed 94221 gms was found weighing 28815 gms causing loss of 65,406 gms valued at Rs.1950.70/- to the Government. It is also revealed that the said contractor supplied 50,000 meters bandage on 14th February 1989 and 50,000 meters bandage on 02nd March 1989 to the officer / store bearers in J.J. Hospital and the said bandage cloth was accepted by them and, utilized the said bandage for the hospital, except 87 thans which was found there at the time of search i.e. on 04th April 1989. The said contractor has also received payment for the material supplied by crossed cheque.

33. On the aspect of who is responsible to accept the goods for J.J. Hospital, the learned APP invites attention of this Court to the duty lists. In duty list of compounders at Sr. No.7 it is specifically mentioned that, “to help the superintendent of stores in receiving, checking and issuing all articles received from the contractor whenever called upon to do so. So far as duties of pharmacist are concerned, he has to keep maintenance and supervision of working of medical stores, inspection of all pharmaceutical supplies on all services, and to keep inspection of all drugs on receipt and test samples of drugs received by the hospital from trade and those prepared in the hospital from time to time. In so far as responsibility of Associate professor of Pharmacology is concerned, the learned APP invites attention of this Court to the heading “Distribution” under “Administration of Medical Stores of a large Teaching Hospital”, and particularly Item at Sr Nos.25 and 26 thereof which deal with the responsibilities of Associate Professor of Pharmacology. In Sr. No.25 it is mentioned that, “The Associate Professor of Pharmacology should be responsible for day to day administration of the stores and should be responsible for purchases of the drugs, and in Sr. No.26 it is mentioned that, “Professor of Pharmacology should be incharge of the administration control of the stores and should be responsible for the proper functioning of the medical stores. It appears that Applicant herein at the relevant time was the Associate Professor in J.J.

Group of Hospitals, and also In-charge of surgery Unit, and responsible for Management of OPD Ward, and carrying out operations, and teaching medical students. In addition to this the Applicant was allotted duty to assist the Dean in Administration, and as such was asked to look after surgical stores. It is required to be noted that Accused No.3 is alleged to have received the bandage cloth in question from Accused Nos.1 and 2, whereas Accused No.4 i.e. the Applicant herein has signed the orders for the payment of price of goods and accused No.5 have initialed the order form. To buttress his submission that the goods supplied by accused Nos.1 and 2 are of sub-standard quality and not as per the specifications as stipulated by law, the learned APP invites attention of this Court to the order slip dated 03rd February 1989. The Applicant on behalf of Dean of J. J. Group of Hospitals, Bombay has placed an order for bandage cloth of 1 Lac meters at the rate of Rs.1.70 per meter under Item No.420 with M/s. The Golden Fibre & Dressing Syndicate. The said letter of placing order dated 03rd February 1989 alleged to have been signed by the Applicant on behalf of the Dean. It is specifically mentioned at Note No.2 in the said order that “along with the delivery challan you should sent a copy of the test report of the batch of drug supplied”, and in the Foot Note it is mentioned that “the goods will not be accepted if the test report is not sent along with the delivery challan”. According to the learned APP, mentioning this condition in the order explicitly indicates that the goods should be in accordance with the specifications as stipulated by law. He also

invites attention of this Court to the report dated 16th June 1990 of the Chemical Analyzer, Government Bombay. Under heading Results of Analysis, it is mentioned in the said CA report that, the bandage cloth pieces sent for examination have average lengths 17.47 meters, 17.6 meters and 18.5 meters and the weight was 23.7 gm, 24.8 gm and 24.9 gm respectively and the average sinking time being very much above 10 seconds for all of them as against the values stipulated in the Gazette of India dated 01st May 1984. On the other hand, it is the case of the Applicant that the bandage cloth that was delivered to J.J. Hospital, was as per the specifications laid down in the standards for Surgical Dressings, and the gazette dated 01st May 1984 does not refer to any sinking time for bandage cloth. According to the Applicant, if the bandage cloth supplied by rate contractor was accompanying with Schedule F(II) Mark of Central Government Quality Marking Scheme, no inspection was necessary by the receiving officers. As indicated herein above, the Applicant was an Associate Professor serving in J.J. Hospital, and was responsible for Management of OPD Ward, and in addition to the said duty, the Applicant was allotted duty to assist the Dean in Administration and was asked to look after surgical stores. The order placed with Accused Nos.1 and 2 was on behalf of the Dean. It appears that the Applicant alleged to have signed order form and bill for payment after verification. Having signed the said Order by the Applicant on behalf Dean, *prima facie* proves that the Applicant was aware of placing of order with Accused Nos. 1

and 2 as also Applicant was aware of the functioning of the stores, and therefore, it cannot be said that he is not responsible for the said order. The respective posts which the Accused Nos.3 to 5 were holding in J.J. Hospital at the relevant time are not in dispute. The prosecution has also annexed duty lists to the charge-sheet. Considering the material and documents placed on record, *prima facie* it appears that the bandage cloth received from Accused Nos.1 and 2 was of sub standard quality and less in quantity, and the said goods were accepted by the Accused is in breach of their responsibilities/duties assigned to them thereby causing loss to the Government. The aspect that the Applicant has no role to play in receiving the consignment and passing the bills has to be considered during the course of trial by leading evidence by the parties. There is therefore no force in the submission of the learned counsel for the Applicant that the Applicant is not responsible for the checking of the goods and, it is not the part of his duty.

34. According to the Applicant quality control test for bandage quality cannot be carried out and the report of CA, on which reliance was placed by the prosecution, is incorrect, and that the onus of responsibility of supplying correct quality also lies on the supplier i.e. Accused Nos.1 and 2. The Certificates of Analysis as regards the test carried out by the Chemist Examiner of Accused Nos.1 and 2 in respect of the goods mentioned in the said certificates have been produced on record. In the said certificates the name of material purporting to be

contained in the sample is mentioned as Bandage Cloth Bleached, and the opinion mentioned therein is the sample referred to above is of standard quality as defined in the Act and the Rules thereunder for the reasons given below :- “The sample complies with above standards as per FCID specifications.

35. Considering the results of analysis mentioned in the CA report of Assistant Chemical Analyser to Government, Forensic Science Laboratory, Bombay and, as also considering the opinion mentioned in the Certificated of Analysis issued of Chemist Incharge of Golden Surgical Dressings & Fibres (Pvt) Ltd, as regards the test carried out in respect of bandage cloth, the case of the Applicant that the average sinking time was 10 seconds is for bandage gauze and not for bandage cloth will have to be considered during trial by producing necessary evidence in that regard.

36. The prosecution has recorded statements of witnesses during the course of investigation. As per the said statements of witnesses it appears that Accused No.3 was a compounder who was incharge of Surgical floor pharmacy; Accused No.4 i.e. the Applicant was in charge of Surgical Floor, and Accused No.5 was pharmacist in medical stores. As indicated herein above, as per the statements of witnesses, the duties of the Accused Nos. 3 to 5 included receiving

the goods, certifying the same, and thereafter to make the payment as per the bills to the contractor, etc. Admittedly, the Applicant has signed the order form and bill for payment after verification. The statements of witnesses indicate that after the receipt of goods in the hospital, the goods are supposed to be checked and only after satisfaction that it is as per the contract or as per the required quality, the same should be received. Looking to the duties/responsibilities assigned to the Accused Nos.3 to 5, *prima facie* it appears that Accused Nos.3 to 5 are responsible for managing the medical stores, day to day functioning of the medical stores and also responsible for checking the quality of goods receipts. Therefore it can be said that the Applicant was very much aware of the whole process in respect of the receipt of goods in question in J.J. Hospital.

37. Now coming to the next allegation of cheating and conspiracy levelled against the Applicant and other Accused. As indicated above, according to the Applicant, the entire case of the prosecution is malafide and politically motivated. The said case of the Applicant has to be proved by cogent evidence during trial. It appears that transaction in question is a commercial transaction. The prosecution has placed sufficient material on record to support the allegations levelled against the Applicant and other accused and therefore, it cannot be said that there is no material in the charge sheet to establish the offence of cheating and conspiracy against the Applicant.

38. The essential ingredients to attract Section 420 of the Indian Penal Code are (i) cheating (ii) dishonest inducement to delivery property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) the mens rea of the accused at the time of making inducement. According to the Applicant, to constitute an offence under Section 420 of the Indian Penal Code, an element of fraud or dishonest intention on the part of accused could be demonstrated or set out in the complaint. From the averments of complaint and the material that is placed on record including C.A. report of Government annexed to the charge sheet, the statements of witnesses as also the posts held by the Accused Nos.3 to 5 and the duty lists annexed to the charge sheet, *prima facie* indicate that the accused are responsible in receiving sub-standard goods in question from Accused Nos.1 and 2 thereby causing loss to the government, as they allegedly accepted the sub standard bandage cloth and certified that it was received in good condition and as per the specifications by law in breach of the said responsibility. In the present case serious allegations of cheating and conspiracy are levelled against the Accused. Admittedly the Accused Nos.3 to 5 were serving in J.J. Hospital which is a Government Hospital thereby representing the Government. Prima facie it appears that the conduct of accepting sub standard goods and less quantity of goods on the part of the Accused Nos. 3 to 5 itself amounts to

misrepresentation to the government, and therefore, all the accused in collusion with each other cheated the Government and caused loss to the Government.

39. In so far as criminal conspiracy is concerned, it is an independent offence and it is punishable separately. The ingredients of the offence of criminal conspiracy are (i) agreement between two or more persons and (ii) an agreement to do or cause to be done either an illegal act or an act which is not illegal in itself but is done by illegal means. Generally criminal conspiracies are hatched in secrecy. In such cases prosecution has to prove charge of criminal conspiracy by leading mainly circumstantial evidence. Therefore, the prosecution needs to be given an opportunity to lead such evidence during the course of trial. A conspiracy is always hatched in secrecy and it is always not possible to adduce direct evidence of common intention of the conspirators, therefore meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution if such inference is possible. Admittedly, at the relevant time the Applicant along with other accused were the employees working in J.J. Hospital relating to the stores functionary, and they had to accept the commodities from the contractor as per the specifications as stipulated by law. The allegation against Applicant is that Accused No.4 i.e. the Applicant along with other Accused Nos.3 and 5 conspired with Accused Nos.1 and 2 thereby accepted bandage cloth of sub-standard quality and less quantity when they were entrusted with

responsibility of placing order and receiving the commodity as per the prescribed standard. As per the responsibilities/duties assigned to Applicant, being Associate Professor he was responsible for the works related to purchase of goods in stores. He was very much aware about the administration of the J.J. Hospital. It is revealed from the statements of witnesses recorded by the police and the material adduced on record that being the administrative in-charge, the Applicant has signed the order form and bill for payment after verification. As per the duty lists produced on record, Accused Nos.3 and 5 also connected with the activities of purchasing etc in stores of J.J. Hospital. Therefore it cannot be said that the person who was holding the key position i.e. accused No.4 as Associate Professor along with Accused Nos.3 and 5, were not aware about the sub standard quality of bandage received from Accused Nos.1 and 2 thereby causing loss to Government. The prosecution has placed sufficient material on record which *prima facie* shows, that the present Applicant and the other accused in collusion with each other hatched a conspiracy to cheat and to cause loss to the Government by accepting sub-standard quality and less quantity of goods from Accused Nos.1 and 2 by misusing their position. Whether the Applicant was responsible for receiving sub standard and/or less quantity of goods or whether the Applicant had knowledge about the supply of sub-standard goods from Accused Nos.1 and 2 to J.J. Hospital can only be ascertained and clarified after recording of evidence during trial.

40. In so far as question of getting benefit on the basis of technicalities under the provisions of Drugs and Cosmetics Act is concerned, considering the nature of offence and, the responsibility of the Accused Nos.3 to 5 is in cumulative in nature, an opportunity has to be given to the prosecution to overcome the said technicalities and prove its case. At this stage it will not be proper to consider the role of each accused, and then give benefit of doubt to discharge the Applicant.

41. In so far as the aspect as regards sanction is concerned, according to the Applicant that earlier twice the authorities have refused to grant sanction but subsequently, the comparative inferior officer has granted the sanction. If that is the case of the Applicant as regards this sanction, then question as to why twice sanction has been refused earlier, and why subsequently it has been granted is the matter of evidence that has to be led by the parties in the trial.

42. According to the Applicant, the only allegation against him is that he misused his position as an employee of J.J. Hospital and intentionally and knowingly received sub-standard quality of goods in question from Accused Nos.1 and 2. It is also the case of the Applicant that it was not his duty to check and inspect the quality of the goods in the medical stores, and therefore the onus lies on the rate contractor to supply the goods as per the standards and specifications

stipulated by law. Whether it was the duty of the Applicant to check/inspect the goods or not, and/or whether the Applicant was responsible for the receipt of the sub standard quality goods from Accused Nos. 1 and 2 or not, and/or whether the goods in question were of sub standard quality or received in less quantity, and, whether the Applicant has no role to play in receiving the goods in question, all these aspects will have to be ascertained in the trial by producing evidence by the parties in that regard. At this stage, this court is of considered view that there is a *prima facie* involvement of the Applicant in the offence levelled against him. There is one more aspect that will have to be ascertain by producing evidence in the trial before the Trial Court, and that is as regards difference of opinion in respect of compliance of the specifications as stipuated in the Standards for Surgical Dressing.

43. In the present case, FIR under Sections 120-B, 420 of the Indian Penal Code has been filed against the Accused, during the course of investigation statements of witnesses were recorded, material was collected, and after investigation, charge sheet has been filed. The prosecution has placed on record sufficient material including letter of placing order signed by the Applicant on behalf of Dean, delivery challans, invoices, bill of payment, duty lists, C.A reports, statements of witnesses etc. This Court is of *prima facie* considered view that there are sufficient material to frame charge against the Applicant. There are

concurrent findings recorded by the Court below against the Applicant. There is no warrant to interfere with the concurrent findings recorded by the Courts below. No fault can be found with the findings recorded by the Courts below. There is no perversity, illegality and infirmity in the orders passed by the Courts below. There is *prima facie* satisfaction recorded by both the Courts below against the Applicant and other accused as regards framing of charge. I do not find any reason to interfere with the orders passed by both the Courts below. Considering the reasons assigned by both the Courts below against the Applicant as also the material placed on record, in my view, no case for interference in the impugned order is made out. The Criminal Application is accordingly rejected. Rule is accordingly discharged. All contentions raised on merits are kept open for being agitated before the Trial Court.

44. It is made clear that the observations made herein before are *prima facie* in nature and are confined to the adjudication of the present Criminal Application only. In the peculiar facts of the present case, it is desirable that the concerned Court shall expedite the hearing of the proceedings and take it to the logical ends as expeditiously as early as possible, however, on their own merits and in accordance with law, uninfluenced by the observations made herein above.

[S.S. SHINDE, J.]