

(1998) 03 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2506 of 1996

Gajra Gears Ltd.

APPELLANT

Vs

Smt. Ashadevi

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Companies Act, 1956 — Section 630
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) 103 CompCas 489

Hon'ble Judges : Nirmal Kumar Jain, J

Bench : Single Bench

Advocate : S.P. Joshi, for the Appellant; Patne, for the Respondent

Final Decision : Allowed

Judgement

N.K Jain, J.—By this petition u/s 482 of the Criminal Procedure Code, the petitioner, a public limited company, seeks quashment of the order dated February 28, 1996, passed by the Sessions Judge, Dewas, in Cr. Rev. No. 9 of 1996, in affirmance of the order dated October 20, 1995, passed by the Chief Judicial Magistrate, Dewas, dismissing the petitioner's complaint against the respondent u/s 630 of the Companies Act, 1956 (for short "the Act").

2. The respondent, Smt. Ashadevi is the widow of the late Shri Ram Pravesh Singh who was an employee of the petitioner-company and died while serving with the company. The petitioner-company filed a complaint before the Chief Judicial Magistrate, Dewas, against the respondent alleging commission of the offence u/s 630 of the Act and it was averred that the respondent has after the death of her husband, failed to hand over vacant possession of the premises allotted by the company to her husband.

3. The learned Chief Judicial Magistrate has dismissed the complaint holding that section 630 of the Act does not contemplate criminal proceedings being launched against the relatives of any erstwhile employee/officer of the company for

recovering possession of the property of the company. The order of the learned Chief Judicial Magistrate, was affirmed in revision by the Sessions Court who also took the same view. Reliance has been placed on a decision of this court in *Beharilal v. Binod Mills Co. Ltd.* [1987] B J 621 : [1987] 3 Comp LJ 246 (MP).

4. The question requiring determination by this court is whether a complaint u/s 630 of the Act is tenable against the legal heirs of a deceased employee for recovery of the company's property.

5. This court in *Beharilal* [1987] B J 621 (MP) has held that the provisions embodied in section 630 of the Act do not contemplate criminal proceedings being launched against the relatives of an erstwhile employee or officer for recovering the possession of the property of the company. A similar view is taken by the Calcutta High Court in *Amritlal Chum v. Devi Ranjan Jha* [1987] 61 Comp Cas 211. However, a different view has been expressed by the High Court of Bombay in *Harikishin Lakshimal Gidwani v. Achyut Kashinath Wagh* [1982] 52 Comp Cas 1.

6. The point projected in all the aforesaid decisions now stands resolved finally by the Supreme Court decision in *Smt. Abhilash Vinodkumar Jain v. Cox and Kings (India) Ltd.* [1995] 84 Comp Cas 28, wherein the apex court after taking into consideration all the decisions referred to above has held (page 39) :

"Thus, our answer to the question posed in the earlier part of this judgment is in the affirmative and we hold that a petition u/s 630 of the Act is maintainable against the legal heirs of the deceased officer/employee for retrieval of the company's property wrongfully withheld by them after the demise of the employee concerned. The High Court was, therefore, right in dismissing the petitions filed by the appellants u/s 482 of the Criminal Procedure Code and declining to quash the proceedings initiated by the employer of the deceased employee for retrieval of the company's property u/s 630 of the Act."

7. It will be thus seen that the decision of this court in *Beharilal* [1987] B J 621 (MP) stands overruled by the apex court and the legal position that now emerges is that a complaint u/s 630 of the Act is maintainable against the legal heirs of the deceased officer/employee for retrieval of the company's property wrongfully withheld by them after the demise of the employee concerned.

8. It was, however, argued by learned counsel for the respondent that the property in question does not in fact, belong to the petitioner-company. If that is so, the respondent shall be free to demonstrate the same before the trial court. It is not open for this court in the present petition to dwell upon the factual aspect of the case. The decisions impugned were passed solely on the ground of maintainability of the complaint and as held above, the view taken by the courts below is not in conformity with the law laid down by the Supreme Court in *Smt. Abhilash Vinodkumar Jain* [1995] 84 Comp Cas 28.

9. I thus allow the petition and quash the order dated February 28, 1996, passed

by the Sessions Judge, Dewas, as also the order dated November 28, 1995, passed by the Chief Judicial Magistrate, Dewas. The case shall now go back to the Chief Judicial Magistrate, Dewas, who shall re-admit and proceed with the same in accordance with law.