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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.273 OF 2014
WITH
CRIMINAL REVISION APPLICATION NO.274 OF 2014**

Rajesh Gevarchand Luniya .. Applicant
V/s.
The State of Maharashtra .. Respondent.

Mr. Deepak K. Girme, for the Applicant
Mr. V. B. Konde Deshmukh, APP for the
Respondent State.

CORAM : M. L. TAHALIYANI, J.

DATE : 15th January, 2015.

P.C.

The applicant is facing trial for offence punishable under Section 413 of the Indian Penal Code, in the Court of Sessions at Pune vide Session Case Nos.27 of 2014 and 26 of 2014, respectively.

2. Learned counsel for the applicant submits that the applicant should not have been chargesheeted for the offence punishable under Section 413 of the IPC, for allegedly

habitually receiving stolen property unless he is convicted for the offence under Section 411 of IPC. Habitual Offender under The Bombay Habitual Offenders Act, 1959 is defined as under :

"2(e) "habitual offender" means any person who, since his attaining the age of eighteen years;

(I) during any consecutive period (whether before or after the commencement of this Act, or partly before and partly after such commencement) of five years, has been sentenced on conviction on not less than three occasions, to a substantive term of imprisonment for one or more of the scheduled offences committed on separate occasions, being offences, which are not so connected together as to form parts of the same transaction, and

(ii) such sentence has not been reversed in appeal or revision;

Provided that in computing the consecutive period of five years aforesaid, any period spent in jail either under a sentence of imprisonment

or under detention shall not be taken into account"

3. The learned APP submits that there is no conviction recorded against the applicant so far. It is, therefore, obvious that the applicant could not have been charged for the offence punishable under Section 413 of the IPC. Learned Counsel for the applicant has relied upon the judgment in case of **Banne Singh @ Pahalwan -vs- State of Rajasthan**, in Criminal Appeal No.1254 of 2008 decided on 15th January, 2014. The Division Bench of Rajasthan High Court while dealing with the same issue has observed in paragraph No.49 as under :-

"49. Something more is required to establish that the offender is in a habit of dealing with or receiving stolen property. Since the offence under Section 413 IPC is inter-related with and is an aggravated form of Section 411 IPC, the State would have to prove and establish that the offender was convicted

repeatedly, twice or more than twice, for offence under Section 411 IPC so as to establish beyond a reasonable doubt that he is in the habit of dealing with or receiving stolen property. Therefore, the previous conviction and punishment of different kind is prescribed in Section 413 IPC which the accused is required to undergo"

4. In view of the provision of Bombay Habitual Offenders Act, 1959 and in view of judgment of Rajasthan High Court, it is abundantly clear that the proceedings pending against the applicant cannot be sustained. The discharge application of the applicant was wrongly rejected. The applicant in fact should have been discharged by the learned Sessions Court itself. For all these reasons I pass the following order.

Order.

I) The impugned orders dated 6th June, 2014 in Sessions Case No.27 and 26 of 2014,

respectively, passed by the learned Sessions Court, refusing to discharge the applicant are set aside.

II) The applicant is discharged of offence punishable under Section 413 in Sessions Case Nos.27 and 26 of 2014, respectively. His Bail Bonds, if any shall stand cancelled.

III) Both the Revision Applications are disposed of accordingly.

(M. L. TAHALIYANI,)