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

+ **W.P.(CRL) 857/2019**

M/S. FISHER PAYKEL HEALTHCARE INDIA
PRIVATE LIMITED & ORS.

..... Petitioners

Through: Mr Siddharth Aggarwal, Ms Krishna
Datta Multani, Mr Siddhant Kapoor
and Ms Devyani Sharma, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr Rahul Mehra, Standing Counsel
for State with SI Vikash Yadav, PS
Dwarka (North).
Ch Rabindra Singh and Mr Paras
Aggarwal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.11.2019

1. The petitioners have filed the present petition, *inter alia*, impugning Criminal Complaint bearing no.11365/2018 and the order dated 27.11.2018 passed by the learned MM under Section 156(3) of the CrPC (hereafter 'the impugned order').
2. One of the controversies raised in the present petition is that the impugned order has been passed without application of mind. It is contended that although the impugned order records that arguments had been heard, it is apparent on the face of the impugned order that none had appeared on behalf of the complainant either on that date or the previous date. This

aspect was also noted by this Court in the order dated 25.03.2019 passed in this petition.

3. The learned counsel appearing for respondent no. 2 (Mr. Sujeet Kumar) submits that the impugned order contains an inadvertent error, inasmuch as, the appearance of the counsel for the respondent no. 2 (complainant) has not been recorded. He states that the counsel who appeared for respondent no.2 was present and was heard extensively. This Court is of the view that the said controversy need not detain the proceedings any further.

4. Since, admittedly, the impugned order does not reflect the presence of any counsel on 27.11.2018 or on the previous date, this Court considers it apposite to set aside the impugned order and remand the matter to be considered afresh. It is so directed.

5. Mr Aggarwal, learned counsel appearing for the petitioner, submits that Section 154(3) of the CrPC had not been complied with and the issue of territorial jurisdiction has not been considered by the learned MM. This Court does not consider it necessary to make any observations in this regard, except to state that it is expected that the learned MM shall consider all aspects of the matter before passing any order.

6. It is clarified that this Court has not expressed any opinion (either *prima facie* or otherwise) regarding the merits of the complaint. It is further clarified that nothing stated in this order should be construed as affecting any right of the parties. All contentions of the parties are reserved.

7. The petition is disposed of.

8. Order *dasti* under signatures of the Court Master.

NOVEMBER 08, 2019
MK

VIBHU BAKHRU, J