
(1990) 03 BOM CK 0025
In the Bombay High Court

Abdul Quayaum Ansari

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 16-03-1990

Acts Referred:

Companies Act, 1956 — Section 630, 630(1)

Citation : (1990) 2 BomCR 437 : (1991) 70 CompCas 368

Hon'ble Judges : A.C. Agarwal, J

Bench : Single Bench

Advocate : R.Z. Moray, for the Appellant; P.B. Sawant, for the Respondent

Judgement

A.C. Agarwal, J.—This petition raises a question in regard to the scope and ambit of section 630 of the Companies Act, 1956. It was held by this court that the term "officer or employee of a company" as used in section 630 applies not only to the existing officers or employees but also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property, or (b) having obtained such property during the course of his employment, withhold the same after the termination of his employment. The Calcutta High Court disagreed with the view and hold that it refers only to existing officers and employees of a company. It also held that the words "any such property" in section 630(1)(b) relates to property specifies in clause (a), i.e., property of the company wrongfully taken possession of by a present officer or employee of the company. The Supreme Court in the case of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, , disagreed with the view of the Calcutta High Court.

2. The question that arises for determination in the present petition is an extension to the question that arose for consideration in the cases before the Calcutta High Court, this court and the Supreme Curt and the question is whether the term "officer or employee of a company" in section 630 would include also the heirs and legal representatives of the deceased officer or employee of a company who continue to withhold the property of a company.

The facts giving rise to this question are as follows:

The late Abdul Aziz Ansari who was in the employment of the complainant, second respondent company, died in the year 1987, leaving behind him his son, the petitioner who was original accused No.1, accused Nos.2 and 3, his other sons, and the original accused No.4, his widow. The deceased, Abdul A. Ansari, was in the employment of the second respondent company during the period 1944 to 1974. He retired from service in the 1974. During the term of his employment, the second respondent company had provided him accommodation being residential cottage at Siraj Cottage, 1st floor, Kurla, Bombay-400 070. After his retirement and on his request, he was allowed to continue to stay in the said cottage for period of two years. In or about 1979, Iqbal Ansari, accused No.3, son Aziz A. Ansari, was employed in the second respondent company. He served till 1986, whereafter he resigned of his own. In view of his employment with the second respondent, he was allowed to continue to reside in the aforesaid cottage. Even after the said Iqbal Ansari resigned, the flat was not handed over to the second respondent company. Since the petitioner and the other co-accused failed and neglected to hand over possession of the said cottage, on March 17, 1988, the second respondent filed the present complaint alleging offences under sections 406, 408, Indian Penal Code, and section 630 of the Companies Act. The second respondent impleaded accused Nos.1 to 3, the sons of late Aziz A. Ansari, and accused No.4, his widow. On March 17, 1988, the learned Additional Chief Metropolitan Magistrate, Ballard Pier, Bombay, issue process against the accused u/s 447, Indian Penal Code, and u/s 630 of the Companies Act. Taking exception to the same, the petitioner who is accused No.1, preferred the present petition for quashing the aforesaid prosecution. It may be mentioned that prior to the filing of the present petition, the accused had applied to the trial court for stay of further proceedings pending Civil Suit No.3491 of 1988, filed by them in the Court of Small Causes, but that prayer was rejected on April 11, 1989.

3. Shri Moray, learned counsel appearing for the petitioner, submitted that on a proper construction of section 630 of the Companies Act, 1956, the heirs and legal representatives of an officer or employee or of an ex-officer or an ex-employee of a company cannot be included within the provisions of section 630 of the Companies Act. According to him, section 630 is penal provision and a strict construction will have to be given to the said provisions. Section 630 provides for offences punishable with imprisonment which may extend to two years. Hence, an extended meaning to the term "officer or employee of a company" cannot justifiably be given in section 630 of the Companies Act. He further submitted that the present prosecution is barred by the law of limitation. He pointed out that the late Aziz A. Ansari had retired as far back as in April, 1974. The period of limitation for filing the instant complaint u/s 468(2)(c) of the Code of Criminal Procedure was three years. Hence, the present complaint filed in the year 1988 was hopelessly time-barred. Lastly, he contended that there was a bona fide civil dispute pending in Suit No.3491 of 1988, filed by the

accused and it would be in the interest of justice that the present prosecution be stayed pending the disposal of the said suit.

4. In my judgment, there is no merit in any of the aforesaid contentions. It has to be noticed that section 630 of the Companies Act, 1956, is not a pure penal provision prescribing punishment. It is a quasi-criminal proceeding. It is apparent that the object of the provision is to provide for speedy recovery of the property of the company. It is common knowledge that both in the public as well as in the private sector, companies are required to provide residential accommodation to their officers and employees as a condition of their service to attract better talent and have of necessity to purchase residential flats in multi- storeyed buildings in large cities and towns for the use of their officers and employees during the course of their employment. It is also common knowledge that many employees who have been provided accommodation by the company as a perquisite or as a condition of service fail to vacate and deliver back possession to the company after they ceased to be in the employment. They adopt diverse proceedings to delay or defeat the claim of the company. This undoubtedly is on account of the paucity of accommodation in such towns and cities. It is obvious that the main object of enacting section 630 is to ensure the speedy recovery of its property by the company. That is the main crux of the provision. The provision no doubt provides for penalty of imprisonment in default of the officer or employee delivering the property to the company despite the order of the court. The main thrust, however, in the provision is to secure possession of the property to the company by making a provision for imprisonment in case of default despite an order in that behalf. The provision imposes a fine for withholding the company's property and the penalty of imprisonment is provided only in default of handing over the property despite the order of court.

5. The question that has arisen in the present case is whether the provisions of section 630 of the Companies Act can be made applicable also to the heirs and legal representatives of the officer or employee in whose charge the property of the company has been left by the deceased employee. In my judgment, on a proper construction of the said provision, the said heirs and legal representatives would be included in the term "officer or employee of a company". An employee who is allotted a residential accommodation by the company does not occupy it alone, but occupies it along with the members of his family. If section 630 obliges an officer or an employee to return the property of the company, I see no reason why after his death, his heirs and legal representatives who continue to be in possession of the property of the company by virtue of them being the heirs and legal representatives of the officer or employee should be absolved of their liability to return the property to the company. Take a case where a company were to prosecute its ex- officer or ex-employee u/s 630 of the Companies Act. If the said officer or employee, during the pendency of the prosecution, dies, can it reasonably be held that the prosecution u/s 630 would abate? I should think not. If the property of the company which was wrongly held by its officer or employee is in the possession of his heirs and legal representatives they are as much in

wrongful possession of such property in their capacity as the heirs and legal representatives as the deceased officer or employee. In my judgment, such heirs and legal representatives are as much liable to return the property to the company as the officer or employee are liable. Extending the same principle a little further, even if the officer or the employee dies before the institution of the complaint, I see no reason why the provisions of section 630 cannot be made applicable to the heirs and legal representatives who have come in possession or continue in possession of the company's property after the death of the officer or employee. In my view, such heirs and legal representatives would be bound to return the property back to the company and in default, they would be liable for prosecution and punishment u/s 630 of the Companies Act.

6. Shri Moray relied upon the case of Beharilal Gupta v. Binod Mills Ltd. [1988] 64 Comp Cas 117: [1987] 3 Com LJ 246. The High Court of Madhya Pradesh in the aforesaid case held that the provision embodied in section 630 do not contemplate criminal proceedings against relatives of an erstwhile director. Consequent upon the said finding, the High Court in its inherent power u/s 482, Criminal Procedure Code, dropped the criminal prosecution lodged against the relatives of the erstwhile directors. I have considered the ratio laid down in the aforesaid case, but have been unable to persuade myself to concur with the view expressed. Section 630 has to be interpreted in a manner as not to defeat the very purpose and object for which it is enacted. Persons found aiding and abetting the offence under the said provisions must be held liable for prosecution in the same fashion as the officer or the employees himself. For the reasons already indicated, I disagree with the view expressed by the High Court of Madhya Pradesh and hold that the provisions of section 630 of the Companies Act apply not only to the officers or employs, but also to the heirs and legal representatives if the deceased officer or employee who have come in possession or have continued to be in possession of the company's property after the death of the officer or employee. For the aforesaid reasons, the first contention advanced by Shri Moray will have to be rejected.

7. In regard to the next contention raised by Shri Moray, it has to be observed that this contention has not been raised in the present petition. The issue regarding limitation is a mixed question of fact and law. The averments in the complaint indicate that Shri Iqbal Ansari, accused No. 3, was in the employment of the second respondent company during the period 1979 to 1986. It has been recited in the complaint that at his request, the accused were allowed to reside even after the retirement of the said Iqbal Ansari for a further period of 12 month after his retirement, i.e. till about December, 1987. It, therefore, cannot be held particularly at this stage that the present complaint which was filed on March 17, 1988, is barred by limitation. Hence, the second contention of Shri Moray is also rejected.

8. The last contention of Shri Moray is regarding the pendency of a bona fide civil dispute in Civil Suit No.3491 of 1988, pending in the Court of Small Causes. It

has to be observed that this suit has been filed after the filing of the present complaint. It is now well-established that a criminal complaint once lodged should be expeditiously disposed of and the same can be stayed only if the special facts and circumstances of the case so warrant. I do not find any special facts or circumstances in the present case to stay the present criminal prosecution pending the suit. It is well-known that civil suits take years before decisions are given. To stay the present complaint u/s 630 of the Companies Act would be to defeat the very object of the said provision. It may be that the suit has been directed to be disposed of expeditiously prior to the end of the year. That, however, may not be an answer to the malady of the second respondent company as appeals and writ petitions are known to take several years before they are finally decided.

9. In the result, I find the present petition devoid of any merit and the same is dismissed.

10. Rule discharged.