

(2006) 01 AHC CK 0153

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 308 of 2006

Bishan Singh

APPELLANT

Vs

State of Uttar Pradesh and Modi Industries Ltd.

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Companies Act, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482

Citation : (2006) 132 CompCas 887 : (2006) 72 SCL 224

Hon'ble Judges : M.K. Mittal, J

Bench : Single Bench

Advocate : Sanjay Srivastava, for the Appellant; Ramesh Sinha and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mittal, J.—Heard Sri Sanjay Srivastava, learned Counsel for the applicant, Sri Ramesh Sinha, learned Counsel for the opposite party No. 2, learned A.G.A. and perused the record.

2. Application has been filed u/s 482 Cr.P.C to quash the proceedings of complaint case No. 755 of 2004 (M/s Modi Industries (Modi Vanaspati Manufacturing Company Unit) v. Bishan Singh, pending in the Court of Special Chief Judicial Magistrate, Meerut u/s 630 of the Companies Act.

3. Brief facts of the case are that applicant was employed in the company of the opposite party No. 2 and was also allotted a quarter No. B-1/17 Mutanipura, Modinagar in connection with his employment in the company. However the services of the applicant were terminated on 19.2.2002 and the applicant was required by the opposite party No. 2 to vacate the quarter but he did not do so and then the complaint was filed u/s 630 Companies Act and after examining the complainant and the witnesses u/s 200/202 Cr.P.C. learned Magistrate finding prima facie case against the applicant directed to summon the applicant vide order dated 24.7.2004.

4. Learned counsel for the applicant has contended that the applicant was working in the company in the capacity of Officer Instrument after his promotion on 16.8.1999. But his services were terminated on 19.9.2002 without giving any show cause notice and the termination matter is pending before Labour Commissioner, Gbaziabad. Learned counsel for the applicant has further contended that opposite party No. 2 is neither the owner of the property nor lessee of the property and has no right to file complaint u/s 630 of Companies Act. He has further contended that the allegations as made disclose a dispute of Civil nature and the learned Magistrate has erred in summoning the applicant.

5. Against it learned Counsel for the opposite party and the learned A.G.A. have contended that the quarter was given to the applicant in connection with his employment and when the services were terminated he was required to Vacate and if he does not. vacate he is criminally liable u/s 630 of the Companies Act. They have further contended that the learned Magistrate has rightly summoned the applicant, and that the present application is misconceived and is liable to be dismissed.

6. The relevant portion of Section 630 of the Companies Act reads as follows:

Section 630: Penalty for wrongful withholding of 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 authorised 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 one 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.

7. This section shows that if any officer or employee of company who is in possession of the property of the company wrongfully withholds it he shall be liable to be prosecuted on the basis of the complaint that may be filed by the company. In the instant case, the services of the applicant were terminated in the year 2002 and therefore he does not have any right to continue in possession over the property of the company even if his case is pending before the Labour Commissioner. Learned Counsel for the applicant also could not show as to who is owner of this property if the company is not the owner of this property.

8. Learned counsel for the applicant has contended that the dispute is of civil nature and has cited the case of Jagdish Chandra Nijhawan Vs. S.K. Saraf, . In that case the appellant was put. in possession of the flat pursuant to the

agreement dated 29.4.1983 and some terms and conditions were laid down and it was held by the Hon''ble Apex Court that accused was granted rent free accommodation as part of conditions of employment contained in an agreement containing clauses stipulating employees right to retain flat in certain circumstances such as termination within a particular period. In that matter, the learned Magistrate had discharged the accused on the ground that it was a dispute of civil nature and that finding was confirmed by the Hon''ble Apex Court. In the present case the facts are different and there is no agreement between the parties as to what would happen in case of termination of the services; therefore, this ruling does not help the applicant.

9. Learned counsel for the opposite party has cited the case of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, where it has been held that 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. It is the wrongful withholding of such property, meaning the property of the company after termination of the employment, which is an offence u/s 630(1)(b) of the Act.

10. Learned counsel for the opposite party has also cited the case of Sunita Bhagat (Mrs) and Ors. v. Voltas Limited and Ors. 1995 SCC 591 where it has been held that once the right of the employer or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with u/s 630 of the Act, for retrieval of the possession of the property.

11. Learned counsel for the opposite party has also cited a recent case of Shubh Shanti Services Ltd v. Manjula S. Agarwalla 2005 SCC 993 In that matter a civil suit was pending between the employee and the company and the High court had directed the company not to dispossess the legal representative of the deceased employee, of the flat, allotted to the deceased, except by due process of law. It has been held by the Hon''ble Apex Court that the remedy available to the company u/s 630 was nonetheless a proceedings taken in due process of law and it was further held that the criminal proceedings were not barred by interim order in civil proceedings.

12. Therefore this legal position shows that if the services of the employee or the officer have been terminated he is liable to vacate the premises of the company and if he fails to do so he can be prosecuted u/s 630 of the Companies Act.

13. In the circumstances, I do not find any illegality in the summoning order and there is no legal ground to quash the proceedings u/s 482 Cr.P.C. Application is devoid of merits and is liable to be dismissed.

14. Application is hereby dismissed.