



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

% Judgment reserved on : 12.07.2023
Judgment pronounced on : 19.07.2023

+ CRL.REV.P. 553/2022

ASHRAF Petitioner
versus

STATE Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Manish Gupta, Advocate.

For the Respondent : Mr. Shoaib Haider, APP with SI Rahul, PS
Seelampur.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a revision petition filed under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 (in short "Cr.P.C."), seeking setting aside of the impugned order dated 11.05.2022 and order on charge dated 26.05.2022 passed by the learned Additional Sessions Judge in SC No.346/2021, titled as "*State vs. Pankaj & Ors.*" pertaining to F.I.R. No. 039/2021 dated 24.01.2021, under Sections 395/365/120B/412/34 IPC registered at Police Station Seelampur, whereby the learned Trial Court had framed the charge under Section 412 IPC, 1870 *qua* the petitioner.

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2. The learned counsel for the petitioner submits that the petitioner is a small time Scrap dealer, who earns his livelihood by buying and selling scrap material. As per the allegations, Abdul Salam @ Mulla, one of the accused, contacted him to sell the stolen copper scrap for which the petitioner paid an appropriate price.

3. The learned counsel for the petitioner submits that the chargesheet in the present case was filed on 03.05.2021, implicating him u/s 412 IPC without proper consideration of legal aspects and in ignorance of the facts of the case.

4. The facts of the case as culled out from the petition are as follows:

a. As per the case of the prosecution, the accused persons allegedly committed robbery of a truck loaded with copper scrap. As per the statement of the complainant, on 23.01.2021, three to four persons stopped the truck and kidnapped the driver as well as the conductor of the truck. Thereafter, the accused persons took away the truck loaded with copper scrap and emptied it at a godown which was already arranged by the accused persons prior to the robbery.

b. Each accused had a specific role to play in the alleged crime of kidnapping and robbery, like accused Nadeem @ Naim and Abdul Salam @ Mulla arranged the godown for keeping the so procured copper scrap from the truck of the complainant. Both of them were present where the truck was taken and unloaded. Other co-accused persons such as Pankaj, Ayub, Tinkle and Rishabh Sharma were allegedly seen in the CCTV footage following the truck.



c. Later on, the police had arrested the co-accused persons including one scrap dealer namely Abdul Salam @ Mulla, whereby he disclosed that he sold the stolen copper scrap to various other scrap dealers including one scrap dealer namely Ashraf @ Babli, resident of Sunder Nagri, Delhi.

d. On 09.02.2021, the petitioner /accused who is also a scrap dealer and resides at Bhopura, Ghaziabad went to the Police Station Seelampur for some personal reasons and was arrested in the instant case for his name being the same as disclosed by another co-accused.

e. Thereafter, 400 kgs. of the material out of the alleged 3000 kgs was allegedly recovered from the Petitioner from his shop at his instance after a lapse of 17 days from the alleged incident of robbery.

f. The charge sheet under Section 392 IPC was filed by the investigating officer on 03.05.2021. The matter was committed to Sessions Court for the reason that Section 395 IPC was also added later on.

g. The impugned order dated 11.05.2022 states that the recovery was made at the instance of the accused Zakir, Ayub, Abdul Salam @ Mulla, Nadeem and Ashraf @ Babli and that they received the stolen property despite knowing or having reasons to believe that they were proceeds of dacoity. Accordingly, all the accused persons were held liable for the charges under Section 412 IPC.

h. *Vide* the order of charge dated 26.05.2022, charges u/s 365 r/w 149 IPC and 395 were framed against all the accused, whereas charge u/s 412 IPC was framed against accused Ayub, Zakir, Abdul Salam @



Mulla, Nadeem @ Naim and, the petitioner herein namely Ashraf @ Babli.

5. Mr. Manish, learned counsel for the petitioner while referring to the charge sheet dated 03.05.2021 submits that as per the disclosure statement of the accused Abdul Salam @ Mulla who was arrested on 04.02.2021, it was alleged therein by that co-accused, that he had pre-planned the robbery alongwith the other accused persons. Abdul Salam @ Mulla had even rented a godown for the said purpose in which the stolen copper scrap was taken and from where, the recovery of 850 kgs. of copper scrap was made.

6. Learned counsel for the petitioner submits that accused Abdul Salam @ Mulla had disclosed that he had sold 3 tonnes of copper scrap to one Ashraf @ Babli who resides in Sunder Nagri, Delhi and on the basis of this disclosure statement, the petitioner was arrested on 09.02.2021 and the charge u/s 412 IPC was framed against him *vide* the impugned order.

7. Learned counsel submits that to be charged u/s 412 IPC, a person should have received or retained any stolen property, the possession whereof he knows or has reason to believe, to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong to or have belonged to a gang of dacoits. Learned counsel for the petitioner submits that, however, in the present case, the petitioner cannot be charged u/s 412 IPC because he neither had knowledge nor the reason to believe that the concerned copper scrap was obtained through the



commission of Dacoity nor that accused Abdul Salam @ Mulla could be a member of gang of dacoits.

8. Learned counsel for the petitioner submits that it is not unusual in the business for a scrap dealer to have in possession or store 400 kgs of scrap to raise suspicion of robbery, much less dacoity and thus, submits that, only the property which is stated to be a “stolen property” will not be a sufficient ground to charge the petitioner under Section 412 IPC, and it is on this basis, learned counsel further very vehemently argued that the impugned order suffers from legal infirmity and has been passed without shedding light on the essential ingredients of Section 412 of IPC.

9. Learned counsel further submits that even as per disclosure statement made by the petitioner, co-accused Abdul Salam @ Mulla contacted him on 25.01.2021 i.e. after two days of alleged incident. This particular statement itself reflects that the Petitioner was absolutely unaware of Abdul Salam @ Mulla’s involvement in any such crime and thus, no ingredients of Section 412 exist.

10. Learned counsel further argued that even if disclosure statements of accused Abdul Salam @ Mulla and the Petitioner are taken to be true, though it has no evidentiary value, and not admitted, but charge under u/s 411 IPC, at worst, is the only available charge which can be leveled against the Petitioner.

11. The learned counsel for the petitioner submits that the learned Trial court totally ignored the facts and argument of the petitioner that the co-accused specifically stated that he sold goods to one Ashraf @



Babli, resident of Sunder Nagri, Delhi whereas the petitioner is not Ashraf @ Babli resident of Sunder Nagri, Delhi, rather he is Ashraf, resident of B-87, Rajiv Nagar, Bhopura, Sahibabad, Ghaziabad, U.P which is sufficient to prove his innocence.

12. Learned counsel for the petitioner emphasises that none of the other co-accused persons in their disclosure statement have mentioned the name of the Petitioner as their acquaintance, which further supports the case of the Petitioner that neither was he a part of the criminal conspiracy, nor had the knowledge of the property to be a proceed of dacoity. Learned counsel further submits that despite the fact that the alleged place of offence is Seelampur Flyover, which is one of the busiest areas of Delhi/NCR, there was no witness of the crime.

13. Learned counsel for the Petitioner further stresses upon the fact that the impugned order is bereft of any reasoning or evidence while recording that the petitioner had knowledge of the scrap being stolen, or reason to believe that it was stolen. Learned counsel further contends that neither the impugned orders, nor on record is there any evidence to prove or even raise a doubt upon the petitioner's complicity to conclude that he was included or was a participant in the pre-planned robbery, coupled with the fact that no independent or corroborative material is available to prove that he was a part of or even aware of dacoity from the beginning.

14. *Per Contra*, Mr. Shoaib Haider, Learned APP for the State had raised serious objections against the setting aside of the impugned



order dated 11.05.2022 and order on charge dated 26.05.2022, and while reiterating and re-emphasizing the submissions so made before the learned Trial Court, he submits that orders so impugned, do not warrant any interference from this Court, as the submissions made before this Court are similar to those made before the learned Trial Court, which were duly considered by the learned Trial Court while passing the impugned orders.

15. Mr. Haider, learned APP for the State, submits that as per the statement of the complainant, 3-4 persons stopped his vehicle loaded with copper scrap by placing a car in front of the truck and 3-4 persons came out of the said car whereas others were following the truck out of which one accused arranged godown for the robbed articles and some of the accused were also involved in recce of the truck, which suggests that all the accused were part of the dacoity.

16. Mr. Haider, learned APP further submits that the accused persons kidnapped the truck driver as well as helper and took away the truck loaded with copper scrape and thereafter, it was unloaded at a godown already arranged by the accused prior to this robbery. Later on, robbed articles were recovered from different places at the instance of accused, due to which charges under sections 395, 365 read with 120B IPC and 412 IPC are made out against all accused persons including the Petitioner herein who was charged under Section 412 IPC only for knowingly receiving the proceeds of the said dacoity.



17. This court has considered the arguments of learned counsel for the petitioner as also learned APP for the state.

18. At the outset, this Court proceeds to first consider as to whether the petitioner has been able to make out a case for interference in the charges framed under section 412, IPC against the petitioner and convert the same to one under section 411 of IPC, 1860. Learned counsel has restricted his arguments only to the framing of charge under section 412 IPC.

19. According to the story of the prosecution, unknown persons had kidnapped the driver of the truck, namely, Krishan Chand Yadav and left him after some distance was covered in the vehicle. The said kidnapping was only a ploy to commit robbery of the copper scrap that was loaded onto the truck. After the complaint was noted, the FIR was registered u/s 392/365/120-B/412/34 IPC, 1860.

20. After investigation, it was revealed that 4 persons other than the two co-accused persons were identified that is, Pankaj, Ayub, Tinkle and Rishabh Sharma. In fact, the four co accused are alleged to have been spotted in the CCTV footage of the place of occurrence too. Once all the above co accused persons were arrested, the offence under section 392 IPC was altered to one under section 395 IPC.

21. Upon the arrest of the aforesaid persons and consequent upon their disclosure statements, one Abdul Salam @ Mulla, Scrap Dealer was arrested on 04.02.2021. It is pertinent to note that none of the above said arrested persons had disclosed the name of the petitioner as co-accused.



22. Upon interrogation of the said Abdul Salam @ Mulla, he is alleged to have disclosed that on 12.01.2021, Nadeem, Zakir and Ayub came and told him about robbing the scrap material and thereafter, he also got involved in the plan for which purposes, he rented a godown alongwith Nadeem at Ghonda Chowk. It is the case of the prosecution that in pursuance of the said conspiracy, the accused persons had committed robbery of copper scrap on 23.01.2021.

23. So far as the petitioner is concerned, it is stated that Abdul Salam @ Mulla disclosed the name of the petitioner as a scrap dealer who purchased the stolen property, that is, the copper scrap. It would be of some significance to note here that apart from the aforesaid disclosure, Abdul Salam @ Mulla did not make any statement or disclosure alleging that petitioner was part of any conspiracy to commit robbery of the copper scrap from the truck or that the petitioner had any knowledge about the robbery at all.

24. It is relevant to note that in the chargesheet, it was stated by the prosecution that the name of the petitioner was disclosed as Ashraf @ Babli from Sunder Nagri. However, it is on record that no such person from Sunder Nagri was ever arrested or detained by the police. Infact, the petitioner claims to reside at B-87, Rajiv Nagar, Bhopura, Sahibabad, Ghaziabad, UP. The recovery of 400 kgs. of copper scrap is alleged to have been effected from scrap dealing shop at A.S Metal, DDA Market, Shop No.43, Tulsi Niketan, Bhopura, Ghaziabad upon



the petitioner's disclosure statement. The copy of the disclosure statement of the petitioner is reproduced hereunder:-

FIR No. 39/21 Dt. 24.1.21 U/s 395/365/412/120B/34 IPC

PS : Seelam Pur

फर्द इन्साफ मुलजिम अशरफ

निम्न लिखित गवाहों के सामने मुलजिम अशरफ s/o मुस्ताक अहमद R/o B-87 राजीव नगर भोपुरा साहिबाबाद GZB UP ने जैरे हिरासत पुलिस बखुसी खुद बिना किसी डर व भय के इन्साफ किया कि मैं उपरोक्त पते का स्थायी निवाशी हूँ तथा कबाई का काम करता हूँ। मैं अब्दुल सलाम @ मुल्ला @ नवाब को बचपन से जानता हूँ जो कबाड़े का काम करता है। दिनांक 25.02.21 को अब्दुल सलाम @ मुल्ला का मेरे मोबाइल नंबर 9540350507 पर 9870498610 नंबर से फ़ोन आया था जिसने मुझे बतलाया था की उसके पास चोरी का कॉपर स्क्रेप करीब दो टन (2000 किलो) है व बेचना चाहता है जो मैंने उसके लिए हॉ भर दी थी। जो दिनांक 27.01.21 को अब्दुल सलाम @ मुल्ला कॉपर स्क्रेप मेरे पास मेरे गोदाम AS Metal Scrap Shop No-4.3, DDA Market, Tulsi Niketan, Bhopuara Sahibabad, GZB UP में रखवा दिया था। जो दिनांक 28.01.21 को मैंने अब्दुल सलाम @ मुल्ला को 3 लाख रुपये दिए थे। जो अब तक मैं पकड़े जाने के डर से भाग रहा था। मैं उस गोदाम की निशानदेही करवा सकता है तथा माल बरामद करवा सकता हूँ।

Sd/ Ashraf

Witness

Sd/- Shailendra

Sd/-

PS Seelam Pur

Ct. Jaiveer 1209/NT

09.02.21

Ps Seelam Pur

ASI Bijender 150/NT

PS Seelam Pur

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FIR No. 39/21 Dt. 24.1.21 U/s 395/365/412/120B/34 IPC

PS : Seelam Pur

DISCLOSURE STATEMENT OF ACCUSED ASHRAF

In the presence of following witnesses the accused ashraf S/o Mushtaq Ahmed R/o B-87, Rajiv Nagar, Bhopura, Sahibabad, Ghaziabad, UP, under police custody disclosed without fear that I am the permanent resident of address stated above and work as scrap dealer. I know abdul salam @mulla @ nawab since my childhood, who works as scrap dealer. On 25.01.2021 I received a call from mobile no. 9870498610 of abdul salam on my mobile no. 9540350507 who stated that he has around 2 ton (200 KG) of stolen copper scrap which he wants to sell and I agreed to that. On 27.01.2021 abdul salam @ mulla brought copper scrap to keep at my shop AS Metal scrap shop no. 4,3, DDA Market Tulsi Niketan, Bhopura, Sahibabad, Ghaziabad, UP. On 28.01.2021 I gave 3 lacs of rupees to abdul salam @ mulla. I was fleeing to out of fear of arrest so far. I can identify that godown and recover the good.

Sd/ Ashraf

Witness

Sd/- Shailendra

Sd/-

PS Seelam Pur

Ct. Jaiveer 1209/NT

09.02.21

Ps Seelam Pur

ASI Bijender 150/NT

PS Seelam Pur

Signature Not Verified

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25. The petitioner is also alleged to have disclosed that he knew Abdul Salam @ Mulla, who was a scrap dealer, since childhood. He is alleged to have also disclosed that Abdul Salam @ Mulla had informed him that he was in possession of a huge quantity of stolen copper scrap to which the petitioner showed his interest to purchase the same. He is further alleged to have disclosed that he had paid Rs.3 lakhs against the 400 kgs. of stolen copper scrap.

26. That, apart from the above alleged complicity of the petitioner in the whole transaction, there is neither any statement of any witness or co accused persons nor is there any document worth the name on record to connect the petitioner to the robbery alleged to have been committed. In fact, the initial offence charged, was under section 392 IPC, however, upon the further arrest of the aforesaid four accused persons, the offence was changed to one under section 395 IPC alleging that the accused persons committed dacoity. It is due to this reason that the offence under section 412 instead of section 411 IPC was framed against all the accused persons including the petitioner.

27. A perusal of the impugned order, particularly, the penultimate paragraph whereby the learned Sessions Court concluded that the accused persons received stolen property with the knowledge that it was stolen and nothing further was observed to bring the ingredients of section 412 IPC to be made applicable to the petitioner. The impugned order is conspicuous by the absence of the role played by the petitioner, either in respect of the alleged dacoity or even the



ingredients of section 412 IPC to fasten and frame charges under section 412 IPC against the petitioner. It appears to be more of an omnibus observation without anything more.

28. It is also clear, *prima facie*, from the reading of the disclosure statements of the co accused, including Abdul Salam @ Mulla, that the petitioner appears to have been unaware of the dacoity committed by the said persons for attracting rigours of section 412 IPC. None of the other co accused persons even took the name of the petitioner. In fact, there is nothing in record to even *prima facie*, show that the petitioner was aware of the dacoity or its planning. Though, it appears that the petitioner was aware that the scrap was stolen material.

29. The only alleged aspect which is stated to be showing the culpability of the petitioner to the crime is the disclosure statement of Abdul Salam @ Mulla. However, that too is restricted only to the receiving of stolen property alleged to be in his knowledge. The relevant extract of the chargesheet wherein the said disclosure statement was reproduced is extracted hereunder:-

सत्यमेव जयते



की application move की जो MM साहब TIP proceedings के लिए 05/02/21 की date fix की जो ने तफ्तीश के दौरान suspect नदीम, जाकिर, टिकल व अब्दुल सलाम @ मुल्ला की तलाश अमल में लाई गयी किन्तु कोई सुराग नहीं मिला।

इसके बाद मन si मय हमराही staff हाज़िर थाना आया जहाँ मन si ने तमाग हालात sho साहब को बतलाए। जो दिनांक 04/02/21 को मुखबिर खास ने थाना में आकर बतलाया की आपके मुकदमे में वांछित मुलजिम अब्दुल सलाम @ मुल्ला आज घास मंडी सीलमपुर में आने वाला है रेड की जाए तो पकड़ा जा सकता है। जो मन si ने अपने साथ ASI बिजेंदर व ct जयवीर को शामिल तफ्तीश किया व हमराह लेकर घास मंडी पहुंचा जहाँ पैदल अगो रहे एक व्यक्ति की तरफ मुखबिर खास ने इशारा करते हुए बतलाया की यही व्यक्ति अब्दुल सलाम @ मुल्ला है। जो ने मन si ने हमराह staff की मदद से काबू किया व दरयाफ्त पर अपना नाम पता अब्दुल सलाम @ मुल्ला S/O अब्दुल r/o C-27/3, Gali No-03, Chauhan Bangar, Seelampur, Delhi, age-64 years बतलाया। जो मन si ने बाद दरयाफ्त मुलजिम अब्दुल सलाम @ मुल्ला को बाद बतलाकर कारण मुकदमा में arrest किया तथा arrest की सूचना मुलजिस की पत्नी शाहीन को दी। जो इसके बाद मन si मय हमराही staff हाज़िर थाना आया जहाँ arrest से सम्बंधित अन्य दोघुर्मेस्त complete किये तथा accused का disclosure statement लिखा जो मुलजिम ने बतलाया जी वह कबाड़े का काम करता है तथा नदीम @ नईम @ कल्लू ज़हीर व अयूब को पहले से जानत है जो दिनांक 12.01.21 को नदीम @ नईम, जाकिर और अयूब ने आकर कॉपर स्क्रेप लूटने के बारे में बतलाया था जो मुलजिम अब्दुल सलाम भी plan में शामिल हो गया था। जो उसने वारदात को अंजाम देने से पहले घोंडा चौक पर नदीम के साथ मिलकर एक किराये का



गोदाम भी ले लिया था | जो दिनांक 23.01.21 को कॉपर स्क्रेप लूटने के बाद पहले से तय plan के अनुसार लूटा हुआ ट्रक 51/2 पुस्ता पर खाली होना था तथा लूट के बाद माल को घोंडा चौक पर बने गोदाम में माल को ले जाना था। जो अब्दुल सलाम @ मुल्ला ने बतलाया की उसने तीन टन कॉपर स्क्रेप सुंदर नगरी में रहने वाले अशरफ @ बबली को बेचा है।

जो इसके बाद मन si मय हमराही staff मय मुलजिम दुकान no D-51 गली no-17, चौहान बांगर सीलमपुर, पहुंचा जहाँ से मुलजिम की निशानदेही पर करीब 850 किलोग्राम कॉपर स्क्रेप बरामद हुआ जिसको plastic के कट्टो में पैक करके seizure मेमो के द्वारा कब्जा पुलिस में लिया गया | जो मुलजिम की निशानदेही पर recovery मेमो व site plan of recovery मेमो तैयार किया गया जो मुलजिम अब्दुल सलाम @ मुल्ला को मंडोली जेल में produce किया गया जहाँ से उसका one day PC remand लिया गया। जो दौराने PC remand मुलजिम पुलिस पार्टी को इधर उधर घुमाता रहा किन्तु माल मुकदमा व मुलजिम के बाबत कोई भी सुराग नहीं दिया। जो दौराने PC remand अशरफ @ बबली की तलाश अमल में लाई गयी किन्तु कोई सुराग नहीं मिल पाया | जो मुलजिम अब्दुल सलाम @ मुल्ला को मंडोली जेल में पेश करके 14 दिन का JC remand भिजवाया गया | जो मन si ने case file को sho साहब से discuss किया जिन्होंने हालात disclosure statement के अनुसार मुकदमा में section 395/365/412/120B IPC को add करने की डायरेक्शन दी।

जो मन si ने मुकदमा में section 395/365/412/120B को add किया। जो दौराने तफ्तीश ट्रक no DL1LV8616 जिसमे कॉपर स्क्रेप को पलटी किया गया था, के ड्राईवर ALI HASAN S/O BUNDU



The English translation of the said text as culled out from the petition is reproduced hereunder:-

“about the whole incident to the SHO. On 04.025.2021, prime informer came into the Police Station and informed that in your case Accused Abdul Salam @ Mulla is coming to the Ghas Mandi Seelampu today he can be caught there.

SI involved ASI Bijender, ctJayveer and Humrahi staff in the investigation and reached Ghas Mandi where Prime offender signalled towards a man coming on foot stating that this person is Abdul Salam @ Mulla. SI with the help of Humrah Staff caught Abdul Salam who on inquiry stated that his name is Abdul Salam @ Mulla s/o Abdul Majeed r/o C-27/3, Gali No.-03 Chauhan Bangar, Seelampur, Delhi Age- 64 Years. After the enquiry SI arrested Abdul Salam @ Mulla after telling him the reasons of his arrest and informed about his arrest to his wife Shaheen. SI along with the humrahi staff and the accused person came to the Police Station where the documents related to arrest were completed and he wrote the statement of the accused who told that he deals in scrap material for his livelihood and that he knows Nadeem @ Nayeem @ Kallu, Zaheer and Ayub from a long time. On 12.01.2021 Nadeem @ Nayeem, Zakir and Ayub came and told him about robbing the scrap material and thereafter he also got involved in the plan. For committing the offence Abdul Salman took a Godown on rent.

Alongwith Nadeem at Ghonda Chowk. On 23.01.2021 as per their pre-planning after the robbing of scrap material the truck 51/2 was to be unloaded on Pusta and robbed scrap material were to be taken to the Godown on Ghonda Chowk. Accused Abdul Salman told that he has sold three tons copper scrap to Ashraf@Babli the r/o Sunder Nagri. After this SI with Humrahi Staff and accused reached Shop No. D-51, Gali No. 17, Chauhan Bangar, Seelampur where as per the indications of the accused approx. 850 Kg of copper scrap was recovered which were seized by the Police as per the seizure memo after packing them in the plastic sacs. Accused Abdul Salam@ Mulla was produced to the Mandoli Jail from there his one day PC remand was taken. During the PC remand Accused roam here and there with the police but no material was recovered and neither any evidence was found. During PC remand Police searched for Ashraf@ Babli but no evidence was found . Accused Abdul



Salman was presented in the Mandoli Jail and from there he was taken into 14 days JC remand. SI discussed the case file with the SHO who had directed to add sections- 395/365/412/120B IOC in the cases as per the incident and disclosure statement. I added sections- 395/365/412/120B to the case.”

30. That the scrutiny of the sum total of the allegations alongwith the statements of all the witnesses or accused persons and considering the order credible evidence brings to fore the irresistible fact that there is no evidence, *prima facie*, at this stage to frame charges against the petitioner under section 412 IPC. At worst for the petitioner and at best for the prosecution, a case under section 411 IPC could be made out and not one under section 412 IPC.

31. It would be opposite to extract Section 411 as well as Section 412 IPC :

“411.Dishonestly receiving stolen property- Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

412. Dishonestly receiving property stolen in the commission of a dacoity - Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with *[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

A plain analysis of the two sections makes it clear that the



receiver of such stolen property under section 411 is only aware of the property being stolen, however, in the case of section 412, the accused person is aware that the same is from out of or result of dacoity. Applying the said interpretation and interplay, it would be unjust to frame charge under section 412 IPC against the petitioner.

32. Even by perusing the entire impugned order, the role alleged to have been played by the Petitioner is conspicuous by its absence.

33. In view of the above, this court has no hesitation in concluding that the offence under section 412 IPC qua the petitioner is not made out. In that view, the impugned order dated 11.05.2022, and the order on charge dated 26.05.2022 is set aside, only to the extent of framing of charge under Section 412 IPC qua the petitioner herein, however, the learned Trial Court would frame charges under the provisions of section 411 IPC as against the petitioner and commence trial.

34. With the aforesaid, the present petition is disposed of.

TUSHAR RAO GEDELA, J.

JULY 19, 2023

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