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**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND  
C.J.M., AT CHIKKAMAGALURU**

**Present:- SRI NANDEESHA R.P,**

B.A. (Law), LL.M.,  
Prl. Senior Civil Judge and C.J.M.,  
CHIKKAMAGALURU.

**C.C.No.1448/2026**

**DATED THIS THE 7<sup>th</sup> DAY OF OCTOBER 2022**

**Complainant:** State by Town Police Station,  
Chikkamagaluru.

(Represented by APP)

**-Vs-**

**Accused:** Patan @ Bakery Eliaz and others

**ORDER ON APPLICATION FILED U/S 239 OF CRPC.**

When the matter is at the stage of hearing before charge, the accused no.11 by name C.B. Naveen Kumar has filed this application submitting that the accused is innocent, he is utter stranger to the

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case on hand, but he has falsely implicated by the Investigation Officer showing false recovery. He submits that he has been charge sheeted only on the basis of voluntary statement of accused no.7, who has received gold from accused no.13 who is also alleged to be the receiver, in fact accused no.7 alleged to have sold 253 grams of gold to CW.24 who is arrayed as the witness, has alleged to be sold 64 grams of gold to one Gurumurthy, who is not at all a witness in the charge sheet, whereas the accused no.11 is allegedly said to have been received 50 grams of gold, without there being any materials. He submitted that on the basis of voluntary statement of accused, the Investigation Officer could not implicated the co-accused without any independent evidence towards offence. He submits that the property alleged to have been stolen as depicted in the complaint are not tallies with the properties shown in P.F. and the properties alleged to be recovered from the accused, the property stolen is entirely

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different from the property alleged to have been recovered from the accused, the properties stolen from the shop of the complainant is gold and silver articles, but the property alleged to have been recovered from the accused no.11 is a raw gold. He submits that the charge sheet materials do not disclose any ingredients of commission of offences punishable under Section 411 of IPC, except the recovery mahazar and voluntary statement of accused there is no other material on record to hold that the accused no.11 has received the stolen property.

2. The accused no.11 further submits that he is a reputed gold smith and a jeweler running his shop at Chikkaballapura for the past 20 years, he is the president of Vishwakarma Gold Smith Workers. He submitted that there are no materials in the charge sheet to hold that he had received the property with dishonest intention knowingly that it was stolen property.

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3. On the other hand the learned APP has filed objection to this application submitting that the Investigation Officer has recovered the stolen properties from the possession of the accused no.11, which shows that the accused has committed the offence punishable under Section 411 of IPC, the materials in the charge sheet prima-facie show that the accused no.11 has committed the alleged offences. He further submits that since there are prima-facie materials against the accused no.11, without going for trial the accused cannot be discharged. On these grounds he prays to dismiss the application.

4. Heard the arguments of learned counsel for the accused no.1 and learned APP.

5. Now the points that arise for consideration of this court are:

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- 1) Whether the accused no.11 is entitled for discharge under Section 239 of Cr.P.C.?
- 2) What order?

6. After hearing the arguments of both sides and perusal of the materials available on record, I have answered the above points as under;

Point No.1 : In the Affirmative  
Point No.2 : As per final order for the following:

### **REASONS**

7. **POINT No.1:** The investigation officer of Town police Station, Chikmagaluru has laid this charge sheet against the accused No.1 to 13 for the offences punishable under Sections 457, 380 r/w 411 of IPC. The allegations made by the investigation officer against the accused No.11-C.B. Naveen Kumar is that he has

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received/purchased the stolen properties from the accused No. 7- Nagendrakumar. The learned counsel for the accused No.11 has argued that the property alleged to be recovered by the accused No.11 is different from the property stolen from the shop of the complainant, therefore accused cannot be chargesheeted with the offence punishable under Section 411 of IPC. Since, the case of the prosecution is that the accused after committing theft of the golden jewellerys, they have melted them and solidified and sold them to several persons including the accused No.11. When that being the case of the prosecution, the contention of the accused No.11 that since the prosecution alleged that the accused No.11 had received the ingot, he cannot be charged with the offence punishable under Section 411 of IPC, cannot be accepted.

**8.** If, upon due consideration of the police report and all the documents sent under Section 173 along with examination of the

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accused, if any, the court thinks obligatory and after hearing prosecution as well as accused, the court considers the charge to be groundless against the accused, he shall be discharged and also record the reasons for doing so. The regular procedure of law is that the police after completing its investigation files the final report/charge-sheet under Section 173 of the code. Thereafter trial against the accused commences by the concerned Court. However, Section 239 and 227 of Cr.P.C, provided that before the charges are framed against an Accused person, he can be discharged.

9. As aforesaid, as rightly argued by the learned counsel for the accused No.11, to constitute the offence under Section 411 of IPC, there should be theft of some property, accused has received or retained such property dishonestly and knowing or having reason to believe that such property was stolen. After careful perusal of the final report and the mahazar alleged to be conducted while

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recovering the ingot from the possession of the accused No.11, there is no sentence or allegation that the accused had dishonestly received the said ingot/raw gold from accused No.7 knowing that or reason to believe that it was stolen property. Though the investigation officer has said to have recovered the ingot on the basis of voluntary statement of accused No.7, a perusal of the voluntary statement of accused No.7 is also silent about dishonest intention. The accused No.7 has not stated in his voluntary statement that he informed the accused No.11 that it was stolen by him and the accused No.11 had received/ purchased the ingot knowing that it was stolen. Thus, the necessary ingredients to constitute the offence of Section 411 of IPC are absent in the charge sheet, therefore the accused No.11 is entitle for discharge. Hence, I have answered above point in the **Affirmative.**

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10. **POINT No.2** :- For the reasons given and discussion made above, I proceed to pass the following;

**ORDER**

The application filed by the accused No.11 under Section 239 of Cr.P.C., is hereby allowed.

Consequently, the accused is discharged from the allegation of offence punishable under Section 411 of IPC.

*(Dictated to the Stenographer, transcribed by her, the transcript corrected by me and then pronounced in the open Court on this the 7<sup>th</sup> day of October 2022).*

Sd/-  
**(Nandeesh R.P.)**  
**Prl. Senior Civil Judge & CJM,**  
**Chikkamagaluru.**

BSM/-