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

+ **CRL.M.C. 3119/2013**

STATE

.....Petitioner

Through: Mr. Hitesh Vali, APP for State along
with ASI Jogender, ER-I, Crime
Branch.

versus

BHARAT BHUSHAN MITTAL

.....Respondent

Through: Mr. Mahavir Sharma, Mr. Ramandeep
Kaur, Ms. Anushka Gupta, Ms. Riya
Kharab and Ms. Neha Bisht,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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17.11.2025

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ seeks quashing of order dated 04th August, 2012 passed by the Additional Sessions Judge/North-West Rohini Courts in Criminal Revision No. 34/11, titled “*Bharat Bhushan Mittal V. State*”. By the said order, the Revisional Court has discharged the Respondent of the offences under Section 409 of the Indian Penal Code, 1860² and Section 4 of the Prevention of Damage to Public Property Act, 1984.

2. The facts of the case are summarised:

2.1. Secret information was received that one Pradeep Kumar Gupta was

¹ “Cr.P.C.”



involved in theft of Government medicines from BJRM Hospital, Jahangir Puri, in collusion with certain hospital staff, and was selling these medicines in open market. The information further indicated that on 28th September, 2006, he would visit the hospital in the afternoon to commit such theft. Acting on the information, a raiding party took position outside BJRM Hospital. At approximately 2:30 p.m., Pradeep Kumar Gupta arrived in a Zen car from the emergency gate; the vehicle was intercepted, and Pradeep Kumar Gupta was apprehended. Four boxes of medicines were recovered from the car, each bearing the inscriptions “For supply to the Govt. of NCT of Delhi” and “Not for sale.” On this basis, FIR No. 676/2006 was registered at P.S. Jahangir Puri, for the offences under Sections 409/411 IPC. During investigation, the stock of medicines at the hospital was verified.

2.2. In the course of investigation, co-accused Pradeep Kumar Gupta disclosed that the recovered medicines were Government stock, meant for use at BJRM Hospital, but were being sold by them in the market. The investigation also revealed that certain medicines were burnt/destroyed on 30th September, 2006 by two individuals, namely Harish Kumar and Manohar Singh. Based on this disclosure, the Respondent who was employed as a pharmacist in BJRM Hospital, allegedly entrusted with the custody of the medicines, was arrested.

2.3. On conclusion of investigation, charge-sheet under Section 409 IPC and Section 4 of the Prevention of Damage to Public Property Act was filed against Pradeep Kumar Gupta and the Respondent. By order on charge dated 6th April, 2011, charges under the said provisions were framed against them.

2.4. The Respondent’s criminal revision challenging the order on charge

² “IPC”



was thereafter allowed by the Sessions Court by the impugned order dated 04th August, 2012, resulting in his discharge from the said offences.

3. The State seeks setting aside of the impugned order of discharge. Mr. Hitesh Vali, APP for the State, submits that at the stage of framing of charge, the Court is not required to weigh the evidence as if at trial or to reconcile contradictions in the prosecution version; it is only to examine whether the material collected during investigation, as reflected in the charge-sheet and accompanying documents, discloses a *prima facie* case or raises a strong suspicion against the accused. He submits that the material on record shows that the medicines recovered from co-accused Pradeep Kumar Gupta were Government-supplied medicines meant for BJRM Hospital and that the Respondent, as the pharmacist in charge, was the custodian of such medicines. It is further urged that the Sessions Court failed to properly consider the statement of Vinod Kumar, an eye-witness, recorded under Section 161 Cr.P.C., in which he categorically stated that, on the Respondent's instructions, he had placed the boxes of medicines in the car of Pradeep Kumar Gupta. Taken together, the recovery of Government medicines along with the Respondent's position of trust and statements of witnesses, constitutes sufficient material to proceed against him for criminal breach of trust and mischief to public property.

4. The Court has considered the aforementioned facts and perused the material on record. At the outset, it is important to underscore that the remit at the charge stage is settled: the Court asks whether the material, taken at face value and without weighing its probative force, raises strong suspicion of the alleged offence;³ if two views are possible and one leads only to a

³ State of Bihar v. Ramesh Singh, (1977) 4 SCC 39.



mere suspicion, discharge may follow.⁴

5. Section 409 IPC, which deals with criminal breach of trust by a public servant, postulates: (i) entrustment of property, or dominion over property, to the accused in his capacity as a public servant; and (ii) dishonest misappropriation, conversion to his own use, or dishonest use or disposal of that property in violation of the terms of entrustment. Section 4 of the Prevention of Damage to Public Property Act, on the other hand, contemplates mischief by fire or explosive substance causing damage to public property. Any *prima facie* case against the Respondent must therefore rest on material showing that the specific medicines recovered from the co-accused, or those allegedly destroyed, were part of the stock entrusted to the Respondent, and that he was involved in their dishonest diversion or destruction.

6. The Sessions Court, upon examining the material, recorded a clear finding that even if the prosecution case is taken at its highest, the essential requirement of entrustment or dominion *qua* the medicines in question is not made out against the Respondent. The stock register of BJRM Hospital showed that, with effect from 14th November, 2005, the stock entries had been checked and verified and were found to be correct up to 28th September, 2006. The statements of members of the Physical Verification Committee, namely, Dr. Tarun Ravi (PW-4) and Dr. Nalini Mittal (PW-5), as well as that of Dr. Anirudh Pandey (PW-24), Consultant, ENT Department, BJRM Hospital, all indicated that the medicines in the store were checked and found intact, with no shortage or discrepancy. On this material, the Revisional Court concluded that there was nothing to show that

⁴ Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.



the medicines recovered from Pradeep Kumar Gupta formed part of any stock entrusted to the Respondent or over which he had dominion, nor was there any material to link him with the subsequent burning of medicines by Harish Kumar and Manohar Singh. In the absence of such a foundational link, the very first ingredient of Section 409 IPC, as well as the threshold requirement for invoking Section 4 of the PDPP Act against the Respondent, was not *prima facie* satisfied, and the case against him did not rise beyond a mere suspicion.

7. This position is further reinforced by the fact that although the Respondent remained under suspension from 30th September, 2006 to 23rd June, 2008, no disciplinary proceedings were ever contemplated or initiated against him by the hospital administration. If there had been any material suggesting irregularity in stock management or complicity in misappropriation of medicines, it would be reasonable to expect some departmental action. The complete absence of such action, despite a prolonged suspension, indicates that, so far as the hospital authorities were concerned, no lapse in the discharge of his official duties could be substantiated against the Respondent. While not decisive in itself for the purposes of criminal prosecution, this circumstance is consistent with the conclusion that there is no concrete material linking him to the alleged diversion or destruction of medicines.

8. As regards the reliance placed by the State on the statement of Vinod Kumar under Section 161 Cr.P.C., wherein he alleged that, at about 4:00 p.m. on 28th September, 2006, he placed four boxes of medicines in the car of co-accused Pradeep Kumar Gupta at the Respondent's instance, the Revisional Court found this allegation to be incompatible with the



prosecution's own narrative. The prosecution case is that the said vehicle was intercepted, and Pradeep Kumar Gupta apprehended, at around 2:30 p.m. the same day. On the prosecution's own timeline, therefore, the car could not have been available at 4:00 p.m. for any such loading of medicines. In the absence of any other independent material to reconcile or corroborate this version, the statement under Section 161 Cr.P.C. does not, even on a *prima facie* view, provide a sustainable basis to attribute entrustment, dominion, or dishonest diversion of medicines to the Respondent so as to justify framing of charges against him.

9. Indeed, the legal submission advanced by Mr. Vali that the Court is not required to reconcile contradictions in the prosecution case at the stage of framing of charge is, in principle, correct. It is well settled that a meticulous evaluation of evidence or an assessment of its ultimate probative value is impermissible at this stage, and that the Court must confine itself to seeing whether a *prima facie* case or strong suspicion is made out on the material placed on record. However, it is equally well settled that while the final determination of guilt is not to be undertaken at the stage of charge, yet, the material on record and the facts emerging therefrom must be consistent and compatible with the charge sought to be framed. The test is whether the material on record, if accepted as true without any additions or qualifications, is sufficient to ground the charge in law.⁵ Where the prosecution's own narrative is self-contradictory on a foundational aspect, such that the basic factual premise of the charge is undermined, the Court is not bound to ignore that incoherence and mechanically direct that the accused face trial.

⁵ See: State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; P. Vijayan v. State of Kerala & Anr., (2010) 2



10. The Revisional Court, applying the aforesaid principles and upon an overall assessment of the facts and circumstances, rightly concluded that the essential ingredients of the offences alleged were *prima facie* not made out against the Respondent and, accordingly, directed his discharge. This Court finds no infirmity in the approach or the conclusion of the Revisional Court, and sees no ground to interfere with the order of discharge.

11. Dismissed.

SANJEEV NARULA, J

NOVEMBER 17, 2025/MK

SCC 398.