

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL REVISION APPLICATION NO. 472 of 2022**

STATE OF GUJARAT  
Versus

AJAYBHAI CHAMPAKLAL CHAMPANERI

Appearance:

MR HARDIK SONI, APP for the Applicant(s) No. 1  
for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR. JUSTICE B.N. KARIA**

**Date : 04/05/2022**

**ORAL ORDER**

By filing present application under Section 397 read with Section 401 of the Code of Criminal Procedure, applicant-State has requested to quash and set aside the order dated 23.07.2021 in Sessions Case No. 23 of 2021 by learned 5<sup>th</sup> Additional District Judge, Bhavnagar and stay the implementation of the said order till hearing and final disposal of the present application.

Heard learned APP for the applicant-State.

It was submitted by learned APP for the applicant-State that the learned Trial Court ought to have considered that this is not a solitary incident where the name of the respondent accused were reveal as a purchaser of the stolen article. In other offences also the respondent accused was charge sheeted as purchaser of the stolen article. Thus, the subsequent

insertion of Section 413 and 120(B) of Indian Penal Code are just and proper and respondent did not deserve any discharge. The offence punishable under section 413 is the serious in nature and it could be punishable up to the life imprisonment. The section 413 of Indian Penal Code speaks that “Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with 1[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”. That, it is mandatory to maintain the records of purchase and sale of the Gold & Silver ornaments, the respondent had admitted that he had purchase the gold from the co-accused namely Shaileshbhai Rasikbhai Dhandhukiya, there were no entry or other account related record were produced by the responded accused along with the discharge application to show the bonafide business transaction. Every gold smith are duty bound to maintain purchase and sells records. In absence any statutory records, there can be a very strong suspicious about the knowledge on the part of respondent accused in purchasing the silver and Gold biscuits even after knowing that there are no sufficient documents of ownership of said objects. It was requested to quash and set aside the order dated 23.07.2021 in Sessions Case No. 23 of 2021 by learned 5<sup>th</sup> Additional District Judge,

Bhavnagar.

After hearing learned APP for the applicant-State, impugned judgment and order passed by the trial court, it appears that as per the case of the prosecution, accused nos. 1 to 4 had committed theft by house breaking between sunset to sunrise and accused nos. 5 to 6 were alleged that they received stolen property knowing it to be stolen and they are habitual offender. In the beginning, the offence was registered against unknown persons. Thereafter, during the investigation, names of the accused nos. 1 to 4 were disclosed and they were found with stolen articles. As per the case of the prosecution, accused no.5 had received such stolen ornaments etc., from accused no.4 and got it converted into gold biscuit (dhaliyo). It was further alleged by the prosecution, accused no.5 had given that gold biscuit to accused no.6-respondent no.1 herein. Further it appears that no recovery or discovery was made from the accused no.6. Further it transpires that accused nos. 5 and 6 are goldsmiths by occupation. There is nothing on record to show that the accused no.6-respondent no.1 herein was having any mens rea or knowledge about the gold smith. From the report submitted under Section 173 of the Code of Criminal Procedure, there is no evidence produced by the prosecution against the accused no.6-respondent no.1 herein would suggest the involvement of the accused no.6-respondent

no.1 herein in the crime. Further it appears that accused no.5 had disclosed the name of accused no.6-respondent no.1 herein that he had received the biscuit made from stolen from accused no.5. Except this, no incriminated statement of co-accused, nothing was brought on record against the accused no.6-respondent no.1 herein.

The provisions of Section 24 to 26 of the Evidence Act clearly restricts to accept such confession made to the court to have been made or cause by any inducement, threat or promise having reference to the charge against the accused persons. Section 25 of the Evidence Act also provides that no confession made to the Police shall be proved as against the persons accused in the offence. Section 26 of the Evidence Act provides that no confession made by any person while he is in custody of the Police officer unless it is made in the immediate presence of a Magistrate shall be proved as against such person.

Trial Court has discussed the judgment of this Court as well Hon'ble Supreme Court of India reported in (2012)13 SCC 614 in para 10.

Further the applicant was arrested on the basis of the statement of the co accused and nothing is produced on record by the prosecution to involve him in the offence. That, he is connected with the crime. Statement of the co-accused or admission of the co-accused cannot be proved in evidence

against the maker of it and it cannot be sole base to convict any person.

Thus, order of the trial Court cannot be said to be illegal and perverse, and therefore, present application preferred by the applicant-State requires dismissal without issuing any notice to the respondents, and accordingly, present application stands rejected.

K. S. DARJI

(B.N. KARIA, J)

