

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 673 OF 2016****Shri. Bharat Sohanrajji Mehta****.....Applicant****V/s.****State of Maharashtra****....Respondent**

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Mr. Manish N. Jain i/by. S.M. Jain & Associates, Advocate
for the applicant.

Mr. A.R. Patil, APP for State.

*Coram : SANDEEP K. SHINDE, J.
17th September, 2021.*

P.C. :

1. Rule.

2. By consent, rule made returnable forthwith.

Heard finally with the consent of the parties.

3. This Revision challenges two orders; (i) order dated 25th November, 2016 rejecting applicant's application for discharge; and (ii) charge framed, under Section 413 of the Indian Penal Code on 20th July, 2013, in Sessions Case No. 649/2012. It may be stated, pending challenge, to the order dated 25th November, 2016 the trial Court framed the charge. Whereafter, the applicant was permitted to

amend the application and challenge the order of framing charge.

Factual Matrix :

4. Applicant has been prosecuted on the accusations of, being habitual receiver of stolen property under Section 413 of the Indian Penal Code, which reads as under :

*“413. **Habitually dealing in stolen property.-** Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

The offence under Section 413 has following essentials:
(i)that the accused habitually receives or deals in property;
and (ii)he did so, knowingly or having reason to believe that such property was stolen. The expression “he knows or reason to believe” means, he must have reason to believe that, he received the property that was stolen property and therefore this Section does not apply to a case where accused suspects the property to be stolen. The word “believe” involves the necessity of showing that the circumstances were such that a reasonable man must have

felt convinced in his mind that the property with which he was dealing, must be stolen property. Thus to be stated, to bring home offence under Section 413 of the Indian Penal Code, the Prosecution has to prove :

- (a)that the properties involved were stolen properties more than once; (emphasized)
- (b)that the accused received or dealt with those stolen properties;
- (c)that he received or dealt with them habitually;
- (d)that accused did so knowing or having reason to believe them to be stolen properties.

5. I have perused the final report. The only evidence relied upon by the prosecution in support of the charge, is the statement of the co-accused (juvenile-in-conflict) who allegedly stolen the property and sold it to the applicant. Except the statement of juvenile-in-conflict, there is neither the recovery of the stolen property from the applicant nor other evidence to believe his complicity in the crime. Although, prosecution relies on the Memorandum panchanama, it did not result into any recovery of the stolen property. Therefore, there is no sufficient ground for proceeding against the accused under Section 413 of the Indian Penal Code.

6. In the result, the Revision is allowed and the charge framed against the applicant in Sessions Case No. 649/2012 under Section 413 of the Indian Penal Code is quashed and set aside.

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(SANDEEP K. SHINDE, J.)