

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M).638/2022 C/W
CRM(M) No. 465/2022

Reserved on 06.05.2024
Pronounced on 17.05.2024.

- 1 Shailender Sharma son of Late Prof. Nilambar Dev Sharma resident of 159 Malhotra street Old Hospital Road Jammu
2. Himanshu Sharma son of Shashi Bhushan Sharma resident of House No. 134 Malhotra Street Jammu.

...Petitioners

Vs.

- 1.UT of Jammu and Kashmir through SHO, Police Station City Jammu
- Respondent**

2. Shakuntla Devi 3. AtulGupta and Shalini Gupta, wife,son and daughter of Bharat Bhushan resident of House No.64/2A Extension Trikuta Nagar Jammu.

Private respondents

CRM(M) No. 465/2022

- 1 Ashok Kumar Gupta son of Yash Pal Gupta resident of House No. 64/2 Extension A Trikuta Nagar Jammu
2. Sonali Gupta daughter of Ashok Kumar Gupta wife of Sunny Gupta
3. Sunny Gupta son of Brij Gupta both residents of House No. 230/1-P Trikuta Nagar Extension Jammu.

vs.

1. UT of Jammu and Kashmir th. DGP,PHQ Jammu
2. SHO Police Station City Jammu
3. Shakuntla Devi
4. Atul Gupta 5. Shalini Gupta, wife, son and daughter of Bharat Bhushan Gupta, resident of House No. 64/2-A Extension Trikuta Nagar Jammu.

For petitioners: Mr. Vishal Kapur Advocate
Mr. Pawan Kundal Advocate
For respondents: Mr. Pawan Dev Singh Dy.AG
Mr. Ajay Gupta Advocate for
private respondents.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 Through the medium of afore-titled two petitions filed under Section 482 CrPC, the petitioners have challenged FIR No. 30/2022 for offences under Sections 380/457/34 IPC registered with Police Station City, Jammu.

2 The impugned FIR has been registered on the basis of a complaint made by respondents Shakuntla Devi, Atul Gupta and Shalini Gupta (hereinafter referred to as the 'private respondents'). In their complaint, they have alleged that they are the partners of firm M/S A.K. Gulshan Kumar situated at Mohalla Malhotra, Jammu. According to them, they filed a civil Suit before the Court of 2nd Additional Munsiff, Jammu (hereinafter referred to as the 'Civil Court') in August 2010 for dissolution of partnership of the said firm and for rendition of accounts and that the said suit is pending adjudication. It has been further submitted that vide order dated 11.07.2011 passed by the Civil Court, a Commissioner was appointed for preparing an inventory of the stocks and furnishing details thereof. On 23.07.2011 the Commissioner furnished a detailed report after he inspected the shop in presence of the parties to the dispute. It has also been submitted that the shop in question remained under lock since 23.07.2011, but during the intervening night of 23.04.2022 and 24.04.2022, petitioner Ashok Kumar along with four other persons broke open the locks of the shop, where-after, he removed the stocks from the shop.

3 The police, on the basis of the aforesaid report, registered the impugned FIR and proceeded to investigate the case. However, the investigation of the case has been stayed by this Court in terms of interim order dated 26.08.2022.

4 The petitioners, while challenging the impugned FIR, have pleaded that initially a partnership firm was constituted by petitioner Ashok Kumar with one Gulshan Kumar under the name and style of M/S A.K.Gulshan Kumar for running the wholesale and retail business of clothes. Petitioner Ashok Kumar was having 60% share, whereas Gulshan Kumar was having 40% share in the partnership firm. It has been pleaded that Gulshan Kumar retired from the partnership firm on 31.03.1988 and in his place, Bharat Bhushan Gupta, who happens to be the predecessor-in-interest of the private respondents, was inducted as a partner. It seems that a dispute arose between Ashok Kumar and Bharat Bhushan Gupta, where-after, in the year 2011, a suit was filed by the private respondents after the death of Bharat Bhushan Gupta against petitioner Ashok Kumar seeking rendition of accounts and dissolution of partnership. A Commissioner was appointed by the Civil Court on 12.07.2011 for making an inventory of the stocks present in the shop in question. The Commissioner visited the shop, opened the locks in presence of the parties and prepared the inventory, where-after, he submitted a report before the Civil Court.

5 It has been further pleaded that the shop in question was taken on rent by petitioner Ashok Kumar from late Sh. Nilander Dev

Sharma on 20.11.2021. A legal notice was served by Smt. Chanchal Sharma wife of Nilander Dev Sharma upon petitioner Ashok Kumar seeking his eviction from the shop in question along with recovery of rent and electricity charges etc. The said legal notice was responded to by petitioner Ashok Kumar through his reply dated 17.02.2022 whereby he requested the landlady to waive off the rent, damages/ charges etc. and conveyed to her that on the said condition, he is ready to vacate the premises. It has been submitted that prior to this, petitioner Ashok Kumar had informed the private respondents that they should bear their portion of the outstanding rent etc., but they did not show any interest. It has been pleaded that petitioner Ashok Kumar thereafter handed over the vacant possession of the shop to the landlady and, at that time, he shifted the stocks lying in the shop to an alternative accommodation.

6 In the backdrop of aforesaid assertions, it has been contended by the petitioners that the dispute between petitioner Ashok Kumar and the private respondents is purely of civil nature which has been given a criminal colour by the private respondents just to coerce petitioner Ashok Kumar to meet their illegal demands.

7 So far as petitioners Shailender Sharma and Himanshu Sharma etc. are concerned, they have contended that the shop in question belongs to mother of petitioner Shailender Sharma and that inter-se dispute between the partners of the firm cannot be made a ground to implicate them in the impugned FIR. It has been further contended that mother of petitioner Shailender Sharma happens to be the owner of the

shop in question and, therefore, the petitioners cannot be booked for an offence of theft or house trespass, particularly when the landlady has duly received the possession of the premises from the tenant.

8 The private respondents in their reply have, more or less, admitted the factual aspects of the case. It has been claimed that the story of serving legal notice by landlady upon petitioner Ashok Kumar and consequent surrender of possession of shop, is only a camouflage to defeat the rights of the private respondents. It has been further contended that when the stocks were removed by the petitioners from the shop in question, it was lying locked and the said locks were broken open by the petitioners, therefore, they have committed offence of house tress and theft. It has been further contended that the shop in question was under the tenancy of the firm and the rent was also being paid from the account of the firm. Therefore, it cannot be stated that the private respondents had no tenancy rights in respect of the shop in question. Lastly, it has been contended that the allegations in the impugned FIR are required to be investigated and investigation of the case cannot be scuttled at this nascent stage.

9 The official respondents have also filed their reply to the petitions in which they have narrated the allegations made in the impugned FIR. They have also produced the CD file for perusal of the Court.

10 I have heard learned counsel for the parties and perused the record of the case.

11 The main contention that has been advanced by learned counsel for the petitioners is that the dispute between petitioner Ashok Kumar and the private respondents is purely of civil nature relating to accounts of the partnership business that was being run by petitioner Ashok Kumar and the predecessor-in-interest of the private respondents. According to learned counsel for the petitioners, the same cannot be given a criminal colour, particularly when civil litigation between the parties involving the same issue is pending before the civil Court.

12 If we have a look at the allegations made in the impugned FIR, it is the admitted case of the parties that petitioner No.1 and predecessor-in-interest of the private respondents were running a partnership business from the shop in question. The private respondents have filed a suit for dissolution of the partnership firm and for rendition of accounts against petitioner Ashok Kumar before the Civil Court. A copy of the plaint is on record of the file. A perusal of the same reveals that the private respondents have pleaded before the civil Court that their predecessor-in-interest Sh. Bharat Bhushan Gupta died on 13.09.2006 and after his death, petitioner Ashok Kumar continued to run business of the firm without reconstituting the partnership firm and without inducting the legal heirs of Bharat Bhushan Gupta into the partnership business. This admission of the private respondents means that after the year 2006, the business from the shop in question was being conducted by the petitioner Ashok Kumar alone. He may not have rendered accounts to legal heirs of Bharat Bhushan Gupta, but one thing is clear that he was running the show all alone even as per the case of the

private respondents, meaning thereby that the possession of the shop in question was with petitioner Ashok Kumar. Even otherwise, it has nowhere been pleaded by the private respondents in their plaint before the civil Court that the tenancy in respect of the shop in question was a property of the firm. This fact gets further strengthened from the circumstance that even prior to induction of Bharat Bhushan Gupta in the firm, petitioner Ashok Kumar was running the partnership business from the said shop right from 1974, meaning thereby that he had been inducted as a tenant of the shop even prior to induction of Bharat Bhushan Gupta into the firm.

13 In the face of aforesaid position when it is clear that petitioner Ashok Kumar was holding possession of the shop in question in his own right as a tenant, it cannot be stated that he has committed house trespass while entering into the shop either during day time or during night time. Even if it is assumed that shop in question was under the tenancy of the partnership firm, still then, petitioner Ashok Kumar being a partner of the firm was well within his right to enter into the shop and he cannot be held liable for having committed house trespass.

14 That takes us to the allegation regarding removal of stocks from the shop in question. As has been already stated, it is the admitted case of the parties that petitioner Ashok Kumar was running the show all alone from the shop in question right after the death of Bharat Bhushan Gupta in the year 2006, so he was the person who was in possession of the stocks lying in the shop in question. Whether legal heirs of erstwhile

partner Bharat Bhushn Gupta had any right or interest in the stocks, is a question that will be determined by the trial Court in the suit for rendition of accounts. The said issue can only be determined by a civil Court and not by way of criminal proceedings. Unless it is clearly shown that the stocks lying in the shop in question belonged to the partnership firm or to the legal heirs of Bharat Bhushan Gupta, the petitioner Ashok Kumar cannot be prosecuted for having committed theft of these stocks.

15 Apart from the above, admittedly there was no order of the civil Court prohibiting petitioner Ashok Kumar from handing over the possession of the shop to his landlord or prohibiting him from removing the stocks from the shop. Neither, petitioner Ashok Kumar, nor petitioners Shalinder Sharma and Himanshu Sharma have committed any offence by handing over/taking over the possession of shop in question.

16 From a bare perusal of the impugned FIR and the material placed on record by the parties in the shape of pleadings and the documents which are not in dispute, it is clear that the dispute between petitioner and the private respondents is purely of civil nature which is under adjudication before the civil Court and it has been given a criminal colour by the private respondent.

17 The Supreme Court has, in the case of **M/s Indian Oil Corporation v. M/s NEPC India Ltd. and others (2006) 6 SCC 736** while deprecating the tendency of business circles to convert civil disputes in criminal cases, observed as under:

"(13) While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged (14) While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

18 From the foregoing analysis of law on the subject, it is clear that tendency of litigants to give a criminal colour to a purely civil dispute is required to be deprecated. Instant case is a classic example of converting a purely civil dispute into a criminal prosecution against the petitioners. Thus, this is a fit case where this court should exercise its power under Section 482 Cr.PC. to quash the impugned FIR and the proceedings emanating therefrom, so as to prevent the abuse of process of law and to secure the ends of justice.

19 The petitions are, accordingly, allowed and the impugned FIR and the proceedings emanating therefrom are quashed. Any observation made in this order shall have no bearing on the merits of the civil suit going on between the parties before the Civil Court.

CD file be returned to the concerned.

(Sanjay Dhar)
Judge

JAMMU
17.05.2024
“Sanjeev”

Whether order is reportable: Yes

