

(1988) 02 MAD CK 0058

In the Madras High Court

Case No : Criminal R.C. 180 of 1986/Crl. R.P. 176 of 1986

K. Narayanan

APPELLANT

Vs

K.V. Subramanian

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Companies Act, 1956 — Section 630, 630(1), 630(1)(b), 630(2)
Criminal Procedure Code, 1973 (CrPC) — Section 313, 456, 456(1), 468, 468(2)(a)

Citation : (1988) LW(Cri) 380

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : P. Rajendran, for the Appellant; S. Sundar, Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

Padmini Jesudurai, J.—The petitioner, who was tried by the Sub-Divisional Judicial Magistrate Sankari in C.C. 77 of 1985 for offences under S. 630(1)(b) of the Indian Companies Act 1956 (hereinafter referred to as the Act) on a private complaint presented by the respondent and directed to deliver possession of the house occupied by him within a month's time from the date of order, in default to undergo rigorous imprisonment for a period of one month, which direction and sentence, had been confirmed by the Sessions Judge, Salem in C.A. 233 of 1985 has preferred the present revision challenging the above direction, as well as the sentence.

2. Admitted facts briefly are: The petitioner was employed as a skilled workman in the instrument section of the respondent Paper Mills, Pallipalayam and was allotted quarters No. E. 152A S.P.B. Colony, Erode 10. For proved acts of misconduct, the petitioner was dismissed from service with effect from 4th October, 1982. The petitioner was bound to deliver possession of the above house to the company, but failed to do the same. The house was meant to provide lodging facilities to the employees of the company. In spite of several

requests, the petitioner did not vacate the premises, and failed to deliver vacant possession of the house. Hence the respondent filed the complaint, which was taken on file by the Sub-Divisional Judicial Magistrate, Sankari, for an offence under S. 630(1)(b), of the Act.

3. On behalf of the prosecution the respondent was examined as P.W. 1 and Exs. P1 to P5 were marked.

4. When questioned under S. 313, CrI. P.C., the petitioner denied having committed any offence. The petitioner had no evidence, either oral or documentary.

5. The trial court found the prosecution case to be true and without awarding any separate sentence of fine under S. 630(1)(b) of the Act, passed an order under S. 630(2) of the Act, directing the petitioner to deliver vacant possession of the house to the respondent within three months of the date of the judgment viz., 22nd July, 1985 in default to undergo rigorous imprisonment for a period of one month. Learned Sessions Judge, Salem, before whom the petitioner challenged the judgment of the trial Court, dismissed the appeal and confirmed the direction, as well as the default punishment. Hence the present revision by the aggrieved accused.

6. Thiru P. Rajendran, learned Counsel for the petitioner, contended that the complaint filed by the respondent was barred by limitation, that the offence under S. 630 of the Act was punishable only with fine, which may extend to Rs. 1,000 and that, therefore, under S. 468(2)(a) CrI. P.C., the period of limitation was six months from the date of the commission of offence, that the offence had been committed on the date of dismissal viz., 4th October, 1982, and the complaint should have been filed on or before 5th April, 1983 and that the present complaint filed on 5th February, 1985 was barred by limitation. The offence according to the learned Counsel was not a continuing offence.

7. Per contra, Thiru Sundar, learned Counsel for the respondent, contended that the offence under S. 630 of the Act was punishable with imprisonment which may extend to two years and that therefore, the period of limitation under S. 468(2)(c), CrI. P.C., is three years and that therefore the complaint having been filed within three years, from the commission of the offence, was within time. In view of the above fact, the further question as to whether the offence was a continuing one or not, need not be gone into in this case.

8. The only question that arises for consideration is whether the complaint is filed within time ?

9. The petitioner had been dismissed from service on 4th October, 1982. He had, therefore, to vacate the premises, but had failed to do the same. It could be taken that the offence was committed on 4th October, 1982, itself. The complaint has been filed on 5th February, 1985, i.e., beyond the period of six months, but within a period of three years. If the offence under S. 630(1)(b) of the Act came

within S. 468, Crl. P.C., then the complaint would be barred by limitation. If however the offence fell within S. 468(2)(c), Crl. P.C., the complaint would then be within time. This in turn, would depend upon the question as to whether the offence under S. 630 of the Act is punishable with fine which may extend to Rs. 1,000 or whether the offence is punishable with imprisonment for a term which may extend to two years.

10. Relevant section could be usefully extracted for a better appreciation of the legal position:

S.630(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.

11. An analysis of the above section shows that what is penalised is not only wrongfully obtaining possession of property and the subsequent wrongful withholding of it. but also the refusal to deliver up the property within the time fixed by the Court for such delivery. Taking wrongful possession and wrongfully withholding the same, are made punishable under sub-S. (1) while the refusal to deliver up possession within the time fixed by the court is made punishable under sub-S. (2) the former with a fine, which may extend to Rs. 1,000, and the latter with imprisonment for a term which may extend to two years. These are two limbs of the same offence, both of which could be resorted to in the same proceedings by the court trying the offence.

12. An analysis of a similar provision found in the Code of Criminal Procedure, with slight variations would be inclusive to a better understanding of the legal issue. S. 456, Crl. P.C. occurring in chapter 14 dealing with disposal of property, provides for restoration of certain kinds of immovable property to the victim of certain kinds of offences.

13. S. 456(1), Crl. P.C. is as follows:-

When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the court that, by such force, or show of force or intimidation any person has been dispossessed of any immovable property, the court may, if it thinks fit, order that the possession of the same be referred to that person after evicting by force, if necessary any

other person who may be in possession of the property.

The above section contemplates that wherever the victim has been dispossessed of any immovable property through the commission of a crime attended by criminal force or show of force or by criminal intimidation, and the accused is convicted, the court may order that the possession of the property be restored to the victim after evicting by force, if necessary, any other person who may be in possession of the property. This order can be made by the court only within one month of the date of conviction. A comparative study of these two provisions, occurring in the different Statutes, reveals that S. 456, CrI. P.C. can be invoked by the court only after a conviction has already been recorded and actual restoration is sought to be made if need be by force. Any refusal on the part of the person who is sought to be evicted is not penalised. Instead, the eviction is carried out by force. On the contrary, under S. 630 of the Act, the refusal to deliver within the time fixed by the court, is itself an offence, which is punishable with imprisonment for a period which may extend to two years. The use of the words "the court trying the offence" in S. 630(2) of the Act would indicate that any order that could be passed under S. 630(2) of the Act, has to be part of the judgment in the case. There cannot be an independent or separate order, as could be passed under S. 456, CrI. P.C. It is, therefore, clear that wrongful withholding of property, made punishable under S. 630 of the Act would include not only wrongful withholding prior to conviction, but also wrongful withholding after the expiry of the term fixed by the trial court under S. 630(2) of the Act. On this interpretation, the offence contemplated under S. 630 of the Act, is punishable with imprisonment for a period of two years and the period of limitation would be S. 468, CrI. P.C. and not S. 468(2)(a), CrI. P.C.

14. A Division Bench of the Delhi High Court, in *B.R. Herman and Mohatta India Ltd. v. Ashok Rai*¹, has also held that the offence under S. 630 of the Act being punishable with imprisonment for a period which may extend to two years would be covered by S. 468, CrI. P.C. It therefore follows that the offence under S.630 of the Act being punishable with imprisonment for a period of two years would come under S. 468, CrI. P.C. and the period of limitation is three years. In the instant case, the complaint has been filed within three years of the commission of the offence. The complaint therefore, is within time. No other point was urged before me.

15. In the result, the criminal revision fails and is dismissed.