
(2006) 09 RAJ CK 0002
In the Rajasthan High Court

B.N. Singh

APPELLANT

Vs

DCM Shriram Indus. Ltd.

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 630
Criminal Procedure Code, 1973 (CrPC) — Section 11, 397, 468, 472
Industrial Disputes Act, 1947 — Section 2

Citation : (2007) 5 RCR(Civil) 791 : (2007) 2 RCR(Rent) 367 : (2007) 3 RLW 2382 : (2007) 76 SCL 1

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Harbans Lal, J.—These 11 revision petitions u/s 397 Cr.P.C. have been filed by the erstwhile employees of DCM Shriram Industries Ltd. against the various judgments rejecting their appeals and confirming the judgments of the trial court convicting them for the offence u/s 630 of the Indian Companies Act, 1956 (hereinafter called in short "the Act") and sentencing them to various punishments with direction to vacate the premises allotted to them as employees of the company which are in their occupation even after their termination/resignation from service of the company.

2. Since there is common and identical legal controversy involved in all these petitions seeking the same relief, I have heard these petitions together and they are being disposed of by this common order.

3. The relevant facts are that the complainant non-petitioner is running an Industry known as Shriram Rayons in Kota city. The petitioners were employees of the said company, but their services were later terminated on various dates or they resigned from service. But the petitioners did not vacate the accommodation allotted to them as employees of the company even after their termination/resignation from their service. So, the company filed separate

complaints before the learned trial court for the offence u/s 630 of the Act. After due trial, they all were found guilty of the offence u/s 630 of the Act and sentenced to various amounts of fine and in default thereof to undergo simple imprisonment for various periods. They were also directed to vacate the premises within the time granted in the judgments of the trial court.

4. The petitioners preferred appeals against the aforesaid judgments of the trial court which were also disallowed upholding the judgment and order of the learned trial court. Hence, these revision petitions.

5. Learned Counsel for the petitioners have contended that the findings arrived at by the trial court as upheld by the Appellate Court and the conviction and sentence passed against them are patently illegal and perverse. The services of the petitioners have not been terminated after following the provisions of the Industrial Disputes Act, 1947. The matter with regard to their termination is still subjudice before the Division Bench of this Court. The provisions of section 630 of the Act are applicable only to the officers and the employees of the company and not to the petitioners who are workmen u/s 2(s) of the Industrial Disputes Act, 1947. The learned Courts below having failed to consider these aspects of the case, the judgments passed by them are liable to be quashed and set aside. They have also submitted that the trial court had no territorial jurisdiction to entertain the complaints against the petitioners. Reliance in this behalf has been placed on H.P. Gupta Vs. Hiralal, H.V. Jayaram Vs. The Industrial Credit and Investment Corporation of India Ltd. and others, They have also submitted on the strength of the decision in Jagdish Chandra Nijhawan Vs. S.K. Saraf, that the dispute between the parties was of civil nature. So, no criminal cases could have been lodged against them.

6. Learned Counsel for the non-petitioners have supported the impugned concurrent judgments. They have contended which could not be controverted that this Court has rejected SB Criminal Revision Petition No. 585/ 2002 Subedar Dixit v. DCM Shriram Industries Ltd. on 9-7-2002 on identical facts and that order has become final and governs the present revision petitions also.

7. According to them, the State Government has in exercise of powers vested in it u/s 11(1) proviso of the Cr.P.C. has created/established vide notification dated 30-1-1980, the Court of Judicial Magistrate, First Class, Jaipur as a Special Court with effect from 15-2-1980 with the territorial jurisdiction of the entire State of Rajasthan to try cases under the Acts mentioned therein including the Act. They have submitted that the cases relied upon by the learned Counsel for the petitioners regarding objection with regard to the territorial jurisdiction of the Court are clearly distinguishable on facts and do not in any way apply to the facts of the instant cases. So far as the decision in the case of Jagdish Chandra Nijhawan (supra) is concerned, it also has been decided on the particular facts of that case and similar facts are not there in the instant cases. They have pointed out that section 630 of the Act does not apply only to the officers and employees of the company, but also to the petitioners even if they be treated to be

workmen. They have also pointed out that the matter in subjudice before the Division Bench of this Court is not with regard to the termination/resignation of the services of the employees. In this regard, they have placed reliance on Baldev Krishna Sahi v. Shipping Corporation of India Ltd. AIR 1987 SC 2245 , Atul Mathur Vs. Atul Kalra and Another, , Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath and Others, , Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, , Tej Singh Vs. S.T.A.T. and Another, and Beguram v. Jaipur Udhog Ltd. [1987] 61 Comp. Cas. 744 ().

8. I have carefully considered the rival submissions made at the bar and have perused the judgments under challenge and the relevant record as well as the authorities cited at the bar.

9. It is true as contended by the learned Counsel for the non-petitioners that a co-ordinate Bench of this Court has dismissed Subedar Dixit's case (supra), wherein the facts in the controversy involved were identical to the facts in these revision petitions. Admittedly, that judgment has become final and being on all fours applies to the present cases as well. So, the instant revisions being governed by the aforesaid judgments are liable to be dismissed on the basis of this judgment alone.

10. The objection regarding territorial jurisdiction of the learned Court below is obviously untenable in view of the notification dated 30-1-1980 which has been issued in exercise of the powers u/s 11(1) proviso of the Cr.P.C. by the State Government creating/establishing the Court of Judicial Magistrate, First Class, Jaipur as the Special Court with effect from 15-2-1980 for the territorial jurisdiction of the entire State of Rajasthan. Section 11(1) reads as under:

11. Courts of Judicial Magistrates. - (1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, at such places, as the State Government may, after consultation with the High Courts by notification specify:

Provided that the State Government may, after consultation with the High Court establish for any local area one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court or Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

11. The facts of the cases relied upon by the learned Counsel for the petitioners and referred to above are clearly distinguishable on facts. In the cases of Hanuman Prasad Gupta and H.V. Jayaram (supra), the dividend warrants and share certificates respectively were dispatched from the registered head offices of the companies and in these facts it was held that the companies could be filed only at the place where the registered office of the company was situated. No Special Court seems to have been created in those States whereas in the present

cases, the learned Court of Special Judicial Magistrate had territorial jurisdiction over the entire State of Rajasthan and, therefore, the objection regarding territorial jurisdiction of the trial court has no pith and substance and this objection being untenable cannot be accepted.

11A. In the case of Jagdish Chandra Nijhawan (supra), there was an agreement between the company and the Managing Director of the company and on the basis of the terms and conditions of the said agreement, the employee and/or his wife were entitled to continue to enjoy rent-free accommodation in the case of termination of the employee until the employee took up any profession, vocation or business. In that case, the services of the appellant were terminated and he had not resigned from service of his own and, therefore, under the terms of the agreement, he was entitled to retain the possession. This apart, in that case, the appellant had in the meanwhile purchased the flat which was on lease with the company and, therefore, he was discharged of the offence u/s 630 of the Act holding that the dispute between the parties was of civil nature and the High Court was not right to hold that he was holding the accommodation wrongly. The facts of the said case are obviously distinguishable from the facts of the present cases. There is no such special agreement between the company and the employees governing the allotment, vacation or retention of the accommodation allotted to the petitioners as employees of the company. Hence, the decision in that case is also of little avail to the petitioners.

12. In the aforementioned authorities relied upon by the learned Counsel for the non-petitioners, it has been clearly held that if the employee does not vacate the premises allotted to him and in his possession after his retirement or resignation, he shall be held to be with-holding the possession wrongfully and would be liable for prosecution and punishment u/s 630 of the Act. It has been held in Atul Mathur's case (supra) that the object of section 630 of the Act is to provide speedy relief to a company when its property is wrongfully detained or withheld by an employee or ex-employee and merely because a civil suit has schemingly been filed against the accused prior to the institution of the complaint in the criminal court and the civil court is in seisin of the same between the parties, the criminal court never be said to be debarred by the criminal complaint u/s 630 of the Act and such a view if taken would not only lead to miscarriage of justice to render ineffective salutary provision of section 630 of the Act.

13. In the case of GokakPatel Volkart Ltd. (supra), the Hon''ble Apex Court has held that the refusal to vacate company's quarter after retirement/termination of service constitutes a continuing offence within the meaning of section 472 Cr. P.C. and hence period of limitation u/s 468(2)(a) Cr. P.C. for taking cognizance of the offence is inapplicable. Such a controversy is not involved in these cases.

14. In the case of Mrs. Abhilash Vinod kumar Jain (supra), it has been held by the Hon''ble Apex Court that a complaint against the legal heirs of a deceased officer or employee for retrieval of the company's property wrongfully obtained or withheld after death of such officer or employee is maintainable. It has further

been held that section 630 of the Act is not a penal provision in the strict sense but a quasi-criminal provision. The fine under sub-section (1) is in the nature of compensation. Punishment of imprisonment is to be imposed under sub-section (2) only on disobedience of the order of the Court directing the person continuing in possession of the company's property after extinguishment of his right.

15. This Court in the case of P.N. Mobar (supra) has held that section 630 of the Act applies both to the existing officers and employees and also to those whose employment has already been terminated. The question of propriety of termination can be decided by civil or industrial adjudication. The conviction of the petitioner in that case was up-held though sentence imposed upon him was reduced. Similar view has been taken in other cases relied upon by the learned Counsel for the non-petitioners.

16. In view of the foregoing discussion, therefore, the contention of the learned Counsel for the petitioners that the dispute between the parties is of civil nature and, therefore, the criminal complaint cannot be proceeded with is clearly unacceptable and unsustainable.

17. So far as the contention of the learned Counsel for the petitioners with regard to inapplicability of section 630 of the Act on the ground that the petitioners are workmen is concerned, even if they be treated as workmen, they are employees of the company and have been allotted the accommodations as employees of the company. It has not been pointed out that the allotment, vacation and retention of the houses allotted to them is governed by some other set of rules.

18. Thus, in view of the discussion made hereinabove, I do not find any error, illegality or impropriety in the orders passed by the learned trial court as upheld by the learned appellate Court in respect of the petitioners and these criminal revision petitions having no merit and substance deserve to be dismissed.

19. Consequently, these revision petitions are hereby dismissed.