

CASE DETAILS

RUCHIR RASTOGI

v.

PANKAJ RASTOGI AND OTHERS ETC.

(Criminal Appeal Nos. 3283-3284 of 2013)

OCTOBER 19, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: High Court if justified in quashing the FIR lodged by the appellant against respondents u/ss.457, 380 and 506, IPC.

Penal Code, 1860 – ss.457, 380, 506 – FIR filed stating that the appellant and respondent No.1 as Kartas of respective HUF were partners in equal share and there was an interim order of preserving the assets and belongings of the shop in question – However, Respondent No.1, along with other co-accused, removed the assets and belongings of the shop in violation thereof – When the appellant inquired from respondent No.1, he was threatened to keep quiet otherwise he would lose his life – FIR quashed – Legality:

Held: Father of the appellant, ‘AR’, ‘KR’, and respondent No.1 are real brothers – The shop in question was a joint partnership of the HUF of the appellant and respondent No.1 and they had signed the partnership deed as Kartas of the respective HUF – The purchase of the shop in question by M/s Sushma Constructions Pvt. Ltd. of which ‘AR’ and his wife were the promoters/Directors from the erstwhile owner could have been part of the larger conspiracy planned in collusion with respondent No.1 but no finding is being recorded to that effect at this stage – The filing of the Suit for eviction by M/s Sushma Constructions Pvt. Ltd. impleading only respondent No.1 as the defendant speaks volumes about their collusion – What made ‘AR’ believe that it was respondent No.1, who was alone the owner and in possession of the business being run from the shop in question, is nowhere reflected – In any case, once the notices for eviction were served upon respondent No.1, he ought to have disclosed this fact in

the said suit that firstly, the business in the shop in question was being jointly run by him and the appellant and that there was an injunction operating passed by a competent Court of District Judge in proceedings u/s.9, 1996 Act – Further, Respondent No.1 almost admitted the claim for eviction which ultimately was the basis for the High Court to decree the suit – It was a collusive suit and, in any case, respondent No.1 was dishonest and deliberately concealed the material fact from the Court – Respondent No.1, along with other co-accused, including not only the Directors/promoters of M/s Sushma Constructions Pvt. Ltd. but also others, removed the assets and belongings inside the shop in question by breaking open the locks in violation of the injunction orders – All the offences are cognizable in nature and on facts, basic ingredients being in the FIR, the High Court erred in quashing the FIR – Whether the offences are proved or not would be a subject matter of the Trial and before that of the investigation as to whether a triable case is made out or not by the investigating agency but in any case, was not a case where FIR was liable to be quashed – Impugned judgment set aside – Matter to proceed with respect to the FIR in question in accordance with law – Arbitration and Conciliation Act, 1996 – ss.9, 36. [Paras 5, 8, 9, 15 and 17]

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 3283-3284 of 2023.

From the Judgment and Order dated 15.04.2019 of the High Court of Judicature at Allahabad in CRMWP Nos.31343 and 31370 of 2018.

Appearances:

Vikas Singh, Sr. Adv., Rahul Kaushik, Ms. Bhuvneshwari Pathak, Varun Bhasin, Ms. Deepeika Kalia, Keshav Khandelwal, Advs. for the Appellant.

Basant R. Sr. Adv., Suvigya Awasthy, Vivek Joshi, Kavinesh RM, Ms. Radha Gupta, Ms. Amita Singh Kalkal, Ankit Goel, Sameer Jain, Abhinav Shrivastava, Rohan Gulati, Shivang Rawat, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

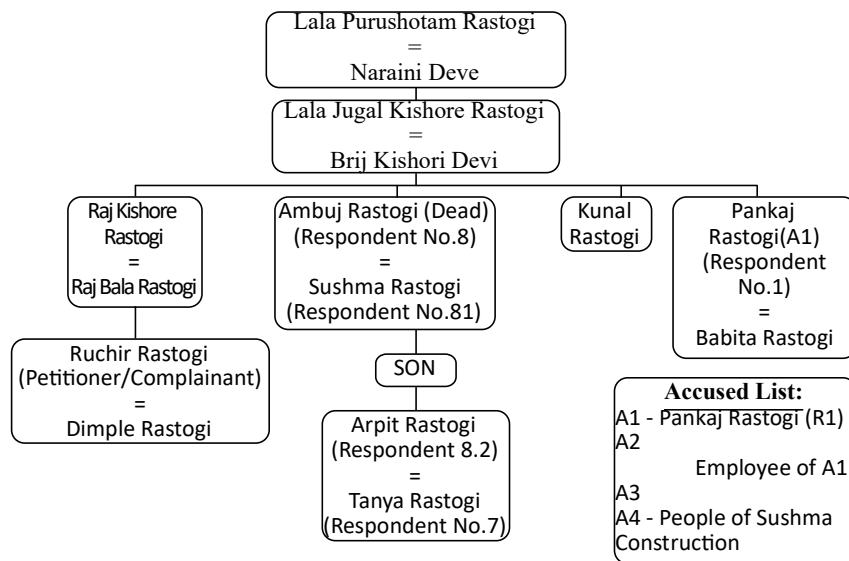
VIKRAM NATH, J.

Leave granted.

2. These appeals assail the correctness of the judgment and order dated 15.04.2019 passed by Allahabad High Court in Criminal Misc. Writ Petition Nos.31343 and 31370 of 2018 (filed by the respondents herein) whereby both the writ petitions were allowed and the First Information Report¹ lodged by the present appellant dated 22.10.2018 registered as Case Crime No.0128 of 2018 under sections 457, 380 and 506 of the Indian Penal Code, 1860², Police Station Pheelkhana, District Kanpur Nagar was quashed. The private respondents herein were the accused in the said FIR.

3. Shorn of unnecessary details, the relevant facts are as follows:

3.1 The appellant and the private respondents belong to the same family and the pedigree is as follows:



1 FIR

2 IPC

- 3.2 The appellant and respondent No.1 entered into a partnership as Karta of their respective HUFs and a partnership deed dated 01.04.2012 was reduced into writing. The business inherited by them was run in shop No.26/59 as a tenant. The said premises was taken on rent from its owner Ms. Urmila Gupta.
- 3.3 Respondent No.1 gave a legal notice dated 27.05.2013 to the appellant expressing his desire to dissolve the firm w.e.f. 01.06.2013. He also retained the keys of the shop and restricted the appellant's entry therein.
- 3.4 In response, the appellant gave a legal notice dated 07.06.2013 requesting the respondent 1 to withdraw his notice dated 27.05.2013. The appellant also filed an application under section 9 of the Arbitration and Conciliation Act, 1996³ before the District Judge, Kanpur registered as Misc. Arbitration Application No.77/70 of 2013. The District Judge passed an interim order dated 01.07.2013 directing the parties not to open the shop in the absence of the other i.e. to say that both the parties or their representative would enter the shop jointly and neither of the parties will enter the shop separately. The District Judge appointed an Advocate Commissioner to serve the notice before the next date which was fixed as 06.07.2013. The aforesaid order dated 01.07.2013 is reproduced hereunder:

“Application under Section 9 of the Arbitration and Conciliation Act alongwith munsrim report is placed on record. It deserves to be registered.

01.07.2013

The case was called.

7ga is registered while issuing notice to the opposite parties date 06.07.2013 is fixed. **Till then both the parties or their representatives will enter the shop in dispute**

3 The 1996 Act

jointly. No party or its representatives will enter the shop separately.

11ga application for appointment of special messenger or advocate Commissioner is accepted Shri Prabhat Sharma Advocate is appointed as advocate Commissioner who will go to the place and serve the notice on the opposite party and before the date will file their report. The plaintiff will pay Rs.700 as fee to the advocate Commissioner and will also pay the expenses of 100 too and from.

Sd/-

District Judge

Kanpur Nagar”

- 3.5 On 02.08.2013, Arbitrators were appointed to sort out the differences between the partners i.e. appellant and respondent No.1 of the firm M/s Lala Jugal Kishore and sons at Kanpur. Before the District Judge, Kanpur, respondents appeared and filed their objections in the proceedings under section 9 of 1996 Act. After hearing learned counsel for the parties and after considering the material on record, the District Judge, Kanpur passed a detailed order dated 11.11.2013 disposing of the said application. The findings recorded were that the appellant had a prima facie case, there was a balance of convenience and also irreparable loss could be caused in case injunction is not granted. The District Judge accordingly directed that the entire assets and belongings of the firm M/s Lala Jugal Kishore and Sons at premises No.26/59, Birhana Road, Kanpur shall be preserved till the making of the arbitral award before it is enforced in accordance with section 36 of the 1996 Act. The operative portion of the order dated 11.11.2013 reads as follows: -

“The application 4kha is decided accordingly. The entire assets, belongings of the firm M/s Lala Jugal Kishore & Sons at Premises No.26/59, Birhana Road, Kanpur Nagar, shall be preserved till the making of the arbitral

award before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act.”

- 3.6 According to the appellant, an arbitral award was passed on 29.08.2013, a copy whereof is filed along with the rejoinder affidavit as Annexure-R5. The said award is on the basis of compromise. As per the said compromise, which included all the assets and belongings of the firm, the shop in question came to the exclusive possession of appellant and his father.
- 3.7 Mr. Ambuj Rastogi, one of the respondents and one of the sons of Lala Jugal Kishore Rastogi purchased the shop in question from Ms. Urmila Gupta the owner, in the name of M/s Sushma Constructions Pvt. Ltd. wherein he and his wife Sushma Rastogi were the main promoters vide sale deed dated 12.12.2013.
- 3.8 M/s Sushma Constructions Pvt. Ltd. filed an eviction suit against the respondent No.1 in the Court of Judge, Small Causes/ Additional District Judge, Court No.16, Kanpur Nagar registered as Small Causes Suit No.309 of 2014. Apart from respondent No.1, no other person was impleaded as defendant in the said suit. The Trial Court, vide judgment dated 15.07.2015, dismissed the said suit. Aggrieved by the said judgment dated 15.07.2015, M/s Sushma Constructions Pvt. Ltd. preferred a Revision under section 25 of the Provincial Small Causes Courts Act, 1887 before the High Court registered as SSC Revision no.279 of 2015. The High Court, vide judgment dated 19.07.2018, primarily on the basis of the concession given by the opposite party therein i.e. Pankaj Rastogi (respondent No.1 herein) allowed the said Revision and a direction was issued to respondent No.1 to hand over peaceful possession of the shop in question within a period of 30 days. It was also provided that as per the agreed terms, if the possession is handed over within 30 days, the plaintiff M/s Sushma Constructions Pvt. Ltd. would not press for recovery of rent. The concession recorded and the operative portion of the order passed by the High Court are reproduced hereunder:

“Accordingly, the impugned judgment dated 15.07.2015 passed by the learned Judge Small Causes Court/Additional District Judge, Court No.16, Kanpur Nagar in S.C.C. Suit No.309 of 2014, M/s Sushma Construction Pvt. Ltd. vs. Pankaj Rastogi stands set aside and the suit filed by the plaintiff stands allowed in toto. However, at this stage, learned counsel for the defendant-respondent submitted that as categorically stated in paragraph 7 of the counter affidavit that the defendant – respondent is not at all in a position to pay even a single penny as his business has been closed, therefore, liability to pay the arrears to set aside. On this statement, the learned counsel for the plaintiff-revisionist very fairly submits that in case the peaceful possession is handed over by the defendant-respondent within 30 days from today, he shall not press for any recovery of the arrears of rent.

Accordingly, as jointly agreed between the parties, the defendant-respondent is directed to handover the peaceful possession of the shop in question within a period of thirty days from today. In case such possession is handed over within 30 days, the plaintiff-revisionist shall not press for any recovery of the rent. It is also made clear that any delay or deliberate avoidance on the part of the plaintiff in taking possession when handed over by the defendant would be taken against the spirit of the present order.

Learned counsel for the defendant undertakes to send a copy of this order to his client. The plaintiff is also permitted to serve a certified copy on the defendant respondent No.1 personally as well as by registered post/ courier services for necessary compliance.

It is further made clear that in case possession is not handed over within thirty days from today, the plaintiff shall be at liberty to execute the same.

Revision stands allowed, however, with the observations as made above.”

- 3.9 Respondent No.1, on the strength of the aforesaid order passed by the High Court, surrendered the shop in question to M/s Sushma Constructions Pvt. Ltd. - plaintiff in the suit for eviction, on 11.10.2018.
- 3.10 The appellant came to know that the Board of M/s Sushma Constructions Pvt. Ltd. was put up outside the shop in question and also that the locks of the said shop had been changed. Immediately thereafter the appellant lodged an FIR on 22.10.2018 which is a subject matter in question. In the said FIR, respondent No.1 along with one Mohit Rastogi, Ketan Shah and staff of M/s Sushama Constructions Pvt. Ltd. were arrayed as accused and named in the FIR. In the FIR, it was clearly mentioned that the appellant and respondent No.1 as Kartas of respected HUF were partners in equal share and there was an interim order operating. At the time when the interim order was passed, the shop had about 100 Kgs of Gold, 500 Kgs Silver, 10,000 Carat of Diamonds and 5000 Carat of Gems. The appellant came to know of new locks and the Board of M/s Sushma Constructions Pvt. Ltd. only on 17.10.2018. It was also mentioned that the appellant had learnt that it was respondent No.1, along with staff named in the FIR, who had opened the locks and the entire stock and valuable documents were missing. When the appellant inquired from respondent No.1, he threatened him to keep quiet otherwise he would lose his life.
- 3.11 It is this FIR which was challenged by way of Criminal Misc. Writ Petition No.31343 of 2018 filed by Pankaj Rastogi, Mohit Rastogi and Ketan Kumar Shah and Criminal Misc. Writ Petition No.31373 of 2018 was filed by Tanya Rastogi wife of Arpit Rastogi and Ambuj Rastogi praying for quashing of the same. These two petitions have been allowed by the High Court by the impugned judgment.
- 3.12 The High Court allowed the petitions on the finding that no offence under various sections mentioned in the FIR were made out as the same on its face value did not satisfy the

ingredients of the offences under section 457, 380 and 506 of IPC. Aggrieved by the same, the present two appeals have been preferred by the complainant Ruchir Rastogi.

4. We have heard the learned senior counsel for the parties, Shri Vikas Singh for the appellant and Shri R. Basant, for the private respondents. We have perused the material on record and also the submissions made on behalf of the respective parties.

5. At the outset, it may be noted that Raj Kishore Rastogi (father of the appellant), Ambuj Rastogi, Kunal Rastogi, and Pankaj Rastogi (respondent No.1) are real brothers. All four are sons of Lala Jugal Kishore Rastogi. The shop in question was a joint partnership of the HUF of the appellant and respondent No.1 and they had signed the partnership deed as Kartas of the respective HUF.

6. The proceedings initiated by the appellant under section 9 of 1996 Act are not disputed nor the orders passed therein on 01.07.2013 and 11.11.2013. The order dated 11.11.2013 had been passed after considering the objections filed by respondent No.1 and also the submissions advanced by the counsel for the parties. It is a reasoned order to which apparently there is no challenge. Pankaj Rastogi very well knew about the order dated 01.07.2013 as also the order dated 11.11.2013.

7. It is true that Ambuj Rastogi and Sushma Rastogi, the promoters and Directors of M/s Sushma Constructions Pvt. Ltd. were not parties to the proceedings under section 9 of the 1996 Act and rightly so for the reason that they were not partners with respect to the business being run in the shop in question.

8. It is difficult to presume that Ambuj Rastogi and Sushma Rastogi were not aware of the orders passed in the section 9 proceedings under the 1996 Act but even if it is assumed that they were not aware of the said orders the fact remains that respondent No.1 had due knowledge and was well aware of the orders passed by the District Judge in the aforesaid proceedings. The purchase of the shop in question by M/s Sushma Constructions Pvt. Ltd. of which Ambuj Rastogi and Sushma Rastogi were the promoters/Directors from the erstwhile owner Smt. Urmila Gupta could have been part of the

larger conspiracy planned in collusion with respondent No.1 but we refrain ourselves from recording any finding to that effect at this stage.

9. The filing of the Small Causes Suit for eviction by M/s Sushma Constructions Pvt. Ltd. impleading only respondent No.1 as the defendant speaks volumes about their collusion. What made Ambuj Rastogi believe that it was respondent No.1, who was alone the owner and in possession of the business being run from the shop in question, is nowhere reflected. In any case, once the notices for eviction were served upon respondent No.1, he ought to have disclosed this fact in the said suit that firstly, the business in the shop in question was being jointly run by him and the appellant and more importantly, that there was an injunction operating passed by a competent Court of District Judge in proceedings under section 9 of the 1996 Act. Respondent No.1 almost admitted the claim for eviction which ultimately was the basis for the High Court to decree the suit. It was a collusive suit no doubt and, in any case, respondent No.1 had been dishonest and deliberately concealed the material fact from the Court. Further, respondent No.1 being under an injunction of preserving the assets and belongings of the shop separately in violation thereof proceeded to surrender the possession in compliance to the decree of eviction on 11.10.2018. Respondent No.1, along with other co-accused, including not only the Directors/promoters of M/s Sushma Constructions Pvt. Ltd. but also others, removed the assets and belongings inside the shop in question by breaking open the locks in violation of the injunction orders.

10. Having considered the FIR which has been registered for the various offences under sections 457, 380 and 506 of the IPC, we now proceed to discuss the ingredients of sections 457, 380 and 506 of the IPC in order to test whether the High Court was right in recording a finding that on the face of it, the ingredients for the said offence were not made out from the reading of the FIR.

11. Theft is defined under section 378 of the IPC, according to which anyone intending to dishonestly take any moveable property out of possession of any person without that person's consent, moves that property in order to such taking, is said to commit Theft. In the present case, the assets and belongings inside the shop in question were in joint possession of the appellant as also the respondent No.1 and there was an injunction

granted by the Competent Court that the assets and belongings of the shop in question would be preserved, removal of the same without consent or knowledge of the appellant would amount to theft.

12. As per the order dated 01.07.2013 and further by a subsequent order dated 11.11.2013, it was directed that the entire assets and belongings of the said firm would be preserved till the making of the arbitral award before it is enforced in accordance with section 36. The possession, would therefore, remain with the appellant and respondent No.1 so long as the injunction was operating on it. Respondent No.1 knowing fully well could not have firstly surrendered the shop and allowed M/s Sushma Constructions Pvt. Ltd. to remove the assets and belongings in the said shop. It is difficult to say whether he was directly involved in the theft but he was definitely involved in the conspiracy and abetting the theft. Respondent No.1 should have informed the appellant of the same but he did not.

13. The appellant, being a partner in the said firm, removal of the assets without his knowledge would amount to theft, be it by M/s Sushma Constructions Pvt. Ltd. or others.

14. Further, section 457 IPC talks of an offence regarding 'lurking house trespass or house breaking at night to commit an offence punishable with imprisonment'. Theft committed in any building which is used as a human dwelling or for a custody of a property is punishable under section 380 of the IPC and the sentence for a term which may extend to seven years and also be liable to fine. In the present case, there was breaking open of the locks of the premises wherein the property was stored for the purposes of theft, the punishment under section 457 of the IPC would extend to 14 years.

15. Section 506 of the IPC talks of the offence of criminal intimidation. The FIR contained the specific averment that when the appellant questioned respondent No.1, he threatened him to remain quiet otherwise he would lose his life. All these offences are cognizable in nature and basic ingredients being there in the FIR, the High Court clearly erred in quashing the FIR. Whether the offences are proved or not would be a subject matter of the Trial and before that of the investigation as to whether a triable case is made out or not by the investigating agency but in any case, was not a case where FIR was liable to be quashed.

16. The defence taken by the respondent if adverted to and dealt with by this Court, could cause serious prejudice to them in the investigation and also the trial as such we are not delving into the same. However, we would refer to the couple of objections taken, for example, the dispute regarding the arbitration award and its execution. Even in the absence thereof once there was an injunction granted to preserve the property, respondent No.1 could not have dealt with the same and, at the outset, he should have informed the appellant about the orders passed under section 9 of the 1996 Act. He should have refrained himself from surrendering the possession of the shop in question. His participation in the crime *prima facie*, therefore, cannot be ruled out.

17. For all the reasons recorded above, the appeals succeed and are allowed. The impugned judgment of the High Court is set aside. Law to take its own course. The matter to proceed with respect to the FIR in question in accordance with law. It is however made clear that any observations made in this order are only for the purposes of deciding the issue raised and the same may not influence the investigation or the trial which shall proceed independently and be decided on the evidence adduced.

Headnotes prepared by:
Divya Pandey

Appeals allowed.