
(2010) 07 SC CK 0068

In the Supreme Court Of India

Case No : Criminal Appeal No. 1304 of 2010 (Arising out of S.L.P. (Criminal) No. 6204 of 2008)

Automobile Products India Ltd.

APPELLANT

Vs

Das John Peter and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Companies Act, 1956 — Section 425, 426, 427, 428, 429
Constitution of India, 1950 — Article 142
Penal Code, 1860 (IPC) — Section 34, 406

Citation : (2011) 1 ACR 119 : (2011) 1 AWC 2.15 Supp : (2010) 158 CompCas 69 : (2010) 4 CompLJ 511 : (2010) 8 JT 478 : (2010) 12 SCC 593 : (2011) 1 SCC(Cri) 768 : (2010) 102 SCL 472 : (2010) 8 SCR 764 : (2010) 7 UJ 3353

Hon'ble Judges : Deepak Verma, J; Dalveer Bhandari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Verma, J.—Leave granted.

2. Under the web of hypertechnicalities justice has taken a back seat as is projected in the order dated 22.11.2006, passed by Additional Chief Metropolitan Magistrate, Girgaum, Mumbai in Crl. Case No. 38/S/2005 filed by appellant herein against accused respondent No. 1 and 2, whereby and whereunder the appellant's criminal complaint filed u/s 406 read with Section 34 of the Indian Penal Code [hereinafter referred to as "IPC"] and u/s 630 of the Companies Act, 1956 (hereinafter referred to as "the Act") was dismissed. Against the said order of dismissal, the appellant herein filed an application before the learned Single Judge of the High Court in Criminal Application No. 450 of 2007 seeking leave to file the appeal which was also dismissed on 14.7.2008, giving rise to filing of this appeal by the original complainant. Unfortunately, the accused have also with vehemence supported hypertechnicalities adopted by the aforesaid two courts, to contend that no interference is called for in the light of the facts as found in the aforesaid two orders.

3. Facts shorn of unnecessary details are mentioned herein below:

4. Appellant is a Company (hereinafter shall be referred to as "the Company") duly registered under the Act and is carrying on business of manufacturing two and three wheelers' automobile products. Mr. V.S. Parthasarthy is the Factory Manager of the Appellant-Company and has been posted in Mumbai. A resolution has been passed by the Company on 31.12.2001 to authorize Mr. V.S. Parthasarthy, Factory Manager to represent the company and to sign, verify, execute and deliver all vakalatnamas, pleadings, complaints, affidavits, declarations, petitions, written statements, rejoinders, papers, deeds, receipts, assurances etc. in a court of law. On the same day, he has been duly authorized by virtue of the Power of Attorney executed in his favour by the Appellant Company to file and prosecute the aforesaid complaint.

5. On the complaint having been filed before the Additional Chief Metropolitan Magistrate, the same was registered. The allegation in the complaint is that company is having a flat situated at 17, Carmichael Road (behind Jaslok Hospital), Mumbai. One room near the garage (hereinafter shall be referred as the 'servant quarter') is also under the ownership of the company for being used by its servants. Even though, the complaint was filed u/s 406/34 of the IPC as also u/s 630 of the Act, but cognizance was taken by the trial court only u/s 630 of the Act.

6. Respondent No. 1 (accused No. 1 herein) was working as a caretaker with the Company to look after the flat. It is not in dispute that he has retired from the service of the Company with effect from 6.3.1992. The servant quarter was allotted to accused No. 1 by virtue of his service in the company. Obviously, after his attaining age of superannuation, he was supposed to have delivered its peaceful and vacant possession to the appellant/company. Instead of doing so, he gave its possession to his daughter, accused No. 2, and shifted to Ambarnath. As on date, it is accused No. 2, daughter of accused No. 1, who is in actual physical possession of the said servant quarter.

7. It is pertinent to note that a written undertaking is said to have been tendered by respondent No. 1 on 5.1.2000 to the effect that he will vacate the servant quarter within one month thereof.

8. Since despite serving several legal notices to the accused, they refused to hand over its peaceful vacant possession to the appellant, it was constrained to file the aforesaid complaint.

9. Shri V.S. Parthasarthy, appeared as PW-1, and deposed before the Court circumstances under which accused No. 1 was handed over possession of the servant quarter, where he had worked as caretaker. After his retirement, despite promise made to the Company he has failed to vacate the servant quarter. His evidence has been dealt with extensively by the trial court but it is not required to be considered at this stage as Appellant's Criminal Complaint has been dismissed on technical ground.

10. Defence of the accused in short was that the complaint as filed by company through Mr. V.S. Parthasarthy is not maintainable inasmuch as the Power of Attorney dated 31.12.2001, said to have been executed in favour of Mr. V.S. Parthasarthy is a fictitious document. The services of accused No. 1 were never terminated and even after retirement he came to be re-appointed. Thus, he has a right to continue in its possession. As regards his undertaking given to the Chairman of the Company on 5.1.2000, wherein he specifically agreed to vacate the premises on or before 31.1.2000, he contended the same was not tendered voluntarily, meaning thereby the same was given under coercion, threat, undue influence, thus it was not binding.

11. Learned trial court critically examined the Power of Attorney and came to the conclusion that the same was executed on 31.12.2001, was notarised on 5.6.2001, and the stamp papers were purchased on 18.4.2002, which gives rise to suspicion with regard to genuineness and correctness of Power of Attorney. Ultimately, it held that the said Power of Attorney is a fictitious document. Thus, on the strength of it, complaint could not be filed. As regards resolution of the company passed on 31.12.2001 was concerned, it was held that complainant failed to file the same, while he was in the witness box. Admittedly, the company faced financial crisis and has since been closed with effect from 21.1.1993 under the orders of BIFR.

12. Ultimately, after appreciating oral and documentary evidence available on record, the following order came to be passed by Additional Chief Metropolitan Magistrate, Mumbai.

The accused No. 1 Mr. Das John Peter and accused No. 2 Ms. Grace Peter are hereby acquitted for the offence punishable u/s 630 of the Companies Act.

Their bail bonds, if any, stands cancelled.

13. Feeling aggrieved thereof, the appellant filed an Application before the learned Single Judge of the High Court seeking leave to file appeal, against the order of acquittal of the accused. Unfortunately, the learned Single Judge did not examine the matter in proper perspective and fell into grave error, in refusing to grant leave and rejected the appellant's application, for prosecution of the accused u/s 630 of the Act.

14. Feeling aggrieved thereof, this appeal has been preferred by the complainant company.

15. We have accordingly heard Mr. Altaf Ahmed learned Senior Counsel for the appellant, Mr. Sanjay Kharde for respondent No. 1 and 2 and Ms. Asha Gopalan Nair, for respondent No. 3-State of Maharashtra at length. Perused the record.

16. At the outset, we inquired from learned Counsel for the accused, whether he would be ready and willing to vacate the premises, provided reasonable and sufficient time is granted to them but learned Counsel vehemently opposed any such suggestion and contended that the complaint has rightly been dismissed on

technical grounds which went to the root of the matter, therefore no interference is called for.

17. With an intention to satisfy ourselves with regard to the correctness, genuineness and authenticity of the resolution dated 31.12.2001 passed by appellant company in favour of Mr. V.S. Parthasarthy and the Power of Attorney of the even date, we requested the appellant to produce the originals for our perusal. They have produced the same before us. We have critically and with microscopic eye examined the same. After doing so, we do not find either of the two documents can be termed as fictitious or manufactured documents so as to oust the appellant from the arena of justice.

18. No doubt, it is true that Power of Attorney was executed on 31.12.2001, but has been scribed on a stamp paper purchased on 18.4.2002. But it has been notarised on 5.6.2002 and not on 5.6.2001 as has been noted by the trial court. The Rubber stamp seal put by the notary clearly depicts it as 5.6.2002.

19. Thus, after going through the same, it leaves no shadow of doubt in our mind that the same are genuine and duly authorized Mr. V.S. Parthasarthy to file and prosecute the complaint against the accused. We had also passed on the originals to the learned Counsel for the respondent- accused to satisfy himself but still, after going through the same he persisted in his arguments tooth and nail that the date of Power Attorney in fact is 5.6.2001 and not 5.6.2002. However, we are unable to agree to the argument as advanced by the learned Counsel for the accused as he is trying to stretch it beyond our comprehension.

20. Admittedly, neither the Trial Court nor the High Court have gone into the merits of the matter. Thus with an intention to do complete justice to the parties, we have heard the counsel for the parties at length and gone through the merits of this appeal.

21. It is not in dispute that accused No. 1 was appointed as a caretaker to look after the flat of the appellant/company at 'Kamal Mahal' Co-operative Housing Society Ltd., Carmichael Road, Bombay 400 026 owned and possessed by the Company. It is further not in dispute that accused No. 1 had retired from the company w.e.f. 6.3.1992. At the time of entering into service, respondent No. 1 had entered into agreement with the company on 22.9.1980, which specifically granted permission to the company to revoke the licence, of the servant quarter at any time and to take possession. It is further not in dispute that on 5.1.2000 accused No. 1 wrote a letter to the Chairman of the Company specifically and categorically agreeing to vacate the servant quarter by 31.1.2000. However, he did not deem it fit and proper to honour his own commitment rather has defied it on various grounds. To appreciate the arguments as advanced by learned senior counsel Shri Altaf Ahmed for the appellant, it is necessary to examine the relevant provisions of the Act under which, the company's complaint was filed.

22. Section 630 of the Act reads as under:

630. Penalty for wrongful withholding of property property.- (1) If any officer or employee of a company:

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorized by this Act,

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

23. A reading of the aforesaid provision makes it clear that a criminal complaint seeking possession of the servant quarter at the instance of company against the accused was maintainable and in our opinion cognizance thereof was rightly taken by the Magistrate but committed a grave error in rejecting it on technical grounds, instead of deciding it on merits.

24. Learned Counsel for appellant has also placed reliance on Section 621 of the Act, dealing with offences against the Act to be cognizable only on complaint by Registrar, share holder or government. To appreciate the arguments in this regard, the said Section 621 of the Act is reproduced hereinbelow:

621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government.

(1) No court shall take cognizance of any offence against this Act, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of a company, or of a person authorized by the Central Government in that behalf:

Provided that nothing in this Sub-section shall apply to a prosecution by a company of any of its officers:

Provided further that the court may take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by the Securities Exchange Board of India.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (5 of 1898), where the complainant under Sub-section (1) is the Registrar or a person authorized by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for the reasons to be recorded in writing requires his personal attendance at the trial.

(2) Sub-section (1) shall not apply to any action taken by the liquidator of a

company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (Sections 425 to 560) or in any other provisions of this Act relating to the winding up of the companies.

(3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of Sub-section (1).

25. However, it is not necessary to examine the applicability of the aforesaid Section 621 of the Act to the present case as it appears to be doubtful to categorise accused No. 1, who was admittedly working as caretaker, as an officer of the company. Thus, we deem it fit and proper to leave the said question open at this stage.

26. We have carefully examined the originals of the resolution dated 31.12.2001 as also Power of Attorney of the even date executed in favour of Mr. V.S. Parthasarthy and the irresistible conclusion is that the same are genuine and do not come under the cloud of suspicion at all.

27. That being so, in the light of the admitted position that accused No. 1 retired in the year 1992 and has also given an undertaking to the Company as far as back as 5.1.2000 categorically admitting and agreeing to vacate the premises on or before 31.1.2000, it was incumbent on his part to honour the same.

28. The letter of the accused No. 1 dated 05.01.2000 is reproduced herein below:

In regard to the above subject I the undersigned would be grateful to you if you would give me one month time till 31st January, 2000 to vacate the premises that was given to me while I was in service with your esteemed organization.

Das John Peter

29. Even after taking into consideration all the defences taken by accused, their eviction from the servant quarter is inevitable. Since he has committed default of his own promise, we have no other choice or option but to direct the accused persons to vacate the premises by or before 1st October, 2010 and to hand over its peaceful vacant possession to the Company.

30. We have done so exercising the powers conferred on us by virtue of provisions of Article 142 of the Constitution which cast a duty on us to do complete justice between the parties.

31. It is clear from the impugned orders that there is manifest illegality in the same and have resulted in palpable injustice to the Appellant/Company curable at this stage under Article 142 of the Constitution as the aforesaid powers are inherent on this Court as guardian of the Constitution.

32. According to us, no useful purpose would be served even if the matter is remitted to Magistrate for trial on merits. We hold so because equity also does not swing in favour of the accused, who have displayed adamant and dilatory attitude.

33. From the date of retirement of accused No. 1 till date, more than 18 years have passed by and he has used the servant quarter without having any right to do so. No further mercy or sympathy can be shown to such an accused.

34. Thus, looking to the matter from all angles we are of the considered opinion that the order passed by Metropolitan Magistrate as also by the High Court cannot be sustained in law. Same are hereby set aside and quashed. This we have to do to give quietus to the litigation which had commenced long years back.

35. Appellant's complaint filed u/s 630 of the Act is hereby allowed and accused is granted time to vacate the servant quarter as mentioned hereinabove on or before 1.10.2010 and to hand over its peaceful and vacant possession to the appellant company. In default thereof accused shall have to suffer imprisonment for a term of one year and fine of Rs. 10,000/-. In default of payment of fine, the accused shall suffer further imprisonment of one month.

36. We hope and trust at least good sense shall prevail on the accused and instead of running the risk of being sent to jail, they would abide by the first part of the order and do the needful. If the accused persons fail to do so then the appellant shall be entitled to take police help to get our order executed.

37. Appeal stands allowed accordingly.