
(2015) 05 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : CRM-M Nos. 22703 and 38116 of 2011 (O&M)

Ajit Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 380, 438
Penal Code, 1860 (IPC) — Section 120-B, 380, 447, 448, 454

Citation : (2015) 05 P&H CK 0066

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : J.S. Bedi, Senior Advocate and Lovekeerat Singh, for the Appellant;
Pradeep Parkash Chahar, DAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raj Mohan Singh, J.—Vide this order above mentioned two petitions are being disposed of. Facts are being culled out from CRM-M No. 22703 of 2011.

2. Petitioner seeks quashing of FIR No. 137 dated 16.4.2010 under Sections 447, 448, 454, 380, 506, 120-B IPC registered at Police Station Sector 5, Panchkula and entire subsequent proceedings undertaken in pursuance thereto.

3. Petitioner alleged that he is tenant under husband of respondent No. 2, who is owner of the house in question. Rent agreement was executed between the petitioner and Rajpal Singh on 7.4.2010 and possession was delivered to the petitioner along with following items, as mentioned in the rent agreement:--

"....AND whereas the said landlord is sole and absolute owner of Double Storey House No. 809 Sector 12, Panchkula, Tehsil and District Panchkula (Haryana) and he want to rent out aforesaid complete house along with furniture and affixture including two double bed room, one single bed, sofa set, Dining table including three Air Conditions and kitchen utensils, curtains, T.V, Fridge, Gas stove, two Geysers, mattresses, 20 blankets, beddings to the said tenant."

The period of tenancy was fixed from 4.4.2010 to 3.4.2011.

4. Respondent No. 2 was married to Rajpal Singh, owner of the house on 2.10.2006. Rajpal Singh is doing import and export business and used to travel abroad frequently. As per case of petitioner, Rajpal Singh and respondent No. 2 are not pulling well in terms of their matrimonial life and respondent No. 2 left the house in May or June 2007 after quarrelling with Rajpal Singh along with all valuable clothing and jewellery and went to her parental house at Sonapat.

5. Petitioner used to travel foreign countries frequently in connection with his business assignments. The chart of his going abroad and coming to India has been shown in para 3(v) of the petition, which reads as under:--

6. After having waited for long when respondent No. 2 did not mend her ways, Rajpal Singh filed a petition for grant of decree of divorce on the ground of cruelty and desertion on 8.4.2010. Notice of this petition was issued to respondent No. 2 on 10.4.2010 by way of registered post.

7. On receipt of notice of divorce petition, FIR in question was got registered by respondent No. 2 with the following allegations:--

"It is submitted that I Sonia d/o Shri Umed Singh Jati (Caste) S.C. R/o No. 85/29 Malviya Nagar, Sonapat is residing at the above mentioned address. My date of birth is 2.12.80. I was married to Shri Raj Pal Singh S/o. Shri Bhajan Singh caste SC at Sonapat, Gurdwara Geet Bhawan Chowk Sonapat. All family members from my side as well as from the side of Raj Pal were present on the occasion of marriage. This marriage was performed on 2.10.06 according to Sikh Customs and Rituals. My parents gave cash in form of dowry on the occasion of marriage. After my marriage my husband brought me to Sector to Sector 12, hosue No. 809/12, Panch kula. I stayed in that house with my husband till July 2008. The house No. 809/12, Sector 12, Panchkula is in the name of my husband. My husband Raj Pal went abroad in July 2008. He uses to call me initially from abroad but later on I did not have any talk with him. I was staying at my house. There were many times in the house including jewellery of Diamond (2 sets) kept in the wooden almirah, 3 rings of 2 tola, 2 bangles of gold, my clothes, kitchen utensils, other household items like bedding etc, full details of the items will be provided by me later on. My brother who is 18/19 years old came to my house on 3.4.10 to take me. I went to my parental house at Sonapat along with my brother Mohit. Today I came back to my house along with my uncle Parvesh Kumar at 12 noon and I saw that the door was locked. I knocked several times on the door before a man came to the gate and told me that he has bought that house from Raj Pal. I told that man that I am the wife of Raj Pal Singh and I am staying in this house since 2006. I further told him that all my household items are lying in the house including jewellery. and I am in possession of this house. My husband did not say anything to me regarding selling of the house. I told him that my husband is living abroad and I had gone after putting a lock on the house and you have taken a possession of my house with force. On my asking he

disclosed his name to be Ajit Singh S/o. Shri Bir Singh caste Jatt Sikh r/o village Chakphul, District Hoshiarpur (Punjab). I requested him to let me go into the house but did not allow me to do so. I suspect that my husband might have done all this work in connivance with this man Ajit Singh. There could be my husband's hand in this whole thing. Then I along with my uncle tried to enter the house but this man Ajit Singh gave us life threats if we tried to do so. We got scared. Ajit Singh has broke open the lock of my house and has taken the possession of the house with force. He has also stolen my jewellery. My husband could be involved in this thing. Legal action may be taken."

8. Petitioner entered the house by lawful means and there cannot be any trespass by him by any stretch of imagination. After lodging of the FIR, petitioner was arrested in the case and was produced before the Court. In view of facts and circumstances of the case, the investigation of the police reveals that at the time of seeking remand, the Court on the basis of police record, found that the Investigating Officer was not in a position to explain how offences under Sections 447, 448, 454, 380, 506 and 120-B IPC were made out against the petitioner. Investigating Officer did not verify factum of rent note and the capacity of the petitioner as tenant. The FIR was lodged in a hurry without verifying the facts from the landlord. In view of that, the prayer for police remand of the petitioner was refused by Chief Judicial Magistrate, Panchkula by observing following:--

"..... These are circumstances in which accused is stated to have entered in the house in question. IO who is present in the court has not able to explain how sections 447/448/454/380/506/120-B IPC are made out against the accused. IO has not even tried to verify the factum with regard to entry of accused as tenant in the house in question and he has lodged the present FIR in hurry on the basis of complaint made by complainant Sonia without verifying the facts from the landlord of house in question. The IO has not even verified the above said rent agreement or called landlord of the house in question to record his statement to the effect as to whether said rent agreement is false or genuine one. Therefore, in view of the circumstances, I do not find any justification for remanding the accused to police custody. Resultantly, present application for police remand of the accused for one day moved by the prosecution is hereby declined."

Accordingly, no recovery was made from the petitioner and he was admitted to bail vide order dated 7.8.2010.

9. The factum of leaving the house by respondent No. 2 was also pleaded in ground No. 4(ix) of the divorce petition, filed by Rajpal Singh, which reads as under:--

"That in the month of May 2007 the respondent quarrel with the petitioner and his parents without any cause and reason and beat the petitioner and left the matrimonial home without the consent and permission of the petitioner and the respondent took all her valuable clothes and articles including jewelry with her."

10. In the impugned FIR, respondent No. 2 has alleged that she left the house on

3.4.2010 when her brother came and took her to Sonapat and she after locking the house went along with her brother. Her husband went abroad in July 2010 and thereafter, after calling her on some occasions he stopped calling and she was staying in the house all alone. In reply to the visit schedule of Rajpal Singh as given in preceding para No. 3(v) of the petition, the reply filed by respondent No. 1 is as under:--

"That the contents of para 3(v) of the petition are wrong hence denied. The matter was thoroughly investigated by the Police and even the facts of the case were verified by the Assistant Commissioner of Police. The statement made by the complainant was found absolutely correct and she is residing in the matrimonial house since the day of marriage till today. The submissions made in preliminary paras are also reiterated."

11. The reply filed by respondent No. 1 does not correspond to the averment made in para No. 3(v) inasmuch as that the reply on the factum of visits of Rajpal Singh to different countries and his arrival in India has not been replied and the reply filed by respondent No. 1 is evasive on the factum of arrival of Rajpal Singh to India.

12. Reply filed by respondent No. 2 in the context of pleadings in terms of para 3(v) of the petition is as under:--

"That para No. 3(v) of the petition is incorrect. It is incorrect that the answering respondent never resided in the matrimonial home since June 2007. As a matter of fact, the answering respondent left the matrimonial home on 4.4.2010 to visit her parents at Sonapat and came back to matrimonial home at Panchkula on 16.4.2010. The detailed reply has already submitted above. Rest of the para is incorrect. It is incorrect that the answering respondent is residing in the parental house at Sonapat since June 2007. False averments have been made in the petition. It is worth mentioning here that Sh. Raj Pal Singh having business of export and import and used to visit abroad."

13. A perusal of stand taken by respondent No. 2 also reveals that though she has not specifically denied the visit schedule of Rajpal Singh in any manner but she had admitted that Rajpal Singh was having business of export and import and used to visit abroad. Reply is quite evasive and respondent No. 2 has virtually admitted the visit schedule of Rajpal Singh for going abroad and coming to India from July 2008 onwards till 31.3.2010.

14. At the time of issuance of notice of motion this court vide order dated 4.10.2011 passed the following order by relying upon the order of bail granted to Rajpal Singh by this Court:--

"Refers to Annexure P-5 to say that petitioner Ajit Singh is a tenant of Raj Pal Singh, Who is landlord and owner of the house. To show that the house is owned by Raj Pal Singh, who is husband of the complainant, counsel refers to orders passed by this court while granting bail to Raj Pal Singh. This fact, at that stage,

was not disputed that Raj Pal Singh is the landlord. He is also accused alongwith the present petitioner for trespass.

On 5.8.2011, the case was adjourned to enable the counsel to find whether any report under Section 173 Cr.P.C. is submitted. So far, no challan has been filed. In this view of the matter, counsel contends that petitioner being authorised to enter the premises being a tenant cannot be accused of trespass. Further says that recording of this complaint would be an abuse of process of the court.

Notice or motion for 8.12.2011.

Notice re: stay as well."

15. The order granting bail to Rajpal Singh, reference of which finds mentioned in the aforesaid order, shows the following observations:--

"This petition has been filed under Section 438 Cr.P.C. for grant of bail to the petitioner in case FIR No. 137 dated 6.4.2010 under Sections 447, 448, 380, 506, 120-B IPC registered with Police Station Sector 5, Panchkula.

Learned counsel contends that the petitioner being the owner of the house could not have trespassed on his own property.

Notice of motion for 5.7.2010.

In the meantime, in the event of arrest, the petitioner will be released on interim bail on furnishing of bail bonds to the satisfaction of the Arresting/Investigating Officer subject to the following conditions:--

"(i) The petitioner shall make himself available for interrogation as and when required.

(ii) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer: and

(iii) The petitioner shall not leave India without the previous permission of the Court."

16. Learned counsel for the petitioner submits that as per the allegations in the FIR itself Rajpal Singh is admitted to be owner of the house. Factum of rent deed has been admitted between the petitioner and Rajpal Singh (petitioner in CRM-M No. 38116 of 2011). The entry of the petitioner in the house in question was on account of lawful means. Petitioner by virtue of rent agreement entered the house and his possession is permissible on account of bilateral agreement between the owner of the house and the petitioner.

17. Since no recovery has been effected, the observations made by the trial Court at the time of declining police remand and granting bail to the petitioner is suggestive of the fact that the police acted in haste in lodging the FIR without verifying the factum of rent agreement between the petitioner and Rajpal Singh.

The Investigating Officer could not explain as to how offences under Sections 447, 448, 454, 380, 506, 120-B IPC are attracted in the context of alleged culpability of the petitioner. Petitioner as well as Rajpal Singh are not supposed to commit offences of trespass in their own house. Petitioner occupied the house in the capacity of tenant, whereas, Rajpal Singh was admittedly owner of the house. Since no recovery of any items allegedly shown as subject matter of theft were recovered from the petitioner, therefore, ingredients of offence under Section 380 Cr.P.C. are also not attracted. No offence of criminal trespass and no offence of theft can be presumed against the tenant of the house as well as against the owner.

18. Learned counsel for the petitioner further submits that according to allegations in the FIR, the complainant left the house on 3.4.2010 and thereafter, revisited the house on 16.4.2010. Respondent No. 2 has totally pleaded ignorance with regard to visits of Rajpal Singh from July 2008 to March 2010 to foreign country as well as his return to India. Rajpal Singh was very much present in India and being owner was in possession of the house also and he allowed the petitioner to occupy the house on account of bilateral agreement. Therefore, allegations made in the FIR are patently false and it seems that the allegations have been made to re-possess the house.

19. Under the garb of lodging of the FIR when petitioner was on run, respondent No. 2 has been able to re-possess the house and is still in possession of the same. According to learned counsel for the petitioner, respondent No. 2 has committed trespass in the house, which was lawfully taken on rent by the petitioner.

20. Learned counsel for the petitioner relies upon Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, AIR 1989 SC 2097 : (1989) 3 JT 489 : (1989) 2 SCALE 424 : (1989) 4 SCC 131 : (1990) 1 UJ 71 to highlight right of owner vis-?-vis trespasser. In the instant case the alleged trespasser has derived his right from the owner and thereby has perfected his right to be in possession, therefore petitioner in both the petitions cannot be presumed to have committed any trespass. Again a statutory tenant (even after expiry of lease period) cannot be a trespasser and can only be ejected in due course of law. Reliance is being placed on a division bench judgment of Rajasthan High Court i.e. Shibprat Ali v. Ahsan Lal 1982 (1) RCR (Rent) 358.

21. In Mehar Singh and Others Vs. Gian Chand and Others, (2014) 2 PLR 346 : (2014) 2 RCR(Civil) 518 : (2014) 1 RCR(Rent) 331 , this Court held that if one of the co-sharer/owner inducted a tenant in joint holding and on partition the tenanted premises goes out of possession of such co-sharer, then also the right of tenant is to be protected who was lawfully inducted as tenant.

The petitioner being lawfully inducted as tenant, cannot be whisked away in the manner as done by the complainant. Rather in such a situation, the complainant should have been relegated to civil remedy rather than to prosecute the

petitioner.

22. In the divorce petition filed by Rajpal Singh, decree of divorce was granted by the trial Court and appeal is pending in this Court. The proceedings before the trial Court were stayed in this case and the case was at the stage of charge.

23. Looking to the facts and circumstances of the case, it has been noticed by this Court that the petitioner occupied the house in question on account of bilateral agreement between him and Rajpal Singh, who is admittedly owner of the house and husband of respondent No. 2. After lodging of the FIR, police could not demonstrate at the time of seeking remand as to how offences in question can be made out against the petitioner. No recovery could be effected from the petitioner in respect of booty which was subject matter of alleged theft. The complainant alleged in the FIR that she remained in possession of the house throughout and her husband after going abroad in July 2008 stopped contacted her and on the date of leaving house and again at the time of re-visiting house she staked her possession on the house in question, unmindful of the fact that her husband has been coming to India and was in possession of the house throughout the period and he lawfully rented out this house to the petitioner.

24. Looking to the aforesaid circumstances, ingredients of offences under Sections 447, 448, 454, 380, 506, 120-B IPC are not at all attracted to the facts of the case in hand. The allegation of threat is also cannot be an incriminating issue in view of permissible possession of the petitioner on the house in question. The alleged threat was statedly given at the time when respondent No. 2 tried to enter the house. As on date, respondent No. 2 has already re-posessed the house forcibly when the petitioner and Rajpal Singh were on the run in order to secure bail for themselves.

25. Accordingly, both the petitions are allowed. FIR No. 137 dated 16.4.2010 under Sections 447, 448, 454, 380, 506, 120-B IPC registered at Police Station Sector 5, Panchkula and entire subsequent proceedings undertaken in pursuance thereto are quashed.