



IN THE COURT OF THE PRINCIPAL DISTRICT &
SESSIONS JUDGE, UDUPI AT UDUPI.

PRESENT

Sri K.S. Gangannavar, B.Com., LLB., (Spl.)
Principal District & Sessions Judge, Udupi

Dated this 10th day of July, 2026

SESSIONS CASE No.52/2025

Complainant : State of Karnataka through
SHO. Manipal Police Station.
(By learned Public Prosecutor, Udupi)

/Vs/

- Accused
1. Shodale @ Veluswamy,
S/o Marimutthu,
Aged about 52 years
 2. Kalimuthu, S/o Velliyappa Thevar,
Aged about 38 years
 3. Doreraju @ Sankarapandy,
S/o Belliyappa Thevar,
Aged about 55 years
 4. Sellas @ Selvakumar S/o Shanmuga,
Aged about 52 years
 5. Velladorai, S/o Kothadai Thevara,
Aged about 41 years

All are R/at Thekku Panavadali,
Panavadali Satram Post,
Shankaramkoyil Taluk,
Tirunelveli District, Tamilnadu

(By Sri Kishore Kumar, Advocate)

**ORDER**

Accused Nos.1 to 4 and 6 facing allegations of the offences punishable under Sections 454, 380 and 413 of IPC in Crime No.137/2006 of Manipal Police Station, have filed this application under Section 227 of Cr.P.C.

2. According to the prosecution, on 27.08.2006, in between 9.30 a.m., and 10.30 a.m., the accused and other accused with common object of committing the theft trespassed into house named 'Ikar', at V.P. Nagar, Shivalli Village of Udupi Taluk i.e., the house of the complainant – Dr. Nayanaz Thomas and committed a theft of gold ornaments like chains and bangles kept in the cupboard. It is further alleged that the absconding jeweler by name Armugam - owner of Umashanker Jewelry at Shankarakoyil, Thirunalveli, Tamilnadu was habitually purchasing the stolen valuables from these accused persons.

3. In support of the relief, applicants/accused have contended that during the course of investigation, police could not trace the accused and on 23.12.2006



submitted 'C' Report before the jurisdictional court. On 30.10.2008 accused persons were arrested and after investigation, charge sheet for the offence under Section 454, 380 and 413 of IPC is filed and registered as C.C.No.105/2009. In fact, no stolen articles are recovered from the accused persons as to prove offence under Section 380 and 454 of IPC. There is no material to frame charge under section 413 of IPC since the alleged receiver of stolen articles i.e., owner of Umashankar Jewellery has not been arrested. Accused No.7 was discharged by this court by order dated 15.04.2016 in S.C.No.19/2015. Hence, prayed to discharge them as well.

4. Learned Public Prosecutor filed objections conceding that prima facie there are no materials to prove offence under Section 380 and 413 of IPC in view of failure on the part of the police to recover stolen articles and to arrest the receiver of stolen property. However, in view of the confession statement offered by accused themselves, they have committed lurking



house trespass by breaking the lock put to the house of complainant. Therefore, accused persons cannot be discharged of offence under Section 454 of IPC triable by Magistrate. Instead, case can be made over to jurisdictional Magistrate with a direction to frame charge under Section 454 of IPC and to proceed with the trial. Hence, sought to dismiss the application.

5. Heard both sides. Perused the materials.

6. Point that arise for consideration is:

Whether the accused/applicants
have made out grounds for
discharge?

7. Above point is answered in the affirmative

for the following:

REASONS

9. The accused persons are before this Court only for the allegations arising under Section 413 of the IPC. It is also disclosed from the charge sheet that the receiver of the stolen property is not before the Court. It is reported that the receiver is absconding. Therefore, even though the charge sheet is filed for the



offence under Section 413 of the IPC, such proceedings cannot be continued at this stage in view of the non-recovery of the stolen property and the absconding of the receiver of the stolen property.

10. Section 413 of the IPC deals not merely with receiving stolen property, but with habitually dealing in stolen property. Such habit, by its very nature, includes transactions involving the receipt of stolen property either repeatedly from one person or even on a single occasion from several persons. Such habitual dealings in stolen property are not disclosed in the present case. The habitual receiver is not before the Court. The definite allegation against the accused persons is only that they disposed of the stolen property. As observed above, there is no recovery either from the person alleged to have received the stolen property or at the instance of the accused persons. Therefore, it is clear that sufficient material to proceed with the trial for the offence under Section 413 of the IPC is not available. On this basis, the accused persons deserve favourable consideration.



11. It is the definite case of the prosecution that, in view of the complaint, there is material to consider the offences under Sections 454 and 380 of the IPC. It is clear that the offence under Section 454 of the IPC, namely lurking house-trespass, is different from criminal trespass or house-breaking. Because of the definite intention and modus operandi involved in the offence, the quantum of punishment is comparatively higher than that of house-trespass or house-breaking. Mere quantum of punishment by itself does not establish the commission of the offence. Proof requires definite and independent material. Even without recovery of the stolen articles, the accused persons have been charge-sheeted by the police solely on the basis of their voluntary statements.

12. It is needless to say that a voluntary statement made before the police is, prima facie, inadmissible unless it is accompanied by the discovery or recovery of the articles which are either the subject matter of the offence or connected with the commission of the offence. In other words, based on the voluntary



statements of the accused persons, the Investigating Officer ought to have recovered either the stolen articles or the articles used in the commission of the offence. In the absence of either, the alleged confession becomes inadmissible. In other words, such statements of the accused amount to self-incriminating material without proper corroboration, which is contrary to the provisions of the Evidence Act. Therefore, the mere voluntary statements of the accused persons while in police custody, without any consequential recovery, are nothing more than a tool to file the charge sheet. Such an approach reflects negligence on the part of the Investigating Officer. In other words, the accused persons have been sought to be prosecuted even in the absence of sufficient material. Such an approach cannot be encouraged. Consequently, the above point is answered in the affirmative. Hence, the following:

ORDER

The application U/Section 227 of Cr.P.C., filed by accused Nos.1 to 4 and 6 is hereby allowed.



Accused Nos.1 to 4 and 6 are
discharged of the offences punishable under
Section 380, 454 and 413 of IPC.

(Dictated to the Stenographer Grade-I, transcript
revised/corrected, then pronounced in the open court on
10th day of July, 2026)

(K.S. Gangannavar)
Principal District & Sessions Judge
Udupi.