**(2008) 02 P&H CK 0316**

**In the Punjab And Haryana At Chandigarh**

Aradhana Gupta and Another — APPELLANT

Vs

Ludhiana Colonizers P. Ltd. and Others — RESPONDENT

**Date of Decision :** 07-02-2008

**Acts Referred:**
Companies Act, 1956 — Section 630

**Citation :** (2009) 152 CompCas 666

**Hon'ble Judges :** Vinod K. Sharma, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Vinod K. Sharma, J.—The petitioners seek quashing of the complaint dated February 14, 2006, annexure PI, filed u/s 630 of the Companies Act, 1956 (for short "the Act") and the summoning order dated February 15, 2006, passed by the learned Judicial Magistrate First Class, Ludhiana, annexure P2, and all consequential proceedings arising therefrom in the interest of justice, equity and fair play.

2. On the complaint filed by the Ludhiana Colonizers P. Ltd., a company registered under the Act, learned Judicial Magistrate First Class, Ludhiana has been pleased to summon the petitioners u/s 630 of the Act by passing the following order:

1. The complainant Ludhiana Colonizers P. Ltd., through its director C.L. Chandok and Vimal Kumar have filed this complaint u/s 630 of the Companies Act suing Aradhana Gupta and Smt. Veena Yadav on the allegations that the complainant is a duly incorporated company. The complainants C.L. Chandok and Vimal Kumar are its directors. Accused Nos. 1 and 2 were taken as directors of the complainant company on March 15, 2004. Accused No. 1 continued to be director of the company while accused No. 2 ceased to be its director because she was not holding qualified share in the company and as such she is an ex-director of the company. The complainant company held its annual general meeting (AGM)

 

on September 6, 2004, which was presided over by accused No. 1. At the time when the record of company and its property was under the control and possession of both the accused, who conducted annual general meeting and filed the annual report along with the audited accounts of the company with the Registrar of Companies after filing of the statutory documents, both the accused retained the record of the society as well as the movable and immovable properties and despite repeated demands by its board of directors, they have failed to hand over the record of the company and are illegally withholding the property of the company, which amounts to wrongful retention of property of the complainant company punishable u/s 630(1)(a) of the Companies Act, 1956. Hence, the present complaint.

2. For the purpose of summoning the accused, the complainant C.L. Chandok himself appeared and submitted this affidavit exhibit PA in which he reiterated the contents of his complaint and closed his evidence.

3. I have heard learned Counsel for the complainant and have, also gone through the evidence on record, which remains unrebutted, perusal of the memorandum and articles of association exhibit P2 makes out that accused No. 2 was also one of the directors of the company but as she was not holding the qualified shares as required u/s 283 of the Companies Act hence, she ceased to be a director of the company but, nevertheless, at the time of holding the annual general meeting on September 6, 2004, both the accused conducted its proceedings. Perusal of the balance-sheet dated March 31, 2002, exhibit P7 confirms that it was filed by the complainant company under the signatures of both the accused on July 26, 2004. Similarly, statement of fixed assets exhibit P8 and notes forming part of the account for the year ending March 31, 2004, exhibit P9 and auditor report dated July 26, 2004, exhibit P10 and photo copy of the annual return exhibit P12 makes out that both accused were running the affairs of the company and as per unrebutted evidence led by the complainant, after conducting proceedings of the annual general meeting on September 6, 2004, they filed the annual report along with audited accounts with the Registrar of Companies but afterwards they failed to return the record of the society as well as its property to its board of directors. As per Section 630(i)(a)(b) it is an offence to wrongfully obtain possession of the property of the company. It is also an offence to withhold the property of the company once it comes into possession of any officer or employee of the company Section 2(30) defines "officer" to include any director, etc., also Hon?ble apex court in Employees'' State Insurance Corporation Vs. Apex Engineering Pvt. Ltd., , has laid down that a managing director of an incorporated company, who had been entrusted by its board of directors with specified functions for a specified annual remuneration was an employee and not the principal employer in another such judgment in Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, , the Hon?ble Supreme Court of India has laid down that retaining the flat of company by legal heirs of its director comes within the mischief of Section 630 as such as despite demand, accused have retained the property of the complainant company, which

 

include its record and movable and immovable property, hence, they are liable to be penalised u/s 630 of the Companies Act. A prima facie case is made out to summon both accused to face the present trial under the said section.

3. The petitioners seek quashing of the complaint, summoning order and subsequent proceedings on the ground that the complaint filed is in violation of the provisions of Section 630 of the Act as under the said provisions the complaint can only be filed by the company or any creditor or contributory. The contention of Shri Anand Chhibbar, learned Counsel appearing on behalf of the petitioners is that the complaint on behalf of the company can only be filed if there is a resolution passed in favour of the person by the board of directors of the company.

4. This contention of learned Counsel for the petitioners cannot be accepted in view of the fact that the complaint, annexure PI specifically mentions that the board of directors of the company in their meeting held on January 13, 2006, have authorised Shri C.L. Chandok and Vimal Kumar to file a criminal complaint u/s 630 of the Act. Copy of the resolution has been attached as annexure C with the complaint. Whether the resolution passed was valid or not or any meeting was held on January 13, 2006, is a question of evidence and proceedings cannot be quashed on the plea that the resolution passed in favour of the persons representing the company was not valid.

5. Learned Counsel for the petitioners also contended that no material has been placed on record showing that Shri C.L. Chandok was ever inducted as director of the company and articles of association placed on record was said to be fake and forged document. This plea of learned Counsel for the petitioners is again misconceived and is against the settled law that for the purposes of dealing with the petition u/s 482 of the Cr.P.C., the allegations made in the complaint are to be taken on their face value and the defence available to the respondents cannot be taken note of to scuttle the prosecution at the initial stage.

6. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners also contends that it were the petitioners who were the real representatives of the company due to shareholding held by them and therefore, the proceedings were liable to be quashed. This plea is again not available to the petitioners as the company has its own independent legal identity and once the complaint has been filed by the company the status of the petitioners vis-a-vis C.L. Chandok and Vimal Kumar looses all importance.

7. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners thereafter contends that the complaint as well as the summoning order are liable to be quashed as there has been violation of the provisions of Sections 202 and 273 of the Code of Civil Procedure. This contention of learned Counsel for the petitioners again is of no help to the petitioners as in the summoning orders it has been specifically mentioned that Shri C.L. Chandok had appeared before the court and submitted affidavit exhibit PA wherein the contents of the complaint

 

were reiterated and preliminary evidence was closed. Thus, it cannot be said that there has been a prima facie violation of Section 202 or Section 273 of the Cr.P.C., as is sought to be contended.

8. The contention of learned Counsel appearing on behalf of the petitioners that the affidavit cannot be taken in evidence also cannot be sustained. Once the affidavit has been filed and proved on record by appearing in the court, the court cart look into the same.

9. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners thereafter contended that complaint and the summoning order were liable to be quashed as the allegations were false vague and contrary to statutory record of the company. This plea also cannot be accepted as paragraph No. 4 of the complaint reads as under:

4. That after the filing of the above said statutory documents, both the accused have retained the record of the society and other property movable and immovable. In spite of repeated demands made by the board of directors of the complainant company to hand over the record to the board of the complainant company, both the accused had failed to do so and are illegally withholding the property of the complainant company. The continuing possession of the movable and immovable property and records of the complainant company amounts to wrongful retention of the property of the complainant company which is punishable u/s 630(1)(a) of the Companies Act, 1956.

10. Thus, the allegations made in the complaint cannot be said to be vague as is sought to be contended. Whether the allegations are false and contrary to statutory record is again a question of evidence to be adjudicated upon at the time of trial.

11. Learned Counsel appearing on behalf of the petitioners contends that in the complaint itself it has been mentioned that the possession of the movable and immovable property and other record of the company was in the legal possession of the petitioners up to September 6, 2005. But it does not disclose as to how the same becomes unlawful subsequent to the said date. This plea of learned Counsel for the petitioners is totally misconceived. Section 630 of the Act would come into operation when any officer or employee of the complainant having any property in his possession wrongfully withholds it or knowingly places it for the purposes otherwise that they are stipulated in the articles of association or by the Act.

12. The allegations against the petitioners in the complaint are that they have failed to hand over the record and property of the company in spite of repeated demands and therefore, this contention of learned Counsel for the petitioners also cannot be accepted.

13. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners thereafter contended that the complaint is liable to be quashed as false

 

allegations have been levelled against the petitioners. This plea is also not available to the petitioners in a petition u/s 482 of the Code as this Court is not to go into the evidence which may be available to the respondents in their defence to the complaint filed by the company.

14. Learned Counsel appearing on behalf of the petitioners vehemently? argued that withholding of property of a private company which was in possession of the quarrelling directors is a matter which requires the decision of the civil court and therefore, the complaint was liable to be dismissed.

15. In support of this contention learned Counsel for the petitioners placed reliance on the judgment of the Hon?ble Bombay High Court in the case of Vishanjee Dungarmal Futnani v. Krishna Mohanlal Futnani [1990] 69 Comp Cas 585. Learned Counsel for the petitioners referred to the following paragraphs in the said judgment:

(ii) That on going through the complaint and on considering the fact that there had been litigation between the two brothers, some of which was still pending, such as the suit instituted by V for settlement of accounts and other relief in the High Court, and the application for probate of the will of D, the dispute between the parties was essentially a civil dispute. The two brothers were fighting for the extensive property left by their deceased father D. The respondents had made an incorrect and misleading statement that the petitioners had admitted in the arbitration proceedings that they had ''illegally'' appropriated Rs. 91 lakhs of the company funds. The allegations made in the complaint when considered in the background of the civil dispute between the parties made it clear that the present complaint had been made with the ulterior motive of coercing the petitioners to settlement of the dispute and to harass them. On the facts, the chances of an ultimate conviction were bleak and the court has to see that such proceedings were not allowed to continue.

It is further alleged by respondent No. 1-complainant that between May 9,1981, and May 18,1981, payments amounting to Rs. 2,05,000 were made by cheques in favour of the petitioners-accused from D.B. Futnani and Sons (Bombay) P. Ltd. However, these amounts are falsely debited to the proprietary concern of Murlimal Santram and Co., in the books of D.B. Futnani and Sons (Bombay) P. Ltd., at Calcutta. However, no such corresponding entries are made in the account books of Murlimal Santram and Co. Similarly, in 1981-82, various amounts to the tune of Rs. 4,00,000 were taken away by the accused. All these withdrawals were contrary to the family arrangement and violative of the trust reposed in them. It is further alleged that the accused, as officers of the company, wrongfully obtained possession of the property of the company or having obtained possession wrongfully withheld it from the company and, therefore, they also committed an offence punishable u/s 630 of the Companies Act, 1956. On those averments, the complainant alleged that the accused committed offences punishable u/s 120B read with Section 406, Indian Penal Code and Section 406 read with Section 34, Indian Penal Code and also u/s 630 of the Companies Act.

On going through the complaint and on considering the fact that there have been litigations between the two brothers--petitioner No. 1-accused No. 1 and Mohanlal, husband of respondent No. 1-complainant and accused No. 1 instituted a suit for settlement of accounts and other reliefs in the Calcutta High Court as far back as on December 20, 1983 and that suit is still pending, and also that the parties referred their dispute to arbitration, but unfortunately, the award passed by the arbitrators was set aside by the Calcutta High Court, it is crystal clear that the dispute between the parties is essentially a civil dispute. The two brothers are fighting for the extensive properties left by their deceased father Dungarmal Futnani. When we consider the allegations made in the complaint in the back ground of the civil dispute between the parties. It is clear that the present complaint has been made with an ulterior motive to coerce the petitioners-accused for settlement of the dispute and also to harass them. As stated earlier, some of the accused are residing at Calcutta and some at Hyderabad and Bangalore and all of them have to rush to Bombay to attend the proceedings in the court of the learned Additional Chief Metropolitan Magistrate.

16. However, the judgment relied upon by Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners would have no application to the facts of the present case.

17. Firstly, for the reason that in the present case the complaint has been filed by the company and not by the quarrelling directors as is sought to be contended.

18. Otherwise also, the Hon?ble Bombay High Court in the referred judgment has merely reiterated the settled law that the civil dispute cannot be given a touch of criminality.

19. In the present case the allegations against the petitioners are for violating the provisions of Section 630 of the Act and prima facie the complaint has been filed by the company and not by the quarrelling directors as is sought to be contended by learned Counsel appearing on behalf of petitioners.

20. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners thereafter contended that the petitioners are trying to grab the ownership/title of the company by resorting to criminal proceedings. This plea is also misconceived as the complaint has been filed by the company and thus, there is no question of an attempt being made to grab the ownership by the persons representing the company as is alleged by the petitioners.

21. Learned Counsel appearing on behalf of the petitioners thereafter drew the attention of this Court to the annexures attached with the petition to contend that respondents Nos. 2 and 3 herein have only 10 per cent, shares and therefore, are not entitled to represent the company.

22. As already referred to above whether, the resolution placed on the file by respondent No. 1 company with the complaint is a valid document or not is a

matter of evidence to be tried by the learned trial court and not by this Court under the provisions of Section 482 of the Cr. P. C.

23. Learned Counsel appearing on behalf of the petitioners also contended that it is only directors having more than 50 per cent, share are entitled to represent the company. This plea also cannot be accepted as the board of directors of the company can authorise any person to represent the company by passing a resolution and the complaint filed against the petitioners does mention passing of a resolution by the company for instituting the complaint and copy of the resolution has been placed on record.

24. Learned Counsel appearing on behalf of the petitioners thereafter by placing reliance on the judgment of the Hon?ble Bombay High Court in the case of Damodar Das Jain v. Krishna Oman Chakraborti [1985] 57 Comp Cas 115, contended that the dispute regarding the company''s title to the property is required to be adjudicated by the civil court. The Hon?ble Bombay High Court in the case referred to above has been pleased to lay down as under (headnote):

On a plain reading of Section 630 of the Companies Act, 1956, particularly where a complaint thereunder could be also at the instance of a creditor or a contributory of the company, the Magistrate''s jurisdiction thereunder would extend only to those cases where there was no dispute, or in any event no bona fide dispute, that the property involved was the property of the company. In cases, where there is such a dispute involving title to the property, which would be purely of a civil nature, the Magistrate cannot and should not venture to determine the same in exercise of his jurisdiction under the said section, which determination could only be of a summary nature. It is a well established principle of law that the decisions of the civil courts are binding on the criminal courts but the converse is not true. Therefore, if a bona fide dispute as regards title to property were to exist between the parties, the said dispute would be purely of a civil nature and the Magistrate, before exercising jurisdiction u/s 630, will be required to allow the civil court, which is the proper forum for the purpose, to determine the dispute as to the title to the property involved.

The accused was an employee of the complainant company. There was no agreement in writing between the company and the accused setting out the terms and conditions of the service of the accused. During his employment with the complainant company till 1973, the accused was allowed to occupy the company''s flat. Some time in July, 1973, the company entered into an agreement termed as ''paying guest'' agreement in respect of a flat with its owner for a period of 9 months from April 1, 1973, with an option to renew the same on the same terms and conditions for the same period and a similar agreement for use of fixtures and furniture therein. The accused had countersigned the agreements and the agreements in terms permitted the company as a paying guest to allow the accused by his name to use and occupy the said flat on purely paying guest basis. The agreements were, thereafter, renewed only twice once on September 6, 1974 and the other on April 1, 1975, for a period of 9 months each, the period under the second agreement dated April 1, 1975, expiring on December 31, 1975. After the expiry of the second agreement, no further agreement was executed although the accused continued to occupy the premises. The company terminated the services of the accused and he by letter dated December 1, 1979, accepted his termination of services from October 4, 1979. Thereafter, the company by its letter dated September 24, 1981, demanded possession of the premises from the accused. As the accused refused to hand over possession, the company filed a complaint against the accused before the Metropolitan Magistrate charging the accused u/s 630 of the Companies Act, 1956, alleging that the accused had wrongfully withheld the company''s premises. Before the Magistrate, the accused denied the charge on the grounds that the premises were not the property of the company, that he was in possession of the premises in his own right and was a tenant of the premises directly under the landlord and that not being an employee of the company at the date of the complaint, the charge u/s 630 could not be sustained. The Magistrate held, on an interpretation of the agreements produced, that the company was a licensee under the said agreements and that in view of there being no agreement between the parties after the agreement of April 1, 1975, expiring on December 31, 1975, the company had become a tenant of the premises and that the accused was given the premises while he was in service on an understanding that he should occupy the same till such time as he was in the service of the company. In the result, the Magistrate convicted the accused of the charge u/s 630. Against the judgment and order of the Magistrate, the accused filed an appeal to the Sessions Court. The Sessions Judge held that Section 630(1) presupposed that the property of the company must be a definite one and should not be a subject-matter of controversy, as the procedure u/s 630 was a summary procedure and that on the expiry of the last agreement dated April 1, 1975, termed as ''paying guest'' agreement, no fresh agreement having been executed and on December 31,1975, the company had no existing right in the premises and that was why in reply to the landlord''s letter dated October 28, 1976, the company had stated to the landlord that it was willing to vacate the premises. The Sessions Judge also, on the interpretation of the agreements between the company and the landlord specifically termed as ''paying guest'' agreement, held that the said agreements being mainly licence agreements, they would not create any interest in the premises in favour of the company and that the company had no existing interest in the disputed premises. The Sessions Judge further found that the real dispute between the parties, was as to the nature of the agreements, which was purely of a civil nature, and the question whether the company had become a tenant of the premises by virtue of the agreements or not, was entirely a question falling within the jurisdiction of the civil court. The Sessions Judge, therefore, allowed the appeal and set aside the order of the Magistrate and acquitted the accused. On a criminal writ petition filed by the complainant company challenging the order of the Sessions Judge:

Held, that the circumstances indicated that the dispute between the parties as to the title to the premises was bona fide, viz., the company itself claiming to be the tenant of the premises having allowed the accused to occupy the same as a term of his employment, while the accused claiming himself to be the tenant of the premises directly of the landlord. Such a dispute between the parties was of a purely civil nature which should be left to the civil court to be determined. Furthermore, it, was imperative for the Magistrate to have done so, as the suit filed by the accused in the Court of Small Causes at Bombay for declaration of his tenancy was already pending and an injunction obtained against eviction was in operation. Therefore, the Sessions Judge was right in holding that the dispute between the parties fell outside the ambit of the inquiry envisaged u/s 630 and the same fell within the jurisdiction of the civil court.

25. However, this Court fails to understand how this judgment could apply as in the present case, there is no dispute regarding the title of the company.

26. The claim of the petitioners is that they are the true representatives of the company. This plea is also not available to them as the complaint has been filed by the company. Whether the same has been validly filed or not is again a question to be decided after the parties lead their evidence.

27. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners contends that the present complaint was liable to be quashed in view of the law laid down by the Hon?ble Bombay High Court in the case of Maharaja Developers v. Udaysingh Pratapsinghrao Bhonsle [2007] 4 (Cri) 1007 : AIR 2007 NOC 1375 and by the Delhi High Court in the case of Satish Dayal v. Mackinnon Mackenzie and Co. Ltd. [1988] 64 Comp Cas 750.

28. The Hon?ble Delhi High Court in Satish Dayal''s case (supra) has been leased to lawn as under (headnote):

On a complaint instituted by the respondent-company u/s 630(1) of the Companies Act, 1956, against the petitioner alleging, inter alia, that after resigning from service, the petitioner refused to surrender the premises provided to him for residence on the specific condition that he would vacate the same on the termination of his employment, the Magistrate summoned the petitioner without examining the complainant u/s 200 of the Code of Criminal Procedure, 1973, which was mandatory in the case of a private complaint before issuing process against the accused. Pending the proceedings, the company sought permission to withdraw the complaint in order to remove the defect with liberty to file a fresh complaint. On the same day, without notice to the petitioner, the Magistrate passed the following order: ''The complainant is allowed to withdraw with permission to file a fresh complaint. The complaint is dismissed as withdrawn''. Thereafter, the Magistrate entertained a fresh complaint on the same day and, after examining the person through whom the complaint had been instituted directed issue of process. The question was whether, in view of Section 257 of the Code, the withdrawal of the earlier cornplaint amounted to acquittal of the petitioner and as such a fresh complaint on the same facts or cause of action was barred by the provisions of Section 300 of the Code:

Held, that the order of the Magistrate on the earlier complaint did not operate as an acquittal of the petitioner within the meaning of Section 257 of the Code so as to bar subsequent prosecution of the petitioner on the same facts.

Held also that the Magistrate was not competent to permit the complainant to file a fresh complaint on the same cause of action.

29. The above referred judgments also do not help the petitioners, in any way, as in the present case the complainant has appeared and submitted an affidavit which has been got duly exhibited and thereafter, the court has been pleased to summon the petitioners. Thus, for all intents and purposes the complainant has been examined in the court.

30. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners also placed reliance on the judgment of the Hon?ble Supreme Court in the case of Damodar Das Jain v. Krishna Charan Chakraborti [1990] 67 Comp Cas 564, wherein the Hon?ble Supreme Court has been pleased to lay down as under (headnote):

The appellant-company took a flat as a licensee on a ''paying guest agreement'', and allowed the respondent, its employee, to reside in it. After termination of his service, the respondent refused to vacate the flat. The company filed a compliant u/s 630 of the Companies Act, 1956, and the Magistrate convicted the respondent. The Sessions Judge reversed the order of the Magistrate. On appeal to the High Court, the High Court held that the basic questions involved, namely, whether the company could be said to be a tenant of the said flat and whether after the written agreement of licence in favour of the company had expired, it could be said that the company was a licensee of the said flat, were both complicated questions of civil law and that the Magistrate had no jurisdiction to decide them. On further appeal to the Supreme Court:

Held, affirming the view of the High Court, that both questions required to be determined by a civil court and could not be determined by a Magistrate in proceedings u/s 630 of the Companies Act.

31. This contention of Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners also cannot be accepted as already referred to above, there is no dispute qua the ownership of the company to the property in dispute.

32. Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners finally placed reliance on the judgment of the Madras High Court in the case of G. Rangaswamy v. Coimbatore Pioneer Mills [2002] 111 Comp Cas 829, to contend that where there is dispute of civil nature between the parties the criminal court has no jurisdiction. The Hon?ble Madras High Court in the said case was pleased to lay down as under (headnote):

When bona fides are found wanting and when the dispute between the parties partakes of the character of a civil nature, in which complicated questions of law and fact arise, the matter would be out of the jurisdiction of the criminal court and the parties should be allowed to protect their rights in the civil forum. When a dispute between the two parties facing each other u/s 630 of the Companies Act, 1956, is of a civil nature, then resorting to Section 630 of the Companies Act would be misconceived. Simply because a person facing a complaint u/s 630 of the Companies Act raises a hue and cry that the dispute is of a civil nature, the magistrate would not automatically divest himself of his jurisdiction. The question whether a dispute is bona fide or not depends upon the facts of each case and once the dispute is found to be bona fide, then the only remedy available is before the civil forum.

33. However, it is not understood as to how the said judgment would be applicable to the facts of the present case where there is no dispute regarding the ownership and the petitioners are only challenging the right of respondents Nos. 2 and 3 to represent the company which is purely a question of evidence, especially when the complaint has been filed by the company. The reading of the complaint as well as the evidence led in support thereof and summoning order passed by the learned trial court referred to above does not suffer from any illegality nor the proceedings can be said to be barred under the provisions of statute.

34. The contention of Mr. Anand Chhibbar, learned Counsel appearing on behalf of the petitioners that the proceedings are misuse of the process of the court also cannot be sustained as the complaint is by the company and the question as to whether the company is properly represented or not is a question which has to be decided after the parties are allowed to lead evidence.

35. Thus, no ground is made out to interfere with the proceedings at this initial stage without letting the parties to lead evidence.

36. No merit. Dismissed.

 