

(1997) 04 MAD CK 0072
In the Madras High Court
Case No : Criminal A. No. 838 of 1989

Hindustan Teleprinters Ltd.

APPELLANT

Vs

A.S. Mohamed Yusuf

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Companies Act, 1956 — Section 630
Criminal Procedure Code, 1973 (CrPC) — Section 467

Citation : (1998) 93 CompCas 223 : (1998) CriLJ 2215

Hon'ble Judges : K. Natarajan, J

Bench : Single Bench

Advocate : A. Raghunathan, for the Appellant;

Judgement

K. Natarajan, J.—This appeal has been directed against the judgment of acquittal dated August 10, 1989, of the Addl. Chief Metropolitan

Magistrate, E.O.I., Egmore, Madras, in E.O.C.C. No. 286 of 1989, on his file.

2. The short facts of the prosecution case are as follows :

The complainant/appellant, Hindustan Teleprinters Ltd., G.S.T. Road, Guindy, Chennai-32, by its senior personnel officer, S. S. Venkatraman,

filed the private complaint before the Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Madras-8, u/s 630 of the Companies Act, 1956,

on the allegation that the accused/respondent was found in possession of 940.20 grains of metal without proper authority and disciplinary

proceedings were initiated and on March 10, 1984, u/s 15(2) of the Standing Orders of the company, charge-sheet was given to him. The

accused/respondent gave his explanation on March 23, 1984, and the enquiry officer submitted a report that the charge against the accused had

been proved. Thereafter, the accused/respondent was dismissed from the

services of the company. The company submitted an application to the Industrial Tribunal to approve the order of dismissal. It appears that since a favourable order was not passed, the matter was taken to the High Court. The accused/respondent was allotted official quarters bearing door No. A-40, as his residence. After his dismissal from the services of the company, the accused/respondent is not entitled to continue in possession of the official quarters and notices dated May 19, 1984, June 20, 1984, June 29, 1984, July 25, 1984, and September 14, 1984, were given to the accused/respondent to vacate and deliver vacant possession of the official quarters. However, the respondent had not vacated the quarters and is continuing in illegal possession of the said quarters. 1,850 employees are working in the company of the complainant. However, there are 220 quarters only. Every year, applications are received from the employees. They are allotted quarters on the basis of the criteria evolved by the company. The possession of the official quarters by the accused/respondent even after his dismissal from the company is an offence punishable u/s 630 of the Companies Act.

3. The accused/respondent resisted the complaint stating that the Industrial Tribunal refused approval to the order of dismissal passed by the enquiry officer and the matter is pending on the file of the High Court, and, therefore, it should be deemed he continues in the service of the company, and he is not liable to vacate the official quarters. Inter alia, he also contended that the senior personnel officer was not a competent person to file the complaint on behalf of the company and the complaint as filed was bad as per the bye-laws of the said company.

4. On the above contentions, the learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, framed the following points for determination :

1. Whether the complaint filed was maintainable ?
2. Whether the accused/respondent is in unlawful possession of the official quarters and is liable to be punished u/s 630 of the Companies Act ?
5. The senior personnel officer, S. S. Venkataraman, was examined as a sole witness on the side of the company and 13 exhibits were marked.

No witness was examined on the side of the respondent or any documents are exhibited. On an appreciation of the evidence placed before him,

the learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Madras, came to the conclusion that the secretary of the company is the agent and is the competent person to file the complaint. The secretary has not filed the complaint. The other competent persons to file the complaint are any one of the directors authorised by the board of directors or the managing director. Further, the authority given to the senior personnel officer shows that he was authorised to present the complaint only, and he was not authorised to sign the same. Ultimately, the trial magistrate reached the conclusion that the complaint as filed was not maintainable and on that short ground, he dismissed the complaint and acquitted the accused/respondent.

6. The company which is aggrieved by the said order of dismissal of the complaint has come forward with this appeal.

7. Learned counsel for the appellant/complainant forcibly contended before this court that the learned trial magistrate was not correct in reaching

the conclusion that the senior personnel officer was not competent to file the complaint. It was also brought to our notice that against the refusal of

the Industrial Tribunal to approve the order of dismissal passed against the accused/respondent, Writ Petition No. 11715 of 1985 was filed in the

High Court, Madras, and the same was allowed on January 2, 1996. A xerox copy of the order of the High Court in W.P. No. 11715 of 1985,

dated January 2, 1996, certified by learned counsel for the appellant had been placed before this court for perusal. The genuineness of the said

copy has not been disputed by counsel for the respondent/accused. It was argued by learned counsel for the appellant/complainant that the

respondent/accused cannot take shelter on the refusal of the Industrial Tribunal to approve the order of dismissal passed by the enquiry officer and

at present the fact remains that the respondent/accused had been dismissed from the service of the company and he is no more the employee of the

company and he shall be directed to vacate the official quarters without any loss of time. So far as the maintainability of the complaint is concerned,

it, was urged by learned counsel for the appellant that the senior personnel officer, S. S. Venkataraman, is competent to present and sign the

complaint and the authority given to him by the company clear all the doubts on this aspect, and the learned Additional Chief Metropolitan

Magistrate, E.O.I., grievously erred in reaching the conclusion that the complaint was not maintainable. In support of the above contention, the

attention of this court was drawn to the ruling reported in Atul Mathur Vs. Atul Kalra and Another, . On similar facts, their Lordships of the

Supreme Court have held, at page 338, as follows :

Another contention of the first respondent to thwart the proceedings u/s 630 which has been repelled by all the courts including the High Court, is

regarding the competence of PW-1, Mr., Atul Mathur, the present divisional sales manager of the company, to file the complaint on behalf of the

company. Belatedly, the first respondent has filed a memorandum of cross-objections against the finding of the High Court on this question. The

appellant's counsel objected to the memorandum of cross-objections being entertained as it has been filed belatedly and furthermore, the appellant

has not been given notice or furnished copies of the cross-objections. Leaving aside the technical pleas, we find the cross-objections to be

worthless, even on the "merits.

8. At page 339, the following observation has been made :

The power of attorney has been executed just before the complaint was filed and it is stated in the complaint that Mr. Atul Mathur was filing the

complaint on behalf of the company and he was duly authorised to do so. The High Court was, therefore, not right in construing the power of

attorney as conferring only special powers and no general powers on Mr. Atul Mathur. Be that as it may, the High Court has held, and very rightly,

that as Mr. Atul Mathur was the divisional sales manager of the company at Bombay, he was certainly competent to file the complaint on behalf of

the company as per instructions given to him from the head office of the company. We do not, therefore, find any substance in the contention of the

first respondent that the complaint suffered from a material irregularity not curable u/s 465 of the Criminal Procedure Code, 1973. Incidentally, we

may observe that in spite of contending that the complaint suffered from an irregularity, the first respondent has neither pleaded nor proved that

failure of justice has been occasioned on account of the alleged irregularity".

9. On a careful analysis of the facts, we are unable to find the accused/respondent had contended anywhere that the complaint suffered from

irregularity and failure of justice has been occasioned to him on account of the

alleged irregularity.

10. From the judgment of the learned Magistrate, it is noticed that the complaint was returned, when it was first presented, to explain as to how the senior personnel officer was competent to file the complaint and the said defect had been rectified and resubmitted with an authorisation letter of the company stating that the senior personnel officer has been given proper authority to present and sign the complaint. It appears that the learned trial magistrate has not taken proper notice of the said authority and he had made only a superficial analysis of the said letter. Further, the trial magistrate has also failed to advert to the main question whether any bona fide dispute exists between the company and the respondent/accused in respect of the official quarters allotted to the accused/respondent. On a careful reading of the judgment of the trial magistrate, we are unable to find any discussion had been made by him regarding the bona fide dispute in respect of the official quarters. We are satisfied that the senior personnel officer had ample authority to present and sign the complaint and the subsequent letter given by the company has ratified the action of the senior personnel officer to present the complaint and also sign it. Even assuming there was some defect in the senior personnel officer presenting and signing the complaint, the same is curable u/s 467 of the Criminal Procedure Code, 1973, and no prejudice had been caused to the respondent by the senior personnel officer filing the complaint and signing it. As already pointed out, W.P. No. 11715 of 1985, filed by the company against the refusal of the Industrial Tribunal to approve the order of dismissal of the enquiry officer has been allowed and, therefore, the respondent/accused cannot claim any more that he continues to be an employee of the company in spite of the dismissal order and he is clearly guilty of the offence u/s 630 of the Companies Act. Hence, we have no hesitation to find that the judgment of the trial magistrate is perverse, totally erroneous and palpably wrong.

11. For the reasons stated above, we hold that the learned trial magistrate was wrong in reaching the conclusion that the complaint filed was not maintainable and the accused/respondent is not liable to be punished u/s 630 of the Companies Act, and the judgment of the trial magistrate is liable to be set aside.

12. In the result, the appeal is allowed and the judgment of the trial magistrate dated August 10, 1989, is set aside and the respondent/accused is found guilty u/s 630 of the Companies Act, and convicted thereunder. This is a summons case and the punishment provided is only up to two years imprisonment and, therefore, the accused/respondent need not be questioned regarding the sentence that will be imposed on him. The accused respondent is sentenced to pay a fine of Rs. 1,000 and also directed to deliver possession of the official quarters bearing door No. A-40 in his wrongful possession to the appellant-company, on or before June 15, 1997, in default to suffer simple imprisonment for a period of six months. The fine amount shall be paid by the respondent/accused in the trial court on or before June 15, 1997, without fail. No leave.