

and that chargesheet would also not be filed in the meanwhile. The interim order has continued to operate in this petition. The reply affidavits were placed on record whereby the respondent-State and the original informant i.e. respondent No. 3, now represented by his legal heirs, opposed the prayers made in this petition.

3. The aforesaid FIR was registered on the basis of the statement given by the original informant, alleging that the Petitioners broke open the lock of a room in a premises which was in possession of the informant. According to the informant, this gave rise to commission of the aforesaid offence on the part of the petitioners. The incident took place on 17th November 2013 allegedly between 7.00 to 7.30 p.m.

4. The record shows that during the pendency of this petition, the original petitioner No. 1 expired. The other petitioners are the remaining accused persons and they are the widow and the children of the original petitioner No. 1. In view of the fact that petitioner No. 1 expired during the pendency of this petition, his name is deleted from the array of parties.

5. We have heard the learned counsel for the parties at length.

6. Mr. Bhadkamkar, learned counsel appearing for the petitioners submitted that the instant petition deserves to be allowed for the reason that, even if the allegations leveled

against the petitioners are to be taken on the face value, the essential ingredients of the offence of criminal trespass defined in Section 441 of the IPC r/w house trespass under Section 442 thereof, are not made out and hence the FIR deserves to be quashed. In that regard, the learned counsel appearing for the petitioners referred to the aforesaid provisions and submitted that the essential ingredients of the said offences under Sections 441 and 442 of the IPC require an intention on the part of the accused persons to intimidate, insult or annoy the person in possession of the property in which entry is made unlawfully by the accused persons. It was emphasized that the dominant or main intention of the action ought to be to cause such annoyance, insult or intimidation.

7. By referring to the documents placed on record, it is submitted that the petitioners had knocked the doors of the Civil Court in respect of the dispute between them and the original informant in the present case. It was submitted that the original petitioner No. 1 was the nephew of the original respondent No. 3 (first informant) and that they were having a running feud with regard to entitlement in respect of a redeveloped property in the context of a premises in which the parties claimed to be in possession when the redevelopment project was undertaken. It was submitted that the City Civil Court, in a proceeding initiated by the petitioners passed an order on 05th December 2012

allowing a Notice of Motion, thereby directing the first informant to allow the petitioner No. 1 and his family to occupy a particular flat which was given as an alternative accommodation by the developer. The original premises had been demolished and having concluded that the petitioners had made out the *prima facie* case in their favour, such a direction was issued against the first informant. It was emphasized that although in an appeal from order filed before this Court by the first informant, an interim stay of the said direction had been granted, on 12th November 2013, the appeal was dismissed in default and the interim stay granted by this Court was vacated. As a consequence, the order of the City Civil Court passed in favour of the petitioners was revived, and in that context on 17th November 2013 i.e. the date of the incident, the petitioners had merely asserted their right as recognized by the competent Civil Court. In this backdrop, it is submitted that when the incident took place, there was no question of criminal intent on the part of the petitioners, much less any intention to cause annoyance, intimidation or insult to the first informant. It was further submitted that the petitioners merely opened one of the rooms of the aforesaid alternative accommodation and they had placed some of their belongings in the said room when the police came to the spot and allegedly whisked them away, as a consequence of which they could not remain in possession of the said room any longer.

8. It is submitted that such an incident could certainly not lead to the criminal prosecution of the petitioners in light of the orders passed by the City Civil Court. It was further submitted that a purely civil dispute was sought to be given the colour of criminality on the part of the first informant, which ought not to be permitted. Apart from this, it was brought to the notice of this Court that even if the appeal from order was eventually restored and allowed, the suit pending before the City Civil Court was partly decreed by recognizing the right of the petitioners to the redeveloped property as co-tenants in the original premises. It is submitted that this vindicated the stand of the petitioners and thereby further demonstrated that the FIR deserves to be quashed. On this basis, it is submitted the petition deserves to be allowed.

9. On the other hand, Ms Kaushik, learned APP referred to the statement of the first informant leading to the registration of the FIR, contending that at the point in time when the incident took place, the first informant claimed that criminal force was used to break open the lock of the said accommodation. It is further submitted that the fact that the appeal from order had been dismissed in default and the interim stay granted by this Court had been vacated on 12th November 2013, could not be denied. It is submitted that the stand taken by the first informant in the proceeding before the City Civil Court did indicate that prior to

demolition of the original premises, the first informant was residing with the petitioner No.1, thereby indicting that the dispute between the parties appeared to be of civil nature. The learned APP submitted that this Court may pass appropriate orders in the present petition.

10. Mr. U. V. Singh, learned counsel appearing for respondents 3(b), 3(c) and 3(e) vehemently opposed the contentions raised on behalf of the petitioners. It was submitted that after the appeal from order was dismissed in default and the interim order was vacated on 12th November 2013, on 16th November 2013 the petitioner No. 1 had approached the concerned police station seeking protection for breaking open the lock of the said alternative accommodation as per the order passed by the City Civil Court. It was submitted that there was no document on record to show as to whether the police did assist the petitioner No.1 and/or the manner in which the petitioner entered upon the alternative accommodation. It was submitted that these facts clearly show that instead of approaching the concerned Court for execution of the order dated 5th December 2012 passed in favour of the petitioners, the law was taken in their own hand by the petitioners with criminal intent and therefore, the petition deserves to be dismissed. It was submitted that even if, by a recent judgment and order dated 25th September 2025 the City Civil Court has partly decreed the suit filed by the petitioners, on

an application made on behalf of the said respondents, the effect and operation of the same has been stayed. This is a factor that ought to be taken into consideration while disposing of the present petition.

11. Having heard the learned counsel for the rival parties we are of the opinion that before referring to the documents on record and the chronology of events, it would be appropriate to first refer to the essential ingredients of the offence alleged against the petitioners. The FIR was registered against the petitioners for offence under Section 448 of the IPC, which pertains to punishment for house trespass and provides that whoever commits house trespass shall be punished with imprisonment for a term which may extend to one year or with fine, which may extend to Rs.1000/- or with both. The effect of Section 448 of the IPC would arise only if essential ingredients of the offences of criminal trespass and house trespass, as defined under Sections 441 and 442 of the IPC, are made out. The said provisions read as follows:

***“441. Criminal Trespass.-** Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,*

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

***442. House-trespass.-** Whoever commits criminal trespass by*

entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.-The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass."

12. A bare reading of Section 441 of the IPC, which pertains to criminal trespass, would show that its essential ingredients include entry into or upon a property in possession of another person; such unlawful entry or unlawfully remaining in possession of such property is with the intention to commit an offence or to intimidate, insult or annoy any person in possession of the property. A perusal of the aforesaid provision indeed indicates that the dominant or main intention of the accused person must be to cause annoyance, insult or intimidation to the person who is in possession of the property.

13. These ingredients are also required to be satisfied in the context of Section 442 of the IPC, which pertains to house trespass. Thus, the allegations made against the petitioners in the present case ought to at least *prima facie* satisfy the aforesaid essential ingredients of the offences of criminal trespass under Section 441 and house trespass under Section 442 of the IPC.

14. While analyzing as to whether the aforesaid essential ingredients of the said offences are satisfied in the present case,

the chronology of events, which is undisputed, is required to be referred to.

15. It is undisputed that the parties are related to each other. The original petitioner No. 1 is the nephew of the original respondent No. 3 i.e. first informant. It is evident from documents on record that there is a running feud or dispute between the parties with regard to entitlement towards redeveloped property in the light of the original premises being demolished by the developer. While the petitioners claim that they too have a right in the context of the demolished premises as the parties who were living together, the first informant has outright denied such claims.

16. This is not a case where such a dispute has led to the petitioners forcibly entering into the alternate accommodation. The petitioner No. 1 moved the City Civil Court in the context of the aforesaid right being asserted on behalf of the petitioners. This led to the aforementioned order dated 5th December 2012 passed by the City Civil Court, allowing the Notice of Motion moved by the petitioner No. 1, specifically directing the first informant to allow the petitioner No. 1 and his family i.e. the remaining petitioners to reside in the alternative accommodation. The said direction was to be complied within 15 days of the order.

17. The documents on record show that the first informant filed Appeal from Order No.1354 of 2012 before this Court

challenging the said order of the City Civil Court. It is an admitted position that an interim stay was granted in the appeal from order but, it is crucial to note that on 12th November 2013, the appeal from order was dismissed in default and the interim order was also vacated. A logical consequence of the aforesaid event was that the order dated 5th December 2012 passed by the City Civil Court in favour of the petitioners and against the first informant stood revived. As per the said order, the petitioners were entitled to entry into the alternative accommodation i.e. the flat located in Sion, Mumbai.

18. Even according to the first informant, the incident took place on 17th November 2013. At that point in time, there was no interim stay to the order dated 5th December 2012 of the City Civil Court, under which the petitioners were entitled to entry into the said alternative accommodation. The record also shows that the petitioners approached the concerned police station on 14th November 2013 and 16th November 2013 for police protection and if necessary to break open the lock and enter into the alternative accommodation. This further demonstrates that the petitioners were inclined to follow the rule of law as they were entitled to assert the right created in their favour as per the order passed by the City Civil Court on 5th December 2012. We are unable to appreciate the emphasis placed on behalf of respondent No. 3(b), 3(c) and 3(e) that in the absence of a

document on record showing as to the manner in which the police assisted the petitioners or the manner in which they eventually entered upon the alternative accommodation, it has to be presumed that they had reached the alternative accommodation with criminal intent and also with the intention to commit the offence of criminal trespass.

19. We find that in the facts of the present case the dispute between the parties essentially appears to be of civil nature. The petitioners approached the competent Civil Court to assert their rights, thereby demonstrating the fact that they indeed showed their faith in the rule of law. In such circumstances and in the light of an order operating in their favour being asserted by the petitioners, it cannot be held that on the date of incident on 17th November 2013, they reached the alternative accommodation with a criminal intent to commit an offence or that their actions satisfied the essential ingredients of the offence of criminal trespass. This Court is unable to agree with the first informant when it is claimed on his behalf that the petitioners necessarily reached the place of incident i.e. the alternative accommodation with the dominant or main intention of causing annoyance, insult or intimidation to the first informant, who claimed to be in possession of the said property.

20. On the contrary, the documents on record sufficiently demonstrate that the petitioners reached the spot of the incident

in order to assert their right in the alternative accommodation, which had been recognized at a *prima facie* stage by the City Civil Court in its order dated 5th December 2012. The said order specifically directed the first informant to allow the petitioners to occupy and reside in the alternative accommodation. As a matter of fact, the documents on record show that the petitioners were asserting their claim bonafide on the basis of an order passed in their favour by the competent Civil Court.

21. Therefore, the essential ingredients of the offence of criminal trespass under Section 441 of the IPC, and consequently of the offence of house trespass under Section 442 of the IPC are not made out in the present case. Hence, there was no occasion for registration of the FIR under Section 448 of the IPC against the petitioners.

22. The subsequent events during the pendency of this petition also assume significance in the peculiar facts and circumstances of the present case. It is undisputed that by a recent order dated 25th September 2025 the City Civil Court has partly decreed the suit in favour of the petitioners, declaring them to be co-tenants to the extent of ½ share in the aforesaid flat and the first informant has been perpetually restrained from alienating or creating third party rights in any manner in respect of the said flat. Although the effect and operation of the said order has been stayed at the request of the aforesaid respondents in order to

enable them to file an appeal before the competent Appellate Court, that in itself cannot be a factor to dilute the effect of the findings rendered at this stage by the City Civil Court in its order dated 25th September 2025.

23. In this backdrop, we find substance in the contention raised on behalf of the petitioners that a dispute necessarily of civil nature, which has been agitated before the competent Civil Court was sought to be given the colour of criminality by the original respondent No. 3 (first informant). We also find that the petitioners have satisfied one of the categories specifically recognized by the Supreme Court in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.***¹ in paragraph 102(1), wherein it has been held that if the allegations made in the FIR even if taken at their face value do not *prima facie* constitute any offence or make out the case against the accused persons, such an FIR deserves to be quashed.

24. In view of the discussion made hereinabove, we reach the conclusion that the petitioners in the present case have been able to support their assertion that the FIR deserves to be quashed in the light of the fact that the basic and essential ingredients of the alleged offence itself are not made out even if the allegations leveled against the petitioners are taken at their face value.

25. In view of the above, the petition is allowed in terms of

¹ 1992 Supp (1) SCC 335

prayer clause (a). Consequently, the FIR No 378 of 2013 dated 17th November 2013, registered at Sion Police Station against the petitioners is quashed.

26. Pending applications also stand disposed of.

(MANJUSHA DESHPANDE, J.)

(MANISH PITALE, J.)