

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9201-2023

Reserved on 24.05.2023

Pronounced on 11.07.2023

Shiv Kumar Sharma

... Petitioner

VS.

UT Chandigarh & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gautam Kaile, Advocate for the petitioner

Sandeep Moudgil, J.

(1). The petitioner seeks quashing of the FIR No.0212 dated 03.11.2020 under Section 452 IPC, registered at Police Station Sector 31, Chandigarh (Annexure P1) and final report dated 27.10.2021 (Annexure P2) submitted by the police and all other subsequent proceedings arising out of the said FIR.

(2). The instant petition revolves around the substantial question as to whether the dispute in FIR is of civil nature and thus amounts to an abuse of process of law. The instant FIR was lodged at the instance of respondent No.2 'SR Goyal' wherein it has been alleged that the petitioner is the tenant of respondent No.2 in Plot No. 1043A, Industrial Area, Phase-2, Chandigarh (demised premises) since 01.12.2018. After completion of negotiation of the both sides, rent agreement was executed between the petitioner and respondent No.2 who was alleged to be the owner of the same but the rent agreement was executed by respondent No.2 on behalf of 'M/s Shree Ram Feed Meals' as well as his wife. It is further alleged that only ground floor of the demised premises was rented out to the petitioner with stipulation to work

on the ground floor alone and not in any other portion of the premises since possession of first floor was with the complainant/respondent No.2.

(3). It was on 18.02.2020, when the respondent NO.2 visited the premises, he found that petitioner has illegally occupied the first floor of the demised premises also. Thus, the present FIR has been filed against the petitioner.

(4). On 27.10.2021, after completing all the proceedings, the final report under Section 173 CrPC (Annexure P2), was submitted in the trial court wherein it has been stated that from the statement of respondent No.2 and documentary evidence, challan against the petitioner has been presented under Section 452 IPC.

(5). Learned counsel for the petitioner submitted that at the time of signing of rent agreement, respondent No.2 has mentioned only ground floor of the demised premises which was contrary to the assurance and willingness of earlier conversation between the parties. On 13.02.2020 (Annexure P5), the petitioner received one show cause notice regarding building violation. From the conversation with the staff of SDM office, the petitioner got to know that respondent No.2 is violating the rules, regulation and bye laws of Chandigarh Administration by covering the open courtyard with sheet. Immediately respondent No.2 issued a vacation notice on 28.02.2020 (Annexure P4), without any justifiable ground for vacation which reflects that respondent No.2 is hiding his own wrong under the garb of said show cause notice.

(6). He further submits that after the encashment of the rent for the period of May 2020, respondent No.2 was again pressing for vacation of

demised premises and started interfering in the affairs of petitioner's firm. Respondent No.2, on 13.07.2020 got issued a legal notice which was duly replied by the petitioner on 06.08.2020, stating that he requested respondent No.2 not to present the cheque during the lockdown period i.e. April & May 2020, however, despite the genuine request, respondent No.2 had not only presented the cheques for the period of April and May 2020 but also presented the cheques for the period of June and July, due to which petitioner is facing financial crisis, otherwise, the petitioner had intention to pay the rent in part.

(7). It is further the contention of learned counsel for the petitioner that the petitioner is being dragged into a litigation by respondent No.2 just because he wants to throw him out from demised premises using the FIR as a pressure tactic whereas, the matter between respondent No.2 and petitioner is purely of Civil nature and no criminal offence is made out and the present FIR has been registered by the respondent No.2 just to fulfill his ill designs.

(8). Learned counsel further urged that the basic ingredients of criminal trespass under Section 452 IPC is not made out and the prosecution has drastically failed to establish any such offence against the petitioner. Attention of this Court is drawn to the fact that the petitioner was inducted as tenant on 01.12.2018 and the respondent No.2 used to visit the demised premises every week and never raised any issue regarding any sort with the petitioner until on 28.02.2020. Once the petitioner received a building violation notice from the estate office on 13.02.2020, the unwarranted dispute was raised by respondent NO.2 when the petitioner asked him that there is violation committed in the industrial plot since 2014. It is at this stage in

order to evict the petitioner for the industrial plot, respondent No.2 adopted different yardsticks by filing two petitions for eviction, and also by way of filing the instant FIR. The respondent No.2 filed the civil suit in the capacity of power of attorney holder of one Surjit Kumar Bansal, alleged to be the absolute owner of the demised premises, who was never into the picture while giving the property on rent or at the time of initiating criminal/civil proceedings against the petitioner. It is further averred that besides the ground floor let out to the petitioner, first floor of the said demised premises forms an integrated part of the demised premises as a whole and it cannot be rented out separately from the ground floor as there is a common entry in the demised premises.

(9). Further it is vehemently contended that the respondent NO.2 by using his influence over the police, has managed to get FIR registered against the petitioner. Even otherwise, there is not a single document with regarding to the ownership of the demised premises at the time of filing of challan against the petitioner. A bare perusal of the challan would show that not even a single word or line has been mentioned with regard to fulfillment of ingredients of Section 452 IPC. Otherwise also, the ingredients of Section 452 IPC are totally missing in the FIR as the complainant has not alleged trespass by breaking the lock or bolt of the premises. The inaction of the authorities is writ large from the fact that the Investigating Officer ASI Kabul Singh in his statement before the trial court stated that the matter was sent for legal opinion and thereafter, as per the orders of SSP, the instant FIR was lodged whereas in the final report under Section 173 CrPC, it has been mentioned that FIR was registered after taking opinion of DDA.

(10). Heard learned counsel for the petitioner and gone through the case file.

(11). Before, I proceed further, it would be apposite to have a glance to the provisions of [Section 452](#) of IPC, which read as under:-

“452. House-trespass after preparation for hurt, assault or wrongful restraint. –

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.”

(12). On a plain reading of the aforesaid provision, it is apparent that for the purpose of invoking [Section 452](#) of IPC, two requirements are required to be cumulatively satisfied. To postulate an offence under [Section 452](#) of IPC, it has to be established (a) that the accused committed house trespass and (b) that the same was committed after making preparation for causing hurt to, or for assaulting or for wrongfully restraining, some person, or for putting some person in fear of hurt, or of assault, or of wrongful restraint. If either of the two requirements is not satisfied, [Section 452](#) would not be attracted.

(13). House trespass itself, has been defined in [Section 442](#) of IPC and it reads as under :-

“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".

(14). However, for proper appreciation and judicious examination of the plea as to whether the offence under Section 452 IPC are made out to look into the essentials as envisaged for criminal trespass under Section 441. Criminal trespass is defined under [Section 441](#) of IPC as under:-

“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".

(15). Therefore, criminal trespass would be complete if, a person enters into or upon the 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. Criminal trespass will also take in its fold, lawful entry into or upon such property, but unlawfully remaining therein, with the aforesaid *mens rea*. Trespass into property, which it is so desirable to guard against unlawful intrusion, as the habitation in which men reside and the building in which they keep their goods was designated as an aggravated form of a criminal trespass.

(16). In the case of ***Mathuri and Ors. vs. State of Punjab, AIR 1963 SC 986***, the Supreme Court held that in order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to

show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which promoted the entry.

(17). In **Baldewa vs Emperor, AIR 1933 All 816**, the Apex Court observed and held that there is a distinction between the phrases with intent and with knowledge; it must be proved by the prosecution that the accused had the intention to intimidate, insult or annoy when he made the entry, and it is not enough that the prosecution should ask the court to infer that the entry is bound to cause intimidation, insult or annoyance. A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy within section 441 of the Indian Penal Code.

(18). Judgment in **Smt. Kanwal Sood v. Nawal Kishore & Anr., 1983 SCC (3) 25**, further clinches the issue in hand wherein, in fact the appellant was allowed to occupy the premises by Shri R.C. Sood and under the terms of gift deed, Shri Sood was entitled to remain in occupation of the premises during his life time and he could as well grant, leave and license to the appellant to occupy the premises along with him. In that case the question arose before the Court about the status of appellant after the death of Shri R.C. Sood. The Supreme Court held that at the most it can be said that after

the death of Shri Sood, the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to a criminal trespass within the meaning of section 441 of the India Penal Code. It was further held that in order to satisfy the conditions of section 441, it must be established that the appellant entered in possession over the premises with intent to commit an offence. It was also held that the appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R.C. Sood and if a suit for eviction is filed in Civil Court, she might be in a position to vindicate her right and justify her possession and, therefore, this is essentially a Civil matter which could be properly adjudicated upon by a competent Civil Court, and to initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the Court.

(19). Coming back to the case as per the allegations made in the FIR, in hand, complainant had let out the demised premises to the petitioner in December, 2018, for doing the business of manufacture and suppliers of CNC Turret etc. and after assessing the viability of conducting business, the respondent No.2 agreed to give the entire building/area on rent for at least five years i.e. 30.11.2023 to the petitioner. The respondent No.2 also agreed and permitted the petitioner to install machineries worth Rs.12 to 15 lakhs in the demised premises. But to the dismay of the petitioner, in the rent agreement only ground floor of the demised premise was mentioned and first floor of the building was left out. However, on pointing out the said defect,

the respondent NO.2 assured the petitioner that it was only a formality and the petitioner in good faith signed the rent agreement.

(20). The concept of possession embraces both actual and constructive possession. Possession may exist in law but not in fact and such possession is termed as constructive. Entry in or upon the property of another person may cause annoyance to the owner even if he be not present at the time of entry. A trespass with intent to cause annoyance to the owner may conceivably be made even though the owner be not present at the time of the trespass. The cause of annoyance is the violation of the rights of ownership and not the presence or absence of the owner at the time of trespass. The degree of annoyance may be more in the case of trespass in the presence of the owner but it is not correct that no annoyance is caused if the owner is not present at the time of trespass.

(21). That means, if intention referred in Section 441 is not proved then no offence of criminal trespass has taken place. The intention has to be gathered from the facts and circumstances of the case. For instance, a person entering into the property of his neighbour with an intention to save his life from imminent danger commits civil trespass, he has not committed the offence of criminal trespass. In other words, a person in exercise of his Right to private defence, entering into the property of someone else, with no criminal intent, will not be held liable under the offence of Criminal Trespass.

(22). In view of Sections 441, 442 & 452 of IPC as well as the law laid down in **Mathuri's** case (supra) and **Kanwal Sood's** case (supra), it can safely be said that every trespass does not amount to 'criminal trespass' and

in order to satisfy the conditions of Section 441 of IPC, it must be established that the petitioner entered in possession over the premises or unlawfully remains there with intent thereby to intimidate, insult or annoy, or with intent to commit an offence and it is not sufficient to show merely that the natural consequences of the entry or over staying/remaining, there was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering or over-staying/remaining there, but it must be shown that causing such annoyance, intimidation or insult was the aim of the entry or over staying/remaining there.

(23). Taking the contents of the FIR as well as the vague final report under Section 173 CrPC, it cannot be said that even *prima facie*, the petitioner entered in possession over the premises or unlawfully remains there with intent/aim thereby to intimidate, insult or annoy, or with intent to commit an offence as there is absolutely no allegation about the intention of the petitioner to commit any offence or to intimidate, insult, annoy any person in possession of such property.

(24). **In Mohammed Ibrahim and Others v. State of Bihar and another, (2009) 8 SCC 751**, Hon'ble Supreme Court has that:-

“This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the

ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

(25). In view of the above discussion and the proposition of law, referred to above, this Court has no doubt to hold that the FIR has been lodged with a mala fide intention to harass and to use it as an arm-twisting device to pressurize the petitioner to get vacated the demised premises and has tried to give a pure civil dispute, the colour of criminal offence.

(26). Accordingly, the present petition is allowed and the FIR No.0212 dated 03.11.2020 under Section 452 IPC, registered at Police Station Sector 31, Chandigarh (Annexure P1) as well as the final report dated 27.10.2021 (Annexure P2) submitted by the police and all other subsequent proceedings arising out of the said FIR, stand quashed.

11.07.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No