

CRR-2697-2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR-2697-2017 (O & M)
Date of decision: 21.12.2022**

Jasbir Singh @ Jassa and another

...Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Vikas Bali, Advocate,
for the petitioners.

Mr. Gurlal Singh Dhillon, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

The present revision has been filed challenging the order dated 07.07.2017 passed by learned Addl. Sessions Judge, Ludhiana, to the extent of framing the charge under Section 413 IPC against the petitioners in case FIR No.285 dated 01.10.2016, under Sections 379, 413 and 473 IPC, registered at Police Station Focal Point, Ludhiana.

The facts of the case, as noticed by learned Addl. Sessions Judge, while passing the impugned order dated 07.07.2017, are as under:

“The perusal of file reveals that FIR in the present case was registered on the basis of secret information received by SI Avtar Singh that accused Joga Singh was habitual of committing theft of trucks and trallas and he has formed a gang of committing theft alongwith the other accused Jagpreet Singh, Jasbir Singh and Major Singh and they have stolen many trallas. They all carry stolen tralls to the workshop of Major Singh and Jasbir Singh

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where they change the colour of tralls and by affixing fake number plates, sell it further and even today they are on their way on Innova Car bearing No.PB-10-CL-8090. Finding the information reliable, the case was registered. The said persons were unable to bring the proof of ownership of vehicle in which they were travelling. Accused Major Singh then got a disclosure statement recorded having concealed the doors of the trallas and other articles. Similar statement of concealing of parts of trallas was made by Joga Singh and Jagpreet Singh, who pursuant to the disclosure statement got recovered the part of bodies of trallas. Tralls was recovered from Jasbir Singh.”

Learned counsel for the petitioner contends that though FIR No.246 dated 01.09.2016, under Section 379 IPC, Police Station Focal Point, Ludhiana, and FIR No.216 dated 17.09.2016, under Section 379 IPC, Police Station Shimlapuri, Ludhiana, have been registered against the petitioners, yet the fact remains that the same are still pending trial. He further contends that the trial Court has erred in law by framing the charge against the petitioners under Section 413 IPC, even though he is not a previous convict. He further contends that under the Punjab Habitual Offenders (Control and Reform) Act, 1952, a habitual offender means a person, who has been convicted to imprisonment more than twice during continuous period of five years. In support of his contentions, learned counsel relies upon the judgment rendered by a Division Bench of this Court in CRA-D-125-DB-2015, titled as 'U.T. Chandigarh Vs. Manga', decided on 31.03.2015.

On the other hand, learned State counsel submits that as to

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whether the petitioners are previous convicts or not, is a matter of trial and at the threshold, they cannot be discharged under Section 413 IPC. He further contends that the petitioners used to change the colour of stolen vehicles and sell the same further by affixing fake number plates and that the petitioners were arrested at the spot alongwith the stolen vehicle(s). As such, the petitioners are habitual in dealing with the stolen property and, therefore, framing of charge under Section 413 IPC is wholly justified.

I have heard the learned counsel for the parties.

Section 413 IPC would read 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.”

As per Clause (3) of Section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, 'habitual offender' means a person (a) who, during any continuous period of five years, whether before or after the commencement of the said Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction; and (b) who has, as a result of such convictions suffered imprisonment(s) at least for a total period of twelve months.

Vide order dated 05.02.2020 passed by this Court, learned State counsel sought time to verify as to whether the petitioners had been convicted in any other case prior to the framing of charge.

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In compliance thereof, affidavit of the Assistant Commissioner of Police, Industrial Area-A, Ludhiana, was filed.

A perusal of the aforesaid affidavit would show that the petitioners have not been convicted as yet in any case, and that apart from the present case, FIR No.246 dated 01.09.2016, under Section 379 IPC, Police Station Focal Point, Ludhiana, and FIR No.216 dated 17.09.2016, under Section 379 IPC, Police Station Shimlapuri, Ludhiana, have been registered against them and the same are pending trial.

There is nothing on record to prove that the petitioners have been convicted in connection with their dealing in stolen property.

The Division Bench of this Court in Manga (supra) has held as under:

“Learned counsel for the appellant is unable to deny that there is no evidence on record to prove that respondent-accused was convicted in seven cases in connection with his dealings in stolen property. There is not one judgment of conviction much less seven which has been placed on record to show the commission of offence as alleged by the prosecution. The prosecution relied upon statement of PW1 Shiv Kumar to the effect that the accused was convicted in seven cases. The said statement is not the primary evidence, which is required to be adduced by the prosecution in support of the charges against the accused. Therefore, inordinate reliance on a verification report (Ex.P1) proved by HC Shiv Kumar is misplaced and uncalled for. Evidence of PW1 HC Shiv Kumar or that of PW2 Amit Kumar son of Chaman Lal can be of no avail to connect the respondent with the alleged offence.”

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In view of the above discussion, this Court finds that no *prima facie* case under Section 413 IPC is made out against the petitioners. Resultantly, the impugned order dated 07.07.2017 is set aside to the aforesaid extent only.

21.12.2022

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No