

(1993) 07 BOM CK 0011

In the Bombay High Court

Case No : Criminal Revision Application No. 33 of 1993

Indian Hotels Co. Ltd.

APPELLANT

Vs

Bhaskar Moreshwar Karve and another.

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Companies Act, 1956 — Section 630

Citation : (1994) 1 BomCR 3 : (1994) 96 BOMLR 831 : (1994) 81 CompCas 132 : (1993) CriLJ 3370

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Rafique Dada, U.P. Vashi and J.V. Vashi, for the Appellant; Sudhir Shah and R.F. Lambay, for the Respondent

Judgement

M.F. Saldanha, J.—This proceeding is reminiscent of the allegoric reference to the proverbial serpent that attempted to sting the hand that was feeding it milk. Harsh as this may seem, a narration of the facts would indicate how appropriate the analogy is. The central issue canvassed in the case being one that is customarily pleaded as a defence in prosecutions u/s 630 of the Companies Act, 1956, the law on the point requires to be settled. It has almost become routine in this class of litigation, for a contention to be adopted by the defence, that a promise was made to the accused ex-employee by or on behalf of the company that the premises in question would be sold to the employee at book value or, in other words, for a fraction of the real market value or, in the case of rented premises, that the tenancy would be surrendered in favour of the occupant. This contention is pleaded in all seriousness and it is contended that the accused is entitled to enforce his rights by insisting on specific performance by the company and that, consequently, the ingredient of wrongful retention or withholding of the premises is absent. Litigations are commenced in the civil courts for a declaration that the accused should be declared a tenant or that he is entitled to enforce the sale at book value to himself for a totally unreal consideration on the ground that he is an intending purchaser, apart from other parallel proceedings in various

courts, and the criminal prosecution instituted by the company is sought to be stayed on the ground that the accused has raised issues which are within the exclusive jurisdiction of a civil court where the accused can confidently assure himself that the first round of litigation will not be over for at least two decades if the requisite dilatory tactics are resorted to.

2. The courts in this country, and in particular the apex court, have held with consistent regularity that section 630 of the Companies Act is a penal provision and that it is intended to provide an expedient and surefire remedy for recovery of company property that is wrongfully withheld, the term "property" being inclusive of residential premises retained by employees or ex-employees, who undoubtedly would use every available means to retain the property for as long as possible and to even appropriate it wherever the situation permits. The application of the law against such wrong-doers is not to be in a weak, long-drawn out, insipid action which would have the effect of encouraging dishonesty, but the approach has to be strong, vigorous and efficient if there is to be respect for the rule of law. The courts have hitherto interpreted section 630 of the Companies Act and have crystallised the position. That the remedy prescribed by the section is required to be speedy, that it is required to be effective and that, consequently, it must necessarily yield the desired result is how the section has been interpreted. What is, in fact, happening in the proceedings is exactly the reverse and it is, therefore, necessary to ensure that the law is given effect to and not put into cold storage.

3. To state the central point in this proceeding, which briefly is that the accused was allotted and is in occupation of residential flat No. 32 on the third floor of Mehr-Dad Building, Cuffe Parade, Bombay-400 005, along with a garage in the same building since about the year 1978 in his capacity as an officer of the Indian Hotels Co. Ltd. (hereinafter referred to as "the company"). At the time of the purchase, the company had paid Rs. 1,70,000 for the property. The accused conveyed a request in the year 1978 to the managing director of the company that he should be permitted to purchase the flat in question at book value. The managing director, Mr. Kerkar, intimated to him that he viewed the proposal favourably, but that the same was subject to the sanction of the board of directors. The accused contends that he is entitled to apply the doctrine of promissory estoppel in so far as a promise was held out to him that the flat would, in fact, be sold to him at book value and that it was because of this assurance that he did not acquire suitable residential accommodation for himself. The matter was hanging fire for several years and ultimately placed before the board in 1989 when the board of directors of the company rejected the proposal. The accused, who had in the meanwhile retired, continued to reside in the premises without making any payments whatsoever to the company and the company had to prosecute him u/s 630 of the Companies Act. Criminal Case No. 2199/S of 1989 was filed by the company in the court of the learned Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay, charging the accused with having committed an offence punishable u/s 630 of the Companies

Act.

4. The accused has filed a suit, which is pending in the High Court, being Suit No. 2187 of 1992 on May 20, 1992, wherein he has prayed for a decree of specific performance against the company for compelling it to sell the flat to the accused at book value. The accused contends through some involved and difficult process of reasoning that he is entitled to enforce the assurance given to this effect and that the adjudication of the case is purely within the ambit of the civil court. Simultaneously, he states that by canvassing such a plea he is entitled to claim total immunity in the criminal prosecution because he is legally justified in retaining possession of the premises and is, therefore, not wrongfully withholding the same. I found it difficult to read much logic into the aforesaid contentions apart from there being precious little legal justification in the argument, but this point has been argued at length and, therefore, requires to be settled, more so since such pleas are being canvassed with regularity in section 630 of the Companies Act proceedings and are responsible for abnormal delays in the disposal of cases. The law on the point, therefore, requires to be stated.

5. As far as the criminal prosecution was concerned, the accused had earlier approached this court by way of Criminal Application No. 2491 of 1990 contending that the criminal proceedings against him ought to be quashed. After hearing the parties, Dhabe J. passed a speaking order dated November 5, 1990, and held that it was not a fit case in which the powers u/s 482 of the Code of Criminal Procedure ought to be invoked and rejected the petition. The accused filed an appeal to the Supreme Court, being Criminal Appeal No. 164 of 1991. It is obvious from the order of the Supreme Court dated September 12, 1991, that the court was not inclined to entertain the appeal whereupon the petitioner sought the leave of the court to withdraw it. The petition was disposed of with the observation that the appeal is dismissed as withdrawn. The court, however, expressed no opinion on the merits of the case and directed the trial court to hear and dispose of the case preferably within a period of six months from the date of the receipt of the order. The trial thereafter proceeded and when it came to the stage of framing charges, the accused once again seriously contended that he should be discharged. The defence taken before the trial court is exactly the same, namely, that it was promised to the accused that the flat would be sold to him at book value, that consequently he did not acquire a place of his own and that the company is, therefore, estopped from going back on the promise. The learned Magistrate, after hearing the parties, rejected the application for discharge by an order dated November 23, 1992, and on December 1, 1992 framed the charge against the accused for an offence u/s 630 of the Companies Act.

6. The accused thereafter filed Criminal Revision Application No. 378 of 1992 before the Court of Sessions for Greater Bombay, principally contending that the framing of charges against him was unjustified and once again pleading the point regarding promissory estoppel. The matter was finally heard by the Court of

Sessions and the honourable judge Deshpande by his judgment dated March 1, 1993, upheld the plea raised by the accused. The revision was allowed, the order of the Metropolitan Magistrate dated November 23, 1992, was set aside and the accused was discharged. It is against this order that the company has approached the High Court through the present petition. When this petition came up for admission, after hearing learned counsel on both the sides and on a consideration of the order dated March 1, 1993, passed by the Court of Sessions, it appeared that the case did require reconsideration. Shri Vashi, on behalf of the petitioner, had pointed out to me that in the year 1991, the Supreme Court had directed that the proceeding be disposed of within six months, that the order of the Supreme Court was dated January 12, 1991, and was binding on the courts below, that almost two years had passed and the proceeding had not yet terminated in the trial court. Learned counsel pointed out to me that the accused has retired from the services of the company, that the company badly requires the premises for its other officers and that, consequently, the matter ought to be disposed of on a priority basis. The only point that arose for consideration in the matter was as to whether the accused could plead and enforce the doctrine of promissory estoppel and to this extent on the facts of this case and a consideration of the law appeared to be an important argument. The Supreme Court direction, on the one hand, the need of the company on the other and the fact that the trial was already part-heard before the learned Magistrate were grounds that required expeditious hearing. The matter was, therefore, admitted and fixed for final hearing on April 20, 1993.

7. The petition was taken up for hearing in the third week of April and learned counsel on behalf of the petitioner pointed out to me the facts of the case, the correspondence on record, the notes of evidence, the orders, etc., on two main points and submitted that there can be no two opinions about the fact that the accused had wrongfully retained the flat and if at all anything was to be said in favour of his defence that the same could only be taken cognizance of at the time of the main judgment. He submitted that interference by the learned Sessions Judge and that too at the stage of framing of charges was wholly improper and consequently the proceedings be remanded to the trial court for a decision on the merits. Shri Sudhir Shah, learned counsel appearing on behalf of the respondents, defended the order of the learned Sessions Judge who had discharged his client. Shri Shah was eloquent in his arguments, which were also long-winded, and he maintained that this court must look at all the material on record, particularly the documents which were rather voluminous. After the case was heard for a considerable period of time, I informed Shri Shah that the plea of promissory estoppel canvassed by him which is the only defence in this case was wholly without substance and that the order of the Sessions Court would have to be set aside.

8. It is not obligatory on the part of the court to forewarn a litigant, but out of a sense of fairness, as is often done by the superior courts, I pointed out to Shri Shah that at the interlocutory stage it did not appear advisable for him to invite

an order on the merits from the High Court. It had been pointed out to me by learned counsel on behalf of the company that in this very case on an earlier occasion when the matter had been taken to the Supreme Court in appeal, their Lordships, after hearing learned counsel for the accused, informed him that if he desired an order on the merits the same was bound to adversely affect him at the trial, at which time the accused sought the leave of the court to withdraw the appeal. The learned Magistrate has yet to hear the parties and to decide as to whether the accused is liable to be convicted and in these circumstances it appeared indiscreet to invite an order on the merits from High Court. Shri Shah stated that after considering the matter and after obtaining the instructions from his client they desired that the matter be disposed of on the merits and that this court should hear the parties completely and indicate its decision. Shri Shah stated that he was confident of succeeding in the case and if he did not, that his client would like to carry the matter higher and that he has considered the implications of an order on the merits being passed at this stage and that he would like a total adjudication of the matter on the merits. It does often happen in judicial proceedings, such as when a reference is made, that a superior court decides the issue and after resolving it merely re-transmits the matter to the lower court for disposal in the light of the law as laid down. The arguments thereafter continued right until the vacation and after the re-opening of the court. In view of my Division Bench assignment, I sat specially on a Saturday to hear the matter so that the arguments could be heard completely. This was done on June 19, 1993, and the matter was kept for judgment. While going through the record and the compilations, I was surprised to find an engrossed compilation entitled "written arguments which were advanced orally on behalf of respondent No. 1". The compilation runs into something like 52 pages and there is a lot of material, particularly case law that was never even referred to in the course of arguments. The court was never informed that this was being filed nor was the leave of the court obtained for placing it on record. I sent for the Sheristedar and enquired with him, whereupon he informed me that after I had heard counsel, concluded the hearing and left the court room, Shri Sudhir Shah, learned counsel appearing on behalf of respondent No. 1, had tendered this compilation to him and requested him to put it into the case papers. He admitted that it was a lapse on his part to have taken the compilation from the learned advocate, but that he did so because the advocate told him that he had mentioned it to the judge after the arguments, that he was filing written submissions. This last statement is a false one. Normally, written submissions and compilations are not only helpful but are useful. I, therefore, decided to scrutinise the compilation when I found that a reference has been made to a very large number of cases which were never cited.

9. In the present instance, I was sorry to find that the manner in which this compilation was attempted to be smuggled on record was particularly in an attempt to put the court in the wrong box and prepare some technical grounds for protracting the proceedings further. Various statements and various cases are

referred to, which I was not aware of, since there was not even a remotest reference of those in the arguments of Shri Shah and the attempt is quite obvious to make a grievance that this court has ignored and overlooked all this material. What is far more serious is the fact that virtual allegations of bias and pre-conceived notions have been attributed to the judge which, apart from being false and unfair, prima facie constitute contempt of court.

10. Regardless of the tactics adopted by the learned advocate, I have at all times been fair and absolutely impartial to both the parties and shall continue to do so. Having read the compilation, I have taken the trouble to ensure that everything which the accused desires to point out through his learned counsel will be considered on the merits. In so far as the misconduct is concerned, it is necessary to uphold the need for proper behaviour in the course of judicial proceedings and not to permit unhealthy and dishonest practices and to this extent, therefore, appropriate proceedings under the Contempt of Courts Act in respect of the compilation are being adopted separately.

11. Shri Vashi, learned counsel appearing on behalf of the petitioners, and Shri Sudhir Shah, learned counsel appearing on behalf of respondent No. 1, have presented their respective cases with a degree of thoroughness that is commendable. Learned counsel are agreed on one aspect, namely, that the correspondence and the documents that are on record are admitted by both sides. Undoubtedly, the areas of differences are with regard to what exactly the record can be said to truly represent. For this purpose, I have culled out on a datewise basis the important factual material that is relevant for this case, as a decision on the merits would require an appraisal of this material. The chronology that emerges on such an examination is as follows :

(1) January, 1956. - The accused joined the company as officer.

(2) 1971. - The accused was allotted as an officer of the company a company flat No. 12-A, Mehr-Dad Building, Cuffe Parade, Bombay-400 005.

(3) July 1, 1976. - The company purchased flat No. 32 in the same building for a consideration of Rs. 1.70 lakhs and all charges and taxes. At the request of the accused the flat was allotted to him for his occupation during the period of his employment with the company. He had represented that he was booking an ownership flat at Shivaji Park, Dadar, which was expected to be ready for occupation in about two years" time. The accused had requested for allotment of the said flat during that period.

(4) July 22, 1978. - The accused wrote to the managing director of the company, Mr. Kerkar, informing him that as his children were grown up and settled down, he intends going into business and, therefore, he was retiring prematurely by March, 1979. He had requested that he be allowed to buy the company"s flat and car at book value, "if permitted".

(5) July 27, 1978. - Reply from the managing director informing the accused that

he had discussed the proposal concerning the flat and the car with the then deputy managing director of the company, Mr. Natarajan, that they were in principle agreeable to the same "with some modifications and subject to board's approval."

(6) July 31, 1978. - Letter from the accused to the managing director informing him, inter alia, that he proposed to pay for the company's flat and the car from his provident fund and gratuity, and also setting out as to what he intended to do after prematurely retiring from the company.

(7) April 30, 1981. - The accused wrote to the managing director of the company as to how he could not retire prematurely, but once again requesting that he would like to buy the flat in question.

(8) June 7, 1984. - The accused wrote a note to the managing director to allow him to buy the company's flat at book value and stating that he would like to buy the flat immediately and requesting him to arrange to take steps to effect the sale.

(9) September 25, 1986. - The accused wrote to the managing director of the company informing him that the company secretary and the accused had met the company's tax consultant Mr. D. M. Harish on September 22, 1986, to find out about the feasibility of effecting the sale of the said flat by the company to accused at book value, the suggestions given by Mr. Harish and requesting that the required resolution be passed at the board meeting to be held on September 29, 1986.

(10) October 3, 1986. - Reply from the managing director to the accused pointing out that there had been dramatic change in the real estate prices and, therefore, he finds it difficult to approach the board with a proposal that the flat be sold at book value to the accused. The managing director had offered an alternative proposal regarding another flat with which, if approved, the managing director was to go to the board and work out the formula. The managing director had expressed confidence that he would be able to persuade the board to agree to certain concessions, but pointed out that he would not be able to help much if the accused still requested that he be allowed to buy the present flat. As regards the flat in question, the managing director had clarified that at the highest, he could approach the board with a recommendation to allow the accused to buy the flat at a cost which will be 10 per cent. less than the market value.

(11) February 23, 1987. - Letter from the accused to the managing director mentioning that he had all along proceeded on the assumption that the very flat would be sold to him at book value.

(12) April 28, 1987. - Reply from the managing director pointing out that there has been an abnormal rise in the cost of housing in Bombay and that consequently he could not approach the board for selling of the flat to respondent No. 1.

(13) May 30, 1987. - Note from the managing director to the accused that he should accept the alternative flat offered to him.

(14) May 15, 1989. - The accused retired from the service of the company.

(15) August 30, 1989. - Letter from the managing director to the accused that the board had considered his request in the meeting held on June 6, 1989, that the same had been turned down and an offer was still made to the accused with regard to some alternative accommodation.

(16) January 19, 1990. - Letter from the accused to the managing director of the company stating that the earlier commitments made were irrevocable, that they cannot be annulled for any subsequent reasons and calling upon the managing director to honour the same.

(17) July 13, 1990. - Letter from the managing director to the accused stating that he had placed the correspondence between the accused and himself before the board and that the board did not accede to the request of the accused.

(18) August 11, 1990. - Letter from the accused once again insisting that the flat in question be sold to him at book value.

(19) August 20, 1990. - Letter from the secretary of the company recording that the company is withdrawing the offer of alternate accommodation and calling upon the accused to hand over possession of the flat.

(20) August 28, 1990. - The company filed the criminal complaint against the accused for the offence u/s 630 of the Companies Act.

(21) May 20, 1992. - The accused filed a suit in the High Court at Bombay, being Suit No. 2187 of 1992 against the company for specific performance of the agreement to sell the flat and the garage at its book value.

(22) December 17, 1992. - The company filed a suit in the Small Causes Court at Bombay against the accused and his family members for obtaining vacant possession of the flat.

12. The above essentially represents the correct sequence of events. Shri Vashi, on behalf of the petitioners, points out to me that there could be no ambiguity about the fact that the request for sale of the flat to the accused at book value had come from him at a time when he was contemplating premature retirement. Shri Vashi states that all this had transpired in the mid-seventies at which time many of the better companies used to permit some of the senior executives the facility of purchasing used items like cars, furniture, etc., at book value which the companies in any case were disposing of. As far as the flats are concerned, since it was always a problem for companies to find sufficient accommodation for their executives, such proposals could not be acceded to. When the accused conveyed his request to the managing director, which was very shortly after the purchase of the flat, the book value of the flat would have been the same as the market value at which the flat had been bought. The managing director and the vice-

president, prima facie, felt that this would not prejudice the interest of the company and that the proposal could be put up to the board, the decision being ultimately that of the board. Shri Vashi emphasised the fact that in the case of a limited company and that too in matters of alienation of property, the decision to dispose of such property can only be taken by the board of directors and that no other officer of the company is empowered to either take the decision or enter into a contract that binds the company. Even at that stage, Shri Kerkar while indicating his personal reaction that the proposal appeared to be good enough as far as he was concerned, clearly indicated with the use of the words "with some modifications and subject to board's approval" that he had no power to decide the matter. What is important is that nothing was concluded at that point of time.

13. Coming to the next stage, namely, the meeting with the company's tax advisor in September, 1986, which is relied upon heavily by the accused, Shri Vashi points out that in none of the documents produced up to this point of time was there any concluded agreement or assurance that the flat would be sold to the accused or that this would be done at book value. He further states that the advice of the company's tax advisor was sought for purposes of ascertaining his views with regard to the proposal from the accused because the accused was still persisting with his request. What is important is that Shri Vashi points out that in the letter dated October 3, 1986, the managing director has recorded a significant fact, namely, the abnormal rise in real estate prices. This meant that the book value or the price at which the accused wanted to buy the flat was approximately 1/25th of the market value and Shri Kerkar himself informed the accused that he finds it difficult to even approach the board with such a proposal. He states that the accused was a senior officer of the company and in order to be helpful to him Shri Kerkar even put forward the alternative proposal that the company would consider certain concessions in case the accused approved of some other flat and that he would go to the board to work out the formula. Shri Vashi emphasised the fact that Shri Kerkar clearly informed the accused that he would not be able to help if he insisted on buying the present flat and that the only recommendation, which he could even put up, was that it be offered to the accused at a price 10 per cent. less than the market value. The accused was still persistent with his request and on April 28, 1987, Shri Kerkar once again recorded the fact that the unforeseen rise in the cost of housing in Bombay, which he himself had not foreseen earlier, virtually precluded him from approaching the board to sell the flat to respondent No. 1. On May 30, 1987, the managing director had even written to him again that he should accept some other flat. Shri Vashi explains that the managing director of the company just could not consider a proposal to dispose of the flat at a throw-away price, quite apart from the fact that it was improper and illegal and the law itself would not permit it. It would be very damaging to the interest of the company as it would be the loss of a valuable asset and would involve the company in huge expenditure when a replacement had to be bought. He states that though not obligatory, it was a gesture of kindness and magnanimity that the accused was

offered an alternative flat. The record indicates that this proposal was never accepted by the accused and that he adamantly stayed on in the present flat. In sum and substance, Shri Vashi submits that there was no promise, no assurance, no obligation and no concluded contract between the company and the accused for sale of the flat to him at book value. He contends that the accused is attempting to distort the record and that he is putting forward false claims which are only in an effort to prolong the litigation and get out of the criminal liability.

14. This essentially is the main controversy in the present proceedings. Shri Shah has repeated ad nauseum that the company had promised to sell the flat to him at book value. When I asked him to produce any documents or evidence in support of this contention, he stated that the reaction of the managing director to the initial proposal of the accused in 1978 when he had asked for the flat and a car at book value signifies that the proposal was accepted and concluded and that according to Shri Shah the board approval was a mere formality. Shri Shah repeated several times in his arguments that a commitment made by Shri Kerkar as managing director binds the company. In this case, I find no such commitment having been made. It needs to be clarified, however, that in matters of alienation of property, no such commitment made by any officer at any level could either be valid or binding - it is only the board in whom the powers vest.

15. Shri Shah then proceeded with a startling argument, namely, that the managing director had assured the accused that he could persuade the board to give the flat to him and that the managing director, Shri Kerkar, was, consequently, instrumental in the accused not buying a flat of his own at that time because of the assurance that this flat would be given to him. I pointed out to Shri Shah that this argument runs contrary to the facts on record and that, apart from Shri Kerkar's letters, even his own client's correspondence does not support any such version. At this, Shri Shah attempted to contend that the court must accept his client's word that because he was confident of getting the present flat at book value, that he did not purchase another flat. Since Shri Shah had made a direct accusation that it was Shri Kerkar who stopped his client from purchasing another flat, I asked Shri Shah to substantiate this statement from anything on record, but apart from making this statement in the air, he was totally unable to do so. Shri Shah then adverted to the fact that since his client had "understood that he was getting the flat and since Shri Kerkar kept him in hopes, his client did not purchase another flat at a point of time when he was in a position to do so." The first part of the submission is contrary to the record and as far as the second part of it is concerned, if the accused for whatever reason did not purchase a flat of his own, I see no justification in his trying to insist on the company providing him accommodation at a later point of time. This demand is not only illogical but it is absurd.

16. I have devoted considerable time both in the court room and while deciding this case to a meticulous examination of the record because Shri Shah's contention is that his client is entitled to spell out an agreement to sell from the

correspondence and the events that transpired and that, in these circumstances, he is justified in his demand for specific performance of what he termed an agreement to sell. This is inter-linked with his contention that the doctrine of promissory estoppel would be applicable in the present case. Shri Shah has contended further that not only did the company hold out a promise to his client but that his client altered his position to his prejudice thereby refraining from purchasing a flat of his own. I have already held that there was no promise, no assurance or no contract and I do not accept that the accused did not purchase a flat of his own in the circumstances so pleaded by Shri Shah.

17. To my mind, the entire plea with regard to promissory estoppel is completely and totally misconceived. To start with, on facts, the record unmistakably indicates that there was no promise and, therefore, there can be no estoppel. One requires to approach the situation, however, from a slightly deeper angle which I consider necessary because it is not only a question of arriving at a conclusion as to whether from an appraisal of the material on record the doctrine of promissory estoppel applies or not. I need to go a stage further and to record that the argument should be tested from another aspect, namely, the question as to whether the accused could have insisted on the purchase of a flat in a situation whereby even the board of directors might have agreed to sell the company property to an employee at a ridiculously low price. Shri Shah has used the term "book value", but one needs to be a little more honest and realistic. The price at which the accused is asking for the flat works out to about one-100th the real value or market value of the property in the city of Bombay today. Not only would the tax laws not permit this but it would be a fraud on the company and it would be wrong on the part of the board of directors to even contemplate a transaction of this type. More importantly, one needs to bear in mind that even the board of directors of a limited company are trustees as far as its property is concerned and that they will not be acting in consonance with law or in the public interest or, for that matter, the interest of the shareholders if they permit this. If such favouritism were to be shown to selective employees who are allowed to take away company property at ridiculously low prices, to my mind, even if such transactions are approved of, the contracts would have to be struck down on the ground that they are illegal and against public policy. Viewed at from any angle, therefore, the record of this case apart, there is no justification even to the remotest extent for the application of the doctrine of promissory estoppel. Even in those of the cases, where such promises are pleaded or even established, a court of law will have to ignore them. I do not see any merit whatsoever in this plea and the detailed reasoning set out by the learned Sessions Judge upholding this contention is not only a wrong appraisal of the record but a total misreading of the law.

18. As regards the justification for framing of charges, Shri Vashi clearly points out that the accused was permitted residence in the premises in his capacity as employee of the company and that, consequently, on his ceasing to be an employee of the company, i.e., when he retired from service, he was legally

obliged to restore the company's property and in not doing so, he has wrongfully withheld the same. Shri Vashi points out to me that the accused has no locus standi to be in the premises which, admittedly, belongs to the company and he is in wrongful occupation of it even after he is repeatedly called upon to hand over possession. He submits that the offence is complete and that consequently the charge has validly been framed against the accused. The only justification pleaded in the cross-examination and in the material that was brought on record was that the accused is an intending purchaser, that the company is wrong in not having completed the sale transaction and that, therefore, he is not liable to restore possession. As indicated by me earlier, the defence plea is wholly and completely baseless and looked at from any angle it cannot justify the wrongful retention of the premises. The learned Magistrate was, therefore, fully justified in framing the charge against the accused.

19. Shri Shah has insisted on arguing every conceivable aspect of the matter on the merits and has insisted that this court must examine it which makes it inevitable that this court must express its views and record its findings. This has been done in spite of my having repeatedly brought it to his notice that at the interim stage, it may not be the best course of action. Shri Shah has relentlessly pursued his arguments and has attacked the validity of the board decision dated June 6, 1989, refusing to accept his client's proposal for purchase of the flat at book value. The first contention is that as regards some of the items on the agenda, a note was put up that the board was requested to approve of the item in question, but that as far as this item was concerned, the board was asked only to decide. According to Shri Shah, the managing director, Mr. Kerkar, and the company secretary were obliged to request the board to decide the proposal favourably. To say that there is no substance in this argument would be an understatement. To my mind, the office of the company has acted correctly in so far as the correspondence was put up to the board and it was left to the board to consider the merits of the matter and take a decision. I need to mention here that the board of a company is obliged to act fairly, but at all times in accordance with law and, to my mind, where an absurd proposal was put up that an employee requests that a property be sold to him for a microscopic fraction of its market value, the board has acted very correctly in having rejected such a proposal.

20. Shri Shah contended that the papers had not been circulated to at least on of the board of members and that, therefore, the decision is bad. Frankly, I do not see how in a prosecution u/s 630 of the Companies Act the learned advocate expects this court to go behind the board decision on all sorts of frivolous and unsustainable pleas. The hollowness of the arguments presented is aptly illustrated by the next submission whereby it was contended that the board completed 16 items in 45 minutes and that, therefore, the directors did not apply their minds to the subjects. The fact that they could have read the material earlier and dealt with each item on the agenda without any loss of time is totally overlooked. The present proposal itself was so inherently unacceptable that I do

not visualise the board of any responsible company spending more than half a minute to consider it. Again, Shri Shah argued that some of the employee-directors were junior to Shri Kerkar, that some of the senior directors had not attended and that had Shri Kerkar so desired, he could have persuaded the board to accept the proposal because Shri Kerkar is a senior and a highly respected director and the board would normally go by his advice. Shri Shah contends that in Shri Kerkar not having voted in favour of the proposal and having abstained from voting, he acted wrongly and unfairly and in Shri Shah's words, the "decision is consequently vitiated". Shri Kerkar was a party to the correspondence between the parties. In the latter part of the correspondence he has himself indicated a valid reason, namely, the high value of the property as being the ground for his not being in favour of the proposal and in these circumstances, he has acted very correctly in not having taken any part when the matter came up for consideration before the board. I have considered these submissions advanced by Shri Shah because he has insisted on adopting this line of argument even though I told him that this court is neither obliged nor required to go into all these questions, but he still maintains that they are intrinsically interlinked with the main issue and, therefore, must be adjudicated upon.

21. Shri Shah then went over to another submission. He cited the decision of Rege J. (as he then was) in the case of Damodar Das Jain Vs. Krishna Charan Chakraborti and another, wherein the learned judge has held that the issues involved in that dispute wherein a prosecution u/s 630 of the Companies Act was pending were ones which were of a civil nature and which were required to be decided by a civil court and the learned judge, therefore, disapproved of a criminal court deciding those issues. Shri Vashi was quick to point out to me that apart from the facts in the present case being totally distinguishable from the ones in the proceeding decided by Rege J., the legal issues involved are also entirely different. He also pointed out that the Supreme Court in the case of Atul Mathur v. Atul Kalra [1989] SCC (Cri.) 761; [1990] 68 Comp Cas 324 has virtually set aside this decision. He also relied on the following three judgments wherein three single judges of this court have taken a contrary view :

(i) C. Y. Patil v. Chander Batheja (Criminal Revision Application No. 252 of 1987, decided on October 26, 1988, by Tated J.)

(ii) M. Y. Gaitonde v. Pradip Kumar Das (Criminal Revision Application No. 234 of 1986, decided on December 3, 1986, by Kantharia J.)

(iii) Lt. Col. M. K. Puri v. J. S. Bhatia (Criminal Revision Application No. 272 of 1990, decided on September 19, 1990, by Chavan J.)

22. To my mind, it is necessary to ascertain as to whether at all on the facts the issues involved are such that it is inadvisable or impermissible for a criminal court to decide them, and secondly, whether there is any bar for doing so. A complicated question of title such as a case in which there is a substantial dispute on the facts supported by evidence as to whether at all the character of

the property is such that it conforms to the legal definition of company property and where, for instance, the person in occupation has already asked for a declaration from the competent civil court that he is, in fact, the de facto and de jure owner of the premises; the question of title could best be adjudicated by a civil court rather than by a Magistrate in a proceeding u/s 630 of the Companies Act. Another instance could perhaps arise where there is substantial material to support a bona fide plea of tenancy. I have been guarded in using the words substantial and bona fide because I do not have in mind the numerous cases where a frivolous plea is put up merely in order to delay the bad day. What is contemplated is a genuine case where the Court of Small Causes may be the only competent forum to finally decide the status of the party in which case a criminal court may not be the competent forum. In the present case, no such plea has been canvassed. On the present record, I see nothing that would justify the arguments that the learned Magistrate is precluded from deciding any aspect of the matter or that he is not competent to do so. This submission, therefore, is devoid of substance and must be rejected. Shri Shah was alluding to the fact that his client's civil suit is pending, but he again overlooks the all important angle that the proceeding is between the same parties, the issues are common, i.e., promissory estoppel, the material relied on in the civil suit is the very same evidence that has been evaluated in this proceeding - to my mind this is only an attempt to litigate and delay, both of which are characteristics of section 630 proceedings in the city of Bombay.

23. Lastly, Shri Shah relied on a decision in the case of R. Gupta v. Dharamchand [1983] CrL. LJ 612, a copy of which judgment he did not produce before me. He, however, advanced the proposition that where an accused has been discharged, a higher court ought not to lightly set aside that order unless it is demonstrated that there is gross miscarriage of justice and that the order itself is perverse in law. I have taken cognizance of several decisions wherein such a principle is enunciated, such as where the accused has been acquitted and the law states that the acquittal ought not to be set aside merely because another view is possible. This unfortunately is not such a case. I have recorded a clear and conclusive finding that the grounds on which the learned Sessions Judge has discharged the accused are wholly and completely unsustainable. The view taken runs contrary to the law as laid down by the Supreme Court and by this court and the several other High Courts. It is a total misreading of the facts and a misconception of the law. The result of such a decision is that the accused who is in wrongful occupation of the premises is permitted to continue and the company which is entitled to restoration of the premises is deprived of such a relief. That the decision has resulted in a gross miscarriage of justice and that it would unfortunately come within the legal definition of "perverse" is the only possible conclusion and it is, therefore, imperative that the order in question be set aside.

24. Shri Shah on behalf of the accused. Who is an ex-employee, contended that the courts while considering applications u/s 630 of the Companies Act are very much concerned about the case from the angle of the company which pleads that

it has been deprived of the user of the property, that loss has been caused, that it requires the same back, etc., but that unfortunately the other half of the picture has not been given sufficient weight. It was, therefore, his request that the court should view the matter from the opposite angle for purposes of appreciating his arguments. It was unnecessary for him to make such a request because any court which includes this one must necessarily take cognizance of every aspect, more so the one in which the accused is placed particularly in a criminal prosecution. Shri Shah pointed out to me that the accused joined the company in the year 1956 and worked there for 34 years until his retirement in 1989. The learned advocate got a bit emotional while stating that his client has given his life for the company, that he is today an old man retired from service and that his client virtually feels cheated and let down. He projected the view that the insistence on the part of his client that the flat be sold to him at book value is fair and justified in these circumstances and that equities are in favour of his client. According to Shri Shah, such a course of action would be most appropriate having regard to the excellent service record of his client and that this is the very least that the company ought to do for him. I need to record here that in disputes of the present type where it is a company v. An employee, the battle is an unequal one and I am conscious of the fact that special consideration must be accorded to the point of view of the employee. This has been done at all stages even to the extent of allowing his learned advocate to carry on for much longer than necessary. In the circumstances, it is most insulting to the presiding judge when statements attributing bias are then made by counsel. If the expectation is that the court must bend over backwards to help a wrong-doer, it is asking for the impossible.

25. I proceed on the assumption that the accused was a good officer and that he rendered praiseworthy service for the company while he worked for it, but the flaw in the argument is that the accused in the present case was extremely well-compensated for his services all through his period of employment and when he retired, he collected a substantial sum of money by way of terminal benefits which again were not withheld even though he had not restored possession of the flat. It would be difficult to visualise a situation where an employee has been better treated and one needs to note that the accused held a top position in the company and it was least expected from an old person that he would behave in the manner in which he has thereafter done. Shri Vashi described his conduct as nothing short of treachery. I prefer not to comment about this aspect of the matter except to record that it is entirely at the benevolence of the management to commend or place on record a career of good service and it is not unknown for a company to give such a retiring employee a memento. Under no circumstances, however, would it justify the management of the board picking out a particular employee and handing over to him on a platter valuable property belonging to the company which the learned counsel informed me is valued at a crore of rupees. I am not concerned with the estimates of the market value, but with the principle involved, namely, that company property is not for being gifted

away or bartered because the law does not sanction this. Again, it would be a most improper and unhealthy practice because it would give rise to a situation whereby certain employees who have towed the line of the management would go home with a huge bonanza; whereas those who have been principled and required to take unpleasant decisions at times being sent home without such rewards. In any event, that issue just does not arise in the present proceeding because the company has not offered the flat to the accused, but on the contrary is aggrieved by the fact that he is not returning it and requests for legal redress by way of an order for its recovery.

26. In the course of his arguments, Shri Shah was particularly severe on Shri Kerkar, the managing director of the company. He not only attacked him but he even made direct allegations against him. He sought to contend that Shri Kerkar has defrauded his client, that he has acted dishonestly and that he has even avoided coming to give evidence. On a perusal of the material before me, I am of the view that these accusations were thoroughly unjustified. To my mind, the company and Shri Kerkar have shown not only a very high degree of kindness and consideration to the accused but they were even magnanimous enough to help him by considering an alternative flat. The statements made by Shri Shah about Shri Kerkar on the record of this case would, in fact, be more appropriate vis-a-vis the conduct of his own client. This is a case in which an attempt has been made to appropriate a valuable property of the company virtually for a song. The attempt failed and thereafter the litigation has been protracted and dragged on so that the accused can continue in occupation and that too absolutely free of cost. This unfortunately is the return meted out to the company by a senior responsible officer who, as the correspondence indicates, was given the very best of terms, the very best of treatment and who has taken complete advantage of all of it. It was for this reason that I have observed that the facts of this case are reminiscent of the proverbial serpent that stings the hand which feeds it.

27. The criminal revision application accordingly succeeds. The rule is made absolute. The order of the learned Sessions Judge dated March 1, 1993, is set aside and, consequently, the order of discharge in favour of respondent No. 1 is also set aside. The proceedings before the trial court are restored. The office shall forthwith send back to the trial court the R.&P. in this case, if the same has been called for.

28. In view of the earlier directions of the Supreme Court and having regard to the fact that the evidence has already been practically concluded before the trial court, the learned Magistrate shall proceed with the trial, according it top priority. He shall bear in mind the guidelines laid down by this court in Hindustan Ciba Geigy's case, a copy of which judgment shall be made available to him by the petitioner's learned advocate. The parties are directed to appear before the trial court on July 12, 1993, and the learned Magistrate shall dispose of the proceeding on a priority basis, preferably within an outer limit of eight weeks

thereafter.