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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 80 of 2015**

Ajay Reddy, S/o Parmanand Reddy, aged about 44 years, R/o D-19, Sector 01, Devendra Nagar, Raipur, Police Station Devendra Nagar and Post Ganj, Civil and Revenue District Raipur, Chhattisgarh.

---- Petitioner**Versus**

State of Chhattisgarh, through : Police Station Sector 6 kotwali, Bhilai Nagar, District Durg, Chhattisgarh.

--- Respondent

For Petitioner	:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates
For State/Respondent	:	Mr. Anant Bajpai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****13.05.2019**

1. The petitioner herein is standing trial for offences under Sections 452 and 294 of the IPC. Charges for the aforesaid offences had been framed against him on 08/09/2014, which he challenged by way of filing a revision. The said revision preferred by the petitioner was dismissed vide order dated 22/12/2014 whereby learned revisional Court declined to interfere with the charges so framed against the petitioner and affirmed the order framing charges passed by the learned JMFC, Durg. Feeling aggrieved and dissatisfied with the order dated 22/12/2014 passed by the 7th Additional Sessions Judge, Durg in Criminal Revision No. 225/2014 as well as the order framing charge, this Criminal Miscellaneous Petition under Section 482 of the Cr.P.C. has been preferred by the petitioner.

2. Mr. Manoj Paranjpe and Mr. Anurag Singh, learned counsel for the petitioner, while questioning the impugned order, would submit that the material collected and filed before the Jurisdictional Criminal Court, taken at its face value, does not make out a case for framing of charges under Sections 452 and 294 of the IPC against the petitioner as the complainant i.e. Rajshree Naidu, petitioner's ex-wife, has forcibly entered into his house which was officially allotted to the petitioner by Bhilai Steel Plant and when the petitioner went to the house to stop construction which was being undertaken by the complainant, she lodged a false report against the petitioner. Accordingly, the provisions contained in Section 441 of the IPC i.e. criminal trespass is not made out against the petitioner. Furthermore, the offence is said to have been committed inside the house, therefore Section 294 of the IPC would also not be attracted in the present case as well. As such, the order framing charges against the petitioner deserves to be quashed.
3. Mr. Anant Bajpai, learned Panel Lawyer for the State, while supporting the impugned order, submits that though the house in question in which the said offences were allegedly committed was allotted to the petitioner but, in fact, at the date of the alleged incident which took place on 22/03/2014 at about 1:30 p.m., the complainant i.e. Rajshree Naidu, petitioner's ex-wife, was in actual possession of the house, therefore, it cannot be held that there is no material available in the instant case for framing charges against the petitioner under Sections 452 and 294 of the IPC.
4. I have heard learned counsel for the parties, considered their rival submissions and went through the records with utmost circumspection.
5. It is the case of the prosecution that on 22/03/2014, the petitioner

entered into the house of one Rajshree Naidu, his ex-wife, with an intent of committing an offence / to intimidate or insult and used objectionable language and thereby committed the aforesaid offences.

6. Section 442 of the IPC defines “house trespass” as under :-

“ S.442. 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”.”

7. Section 452 of the IPC provides as under :-

“ S.452. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. Section 448 of the IPC defines punishment for house trespass as under :-

“ S.448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

9. Section 441 of the IPC defines “criminal trespass” as under :-

“ S.441. 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”.”

10. Section 447 of the IPC defines punishment for criminal trespass as under :-

“ S.447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both ”

11. The Supreme Court, in the matter of **Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath & Ors.**¹, with reference to

Section 441 of the IPC, has held as under :-

“...when entry into or upon property in possession of another is lawful then unlawfully remaining upon such property with the object Of intimidating, insulting or annoying the person in possession of the property would be criminal trespass...”

12. In the matter of **Satish Chandra Vs. The King**², the Calcutta High Court, while dealing with offence punishable under Section 441 of the IPC has held as follows :-

“The mere taking of unlawful possession will not amount to either criminal trespass or house trespass. An unlawful act is not necessarily an offence. The mere taking of unlawful possession of a house will not amount to either criminal trespass or house-trespass. An unlawful act is not necessarily an offence. The house in question must be in actual possession of the complainant. Mere constructive possession is not sufficient.”

13. In the instant case, complainant i.e. Rajshree Naidu is the former wife of the petitioner. The petitioner had divorced her with a decree of divorce granted by the competent Family Court on 15/04/2010. There is no dispute that the house in question in which the petitioner is said to have committed the offence of house trespass criminally had been allotted to the petitioner from the Bhilai Steel Plant on lease. Furthermore, in the order dated 15/04/2010, while granting the decree of divorce, learned Family Court had observed that the complainant i.e. Rajshree Naidu has forcibly entered into the house of the petitioner which was departmentally allotted to him by the Bhilai Steel Plant. In that view of the matter, it cannot be held that the petitioner entered into the house which was in possession of the complainant i.e. Rajshree Naidu with an intent to commit an offence as it is clear that in the instant case, the alleged

1 (1991) 2 SCC 141

2 A.I.R. (36) 1949 Calcutta 107

entry of the petitioner in the house was undoubtedly for the purpose of stopping unauthorized construction. Even otherwise, admittedly, the complainant i.e. Rajshree Naidu was out of station on the date of offence and was not present in the house at that time. Further, the petitioner is said to have abused and threatened the labourers and contractors on the date of alleged offences but none of them have been examined by the prosecution, as such, no offence under Section 452 of the IPC is made out on the basis of the material available against the petitioner for framing charges.

14. The incident is said to have taken place inside the house in question and that is not a public place which is required for attracting offence under Section 294 of the IPC. In view of the aforesaid discussion, it cannot be held that the act of the petitioner i.e. entering into the house which was actually allotted to him and of which the complainant had forcibly taken over the possession, as recorded by the Family Court vide order dated 15/04/2010, would attract Section 441 of the IPC and consequently, no charge under Section 452 of the IPC can be framed against him.

15. As a fall out and consequence of the aforesaid discussion, the charges framed against the petitioner under Sections 452 and 294 of the IPC are hereby quashed and the order framing charge is hereby set aside. This Criminal Miscellaneous Petition under Section 482 of the Cr.P.C. is allowed to the extent indicated herein above.

Sd/-
(Sanjay K. Agrawal)
Judge