
(1990) 03 BOM CK 0027

In the Bombay High Court

Case No : Criminal Writ Petition No. 26 of 1989

Bhanu M. Vakil

APPELLANT

Vs

Chandra Oshiram Keswani and another

RESPONDENT

Date of Decision : 08-03-1990

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 21
COMPANIES ACT, 1956 — Section 630
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 309, 313, 397, 399, 476

Citation : (1991) CriLJ 2819

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : M.A. Rane, A.K. Abhyankar and V.M. Rane, instructed by M/s. Gagrati and Company, for the Appellant; V.P. Vashi and Miss Neelam V. Vashi and P.M. Vyas, Public Prosecutor, for the Respondent

Judgement

1. Whether the present criminal prosecution u/S. 630 of the Companies Act is liable to be stayed pending the suit for possession u/S. 13(1)(g) of the Bombay Rent Act is the short question that arises for my determination in the present writ petition.

2. The petitioner is the original accused while the respondent No. 1 is the complainant in Criminal Case No. 76 of 1983 pending in the Court of the learned Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Bombay. This complaint has been filed u/S. 630 of the Companies Act. The respondent No. 2 is the State of Maharashtra.

3. The facts of the present case, as stated in the present petition, are as under :-

The premises in dispute is a residential flat being flat No. 1A at Alta View Co-operative Housing Society, situate at 7 Altamount Road, Bombay 400026. This flat was originally owned by one D. D. Solanki who happened to own five flats in that building. By an agreement dated 1st May, 1968 the said D. D. Solanki gave

his aforesaid flat No. 1A to Esso Standard Eastern Incorporated, the predecessors of the Hindustan Petroleum Corporation, respondent No. 1 in the present petition. By this agreement a licence was created in favour of respondent No. 1 for a period of 10 years. On the 13th February, 1976 the petitioner was permitted to occupy the said flat as an employee of the first respondent.

4. Sometime during 1977-78 an Administrator was appointed in respect of the Alta View Co-operative Housing Society. Since Shri J. D. Solanki, who had succeeded the original owner Shri D. D. Solanki, held five flats he was called upon to have four of the flats sold, not to renew licence in favour of the first respondent but to have the same vacated. On the 1st March, 1977, Shri J. D. Solanki informed the first respondent that he was interested in selling the flat for an amount of Rs. 3,50,000/- (three lakhs fifty thousand). The first respondent declined to purchase and preferred to continue as tenant. By a letter dated 26th October, 1977 Shri J. D. Solanki made a fresh offer of sale to the first respondent for Rs. 2,25,000/- (two lakhs twenty-five thousand) to which the first respondent did not respond. On 17th April, 1978 Shri Solanki addressed his further letter to the first respondent stating that the Society was pressing for the sale of the flat and he was, therefore, willing to sell the same for Rs. 1,75,000/- (One lakh seventy five thousand). By a letter dated 2nd May, 1978 Shri Solanki made his final offer to the first respondent for Rs. 1,25,000/- (One lakh twenty five thousand); that in case he did not receive any reply within 15 days he would dispose of the flat to any third person. On 29th of June, 1978 Shri Solanki entered into an agreement of sale of the flat in favour of Smt. I. B. Vakil, the wife of the present petitioner. On the basis of the said agreement the shares of the Society were transferred from the name of Shri J. D. Solanki to Smt. I. B. Vakil. On 2nd July, 1978 the flat came to be transferred in the name of Smt. I. B. Vakil in the aforesaid circumstances.

5. On 13th July, 1978 the petitioner tendered his resignation in respect of his service with the first respondent. By a letter dated 1st August, 1978 the first respondent accepted the petitioner's resignation with effect from 10th August, 1978. On 8th August, 1978 Shri Solanki paid an amount of Rs. 3000/- to Smt. Vakil being the amount of three months rent held in deposit from the first respondent. By a letter dated 9th August, 1978 Shri Bhanu Vakil the petitioner requested the first respondent for permission to continue to stay in the flat for a period of four months after his resignation which request was acceded to by the first respondent by a letter dated 10th August, 1978. By a letter dated 14th August, 1978 Shri Solanki informed the respondent regarding the transfer of the flat to Smt. Vakil. He also returned the cheques towards the rent for the months of July and August, 1978 which were being advanced by the first respondent. The first respondent was requested to pay the rent to Smt. I. B. Vakil. By a letter dated 19th August, 1978 the first respondent permitted the petitioner to continue to occupy the the flat till 31st October, 1978. By a letter dated 24th July, 1979 the first respondent paid rent to Smt. I. B. Vakil for the period July, 1978 to August 1979 and asked for rent receipts. Thus the first respondent

accepted Smt. I. B. Vakil as its landlady by its letter dated 27th December, 1979.

6. By a notice dated 25th July, 1979 the Estate Officer initiated the proceedings against the petitioner under the Public Premises (Eviction of unauthorised occupants) Act, 1971. On the 5th January, 1980 the Estate Officer passed an order directing the petitioner to vacate the premises within 14 days. Being aggrieved the petitioner filed in this Court Writ Petition No. 343 of 1980. By an order dated 2nd May, 1980 this Court remanded the matter back to the Estate Officer directing further hearing to be given to the petitioner. On 30th April, 1982 the Estate Officer passed an order of eviction against the petitioner. The petitioner challenged the same by filing a Misc. petition No. 289 of 1982 before the City Civil Court wherein an order was passed on 21st January, 1986 staying the order of the Estate Officer in the light of the judgment passed by this Court in Misc. Petition No. 458 of 1978. The said order of stay was thereafter vacated after the judgment in Misc. Petition No. 458 of 1978 was set aside by the Supreme Court and it appears that the fresh show causes notices have been issued to the petitioner by the Estate Officer. By a notice dated 24th January, 1980 Smt. I. B. Vakil terminated the tenancy of the respondent and filed sometime in the month of March, 1980 RAE Suit Nos. 488/1805 of 1980 for possession of the flat u/S. 13(1)(g) of the Bombay Rent Act on the ground of bona fide requirement of herself and members of her family which included the petitioner. The first respondent by its written statement of July, 1980 resisted the claim denying the requirement and contended that the petitioner was bound to vacate and surrender the flat to the first respondent. The issues were framed on 24th September, 1982 and the suit was adjourned to 6th August, 1985 for hearing. In the meanwhile on 17th February, 1983 i.e. after four years of the resignation of the petitioner and after almost three years from the date of the filing of the aforesaid suit under the Rent Act the first respondent filed Criminal Case No. 76 of 1983 u/S. 630 of the Companies Act.

7. The recording of the evidence in RAE Suit Nos. 488/1805 of 1980 commenced on 19th March, 1987 and was completed on 18th August, 1987. The matter was adjourned to 3rd September, 1987 for arguments. On an application of the first respondent the matter was adjourned to 9th September, 1987 and thereafter to 29th September, 1987, on which date the arguments on behalf of the plaintiffs were heard. On 24th September, 1987 the first respondent made an application for amendment of the written statement contending inter alia that Smt. I. B. Vakil was a benamidar of the petitioner and the petitioner was the real owner who in breach of the service rules had purchased the flat without the knowledge of the Company. By an order dated 12th November, 1987 the amendment was granted in part and the first respondent carried out the necessary amendments on 1st December, 1987.

8. On the 15th December, 1987 the first respondent filed a suit in this Court on its original side for the following amongst other reliefs :

(a) that it may be declared

- (i) that the said flat was purchased by the 1st Defendant as the benamidar and as a nominee for the 1st Defendant;
- (ii) that the 2nd Defendant has no right, title or interest in the said flat and is not the owner thereof; and
- (iii) that the 1st Defendant and/or the 2nd Defendant hold the said flat for and on behalf of and in trust for the plaintiff;
- (b) that the Defendants be ordered and decreed to transfer to the plaintiff the said flat on payment by the plaintiff of the sum of Rs. 1,25,000/-.
- (c) that the Defendants their servants and agents be restrained by a permanent order and injunction of this Hon"ble Court from in any manner directly or indirectly seeking to recover or recovering from the Plaintiff, possession of the said flat or ejecting the plaintiff from the said flat by means of the said Small Causes Suit RAE No. 488/1805 of 1980 or otherwise and/or from proceeding with the said Small Causes Court Suit.
- (d) that the Defendants their servants and agents be restrained by a permanent order and injunction of this Hon"ble Court from entering upon or remaining on the said flat or any part thereof;
- (e) that the Defendants their servants and agents be ordered and directed to hand over vacant and peaceful possession of the said flat to the Plaintiff;
- (f) that the Defendants their servants and agents be restrained by a permanent order and injunction of this Hon"ble Court from dealing with or disposing of or parting with possession of the said flat or any part thereof or inducing any person or party other than the Plaintiff into the said flat;"

In the said suit the first respondent took out a Notice of Motion No. 3297 of 1988 inter alia praying that the defendant therein i.e. the petitioner and his wife Smt. I. B. Vakil be restrained from proceedings with their Small Causes Court suit, and creating third party interest on the suit flat. By an order dated 19th January, 1988 the interim order of injunction was passed restraining the petitioner and Smt. I. B. Vakil from creating third party interest. This suit is pending.

8A. The recording of the evidence in the criminal case No. 76 of 1983 was commenced on 18th December, 1987 and was concluded on 29th April, 1988. On 25th January, 1988 the first respondent filed writ Petition No. 389 of 1988 challenging the order dated 12th November, 1987 in so far as it rejected the part of the amendment claimed by it. On 19th February, 1988 a consent order was passed granting the amendment prayed for. After the draft issues were submitted in respect of the issues arising out of the amended written statement, an application was filed by the first respondent on 8th March, 1988 for stay of the suit but the same was rejected on the same date. On the 13th March, 1988 the first respondent filed a writ petition which was opposed by Smt. Vakil at the stage of the admission and the writ petition was disposed of for want of

prosecution. On 7th July, 1988 fresh evidence, on the issues raised by the amended written statement was commenced and the evidence was closed on 11th October, 1988. By a judgment and decree dated 10th February, 1989 the RAE Suit No. 488/1805 of 1980 was decreed and the first respondent was directed to hand over the possession of the suit flat to Smt. I. B. Vakil. Being aggrieved the first respondent filed in the Full Court of Small Causes an appeal bearing No. 278 of 1989 and the same is pending. On the 27th July, 1988 the petitioner applied in the Criminal Case No. 76/S of 1983 for stay of further proceedings. By an order dated 12th October, 1988 the application was rejected. Being aggrieved he filed in the Sessions Court Criminal Revision Application No. 331 of 1988. By an order dated 19th/23rd December, 1988 the Revision Application was partly allowed. The order of the trial Magistrate refusing to stay the criminal case pending the Small Causes Court suit was confirmed but the matter was remanded back for considering the grant of stay pending the hearing of the suit on the original side of this Court.

9. Being aggrieved, the petitioner on 16th January, 1989 filed the present petition. Rule was issued on 17th January, 1989 and an interim order of stay of the criminal case was passed.

10. Shri Rane, the learned counsel appearing in support of the petition by advertng to the facts stated above submitted that this was a fit case for stay of the criminal case pending the suit. He conceded that the normal rule is to give precedence to criminal prosecution. Prosecution once initiated should be heard and disposed of expeditiously, the guilty be punished and the innocent be exonerated before human memory fails. Criminal prosecution cases cannot ordinarily be stayed pending civil suits which are known to take years before their disposal. This, however, according to Shri Rane, is not a hard and fast Rule. It would be a matter depending on the facts and circumstances of each case. According to him, the facts of the present case are such that this is a pre-eminently fit case where the criminal case should be stayed pending the suit. He cited the oft-quoted case of M.S. Sheriff Vs. The State of Madras and Others, wherein the Supreme Court was pleased to observe as under (paras 15 and 16) :-

"As between the civil and the criminal proceedings the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the civil and criminal Courts is not a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration is the likelihood of embarrassment. Another factor which weighs with the Court is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as

is consistent with a fair and impartial trial.

Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to prosecution ordered u/S. 476."

He further cited the case of Atul Mathur Vs. Atul Kalra and Another, wherein the Supreme Court on the facts of that case was pleased to observe as under :-

"The sequence of events also go to show that respondent 1 had formulated a plan for clinging to his possession of the flat even after resigning his post and in accordance with that plan he had obtained the letters Exs. 3 and 4 and then filed a suit in order to forestall the company from proceeding against him under 630 of the Companies Act."

11. Sri Rane on comparing the facts of the above case with the facts of the present case pointed out that the flat in question was offered to the first respondent time and again but the first respondent refused to purchase the same. The agreement of purchase executed by the petitioner's wife was to the knowledge of the first respondent company. After the shares in respect of the flat were transferred to her name, the first respondent Company accepted her as its landlady and started paying rent. Till this stage the petitioner was in the employment of the first respondent Company. It was, therefore, that the petitioner resigned. Hence it could not be held that the purchase of the flat by the petitioner's wife was in order to defeat the claim of the first respondent u/S. 630 of the Companies Act. Furthermore, the suit filed the wife of the petitioner is earlier in point of time to the filing of the criminal case. It was almost after three years after the filing of the suit that the criminal case was filed. In the suit, the petitioner's wife claimed possession u/S. 13(1)(g) for the bona fide requirement of herself and the petitioner who was a member of her family. The evidence in this suit commenced prior to the evidence in the criminal case. The course of the progress of the suit shows that the first respondent had delayed the hearing and final disposal of the suit by applying for amendment of the written statement and by challenging the orders passed thereon. What is more is that this suit for possession has been decreed and the appeal filed by the first respondent is pending. According to Shri Rane, if the criminal case is permitted to be heard, the petitioner and his wife would be thrown on the streets and will be left with the ordeal of executing the decree which is also passed in their favour for possession. The first respondent is a public limited Company against whom a decree for possession has been passed and it is in the interest of justice that the criminal case should be stayed pending the suit which is pending in appeal. Shri Rane placed reliance on the decision of Dhanrajmal Gobindram and Company Private Ltd. Vs. The State of Maharashtra, wherein this Court after a perusal of the entire case law on the point was pleased to observe as follows :-

"As far as general principles, if principles they can be called, which emerge from the authorities discussed above regarding the question of stay are concerned, they are only two, and both of them are of a negative character viz., (1) that there is no hard and fast rule as to whether a criminal proceeding should be stayed or a civil proceeding should be stayed, the question being one which has to be decided on the facts and circumstances of each particular case a principle which emerges from all the authorities discussed above; and (2) that the possibility of conflicting decisions in civil and criminal courts is not a relevant consideration since the law itself envisages such an eventuality, a principle which forms ratio of the decision of the Supreme Court in *M. S. Sheriff's case* 1954 Cri LJ 1019 also discussed above. Apart from these two negative "principles" laid down by authorities, the others are not principles at all, but are merely in the nature of guidelines chalked out by judicial decisions indicating how the Court's power to grant stay should be exercised. Some of them have only an illustrative value. Turning to these statements of law, the authorities do lay down that the primary consideration is the interest of justice which are opposed to multiplicity of proceedings on the same facts. This would imply that the Court must consider whether one of the proceedings was instituted with a view to prejudice the other, or what is the same thing, whether one of those proceedings would tend to embarrass the other, and in that connection, the question whether the criminal proceeding or the civil suit was instituted first, as well as the question as to whether the former was a public or a private prosecution are important, though not conclusive. These however, are not the only considerations. There are other considerations which the Court must also bear in mind. One such consideration is whether the object of instituting the criminal proceeding was to use the same as a lever to coerce a compromise of the civil suit, as laid down by Broomfield J. in the case of *Dias v. Mahadev* (reported in AIR 1933 Bom 485 : 35 Cri LJ 311. According to the judgment of the Supreme Court in *M. S. Sheriff's case* 1954 Cri LJ 1019 cited above, as interpreted by Chagla C.J. and Shah J. in their unreported judgment also cited above, some other facts and circumstances which have to be taken into consideration by the Court are, the nature of the proceeding, the conduct of the parties, the likelihood of delay in the decision of the civil suit, the possible loss of evidence, and the suitability of a particular dispute being more effectively and more satisfactorily decided by the civil or the criminal Court. What, however, important to note is that, except for a stray observation by Broomfield J. in *Louis Dia's case* 1934 35 Cri LJ 311, none of the authorities discussed by me above, lays down that both the criminal proceeding as well as the civil proceeding should be allowed to continue, even if both are between the same parties and relate to the same facts. Broomfield J. himself has, in the passage from his judgment in the said case which has been quoted above, stated that, generally speaking, it is not desirable that civil and criminal litigation between the same parties on substantially the same facts should go on simultaneously. Respondent No. 2's stand that both the proceedings in the present case should be allowed to continue is, therefore, clearly untenable. That is the position emerging from the authorities on the question of stay, in general,

apart from two of the unreported decisions discussed by me above which specifically deal with the position in regard to S. 21 of Bombay Rent Act to which I must now refer."

12. Placing reliance on the aforesaid decisions as also on the facts and circumstances enumerated above, Shri Rane submitted that this is a fit case where a departure from the normal rule should be made and the criminal case should be stayed.

13. In my judgment there is considerable force in the submissions advanced by Shri Rane and they merit acceptance. I find that the petitioner cannot be held to be guilty of dilatory tactics in order to avoid the evil day of the decision in the criminal case. If at all, it is the first respondent who should be blamed for causing delay in the disposal of the suit filed by the wife of the petitioner. The evidence, both in the civil suit as also in the criminal case, has been recorded. Hence there is no question of obliterations of the evidence in the criminal case as the entire evidence has already been laid. I find that in case the criminal case is permitted to proceed the same is bound to cause embarrassment to the petitioner as it is likely to lead to the conviction of the petitioner coupled with an order of eviction and also sentence of imprisonment in case the petitioner fails to vacate and hand over possession to the first respondent Company. The proceedings u/S. 630 of the Companies Act cannot be termed as criminal proceedings as understood in ordinary parlance. The object of the proceeding is to ensure speedy recovery of the property of the Company which has been given to the employee during the term of his employment. The thrust of the provision is more to ensure speedy recovery of possession than to sentence the employee to imprisonment. These are, therefore, quasi criminal proceedings and cannot be equated with prosecutions under the Indian Penal Code or other acts providing punishment for criminal offences.

14. I find that the first respondent by filing the Suit No. 3495 of 1987 on the original side of this Court has given a complete go-by to the case set up in the criminal case. The first respondent in the criminal case has alleged that the petitioner after he ceased to be in its employment is in unlawful occupation. In the suit the prayers, which I have set out in the earlier paragraphs of this judgment, show that the first respondent has contended that it is virtually the petitioner who is the owner and his wife is the benamidar, the petitioner is holding the property as trustee of the first respondent and is liable to hand over the property on the first respondent paying an amount of Rs. 1,25,000/- to him. The aforesaid inconsistent stands set up by the first respondent company is bound to further embarrass the petitioner as also his wife in both in the criminal case as also in the suit of the wife for possession.

15. It is true that ordinarily the criminal prosecution ought to be given precedence. Once instituted the criminal trial should progress expeditiously so that the guilty are brought to book and the innocent are exonerated. This should be done before the facts fade from the minds of the witnesses or the public.

Such prosecutions cannot ordinarily be stayed pending the civil suits which are known to take years before they are taken up for hearing and final disposal. This, however, cannot be a universal rule. It would all depend upon the facts of each case and there could be cases where the stay of criminal cases would be justified, and, in my view, this is one such case.

16. Shri Vashi the learned Counsel appearing on behalf of the first respondent Company strenuously submitted that the stay of this criminal case should not be granted more so when the evidence is complete and the statement of the accused u/S. 313 of the Cr.P.C. has also been recorded. He emphasised that the stay, if granted, is likely to frustrate the salutary provisions u/S. 630 of the Companies Act. According to him, it is an established law the the prosecution u/ S. 630 should not be stayed. He contended that if Accused has a bona fide defence or raises a bona fide dispute he will be entitled to an acquittal. But that is no ground to stay the criminal case. He pointed out that the learned Trial Magistrate has rejected the stay application. The revision of the petitioner was dismissed by the Sessions Court. The present petition though labelled as writ petition under Art. 227 of the Constitution of India and u/S. 482 of the Criminal Procedure Code was nothing else but a second revision which is barred u/S. 397(3) and 399(3) of the Criminal Procedure Code. The writ jurisdiction cannot be used to circumvent the express bar put by the statute. He finally contended that the claim of the first respondent company for possession vis-a-vis the petitioner against its officer is quite distinct from the claim of possession by the wife of the Accused as the owner against the first respondent Company who is admittedly the tenant. According to Shri Vashi, the petitioner is not entitled to stay of the criminal case either on facts or in law. He placed reliance on the case of State of Maharashtra Vs. Champalal Punjaji Shah, , wherein the Supreme Court observed as follows (Para 1) :-

"It is one of the sad and distressing features of our criminal Justice system that an accused person, resolutely minded to delay the day of reckoning, may quite conveniently and comfortably do so, if he can but afford the cost involved, by journeying back and forth, between the Court of first instance and the superior Courts, at frequent interlocutory stages. Applications abound to quash investigations, complaints and charges on all imaginable grounds, depending on the ingenuity of client and counsel. Not infrequently, so soon as a Court takes cognizance of a case requiring sanction or consent to prosecute, the sanction or consent is questioned as improperly accorded, so soon as a witness is examined or a document produced, the evidence is challenged as illegally received and many of them are taken up to the High Court and some of them reach this Court too on the theory that it goes to the root of the matter. There are always petitions alleging "assuming the entire prosecution case to be true no offence is made out". And, inevitably proceedings are stayed and trials delayed. Delay is a known defence tactic. With the passage of time, witnesses cease to be available and memories cease to be fresh. Vanishing witnesses and fading memories render the onus on the prosecution even more burdensome and make a welter

weight task a heavy weight one."

17. In my judgment, no reliance can justifiably be placed on that case. That case was the one in respect of smuggling. The observations were made in the facts and circumstances of that case and can have no relevance to the present case.

18. Shri Vashi placed reliance on the provisions of S. 309 of the Criminal Procedure Code and submitted that the said provisions give a mandate that every prosecution be held as expeditiously as possible and in particular as in the present case when the examination of the witness has been done, the same shall be continued from day to day until all the witnesses sought by them examined. If the case was required to be adjourned, the Court is required to record reasons, According to Shri Vashi, the aforesaid provisions show that it would be inappropriate to grant stay of the criminal case, especially, in view of the fact that there is no provision under the Code to grant stay. In my judgment, there is no merit in the aforesaid contention. It is true that criminal trials are expected to be proceeded with and decided with all expedition. That, however, in my view cannot take away the power of this Court u/S. 482 of the Code of Criminal Procedure, which empowers the Court to make such orders as may be necessary in the interest of Justice.

19. Shri Vashi, next relied upon the decision in Criminal Appln. No. 1936 of 1975 decided by Mr. Vaidya and Mr. Rege JJ. on 21st January, 1976 wherein the Division Bench considered the decision of a single Judge in Criminal Revn. Appln. No. 1161 of 1968 that the observations of the Supreme Court in the case of M.S. Sheriff Vs. The State of Madras and Others, applied to the facts and circumstances restricted to that case. The Division Bench disagreed with that view of the learned single Judge and observed that the ratio laid down in the case of M. S. Sheriff was of general application and should not be said to have been made only in relation or restricted to the facts of the particular case. The Division Bench further went on to hold, on the facts and circumstances of the case before it, that it was not a fit case for stay of the criminal prosecution.

20. In my judgment, the aforesaid decision cannot advance the contention of Shri Vashi, as observed by the Supreme Court, there can be no hard and fast rule and each case will have to be decided on the facts of that particular case. Shri Vashi drew my attention to a number of decision of different High Courts in support of his contentions that the Criminal Case should not be stayed and the same should be expeditiously decided. In my view, none of these cases lay down as a proposition of law that in all cases the Criminal case can never be stayed irrespective of the facts and circumstances that may arise. In my view, the decision in the case of M.S. Sheriff Vs. The State of Madras and Others, still holds the field and whether in a given case an order of stay of criminal case is called for would depend upon the facts and circumstances of each particular case.

21. Shri Vashi placed further reliance upon the decision in the case of Suresh Venkatrao Nerlekar (Dr.) Vs. Sharanghadar Pandurang Nadkarni and Others, ,

wherein it was observed as follows :-

"The charge, as made out in the complaint against its employee exclusively referred to the allegation that the employee petitioner-accused while in the employment of the company had in collusion with landlord, accused No. 2, forged certain documents of the company, which were in possession of the company in order to establish his right of tenancy to the premises in question and had deprived the company of their rights in respect thereof. The company had filed a declaratory suit in the Court of Small Causes, Bombay against both the employee and the landlord. The Magistrate issued a summons to the employee and the landlord. Before the hearing of that complaint, the employee accused filed before the learned Magistrate an application for stay of the complaint till the hearing and final disposal of the said civil proceedings. The learned Magistrate had rejected that application relying on the judgment of the Supreme Court in *M. S. Sheriff v. State of Madras* 1954 Cri LJ 1019 (supra) and this rejection of the application was challenged by the employee-accused No. 1 in a petition under Arts. 226 and 227 of the Constitution of India and ultimately this Court on the similar facts held that there was no error in the judgment of the Magistrate and refused to interfere with the order of the Magistrate. Deriving the support from this judgment, I also feel that the contention of the petitioner is liable to be rejected."

In my view, the aforesaid case cannot advance the submission of Shri Vashi, as the decision refusing to stay the criminal prosecution pending the civil proceedings, was rejected on the facts of that particular case. It has been further observed :-

"The real principle would be : What are special facts and exceptional circumstances disclosed by the parallel proceedings to order the stay of criminal proceedings.

There is no hard and fast rule that the criminal case proceedings should be postponed pending the hearing and final disposal of the civil suit, but the case must be decided on its merits."

22. Shri Vashi next relied upon the decision in *Krishan Avtar Bahadur v. Col. Irwin Express* reported in (1986) 59 Comp Cas 417 : 1985 Tax LR 2083 wherein it was observed as under :

"ii) that merely because the petitioner had filed a declaratory suit in the Court of Small Causes on the ground of tenancy, the High Court was not justified in staying the criminal proceedings on the bare theoretical ground that the question of tenancy could more appropriately be dealt with by that court;

(iii) that, on the facts, the plea of tenancy was not open to the petitioner. The flat belonged to the company and it was occupied by the petitioner during the term of his employment with the company and he was entitled to occupy it only during the term of his employment with the company. After the termination of his

services, he could not claim to continue to occupy the premises on the ground that he was a tenant thereof. The Criminal court had jurisdiction to entertain the complaint u/S. 630 of the Companies Act.

In my view, the aforesaid decision has not laid down a proposition of law that in no case can a criminal prosecution be stayed on the facts of the case it was found that the petitioner was not entitled to raise the plea of tenancy. The facts of our case are entirely different. The wife of the petitioner is the owner who has proceeded against the first respondent Company for possession and has even obtained a decree. If the proceedings u/S. 630 of the Companies Act are allowed to continue, the same is bound to lead to extreme hardship.

23. Shri Vashi further relied upon the decision in the case of Baldev K. Sahi v. Shipping Corporation of India Ltd. in Criminal Writ Petn. No. 332 of 1987 decided by this Court on 8/9th July, 1987. In my view, the aforesaid decision can have no application to the facts of the present case as what was decided was that the provisions of S. 630 of the Companies Act applied both to the present as also ex-employees of the Company. It was no doubt held on the facts of that case that it was not a fit case for quashing the criminal prosecution. That case however can have no application to the facts of the present case.

24. Shri Vashi further placed reliance on the decision in the case of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, wherein the Supreme Court expressed the view taken in the foregoing case and observed as follows (at p. 2251 of AIR) :-

"The term" officer or employee" of a company applies not only to 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, withholds the same after the termination of his employment."

The ratio in the aforesaid case can have no relevance to the decision of the question involved in the present petition.

25. Shri Vashi further submitted that the order of the trial Magistrate refusing to grant stay of the criminal prosecution was an interlocutory order. Hence no revision could lie in the Sessions Court in view of S. 397(2) of the Code of Cr. Procedure. The Sessions Court substantially confirmed the order of the trial Magistrate and refused to stay the criminal case. Hence a second revision is not maintainable in this Court in view of the provisions of S. 397(2) and (3) and 399(3) of the Criminal Procedure Code. According to Shri Vashi, the aforesaid provisions which have been introduced by the amendment of 1973 are intended to give finality to interlocutory orders as also orders passed in revision applications so as to ensure speedy disposal of criminal cases. It is, therefore, not open to a party to get over this mandatory provision by merely putting the label of the provisions of S. 482 of the Criminal Procedure Code or of Art. 227 of the Constitution. What is prohibited specifically cannot be circumvented by the

subterfuge device of taking resort to the aforesaid provisions.

26. In support of this contention Shri Vashi relied upon the decision in the case of Rajan Kumar Machananda v. State of Karnataka reported in JT (1987) 5 (SC) 637, wherein while dealing with an order directing release of a truck in favour of the Accused the Supreme Court observed that a second revision did not lie at the instance of the State to the High Court in view of the provisions of S. 397(3) of the Cr.P.C. It further observed that obviously to avoid this bar the application moved by the State before the High Court was stated to be u/S. 482 of the Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court had reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration was as to whether the power u/S. 397(3) of the Criminal Procedure Code should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power had to be sustained. It was held that merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of S. 397(3) of the Code could be labelled as one u/S. 482. It was held that the High Court had no jurisdiction to entertain the revision application.

27. It has to be observed that while making the above observations the Supreme Court also observed as under :

"It is not disputed by counsel appearing for the State that the move before the High Court was really an application for revision of the order of the Magistrate releasing the truck."

In my view, it was common ground before the Supreme Court that though the application that was moved before the High Court was labelled as one u/S. 482 of the Cr.P.C., it was in effect nothing else but an application for revision of the order of the Magistrate releasing the truck. Moreover, I find that the Supreme Court in the case of Madhu Limaye Vs. The State of Maharashtra, , in regard to S. 482 Cri.P.C. laid down as under :-

"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of Justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

The purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the case finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its

wisdom decided to check this delay by introducing sub-sec. (2) in S. 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessioned Judge) for exercise of the revisional power in relation to any interlocutory order, on the other the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of S. 482, however, it would follow that nothing in the Code, which would include sub-sec. (2) of S. 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". The bar provided in sub-sec. (2) of S. 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in S. 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.

The bar u/S. 397(2) will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers.

It was held that the instant case undoubtedly calls for exercise of the power of the High Court in accordance with S. 482 of the 1973 Code, even assuming, although not accepting that invoking the revisional power of the High Court is impermissible.

Ordinarily and generally the expression "Interlocutory order" has been understood and taken to mean as a converse of the term "final order". But an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by S. 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code -

Although the words occurring in a particular statute are plain and unambiguous,

they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order."

An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of S. 397(2).

The impugned order in the instant cases rejecting the application challenging the jurisdiction of the Court to proceed with trial, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-sec. (2) of S. 397. It must be taken to be an order of the type falling in the middle course."

28. The decision in the Rajan Kumar Machananda's case JT (1987 (5) (SC) 637 (supra) can be reconciled with the case of Madhu Limaya (1978 Cri LJ 1657 (supra). In the case of Rajan Kumar Machananda, it was common ground that the petition before the High Court was nothing else but revision application and it was in that context that the Supreme Court made the above observation. Even assuming that there is a conflict, which in my view there is not, I will be bound by the decision in Madhu Limaya's cases as it is a decision of Larger Bench.

29. It has been held in the case of The State of U.P. Vs. Ram Chandra Trivedi,

"Constitutional position as regards the powers of Court to go behind the orders of termination to find out motive of Government is clear. Even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself".

30. In the case of Sailesh Pranbhydas Mehta v. Dilip Harilal Mehta decided by the Division Bench of this court reported in 1980 Bom CR 208 it has been observed as under :-

"We will first deal with a preliminary submission raised on behalf of the complainant regarding the maintainability of this application. The submission on behalf of the complainant was that a second revision application was filed by the accused against an interlocutory order framing the charge, the first revision application being that filed before the Sessions Court. In view of the provisions of sub-sec. (2) of S. 397 of the Criminal Procedure Code such an application is barred. In this connection he has also submitted that even the original application filed by the accused before the Sessions Judge was contrary to the

provisions of sub-sec. (2) of S. 397 of the said Code, which bars the challenge to an interlocutory order by a revision under S. 397(1) of the said Code. In the first instance, it must be made clear that the first instance, it must be made clear that the present application filed by the accused is not under S. 397(3) but under S. 482 of the said Code and under Art. 227 of the Constitution. The provisions of S. 482 of the said Code are available to prevent an abuse of the process of the Court even where a second revision application is barred by the provisions of sub-sec. (3) of S. 397 of the said Code as is now laid down by the Supreme Court in its latest decision reported in *Madhu Limaye Vs. The State of Maharashtra*, . Therefore, there is no difficulty in the way of the accused in filing the present application under S. 482 of the said Code. This is apart from the fact that under Art. 227 of the Constitution, this Court has power of supervision, over the subordinate Courts and whenever there is an error apparent on the face of the record the discretionary power under Art. 227 of the Constitution can be exercised to correct the said error and keep the subordinate Courts within their jurisdiction if the Court finds that the order challenged has resulted in injustice to the accused."

In my judgment, the aforesaid case would show that in an appropriate case inherent jurisdiction under S. 482 of the Criminal Procedure and Supervisory jurisdiction under Art. 227 of the Constitution can justifiably be resorted to, despite the bar under Ss. 397 and 399 of the Criminal Procedure Code, if the facts and circumstances of a case warrant interference so as to prevent the abuse of the process of the Court.

31. Shri Vashi relied upon a case *Jagir Singh Vs. Ranbir Singh and Another*, wherein it was observed as follows :-

The object of S. 397(3) is to prevent a multiple exercise of revisional power and to secure only finality to orders. Any person aggrieved by an order of an inferior criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of other authority. The language of S. 397(3) is clear and peremptory and it does not admit of any other interpretation.

When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate and not that of the Sessions Judge. The bar of S. 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order.

The revision application before the High Court cannot be treated as an application directed against the order of the Sessions Judge instead of as one directed against the order of the Magistrate. It is not permissible to do so. What may not be done directly cannot be allowed to be done indirectly. That would be an evasion of the statute. It is a well known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance.

32. Shri Vashi also placed reliance on the decision of the Kerala High Court in the case *M. Chandran v. V. B. Jagadamma*, reported in AIR 1982 Cri LJ 100 wherein it was observed as follows (at p. 101 of Cri LJ) :-

"Section 482 saves inherent powers in the High Court to make such orders as are necessary to give effect to any order under the Criminal Procedure Code or to prevent abuse of the process of any Court or otherwise secure the ends of justice. The provision confers no power on the High Court. The scope of examination in revision is limited. S. 397(3) of the Code is a new provision in the sense that in the corresponding provision in S. 435 of the old Code, there was no bar to the High Court entertaining a revision when once the Sessions Judge had been moved in revision. The effect of S. 397(3) is to preclude the entertainment of a revision in the High Court once there is an adjudication in revision by the Sessions Judge and the entertainment of a revision by the Sessions Judge when once there had been an adjudication in revision by the High Court."

33. Shri Vashi also placed reliance on the decision reported in 1988 All LJ 1242 in the case of *Yaqoob Ali Khan v. Devendra Singh Bedi*, wherein the Allahabad High Court has by following the decision of the Supreme Court in the case of *Rajan Kumar Machananda* 1987 (5) JT 637 (supra) on the facts of that case held that it was not permissible to invoke inherent powers under S. 482 of the Criminal Procedure Code. In my judgment the aforesaid decision cannot advance the submissions of Shri Vashi as I have indicated that in *Rajan Kumar Machananda*'s case it was common ground that though the petition before the High Court was labelled as one under S. 482 of the Criminal Procedure Code it was really an application for revision of the order of the Magistrate releasing the truck. It was in the context held that the same was prohibited under S. 397(3). Moreover I am bound by the decision of the larger Bench of the Supreme Court given in the case of *Madhu Limaye* (1978 Cri LJ 165) (supra).

34. In my judgment the jurisdiction of revision conferred by Ss. 397 and 399 is for correcting the illegality or impropriety of a finding of a subordinate Court. It is only when the order is shown to be illegal or improper that powers of revision under Ss. 397 and 399 of the Criminal Procedure Code can be exercised. That power, however, cannot detract from the inherent power of the High Court under S. 482 of the Criminal Procedure Code. S. 482 starts with the phrase "nothing in this Code shall be deemed to limit". This phrase would bring within its compass the provisions of S. 397 as also S. 399 of the Criminal Procedure Code. It is true that resort to S. 482 has to be made sparingly and in exceptional cases. It is only in cases where the High Court finds that there is abuse of the process of any Court or that it is expedient in order to secure the ends of justice that resort can be had to S. 482. It is true that it is not what label is attached to the petition that matters. Whether it is label of a revision application under S. 397 or 399 of the Cr.P.C. or whether it is a label of S. 482 of the Cr.P.C. or Art. 227 of the Constitution of India, it is the power which the High Court exercises that has to be determined. If the order is shown to be illegal or improper, the Court should

exercise its jurisdiction under S. 397 or 399 of the Criminal Procedure Code. If the High Court finds it necessary for the prevention of abuse of the process of any court or for securing the ends of justice, S. 482 empowers the High Court to exercise its inherent power and in that case there can be no limitation in the exercise of that power. Similarly, if an order passed by any subordinate Court or Authority is shown to contain an error apparent on the face of the record Art. 227 of the Constitution of India empowers the High Court to pass such orders as the case may require. While exercising such a power no provision any law can be an impediment.

35. It has been held in the case of Kaikhusroo Phirozshah Doctor Vs. State of Bombay, that if the legislature attempts to make the decision of any Tribunal final, it cannot by doing so prevent the High Court from issuing the proper writ either under Art. 226 or under Art. 227 of the Constitution of India.

36. In view of the aforesaid discussion, I have no hesitation in holding that this is a fit case where the criminal case bearing No. 76/S/1985 pending in the Court of the learned Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Bombay, should be stayed pending the ultimate decision of the proceedings in RAE Suit No. 488/1805/1980 in the Court of Small Causes. The petitioner has also prayed for stay of the criminal case pending the decision in Suit No. 3495 of 1987 on the original side of this Court. Since the hearing of the suit is not likely to be taken up in the near future, I do not propose to pass any orders in regard thereto. It would be open to the petitioner in case it becomes necessary to apply.

37. In the result, the petition succeeds. Criminal Case No. 76/S/1985 pending in the Court of learned Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Bombay is stayed pending the ultimate decision of the RAE Suit No. 488/1805 of 1980 now pending in appeal bearing No. 278 of 1989 in the full Court of Small Causes at Bombay.

Rule is made absolute.

There shall be no order as to costs.

38. Order accordingly.