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

\+ CRL.REV.P. 333/2025, CRL.M.A 25162/2025 & CRL.M.A. 25163/2025

BARAIYA NERUBHAI BABABHAI .....Petitioner

Through: *Appearance not given.*

versus

STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Mukesh Kumar, APP for State along with SI Kavish Rana, PS Lahori Gate, Delhi.
Mr. Sharique Hussain, Advocate for Respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **25.08.2025**

1. The Present Revision Petition under Section 438 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (formerly Section 397 read with Section 482 of the Code of Criminal Procedure, 1973) is directed against the order dated 19th July, 2025, passed by ASJ/Special Judge (Electricity) Court No. 02, Central, Tis Hazari, Delhi. This impugned order frames charges against the Petitioner for the offences under Sections 379/411/34 of the Indian Penal Code, 1860[2] and under Sections 136/137 of the Electricity Act, 2003[3] in relation to FIR No. 167/2016 registered at P.S.

[1] "BNSS"
[2] "IPC"
[3] "the Electricity Act"

Lahori Gate.

2. The case of the prosecution, in brief, is as follows:

2.1. On 31st July, 2016, a complaint was lodged by Subhash Chauhan, Sr. Manager, BSES Yamuna Power Ltd. alleging theft of two 990 KVA package transformers installed near PNB Bank, Katara Neel, Chandni Chowk, estimating the loss at approximately INR 60 lakhs.

2.2. On this basis, FIR under Section 379 IPC was registered at P.S. Lahori Gate. During investigation, CCTV footage was collected and the truck used in the theft was traced. Its driver, Jiyauddin, disclosed that the theft was carried out at the instance of Javed (owner of S.K. Transport) and Rohtash, with the aid of a crane and the stolen transformers had been transported to Gujarat.

2.3. The transformers were recovered from the possession of accused Asif after the present Petitioner, Neeru Bhai, a scrap dealer, informed the police that he had sold them to Asif. Investigation revealed that the Petitioner had purchased the transformers from Rohtash for INR 8.2 lakhs and later sold them to Asif for INR 9 lakhs.

2.4. During the course of investigation, other accused persons, including Shoaib (owner of Apollo Traders), Subhash, and Rohtash, were also apprehended. On the basis of the material collected, offences under Sections 379/411/34 IPC were invoked against the accused persons.

3. Subsequently, upon consideration of the rival submissions and the material placed on record, the Trial Court, by the impugned order, declined to discharge the Petitioner and the other co-accused (save Subhash, who was discharged), and directed them to face trial. For ease of reference, the operative portion of the order is extracted below:

"6. After having gone through the submissions of both the parties and perusal of record, I find that it is the case of prosecution that all accused persons were involved in the theft and receiving the stolen property of two electric transformers from the area of Chandni Chowk. The first arguments of the counsel for the accused persons are that since chargesheet was filed beyond the period of limitation, therefore, accused persons be discharged. The said argument is countered by the Learned Addl. PP for the State stating that the alleged offence took place in the night of 16" July 2016 and matter - was reported to the police on 31.07.2016. It is further submitted that identity of accused Neeru Bhai and Asif Bhai were firstly known/established on 28,08.2016 and they were arrested on the same day. Accordingly, the period of limitation in the present case starts from the date of 28.08.2016 in view of Section 469 (C) Cr.PC and accordingly, the chargesheet was filed within the period of limitation i.e. on 07.08.2019.

7. After having gone through the submissions of both the parties, I am also of the same view that since the identity of the accused persons namely Neeru Bhai and Aasif Bhai were known/established on 28.08.2016, therefore, the chargesheet was filed on time.

8. Now coming on the arguments of the counsel for the accused Subhash, I find that there is allegation against the accused Subash that he was involved. of the alleged offence of theft of two electric transformers. Perusal of record, I find that there is only disclosure statement of co-accused Rohtash that accused Subhash was also involved in the alleged commission of theft. During the course of arguments, Learned Addl. PP for the State and IO also concedes the aforesaid fact that there is only disclosure statement against the accused Subhash. It is settled law that only disclosure statement of accused/co-accused is not sufficient to put the accused on trial. In light of the aforesaid facts and circumstances, I am of the considered view that since there is no sufficient ground for proceeding the case against the accused Subhash, therefore, he is discharged for the alleged offences.

9. As far as other accused persons namely Rohtash, Neeru Bhai and Aasif Bhai are conceded, l I find that witness namely Jiyauddin, truck driver has already stated in his statement recorded u/s 161 Cr.PC that the met the accused Rohtash at Chandni Chowk and he loaded the said two electric transformers in his truck with the help of crane. He further stated that he took the said transformers to Gujrat and offloaded the same at the godown of the accused Neeru Bhai as per the instructions of Javed (transporter). He further stated that Neeru Bhai also provided form no.403 to him. He further stated that on 28.08.2016, he also got recovered the said transformers from the godown of the accused Aasif. Perusal of the said statement of Jiyauddin, it is apparent that he has named three accused persons namely Rohtash, Neeru Bhai and Aasif Bhai. During the course of arguments, counsel for the said accused has only emphasized the said fact that the aforesaid accused persons purchased two electric transformers against the sale consideration amount. As Learned Addl. PP for the State has already stated that complainant company i.e. BSES has never sold the said two transformers to anyone including accused Subhash, therefore, accused cannot take plea that they purchased the said two transformers against sale consideration. In light of the said arguments of both the parties, particularly there is no document *on record suggesting that BSES had sold the said two transformers to the accused Subhash, therefore, alleged subsequent purchase create doubt upon the accused persons. In view of the aforesaid facts and circumstances, I am also of the considered view that there are sufficient grounds for presuming that accused persons namely Rohtash, Neeru Bhai, Asif Bhai have committed the alleged offence U/s 379/411/34 IPC and U/s 136/137 of the Electricity Act, 2003.*

10. As far as accused Soyab Bhai is concerned, 1 find that he made available form no. 403 to the accused Neeru Bhai to cross the inter-state border regarding said transformer by truck. It has not been explained by the counsel for the accused as to in which capacity he made available the form no. 403 to accused Neeru Bhai. It is to be noted here that many particulars are given in the said form particularly for goods, value of goods and etc. and now it is a matter of trial whether the said particulars are correctly filled or not particularly in the light of the defence taken by the accused Soyab Bhai. I am of the considered view that there is sufficient grounds for presuming that present accused Soyab Bhai has also committed the offences U/s 379/411/34 IPC and U/s 136/137 of the Electricity Act, 2003.

11. Before parting this order, it is to be noted here that I have gone through the citations referred by Sh. Anand Bhardwaj learned counsel for the accused persons but the same are not applicable upon the facts and circumstances of the present case.

12. With these observations, the present application stands disposed of.

13. All four accused persons are directed to appear on the NDOH for framing of charge.

14. Put up for framing of charge on 22.08.2025."

4. Counsel for the Petitioner urges the following grounds:

4.1. The Petitioner has been falsely implicated; even if the prosecution material is taken at its face value, it does not disclose the essential ingredients of the offences alleged under Sections 379, 411 and 34 IPC.

4.2. There is no allegation, much less any material, to suggest that the Petitioner participated in the theft of the two transformers. The prosecution case itself proceeds on the basis that the theft was carried out at Chandni Chowk by other accused, and the Petitioner was nowhere present at the scene. Thus, the offence under Section 379 IPC is wholly inapplicable to him.

4.3. Insofar as the allegation of receiving stolen property under Section

411 IPC is concerned, it is urged that the prosecution has not adduced any material to show that the Petitioner was in conscious and dishonest possession of the transformers with knowledge of their illicit origin. Neither CCTV footage nor any independent public witness links the Petitioner to the alleged chain of events, thereby rendering the investigation deficient and unreliable.

4.4. Further, no recovery has been effected from the Petitioner. The transformers were traced and seized from the premises of a co-accused in Gujarat. There is no evidence to show that the stolen property was ever in the physical custody of the Petitioner. In the absence of proof of possession, knowledge, and dishonest intent, the statutory ingredients of Section 411 IPC are not satisfied.

4.5. The Petitioner is a scrap dealer by trade and that his alleged transaction with co-accused Rohtash was in the ordinary course of his business. The Petitioner is said to have purchased the two old transformers for a consideration of INR 8.20 lakhs on the basis of bills shown to him and to have arranged their transport through an authorised carrier on payment of freight charges. These circumstances negate any dishonest intention or criminal complicity and indicate a *bona fide* commercial dealing.

4.6. As held on ***Rajender Kumar v. State***,[4] for attracting Section 411 IPC, the prosecution must prove not only possession of the property by the accused but also knowledge that the property was stolen. The failure to establish these two elements renders the prosecution case unsustainable. In the present case, neither possession nor knowledge can be attributed to the Petitioner on the basis of the material collected during investigation.

5. Mr. Mukesh Kumar, APP for the State, opposes the Petition on the following grounds:

5.1. Petitioner's defence of being a *bona fide* purchaser is untenable on the face of the record. The two package transformers in question were valued by the complainant company at nearly INR 60 lakhs and were in working condition. Against such valuation, the Petitioner's alleged purchase for a mere INR 8.20 lakhs and resale for INR 9 lakhs cannot be regarded as a bona fide commercial transaction. No prudent dealer in the ordinary course of business could have believed the transaction to be genuine at such a grossly undervalued price and the circumstances themselves are sufficient to impute dishonest knowledge and intent.

5.2. The contention of the Petitioner that disclosure statements cannot by themselves form the basis for proceeding to trial is misconceived. The case of the prosecution does not rest solely on disclosure statements. The truck driver, Jiyauddin, in his statement under Section 161 Cr.P.C., has specifically implicated the Petitioner by stating that the stolen transformers were transported to Gujarat and offloaded at the Petitioner's godown on the instructions of Javed and that the Petitioner himself facilitated the transportation by providing Form No. 403. This independent testimony, coupled with the recoveries effected, *prima facie* links the Petitioner to the offence.

5.3. At the stage of framing of charge, the Court is not to meticulously weigh the evidence or test the prosecution case as if in trial. The test is whether the material discloses grave suspicion sufficient to proceed. The evidence on record, clearly meets this threshold and warrants that the

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[4] (1983) 23 DLT 42

Petitioner face trial alongside the other accused.

6. The Court has considered the aforenoted contentions. It is well settled that, at the stage of framing of charge, the Court is not required to conduct a meticulous evaluation of evidence or assess its probative worth. At this stage if the court finds there is a *prima facie* case against the accused, meaning there is sufficient credible evidence that, if unrebutted, would support a conviction, and the alleged acts constitute an offence, it would apposite to proceed with trial. Thus, 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.

7. The Supreme Court, in ***State of Bihar v. Ramesh Singh***,[5] discussed the principles to be considered by Courts at the stage of framing of charge or discharging an accused. The relevant observations made by the Supreme Court are as under:

> *"4. ……. Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code* ***. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof***

[5] (1977) 4 SCC 39

> ***<u>of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.</u>*** *The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not."*
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> Emphasis supplied

8. Bearing the afore-noted principles in mind, the prosecution's narrative, does disclose a coherent chain pointing to the Petitioner's involvement. Two 990 KVA package transformers, worth roughly ₹60 lakhs, disappeared from the BSES installation near PNB Bank, Katara Neel, Chandni Chowk, on the intervening night of 16th July 2016. The investigation traced the truck allegedly used in the removal; the driver gave a statement Section 161 Cr.P.C. naming (i) Rohtash, said to have supervised the loading with a crane at Chandni Chowk; and (ii) the Petitioner, a scrap dealer in Bhavnagar, at whose godown the units were off-loaded. The driver further stated that the Petitioner facilitated the movement by arranging Form No. 403 (the inter-State waybill), and that the delivery at Gujarat was undertaken "as per instructions" of the Petitioner, to unload the transformers at his godwon. Later, both the transformers were recovered/seized in Gujarat. On these facts, the Trial Court's conclusion, that there exist sufficient grounds for presuming that the Petitioner has committed offences under Sections 379/411/34 IPC and Sections 136/137 of the Electricity Act, cannot be characterised as either speculative or perverse.

9. The Petitioner's primary defence, that he is a *bona fide* purchaser in the ordinary course of a scrap business, cannot be adjudicated at this stage.

The record notes a purported purchase from co-accused Rohtash for INR 8.20 lakhs and re-sale to Asif for INR 9 lakhs. While price alone may not be conclusive, a transaction involving a working asset valued at approximately INR 60 lakhs, sold for a substantially lower amount, is a relevant circumstance from which knowledge or reason to believe that the property was stolen may be inferred. For Section 411 IPC, "knowledge or reason to believe" may be drawn from the totality of surrounding circumstances, including the nature and value of property, the manner and timing of acquisition, the identities of counterparties and the laundering of documentation. As per Section 114, Illustration (a) of the Indian Evidence Act, a presumption may be drawn from the recent possession of stolen property. While the final inference at trial must be based on the precise establishment of timelines and the nexus between the accused and the recovered goods, the prosecution material on record, including the driver's statement, the logistical arrangements through a waybill and the recovery at the purchaser's premises, is sufficient, at this stage, to satisfy the threshold of strong suspicion.

10. The argument that no recovery was effected from the Petitioner personally does not advance a discharge at this stage. Section 411 criminalises dishonest receiving/retaining "stolen property"; actual physical recovery from the accused is not a *sine qua non* where there is material indicating control or dominion in the disposal chain. The driver's statement places the stolen transformers at the Petitioner's godown before prior to their further movement. The connection established through Form 403 is an additional circumstance suggestive of the petitioner's involvement in facilitating the movement of the goods. Whether these links withstand cross-

examination is a matter for trial, not for hindering the prosecution at inception.

11. The contention that the case is built on disclosure statements is equally misplaced. The Trial Court has not rested the order on disclosure statements alone; it has relied on (i) the driver's statement under Section 161 Cr.P.C. detailing the route, handlers, and delivery; (ii) recovery/seizure at Gujarat; and (iii) the documentary trail of transport/waybill. At the charge stage, such testimonial account and recovery-based material is more than adequate to frame charges.

12. The absence of independent public witnesses or CCTV footage connecting the Petitioner likewise does not demolish the case at this stage. While association of public witnesses is desirable where practicable, the law is well settled that non-joining of public witnesses does not *ipso facto* vitiate proceedings; it goes to weight, not existence, of the case, an enquiry that be undertaken only during trial. The same holds for the unavailability of CCTV: it may be a factor in appreciation of evidence, but its absence does not create an embargo on framing charge where other primary evidence is present.

13. On limitation, the Trial Court has recorded, with reference to Section 469 Cr.P.C., that the identity of the Petitioner and Asif surfaced on 28th August 2016 and that the charge-sheet was filed on 7th August 2019, well within the three-year period applicable to the invoked offences. No perversity is shown in that determination. At any rate, limitation at this stage turns on broadly ascertainable dates drawn from the case diary; the view taken by the Trial Court is a plausible and legally tenable one and does not warrant revisional interference.

14. The reliance placed on *Rajender Kumar v. State* to contend that the essential ingredients of Section 411 IPC are not satisfied is misconceived. That decision was rendered in the context of appreciation of evidence after a full trial, whereas the threshold at the charge stage is materially different. At this preliminary stage, issues such as bona fides of the purchase, actual knowledge and intent cannot be conclusively adjudicated and must be tested against evidence during trial.

15. For all the above reasons, this Court finds no jurisdictional infirmity, or perversity in the order directing that charges be framed against the Petitioner. The petition is, therefore, dismissed.

16. It is clarified that all observations herein are confined to the threshold at the stage of charge and shall not influence the Trial Court's assessment of evidence at trial.

SANJEEV NARULA, J

AUGUST 25, 2025/MK