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THE LAW LEDGER

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SUPREME COURT OF INDIA

SONU CHOUDARY .....APPELLANT(S)

VERSUS

STATE OF NCT DELHI .....RESPONDENT(S)

OFFENCE WITHIN RESTAURANT NOT 'HOUSE TRESPASS' AS PER SECTIONS 442, 452 IPC: HON'BLE SUPREME COURT

SUPREME COURT OF INDIA
CRIMINAL APPEAL NO. 3111 OF 2024

ISSUE# 11 NOVEMBER/2024

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OFFENCE WITHIN RESTAURANT NOT 'HOUSE TRESPASS' AS PER SECTIONS 442, 452 IPC: HON'BLE SUPREME COURT

SUPREME COURT OF INDIACRIMINAL APPEAL NO. 3111 OF 2024

Date of Judgement: 06/11/2024

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Facts of the Case:

This case originated from an incident on October 6, 2014, in which the appellant, Sonu Choudary, allegedly entered Baithak Restaurant in Delhi, where he assaulted the owner, Rajat Dhyani, after being denied water to consume alcohol. Choudary inflicted injuries on Dhyani using a blade and later injured another person, Imran Khan, who attempted to intervene. Based on the testimonies and evidence, the Trial Court convicted Choudary under Sections 324 (voluntarily causing hurt) and 452 (house trespass with intent to harm) IPC. The High Court later upheld this conviction and sentencing, leading to this appeal to the Supreme Court.

Issues Advanced:

Whether the offense of house trespass under Section 452 IPC was correctly applied to a commercial establishment (the restaurant) not primarily used as a dwelling or place for the custody of property.

Judgement:

The Hon'ble Court upheld the conviction under Section 324 IPC, stating that the evidence, especially the corroboration from medical records, substantiated the appellant's guilt for causing simple injuries.

The relevant para of the judgement is as under:

Para 6."……..we are of the opinion that the prosecution had proved the guilt of the appellant so far as the offence under Section 324, i.e., "voluntarily causing hurt" to the appellant was concerned and was rightly convicted and sentenced for the offence under Section 324 IPC. "

However, with regard to applicability of the section 452 IPC the hon'ble court observed as under:

Para 7.However, so far as the offence under Section 452 is concerned, both the Courts below have failed to consider the ingredients of the said provision. Section 452 reads 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."

Para 8.The definitions of criminal trespass and house trespass as contained in Sections 441 and 442 read as under:-

Section 441 IPC :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".

Section 442IPC :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"."

Para 9. Having regard to the said provisions contained in Sections 441, 442 read with 452, it appears that in order to convict a person for the offence under Section 452, it has to be proved beyond reasonable doubt that the accused had committed a house trespass within the meaning of Section 442, on he having made preparation for causing hurt to any person, or putting him under fear etc.

The “house trespass” being an essential ingredient for convicting a person under Section 452, it has to be proved by the prosecution that the accused committed the house-trespass and criminal trespass by entering into or unlawfully 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, as contemplated in Section 442 IPC.

Para 10. So far as the facts of the present case are concerned, admittedly, the incident had taken place in a restaurant run by the injured PW-1, Rajat, which cannot be said to be either a place used for human dwelling or for worship or for the custody of the property. Hence, the very ingredients of the offence under Section 452, namely, the criminal trespass as contemplated in Section 441 and house trespass as contemplated in Section 442 having not been made out by the prosecution, the appellant could not have been convicted for the offence under Section 452 IPC.

Accordingly, the Hon'ble Court held as under:

In that view of the matter, the conviction made and sentence awarded by the Trial Court and confirmed by the High Court is further confirmed so far as the offence under Section 324 IPC is concerned, however, the conviction made and sentence awarded for the offence under Section 452 IPC by the Trial Court and confirmed by the High Court is hereby set aside.