

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

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*Reserved on: 7<sup>th</sup> August, 2019*  
*Decided on: 17<sup>th</sup> September, 2019*

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**CRL.A. 925/2017**

ANWAR @ KARAMAT

..... Appellant

Represented by: Mr. Zeeshan Hashmi, Mohd.  
Adil, Advocate

versus

STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the  
State with ASI Vijay Singh,  
PS Shastri Park

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal, Anwar @ Karamat challenges the impugned judgment dated 5<sup>th</sup> September 2017 convicting him for the offence punishable under Sections 411/413 IPC in FIR No. 10/2013 registered at PS Shastri Park and the order on sentence dated 7<sup>th</sup> September 2017 directing him to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹20,000/- and in default whereof to undergo simple imprisonment for a period of six months for offence punishable under Section 411 IPC and to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹20,000/- and in default whereof to undergo simple imprisonment for a period of six months for offence punishable under Section 413 IPC

2. Learned counsel for the appellant contends that the complainant in his statement made to the police did not disclose the fact that the stolen bundle had BATA seal on it and that the statement regarding the said fact was made

after the registration of FIR and recovery. He further contends that the recovery was made after two days of the arrest. When the currency was purportedly seized neither the numbers of the currency notes were noted nor the photographs were taken at that point, rather the photographs were taken later on which were meaningless.

3. Learned APP for the State on the other hand contends that the complainant duly identified the bundle of the currency notes recovered from the appellant. He further contended that as per the testimony of SI Madan Gautam, the accused was involved in ten other cases out of which he had been convicted in five cases.

4. Process of law was set into motion on 15th December 2014 at about 11:30 A.M. when telephonic information was received regarding theft in a showroom in Dilshad Garden Metro Station. Aforesaid information was recorded vide DD No. 9A (Ex.PW-6/A) and assigned to HC Ghanshyam. He along with Ct. Pramod went to the place of occurrence that is Bata Showroom at Dilshad Garden Metro Station and met the complainant. He recorded the statement of the complainant wherein he stated that on 21st March 2013 at about 10:30 A.M. when he came to open the Bata showroom, he found out that the shutter was raised till middle and was bent on the right. On checking he found that locks on both sides of shutter were intact. After unlocking, when he entered inside and checked, he found the cash drawer open and ₹42,000 were missing from the cash drawer. He stated that on 20<sup>th</sup> March 2013 at around 9:30 P.M. after locking the showroom he left after which some unknown person had raised the shutter and had stolen the money. He also stated that after checking he would provide the list of other missing goods. Aforesaid statement was recorded vide Ex. PW-1/A.

5. On the basis of the aforesaid statement, FIR No.10/20143 (Ex.PW-6/B) was lodged at PS Shastri Park for the offence punishable under Sections 457/380 IPC.

6. A private photographer was called who took eight photographs of the place of incident Ex. PW-3/1-8. The site plan was prepared at the instance of the complainant vide Ex.PW-9/B. Supplementary statement of the complainant was also recorded. Thereafter, the investigation was carried out by ASI Raj Kumar.

7. On 22<sup>nd</sup> February 2013, Ct. Sunil and Ct. Rajneesh informed ASI Raj Kumar about a secret information that was received regarding such thefts being committed by Anwar (appellant herein) and Saddam. The said information was conveyed to the SHO who directed him to take steps to apprehend the appellant and Saddam.

8. On 23<sup>rd</sup> February 2013, ASI Raj Kumar along with Ct. Sunil, Rajneesh, Umender and Ravinder reached the Chandni Chowk area in their official vehicle to meet the informer. Upon meeting, the informer reaffirmed that such acts of theft were committed by Anwar and Saddam and he could help in catching them both. They took different positions in Chandni Chowk area with assistance of informer but could not catch the culprits. Then the entire team reached near Mansarovar Metro Station and search was made for Anwar and Saddam. The informer identified Anwar, pursuant to which he alongwith Ct. Sunil and Ct. Rajneesh apprehended Anwar. HC Raj Kumar conducted search on the accused Anwar and forty 500-rupee notes were found concealed under the socks of left-leg foot of the appellant. A paper slip was affixed on that packet of currency notes with help of a rubber band and the paper slip was bearing a stamp of "*Bata Shoe Store, Dilshad*

*Garden, Delhi-85*” along with some signature also on the paper slip. Upon interrogation, the appellant disclosed that he along with Saddam had committed theft in Bata Showroom situated at Dilshad Garden Metro Station and that money recovered from him was part of amount of total ₹42,000/- which had been stolen from the showroom. He further disclosed that ₹20,000/- had gone to share of Saddam and rest amount of ₹22,000/- was his share. The notes recovered were sealed and seized vide seizure memo Ex. PW-2/A. The appellant was arrested vide arrest memo Ex.PW-2/B, his personal search was done vide Ex.PW-2/C and his disclosure statement was recorded vide Ex.PW-2/D. The appellant further disclosed that an iron rod used in lifting the shutter of showroom had been concealed by him in garbage lying near Mansarovar Metro Station pillar. On his personal search one Nokia phone and a pocket purse containing ₹310/- , one NCR and one court summon concerning PS Gandhi Nagar were recovered. The appellant then led them to garbage heap near metro station where the iron rod was lying. The iron rod was taken out from the garbage and was seized vide seizure memo Ex. PW2/E.

9. On 1<sup>st</sup> March 2013, complainant handed over the physical inventory documents which was taken into possession by ASI Ghanshyam and was seized vide seizure memo Ex. PW-9/C. Supplementary statement of the complainant was recorded and previous conviction slip of the appellant were also obtained vide Ex. PW-9/D.

10. On completion of investigation, charge sheet was filed. Charge was framed for the offences punishable under Sections 457/380 IPC or in alternate under Sections 411/413 IPC vide order dated 3<sup>rd</sup> March 2014.

11. Arun Kumar Sharma (PW-1), complainant deposed in sync with his

complaint made to the police. Further, he stated that he himself had counted the amount of ₹42,000/- and left it behind in the drawer. Some socks packets were also found missing from the side rack, some of them contained single pair socks, while some contained three pairs of socks and around 70-80 packets of socks were found missing. He then made a call on 100 from his mobile phone bearing no. 9582113772. Pursuant to the call two police officers arrived and inspected the spot. He further stated that upon audit and physical inspection of stock in the showroom 35 pair of footwear, 89 packets of socks of the total value of ₹40,830/- were also found missing. He further stated that on 21<sup>st</sup> July 2017 police came to his showroom and again conducted an inquiry. He provided further information that stolen amount consisted of two packets of forty 500-rupee notes, with paper slip, having his signatures and stamp of Bata Store, Dilshad Garden. Further amount of ₹2,000/- was in form of small currency notes and coins. The currency notes were kept with stamp and signatures as they were to be collected by CMS services on behalf of Bata Company, and deposited in HDFC Bank. CMS used to collect the money every day at 11:00 AM. He added prior to this inquiry he received a call from police that they had recovered a sum of ₹20,000/-. The amount of ₹20,000/- was got released by him. In his cross-examination, he stated that on reaching the showroom at about 10:30 AM he found two employees of the showroom, namely Anil and Afzal present there. He stated that before reaching the showroom, he was informed by Afzal that the shutter was part open and there was a gap of about nine inches between the floor and the shutter. The said gap was in middle of the shutter. He stated further that there was a glass just behind the shutter in the showroom and the gap/width between the glass and shutter was about 8

inches. The locks were intact and were opened by Afzal before the police reached.

12. Madan Gautam (PW-7), Sub Inspector stated that he had brought original summoned record, i.e. conviction slip of the appellant. At the time of report, the appellant was involved in ten other cases out of which he had been convicted in five cases.

13. The appellant in his statement recorded under Section 313 Cr.P.C. stated that he has no knowledge about the missing of packets of socks. He stated he was coming from Tis Hazari Court after meeting his counsel and was falsely arrested from Kashmiri Gate Metro Station. He further stated that nothing was seized either from his possession or at his instance. He further stated that he has been falsely implicated in the present case by the concerned IO at the instance of the complainant as his record was already available with the IO as he was convicted in other cases.

14. Case of the appellant is that the recovery of currency notes has been falsely foisted. The fact that the bundle was marked with the seal of Bata Shoe Store, Dilshad Garden, Delhi-85 was not stated in the FIR. Further, no photographs or numbers of the notes were taken. Hence, the appellant cannot be convicted. Undoubtedly, in the FIR the complainant did not state that the notes were properly tied up with the paper slip of the Bata Store however in the FIR itself it was stated that ₹42,000/- were missing from the cash drawer. The recovery of the notes with the seal of Bata has been proved by the recovery witnesses. The paper slip bearing the seal of Bata tied on the notes was duly recovered and exhibited as Ex.P-1 before the learned Trial Court. However, the photographs of the currency notes taken could not be exhibited as the photographer who took the photographs did not

appear in the witness box. In the cross-examination of complainant nothing has been put to the complainant to show that the currency notes with the paper slip of Bata Shoe Store, Dilshad Garden, Delhi-85 were not recovered. In the initial seizure memo itself this fact has been mentioned. Merely because it was not stated by the complainant in the FIR that the money was tied up with the paper slip would not belie his otherwise cogent evidence. Though in the present case the rod recovered from the appellant would show the manner in which the store was opened, however the recovery cannot be connected with the offence of theft for the reason neither was there any eye witness to the incident who saw the rod being used, nor any expert opinion by way of mechanical inspection was sought to show that the gap in the shutter of the shop was due to the iron rod. However, considering the recovery made which was duly connected with the offence of theft, a presumption is required to be drawn which presumption has not been rebutted by the appellant.

15. Consequently, this Court finds no error in the conviction of the appellant for offences punishable under Sections 411 and 413 IPC or the order on sentence which has been given due to the fact it has been proved by the prosecution that the appellant has been earlier convicted in five cases.

16. Appeal is accordingly dismissed. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

17. TCR be returned.

**(MUKTA GUPTA)**  
**JUDGE**

**SEPTEMBER 17, 2019**

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