

CRM-M-42293 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-42293 of 2014

Date of Decision: 26.10.2018

Jagir Singh and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. A.P.S. Deol, Sr. Advocate, with
Mr. Himmat Deol, Advocate, for the petitioners.
Mr. Amandeep S. Gill, DAG, Punjab.
Mr. Navkiran Singh, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. accused have laid challenge to order dated 01.11.2014 (Annexure P-9) of the revisional Court, setting aside order of the trial Court dated 09.10.2013, whereby application of the complainant under Section 216 Cr.P.C. for addition of charge under Section 458 IPC, was rejected.

Briefly, on 25.08.2003 i.e. around more than 15 years ago FIR No.349 under Sections 323, 506, 447, 427, 148 and 149 IPC was registered against 12 persons at Police Station Mohali. They joined investigation. Final report under Section 173(2) Cr.P.C. was filed against the petitioners in the year 2004. Trial against them remained pending for another seven years for the reasons best-known to the parties or the trial Court. Finally on 13.05.2011,

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petitioners were charge-sheeted under Sections 148, 149, 452, 506, 447, 323 read with Section 149 and 427 IPC. Thereafter, prosecution concluded its evidence. Statements of petitioners under Section 313 Cr.P.C. were recorded. However, at the final stage of the trial, complainant moved application under Section 216 Cr.P.c. for framing additional charge against the petitioners under Section 458 IPC for lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint. Trial Court, after hearing both the sides, rejected said application vide order dated 09.10.2013. However, in revision filed by respondent No.2, revisional Court , setting aside aforesaid order of the trial Court, accepting application of respondent No.2 under Section 216 Cr.P.C., directed the trial Court to frame additional charge under Section 458 IPC vide impugned order dated 01.11.2014.

Learned counsel for the petitioners, referring to Sections 443 and 445 IPC, which define lurking house-trespass and house breaking, respectively, urged that to charge-sheet a person under Section 458 IPC, ingredients of both the aforesaid Sections are necessarily required to be fulfilled. Since as per version of the complainant, ingredients of Sections 443 and 445 IPC are not fulfilled, therefore, revisional Court overlooking this aspect of the matter has erroneously directed the trial Court to frame additional charge under Section 458 IPC, against the petitioner by wrongly and illegally setting aside its well-reasoned order dated 09.10.2013.

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vehemently opposing the above submissions of learned counsel for the petitioners, has pleaded the legality and validity of the impugned order.

Having given thoughtful consideration to the submissions made by both the sides, this Courts finds that instant petition merits acceptance for the reasons to follow.

Section 443 IPC envisages house-trespass by accused taking precautions to conceal such trespassing. There is no allegation against the petitioners that they trespassed the house of the complainant by carving out some secret passage as a precaution to conceal their house-trespass. Allegation against the petitioners is that they entered the house of the complainant by scaling the wall. Therefore, it is evident that no offence, whatsoever was committed by the petitioners under Section 443 IPC, making them liable to charge under Section 458 IPC.

That apart, Section 445 IPC envisages house breaking, which means that any overt-act being done by an accused of breaking the house for trespassing the same. However, as discussed above, in the instant case petitioners, according to the allegations of the complainant, trespassed the house of the complainant by scaling wall for which they have already been charge-sheeted under Section 452 IPC. Moreover, no secret passage was created by breaking the house by the petitioners. Therefore, offence under Section 445 IPC is also not made out.

Consequently, petitioners are not liable to be charge-

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sheeted under Section 458 IPC, inasmuch as they have already been charge-sheeted under Section 452 IPC for trespassing the house of the complainant.

In view of the discussion made above, petition is allowed. Order dated 01.11.2014 (Annexure P-9) of the revisional Court is set aside and that of the trial Court dated 09.10.2013 (Annexure P-7) is affirmed.

October 26, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No