

(2007) 04 RAJ CK 0078
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

Waman Narayan Gheeya and Others

RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 110, 111
Penal Code, 1860 (IPC) — Section 120B, 380, 411, 413, 457

Citation : (2007) CriLJ 3614 : (2008) 2 RCR(Criminal) 623 : (2008) 2 RLW 1084

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This revision petition has been filed for quashing the impugned order dated 21-4-2005 passed by the Addl. Sessions Judge (Fast Track) No. 1, Sirohi in Sessions case No. 112/2000 whereby, while discharging the accused non-petitioners from offence u/s 413, IPC the trial Court framed charge for offences under Sections 457, 380, 411 and 120B, IPC against the accused non-petitioners. The State has preferred this revision petition challenging the aforesaid order dated 21 4-2005 to the extent the trial Court has discharged the non-petitioners from the offence u/s 413, IPC.

2. It is submitted by the learned Addl. Advocate General, appearing for the petitioner-State, that on 20-10-2002, complainant Purushottam Das submitted a written report to the S.H.O., Police Station Mandar that he had been performing worship in Warmeshwar Mahadev temple. On 20-10-2002, at about 7 a.m., he came to the temple and saw that the door of the temple was displaced and two idols of Lord Shiv and Parvati were not there. Thereafter, he gathered the villagers and has thus lodged the FIR. Upon this information, the case was registered and usual investigation was commenced. After investigation, challan was filed against the accused non-petitioners for offences punishable under Sections 457, 380, 411, 413 and 120B. IPC. After committal, the trial Court proceeded to frame charges against the accused non-petitioners and, after

hearing the arguments, the trial Court discharged the non-petitioners from alleged offence u/s 413, IPC and framed charges for the remaining offences i.e., Sections 457, 380, 411 and 120B, IPC on 21-4 2005. The State has challenged the said order to the extent of discharge of the non-petitioners for offence u/s 413, IPC.

3. Learned Counsel for the State submitted that discharging the accused non-petitioners is totally contrary to the provisions of law. There was material on record for framing charge u/s 413, IPC because number of cases are registered against the non-petitioners for committing offence u/s 413, IPC and specific allegation on the basis of material on record was made that the non-petitioners are habitual in dealing with the stolen property, therefore, the learned trial Court ought to have framed charge against the non-petitioners for offence u/s 413, IPC.

4. It is further submitted by Shri Thakur, learned Addl. Advocate General, that the learned trial Court has not properly considered the proposition of law laid down by various High Courts and the citations referred to have not been properly interpreted by the trial Court while discharging the non-petitioners from the offence u/s " 413, IPC. It is contended that various cases have been registered by the CBI against the accused non-petitioners in Rajasthan and Madhya Pradesh for offences relating to stolen idols. All these facts were narrated before the trial Court and attention of the Court was drawn to these facts and despite that the trial Court discharged the non-petitioners from the offence u/s 413, IPC.

5. Learned Counsel for the State invited my attention towards Section 413, IPC which runs 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.

While inviting attention towards the section, it is submitted by Shri Thakur that the Section is very express in its terms without admitting of any probability of construing the section otherwise than is expressed by the legislature in its terms. According to him, as per Section 413, IPC, it is provided that it relates to "Habitually Dealing in Stolen Property" and the words employed in the section "habitually dealing" can by no stretch of imagination read for "habitual offender". It is submitted that the meaning of the term "habitual" is repeated and/or persistent in an act, and implication of the term only suggests a thread of continuity stringing together similar respective acts. It connotes frequent commission of acts or omission of the same kind forming an aggregate of similar acts of commission or omission.

6. In the context, learned Counsel for the State urged that the words "habitual offender" relate mainly to Sections 110(a) and 111 of the Code of Criminal Procedure which are preventive in nature and the learned trial Court has relied

upon the citation of Lalookhan Haideralikhan Vs. M.M. Kamble, Special Executive Magistrate, Byculla Division, Bombay and others, which is, however, not attracted in the case. While inviting attention towards the said judgment, it is submitted by the learned Counsel for the State that in the cases falling under the provisions of Sections 107 to 110 of the Code of Criminal Procedure the Executive Magistrate can proceed on the basis of an information and it cannot be equated with the trial proceedings because the Executive Magistrate, where he is satisfied that, previously such person has been proved by habit a robber, house breaker, thief or forger by habit then the required proof is that such a person had been found guilty of the charge levelled against him, that is to say, he was convicted of the charges. But, in the matter of Section 413 of the Indian Penal Code, the Section specifically relates to a habit of the dealing in stolen property, in which case, the trial is proceeded with; and, the legislature has enacted the section with particular intent to check the habitual dealing in stolen property by enhancing the sentence in the matter of habitual dealing in stolen property in comparison to offence punishable u/s 411, IPC where the dealing of stolen property is not frequent, persistent and repeated. Thus, the legislative intent to enact Section 413 in itself is very specific in providing for the provision of law to enforce check upon habitual dealing in stolen property, even after enactment of Section 411, IPC with a view to differentiating the gravity of the repetitive dealing in the stolen property. In this view of the matter, the learned Counsel for the State urged, the trial Court has erred in appreciating the case of Laloo Khan v. M.M. Kamble (supra) in favour of the accused non-petitioners.

7. Similarly, it is contended by learned Counsel for the petitioner, that the learned trial Court has relied upon the case of Uttom Kundoo, reported in ILR Vol. VIII Calcutta 1882, page 635, wherein it is held as under:

we may observe that the prisoners could not be tried at the same trial for receiving or retaining (S. 411) and habitually receiving or dealing in (S. 413) stolen property, these two offences not being offences of the same kind (S. 453, Code of Criminal Procedure). The proper course would have been to try the accused first for the offences u/s 411, and then, if he were convicted, to try him for the offence u/s 413, putting in as evidence the previous convictions u/s 411, and proving the finding of the rest of the property in respect of which no separate charge, u/s 411, could be made or tried by reason of the provisions of Section 453, Code of Criminal Procedure. As, however, the punishment awarded u/s 411 is, in our opinion, sufficient, it is unnecessary to proceed further u/s 413.

8. While inviting attention towards above judgment, it is argued that the facts and circumstances of this case are quite different from that of the present case of the accused non-petitioners. In the case of Uttom Kundoo separate charge u/s 411, IPC could be made or tried by reason of the provisions of Section 453 of the Criminal Procedure Code. Further, it is submitted by learned Counsel for the petitioner that Part VIII and Chapter 33 deal with matter relating to special proceedings and contained Sections 443 to 463 (provisions relating to cases in

which European and Indian British subjects are concerned). It is submitted that Sections 443 to 463 of the old Code have been repealed by Section 3 of the Criminal Law (Amendment) Act, 17 of 1949 and since Section 453 of Criminal Procedure Code has been repealed as a consequence of which no separate charge was held to be made or tried in the case of Uttom Kundoo exists; but the trial Court, relying upon the judgment in Uttom Kundoo's case did not consider the fact, that Section 453, Criminal; Procedure Code was not existing in the year 2002 when the present case was registered, because this section had already been repealed in the year 1949.

9. It is submitted by learned Counsel for the petitioner-State that in the facts and circumstances of the present case the above proposition, held in afore-quoted judgment, will not apply inasmuch as the challan was presented before the Court with evidence of number of cases, at different occasions, at different places had been registered against the accused non-petitioners relating to offences in respect of their dealing in the stolen property; more so, after passing of the order under challenge dated 21-4-2005 non-petitioner accused No. 1 Waman Narayan Gheeya has been convicted by the Judl. Magistrate, 1st Class, Bhanupura (District Mandsores) for offence u/s 411, IPC and sentenced to rigorous imprisonment for three years and a fine of Rs. 1,000/- vide judgment dated 24-2-2006.

10. Likewise, learned Counsel for the petitioner submitted that in another case in CRNo. 146/2003, Police Station Vidhyadhar nagar, wherein challan was filed against non-petitioner accused Waman Narayan Gheeya and others and along with other charges, charge u/s 413, IPC is also framed, the trial is pending before the Court of learned Addl. Sessions Judge (Fast Track) No. 1, Jaipur in Sessions Case No. 41/2003, State v. Waman Narayan Gheeya. In one more case pending against non-petitioner No. 1 in the Court of Addl. Sessions Judge (Fast Track). Chittorgarh in Sessions case No. 130/2003, charges were framed for offence u/s 411, 413 and 120B, IPC against which S.B. Criminal Revision Petition No. 310/2004 was filed by the non-petitioner accused and the said revision petition was dismissed on 26-5-2004 and non-petitioner No. 1 is facing trial.

11. It is vehemently contended by learned Counsel for the State that a list of cases was brought on record and it was submitted before the Court that at different places, on different occasions, cases had been registered against the accused in respect of the same alleged offence, therefore, the trial Court seriously fell in error in not appreciating that u/s 413, IPC an isolated case of habitual dealing in stolen property, if so unravelled in the course of investigation, may too be tried without reference to previous conviction of the accused u/s 411, IPC. It is vehemently urged by the learned Counsel that it is settled proposition of law laid down in catena of judgments that at the stage of framing charge trial Court is not required to marshal material on record but has to prima facie consider whether there is sufficient material against the accused in respect of the charge levelled and the conclusion about inadequacy of evidence, at the stage,

against the accused is premature assessment of evidence and not proper at that stage. He contended that even strong suspicion about commission of offence is sufficient for framing of charge.

12. Per contra, while supporting the order passed by the trial Court, it is contended by learned Counsel for the non-petitioners, Shri Alok Sharma that in this case the learned trial Court has rightly discharged the non-petitioners from the offence u/s 413, IPC with regard to arguments" advanced by the learned Addl. Advocate General for applicability of the judgment in Uttom Koondoo's case, it is submitted by learned Counsel for the non-petitioners that in that case it has been held that the accused cannot be tried at the same trial for offence u/s 411, IPC on the one hand and Section 413, IPC on the other. He argued that the logic of the judgment lies in such a trial entailing a contravention of the then subsisting Section 453 of the Criminal Procedure Code 1872. It is submitted that Criminal Procedure Code, 1872 was substituted by the Criminal Procedure Code, 1898, whereunder Section 453 of the Code of 1872 stood equal to Section 234 of the Code of 1898. Upon subsequent substitution of the Code by Criminal Procedure Code 1973, Section 234 of the Criminal Procedure Code, 1898 stood equated with Section 219 of the Criminal Procedure Code, 1973. It is, therefore, submitted by learned Counsel for the non-petitioners that statement of law in Uttom Koondoo holds good as of today. According to him, therefore, the trial Court has rightly discharged the non-petitioners for offence u/s 413, IPC.

13. It is contended that in the present case challan was filed and along with challan information with regard to pendency of other cases was also given. Learned Counsel for the non-petitioners submitted that it is trite law that the case material in one criminal case cannot be duplicated or constituted case material in another case, therefore, the learned trial Court has rightly discharged the non-petitioners for offence u/s 413, IPC. He placed reliance upon the judgment of the Supreme Court in the case of Mitthulal and Another Vs. The State of Madhya Pradesh, , wherein, vide para 4, it is observed as under:

It is difficult to comprehend as to how the High Court could decide the appeal before it by taking into account evidence recorded in another case what is loosely called a cross case. It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at the decision. Even in similar cases this cannot be done unless the parties are agreed that the evidence in one case may be treated in the other case, much more so in criminal cases, this would be impermissible. It is doubtful whether evidence recorded in one case can be treated as evidence in the other even with the consent of the accused but here there was clearly no consent of the appellant to the evidence recorded in the cross case.

14. It is contended by learned Counsel for the non-petitioners that the Code of Criminal Procedure follows the rule of equity and logic and disbars parallel trials in respect of respective instances. It is argued that for this reason Section 186, Cr. P.C. provides that in the event of two or more Courts taking cognizance of the

same offence, the High Court should decide the question as to which of such Courts would continue with the trial entailing the discontinuance of the trial elsewhere. He submitted that the accused are subjected to a trial in respect of the various challans referred to in the charge-sheet in respect of which cognizance has been taken by the respective Courts. Therefore, according to him, in respect of one set of allegations a person should not be prosecuted in two jurisdictions. While arguing upon the facts of the case, it is vehemently contended by learned Counsel for the non-petitioners that at the time of framing charge and deciding the matter, the Court is only required to consider the evidence which is on record and filed along with the challan.

15. It is contended by learned Counsel for the non-petitioners that as per Section 218, Cr. P.C. which essentially provides for the general principle that there shall be a separate trial for each charge. The exception is where the accused requests for joinder of charges by way of an application to the trial Court which finds that a joint trial of charges contrary to the general principle enunciated in the main part of Section 218(1), Cr. P.C. will not be to the prejudice of the accused. It is further contended that the learned trial Court has rightly considered the judgment in the case of Uttom Koondoo in which it has been held that the accused cannot be tried for the same set of allegations for offence u/s 411, IPC on the one hand and, on the other hand, for offence u/s 413, IPC.

16. It is further submitted by learned Counsel for the non-petitioners that having enunciated with clarity the issue of misjoinder in the event an offence u/s 411, IPC were to be tried along with offence u/s 413, IPC, in its special facts, the Court was pleased to hold that subsequent to a conviction u/s 411, IPC a trial for an offence u/s 413, IPC could be initiated with the previous conviction u/s 411, IPC supplying material to establish habit as required u/s 413v IPC. It is submitted that the enunciation of law in Uttom Koondoo's case is how a misjoinder of a trial would ensure in the event an offence u/s 411 and Section 413, IPC were to be tried together.

17. It is submitted by the learned Counsel for the non-petitioners that in any event the petitioner State is seeking to agitate the present revision petition for framing of charge u/s 413, IPC against the non-petitioner accused in spite of a charge u/s 380, IPC already having been framed against the non-petitioners. Such a course would lead to an illegality and contradiction plain for its transparent absurdity. It is submitted that admittedly the non-petitioner accused have inter alia been charged for offence u/s 380, IPC and challenge to the said charge before this Court has failed in S.B. Criminal Revision Petition No. 4146/2005 (DR-J) vide order dated 2-3-2006 and this Court has upheld the said charge along with the charges under Sections 457, 411 and 120B, IPC. It is pointed out by the learned Counsel for the non-petitioners that the said revision petition was filed by the non-petitioners against the order impugned. It is contended by learned Counsel for the non-petitioner accused that a person who himself commits the theft cannot be guilty of charge of receiving stolen property.

It is further contended that the whole case set up before the trial Court lacked in each of the ingredients for making out a charge for offence u/s 413, IPC. It is emphatically pointed out that most important of all the facts alleged is that the FIR lodged at police station Mandar relates to a single property.

18. The contention of the non-petitioner with regard to S.B. Criminal Revision Petition No. 310/2004, decided on 26-5-2004, is that charges in each case are framed in the facts of the case and framing of charges in a different case does not automatically entail framing of similar charges in another case. In the instant case, the learned trial Court has framed charge inter alia u/s 380, IPC against the non-petitioners and that order has been upheld by this Court in the aforesaid S.B. Criminal Revision Petition No. 4146/2005 (DR-J) on 2-3-2006, therefore, in view of the judgment of the Supreme Court, reported in V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, an accused cannot be guilty both of theft and of receiving stolen property or its aggravated form u/s 413, IPC. It is also argued that as per decision of the Supreme Court, contradictory charges are impermissible in law. Learned Counsel for the non-petitioners lastly submitted that there is no evidence with regard to habituality of the non-petitioners. According to him, in this particular case, the only allegation is for theft of one idol of Lord Mahadev and Parvati, therefore, no interference is required in the present case.

19. I have considered the rial submissions advanced from both the sides.

20. First of all the proposition upon which the learned trial Court has discharged the accused non-petitioners from offence u/s 413, IPC is required to be considered. The learned trial Court has relied upon the judgment, reported in 1882 Vol. VIII ILR Calcutta, p. 635. I have carefully perused the reported judgment. By the said judgment, the Calcutta High Court decided the appeal against conviction and, at that stage, the facts and circumstances obtaining in the case were considered. In that case, prisoners Uttom Koondoo and Krishno Moni Telani were held to be guilty for offences specified in the first seven headings of the charge that they dishonestly retained stolen property belonging to Nobin Ghose, Mudun Shaha, Meer Jhan, Sonatun Ghose, Naba Kumar Chatterjee. Tamizudden, and Porashoola, knowing or having reason to believe the same to be stolen and thereby committed an offence punishable u/s 411, IPC. The trial Court directed that Uttom Koondoo be sentenced to rigorous imprisonment for five years and Krishno Moni Telani to rigorous imprisonment for three years. Further, Uttom Koondoo was sentenced to pay fine of Rs. 100, and, in default, to suffer rigorous imprisonment for one year.

21. In appeal, the Calcutta High Court held that there is no finding or sentence u/s 413, IPC. The Sessions Judge erroneously speaks of the "seven headings of the charge". There were seven distinct charges, not seven headings of one charge. Upon conviction on a single charge u/s 411, IPC, three years is the maximum term of imprisonment that could have been directed. Regard being had to the provisions of Section 453 of the Code of Criminal Procedure, the prisoner could

not have been charged and tried at the same time for more than three offences of the same kind. It was held that the Sessions Judge was, therefore, wrong in trying the seven charges together. But this irregularity was not complained of and It does not appear that the irregularity had occasioned failure of justice either by affecting the due. conduct of the prosecution or by prejudicing the prisoners in their defence.

22. The Calcutta High Court, therefore, thought it unnecessary to set aside the proceedings of the Sessions Judge and direct a new trial. But the conviction and sentence was set aside and, the prisoners were convicted upon the three charges concerned with the property of (i) Nobin Ghose, (ii) Meeajan, and (iii) Porashoola. For the first and second offences the prisoners were sentenced each to one year's rigorous imprisonment in respect of each charge. For the third offence, Uttom Koondoo was sentenced to three years' rigorous imprisonment and Krishno Moni Telani to one years' rigorous imprisonment and sentence of fine was not thought to be necessary.

23. While deciding the said appeal in the above manner, the Calcutta High Court observed that the prisoners could not be tried at the same trial for receiving or retaining (S. 411) and habitually receiving or dealing in (S. 413) stolen property, these two offences not being offences of the same kind (S. 453, Code of Criminal Procedure). The proper course would have been to try the accused first for the offences u/s 411, and then, if he were convicted, to try him for the offence u/s 413, putting in as evidence the previous convictions u/s 411, and proving the finding of the rest of the property in respect of which no separate charge, u/s 411, could be made or tried by reason of the provisions of Section 453, Code of Criminal Procedure. It was further held that; since punishment awarded u/s 411 was sufficient it was unnecessary to proceed further u/s 413.

24. It is thus clear that it is nowhere held that at the time of initiation of the trial, no charge can be framed for different offences. Ratio of the above judgment is that first if the prosecution proves its case with regard to offence u/s 411, IPC and places on record repetition of the said offence, then, punishment u/s 413, IPC can be awarded. However, the above judgment does not speak that no charge can be framed at the time of initial stage of the trial.

25. The reason given in the impugned order is also not cogent. Moreover, as of today, non-production of any evidence with regard to conviction u/s 411, IPC does not exist because, after passing of the impugned order dated 21-4-2004, non-petitioner No. 1 was convicted by competent criminal Court of Judl. Magistrate (First Class), Bhanupura (Distt. Mandsore) in criminal case No. 380/2003 on 24-2-2006, which is one of the cases mentioned in the charge-sheet of the present case. Therefore, the judgment in Uttom Koortdoo's case was not considered by the trial Court in proper perspective.

26. The reason for inserting Section 413 by the legislature is clear from the language of the section. The legislature purposely enacted knowing it well that

there is already . Section 411 in respect of offence of dishonestly receiving stolen property knowing it to be stolen. The legislature inserted Section 413 in the Indian Penal Code whereunder it is provided that if a person is habitually dealing in stolen property, he will be charged for offence u/s 413, IPC. The terms of the provision make it clear that "habitually dealing" means there is evidence on record that there are other instances other than the present instance of the accused found to be indulging in the act and he is facing trial, then, it can be said that Section 413, IPC is attracted.

27. It is necessary to peruse the record of the case. In this case, after investigation when challan was filed, admittedly, a list of cases was given which is part of challan. According to the charge-sheet there is evidence of as many as ten cases under the record. It is not disputed by learned Counsel for the non-petitioners that these cases are pending in different Courts. Therefore, it is important evidence on record that besides the present case, there are more than ten cases pending in various Courts of different states. The pendency of various cases of the like offence is not disputed before me. It may however, be seen whether the trial Court has rightly appreciated the judgments referred to in the impugned order.

28. With regard to the proposition of law held good in the case of Lalookhan Haideralikhan Vs. M.M. Kamble, Special Executive Magistrate, Byculla Division, Bombay and others, it is obvious that under both Sections 110(a) and 111 of the Code of Criminal Procedure the Executive Magistrate proceeds on the basis of information and, since the measure provided is preventive, therefore, the same proposition cannot be applied equating the proceedings to the proceedings of trial. Moreover, the Court specifically observed that the action would have been fully justified if on earlier occasion the charges envisaged under various clauses of Section 110 of the Code had been established in the Court, on the strength of proof of the past incidents falling within the purview of various clauses of Section 110 of the Code and to prevent the accused from committing similar offences preventive action can be taken. That is not the position herein. In the present case, the controversy specifically relates to habitual dealing by the accused in stolen property and the prosecution, with the aid of past conviction and past incidents, set out the charge alleging offence u/s 413, IPC. Therefore, the judgment in the case of Laloo Khan (supra) is not aptly relied upon by the trial Court.

29. Turning to the judgment reported in 2003 Cr LJ 4050, it is observed that in the present case the prosecution produced evidence for framing the charge u/s 413, IPC. At this stage, it could not be the evidence for proving the charge and, therefore, the evidence produced to show the habitual dealing by the accused in stolen property only required to be considered for arriving at a prima facie conclusion as to framing of charge u/s 413, IPC strangely enough, the trial Court has observed that only one idol is alleged to be stolen in the present case. However, the investigating agency at the time of filing the challan produced list

of cases pending against the accused for similar type, of-fences. Now, after passing of order under challenge dated 21-4-2005 the non-petitioner was convicted for offence u/s 411, IPC by the Judl. Magistrate (First Class), Bhanupura (Distt. Mandsoore) in the State of Madhya Pradesh vide judgment dated 24-2-2006, therefore, there is occasion for framing charge u/s 413, IPC against the accused.

30. It is also obvious that the contention of the petitioner State is also not tenable that Section 453 was repealed and that situation does not exist today. After subsequent amendment, at present. Section 219 is very much analogous to Section 543 of the old Code. Therefore, this argument of the State is not acceptable but, at the same time, it is clear from the above discussion that case of Uttom Koondoo is not even applicable in the present case because the facts were altogether different and, here, in the present case, along with charge-sheet number of documents with regard to pendency of similar type of cases was produced before the Court along with challan which is part of challan and can be taken into account for the purpose of framing charge.

31. Perusal of the impugned order reveals that at the time of framing charge the Court was only required to see the evidence for the purpose of framing charge; but, the learned trial Judge has adjudicated upon the matter for the purpose of offence u/s 413, IPC.

32. In this view of the matter, it can very well be said that at the time of framing charge, the learned trial Court, if evidence is on record with regard to number of cases pending or, in which the person accused is convicted, can frame charge for offence u/s 413, IPC along with Section 411, IPC; but, at the time of final adjudication, i first of all, finding with regard to conviction for offence u/s 411, IPC is required to be arrived at; and, thereafter, for the purpose of convicting the accused for habitually dealing in stolen property, after recording finding of guilt sentence can be awarded u/s 413, IPC on the basis of established habitually dealing in stolen property and the prosecution is required to prove the regular indulgence with regard to offence u/s 411, IPC by way of producing the required evidence. Thus, at the stage of framing charge. It is not necessary that there must be conviction or finding against the accused for the purpose of framing charge u/s 413, IPC.

33. It may also be observed that charge can be amended at any stage of the trial and, if the list of cases which is filed along with the challen with regard to pendency of other cases of commission of offence u/s 411, IPC is submitted by the investigating agency and out of which the accused person is convicted by a criminal Court in any of those cases, then obviously charge u/s 413, IPC would be made out. In the present case, the non-petitioner is facing trial for offence u/s 413, IPC in two cases and in one case he was convicted by the Judl. Magistrate, Bhanupura vide judgment dated 24-2-2006, therefore, there is sufficient material and, according to law also, the charge for offence u/s 413, IPC is required to be framed against the accused non-petitioners.

34. In the facts and circumstances of the case, it is a fit case for direction to the trial Court to frame charge u/s 413, IPC. Accordingly, the petition is allowed. Impugned order dated 21-4-2005 is quashed to the extent whereby accused non-petitioners have been discharged for offence u/s 413, IPC. The trial Court is directed to frame charge for offence u/s 413, IPC also and proceed with the case.