

(1999) 10 MAD CK 0066

In the Madras High Court

Case No : Criminal Original Petition No's. 15288 and 15289 of 1999 and
Criminal M.P. No's. 7370 to 7373, 7391 and 7392 of 1999

K. Radhakrishnan

APPELLANT

Vs

Thirumani Asphalts and Felts (P.) Ltd. and Others

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

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

Citation : (1999) 10 MAD CK 0066

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : V. Sankaranarayanan, for the Appellant; N. Ishtiaq Ahamed, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The petitions, filed u/s 482 of the Criminal Procedure Code, 1973, by the accused in S. T. C. Nos. 2470 of 1993 and 3011 of 1993, on the file of the learned Judicial Magistrate No. VII, Coimbatore, to pass appropriate orders, setting aside the order dated August 23, 1995.

2. The case in brief for the disposal of both the petitions is as follows :

The petitioner is the lifetime director of the first respondent-company as per Article 39 of the articles of association of the company. The company was incorporated on April 9, 1991, and it manufactures bituminous water proof products. Respondents Nos. 2 to 4 are other directors and they are related to each other. They hold 60 per cent. shares in the company each having 20 per cent. The petitioner and his late father Kuttikrishnan have 40 per cent. of the shares each having 20 per cent. The company negotiated with Punjab National Bank for credit facilities. Since the assets of the company were not sufficient to cover the range of credit facilities offered, the petitioner and his late father gave their personal properties as additional securities. The petitioner was designated

as director marketing, and by his dedicated hard work, even in the first year of operation, he was able to procure orders for purchase to the extent of Rs. 1 crore. Because of this, the bank increased the credit facility limit. The bankers found that sale proceeds received by the company were not deposited in the account and outstandings to the bank remained not discharged. The second respondent looking after the financial transactions could not give any reasonable explanation. To cover the lapses, he informed the bank that due to the differences and inter se dispute among the directors, the stalemate had arisen. The factory was also closed on June 7, 1993. Since outstanding to the bank remained undischarged, the bank manager called the directors for a meeting on June 11, 1993. The petitioner and respondents Nos. 2 and 4 met the officials of the bank. The officials of the bank suggested that the dispute among the directors/shareholders should be resolved and the offer of the second respondent that either the petitioner and his father should buy their 60 per cent. shares or sell their 40 per cent. shares to respondents should be considered in the meeting of the board of directors convened.

3. On June 15, 1993, a meeting of the board of directors was convened and all the directors attended the meeting and the petitioner and his father informed that before any settlement, their personal properties given as collateral security should be released first by settling the dues to the bank and they were ready to buy the shares of the respondents for the prevailing price in stock exchange. On June 16, 1993, the bank officials again held discussions with the other directors and advised them to resolve their dispute at an early date as otherwise the accrued interest would ruin the company. The bank officials informed that they would verify hypothecated stock position on June 17, 1993. On June 17, 1993, during inspection, the stock in trade hypothecated to the bank was not found. The respondents wanted to eliminate the petitioner and his father from the board of directors as only then the lapses committed by them could not be exposed.

4. The first respondent-company represented by the managing director, the second respondent filed a complaint u/s 630 of the Companies Act (hereinafter referred to as "the Act") before the learned Judicial Magistrate No. VII, Coimbatore, claiming that the petitioner ceased to be the director of the company due to his absence for three consecutive board meetings and in spite of notice, he had failed to surrender the motorcycle given by the company to him for official use. They have also filed another case u/s 630 of the Act that the petitioner absented for three consecutive meetings held on April 12, 1993, June 18, 1993 and July 19, 1993, and was retaining the records of the company illegally in spite of notice dated September 29, 1993. The petitioner's father filed the suit O. S. No. 1894 of 1994, before the District Munsif Court, Coimbatore, for permanent injunction. He also filed I. A. No. 2616 of 1994, for interim injunction. The petitioner's father took a stand that he did not cease to be the director of the company and without notice to him, the board approving the balance-sheet and auditor's report was not valid. The respondents also filed counter to the said petition and the learned District Munsif granted interim injunction. The petitioner

also filed S. T. C. No. 1319 of 1995, to punish the respondents u/s 628 of the Act for filing Form No. 32 with Registrar of Companies declaring that the petitioner ceased to be the director of the company. The learned Judicial Magistrate VII, Coimbatore, passed separate orders in S. T. C. No. 2470 of 1993, and S. T. C. No. 3011 of 1993, that the offence u/s 630 of the Act was proved and the petitioner was imposed a fine of Rs. 200 and to return the properties of the company. He also preferred revisions against the said order before the District Court, Coimbatore, and they were dismissed. S. T. C. No. 1319 of 1995, was dismissed by the learned magistrate and aggrieved against this, Crl. R. C. No. 33 of 1996 was filed by the petitioner. This court held that the learned magistrate has erred in dismissing S. T. C. No. 1319 of 1995, and the learned magistrate should try the case and find out whether the averments in the complaint are true or not and remanded the matter for fresh disposal. The petitioner also filed petitions u/s 482 of the Code of Criminal Procedure, 1973, in Crl. O. P. Nos. 6150 and 9040 of 1998, against the orders in S. T. C. Nos. 2470 of 1993 and 3011 of 1993, and they were dismissed after holding that the question whether the petitioner had absented himself consecutively for three meetings has to be gone into by the civil court and it is a complicated question, which can be decided by a civil court only is not appealing (see K. Radha Krishnan Vs. Thirumani Asphalts and Felts (P.) Ltd., .

5. The first respondent filed a counter-affidavit stating that S. T. C. No. 2470 of 1993, and S. T. C. No. 3011 of 1993, were filed for return of the company's motorcycle and the company's records u/s 630 of the Act, which was allowed by the learned Judicial Magistrate VII, Coimbatore, and confirmed by the learned District and Sessions Judge, Coimbatore, in Revision Cases Nos. 63 and 64 of 1995. Against which, the petitioner has preferred Crl. O. P. Nos. 6150 and 9040 of 1998, u/s 482 of the Code of Criminal Procedure, 1973, and they were dismissed (see K. Radha Krishnan Vs. Thirumani Asphalts and Felts (P.) Ltd., , Instead of preferring a SLP before the apex court, the petitioner has filed the present petitions again u/s 482 of the Code of Criminal Procedure, 1973, and it is nothing but an abuse of process of the court. u/s 630 of the Act, any officer or employee of a company, who wrongfully withholds any property shall on the complaint of the company be punishable with fine and he should also return the property. The petitioner was an officer of the company as per Section 2(30) of the Act. He was entrusted with the company property namely, the motorcycle bearing No. TN 37 D 6436 Royal Enfield Bullet 1992 for the purpose of looking after the business of the company. It is immaterial whether the petitioner continues to be a director or ceases to be the director. The vehicle is the property of the company. The petitioner cannot act against the directions and resolutions passed by the board of the company. The filing of a civil case will not absolve the accused from the offence committed u/s 630 of the Act. If a company desires to recover its assets or properties from anybody including the managing director, it has got a right to do so. The respondent-company in its board meeting has resolved to recover its property. The company has given notice to the petitioner

to return the property. The necessary documents were also filed before the trial court. Section 9 of the Companies Act is very clear and according to which, the Act will override the memorandum and articles. The petitioner was in charge of stocks and goods and by his action, he had caused shortage of stocks. When he was questioned, a dispute arose and the activities of the company came to a standstill. The complaint is not one based on Section 283(1)(g) of the Act. The averments regarding the proceedings in Crl. R. C. No. 33 of 1996, are all matters of record and has no relevancy to this case. The petitioner is aware of the fact that the statutory records should be maintained in the registered office of the company, failing which the company is liable to be prosecuted. He is withholding the statutory records wrongfully for the last six years without any justification. These petitions are liable to be dismissed.

Heard learned counsel of both the sides.

6. The petitioner was one of the directors in the first respondent-company. Learned counsel for the petitioner relied upon Article 29 of the memorandum and articles of association that he is a life time director of the company and he cannot be removed. It is admitted that the first respondent-company represented by the second respondent, managing director filed two complaints u/s 630 of the Act against the petitioner in S. T. C. Nos. 2470 and 3011 of 1993, for return of the company's motorcycle and also for return of the company's records. It is admitted that the petitioner was found guilty of the offence u/s 630 of the Act and a fine of Rs. 200 was imposed in each case. Aggrieved against this, the petitioner preferred two revision petitions before the Sessions Court, Coimbatore, and they were also dismissed. Subsequently, the petitioner filed two petitions, invoking the provisions u/s 482 of the Code of Criminal Procedure in Crl. O. Ps. Nos. 6150 and 9040 of 1998 K. Radha Krishnan Vs. Thirumani Asphalts and Felts (P.) Ltd., and both were dismissed. Now, the petitioner has come forward with these two petitions u/s 482 of the Code of Criminal Procedure that in another petition in Crl. R. C. No. 33 of 1996, this court has remanded the matter in S. T. C. No. 1319 of 1995, before the same magistrate and he was called upon to try the case and find out whether the averments made in the complaint are true or not. It is the specific case of the respondents that the petitioner had absented for three consecutive meetings of the board and he ceased to be the director but the same was questioned by the petitioner. Learned counsel for the petitioner mainly contended that in the earlier petitions filed before this court, this question has not been considered at all and the two petitions filed u/s 482 of the Code of Criminal Procedure have been dismissed ; but in another revision petition No. 33 of 1996, another learned judge of this court has remanded the case in S. T. C. No. 1319 of 1995, with a finding to find out whether the averments made in the complaint are true or not. Because of this, it is just and necessary that as it has not been proved that the petitioner had absented for three consecutive meetings, the conviction and sentence imposed by the trial court is not proper and correct and it is liable to be set aside.

7. It is necessary to state that the learned Judicial Magistrate No, VII, Coimbatore, had imposed a fine of Rs. 200 against the petitioner on August 23, 1995. Thereafter only, the petitioner filed two revision petitions before the Sessions Court, Coimbatore, and they were also dismissed. Later, the petitioner filed two petitions u/s 482 of the Code of Criminal Procedure, raising the very same grounds and they were also dismissed. In spite of this, it is not known how the present petitions have been filed u/s 482 of the Code of Criminal Procedure, raising the very same ground. If really the petitioner was aggrieved against the orders passed by this court in Crl. O. Ps. Nos. 6150 and 9040 of 1998, he ought to have moved the apex court after obtaining special leave. The conduct of the petitioner would only indicate that these two petitions are again filed reiterating the very same contentions, which have been negated by this court in the earlier proceeding's. Simply because in another connected proceedings, this court has remanded the matter with a direction to find out whether the petitioner had absented for three consecutive meetings, I am of the view that now it cannot be made use of to set aside the order passed by the trial court in a different proceedings.

8. It is evidently clear that according to Section 630 of the Act, any officer or employee of a company, who wrongfully withholds any property shall on the complaint of the company be punishable with fine and he should also return the property. There is no dispute that the petitioner was one of the directors in the company and there is also resolution of the board to file a complaint against the petitioner u/s 630 of the Act. When there is a resolution calling upon the petitioner to return the property, it is just and proper for him to return the same. It is also not in dispute that a notice was also sent to the petitioner, calling upon him to return the motorcycle as well as other records relating to the company. In spite of this, the petitioner has failed to return and, therefore, the first respondent-company was constrained to file these two complaints. Now, learned counsel for the petitioner would contend that unless it is established that the petitioner ceased to be the director, the first respondent-company is not entitled to get back the property. I am unable to agree with the contention. The questions whether the petitioner has absented for three consecutive meetings and whether he ceased to be the director of the company, have been duly considered by the trial court and only thereafter, a finding was given that the petitioner has committed the offence u/s 630 of the Act. Apart from this, the petitioner's father has also filed a civil suit and the same is pending before the court. There is a resolution by the board of directors to file a complaint u/s 630 of the Act and based upon which duly, the first respondent-company had filed the aforesaid two complaints before the learned magistrate. There is no dispute that the accused was entrusted with the company property and the complainant-company has also marked exhibit P-1 and also filed the minutes of the board meeting dated August 9, 1993, to establish that the petitioner ceased to be the director. The company had also adduced evidence both oral and documentary to establish that the board of directors have decided to get back or recover the

property belonging to the company from the petitioner. When once this has been established the only course open to the petitioner is to return the property. It is always open to the petitioner to agitate the claim relating to continuance as director or not in a separate proceeding. Exhibit P-4-notice was also served on the petitioner, calling upon him to return the property and for which, the petitioner neither gave any reply nor returned the property.

9. Learned counsel for the petitioner relied on Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, , for the proposition that the High Court has got power to entertain the application again in a changed set of circumstances. The petitioner also relied on Krishnan and another Vs. Krishnaveni and another, , wherein it is observed that inherent power must be used sparingly so as to avoid needless multiplicity of procedure.

10. Learned counsel for the respondents relied on Khushi Ram v. Hashim, AIR 1959 SC 542, wherein it is observed that the inherent powers of the High Court u/s 561A cannot be invoked in regard to matters which are directly covered by specific provisions of the Code. They also relied on Nalu Sahu and Another Vs. The State, that the inherent power of the High Court cannot be invoked to review or alter the judgment delivered in a criminal revision. They also relied on Rajan Kumar Machananda v. State of Karnataka [1990] SCC 537 ; (Suppl.) SCC 1320 that merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome, if that was to be permitted, every revision application facing the bar of Section 397(3) of the Code could be labelled as one u/s 482 of the Criminal Procedure Code.

11. It is, therefore, evidently clear from the aforesaid facts and discussion that the petitioner had already filed two petitions invoking the inherent power of this court u/s 482 of the Criminal Procedure Code and they were dismissed by this court by the order dated May 12, 1999 K. Radha Krishnan Vs. Thirumani Asphalts and Felts (P.) Ltd., . Now, it is not open to the petitioner to agitate the very same points before this court again invoking Section 482 of the Criminal Procedure Code as if there is a material change in the circumstances. S. T. C. No. 1319 of 1995, said to have been filed by the petitioner relates to a different matter and as such, the remand order and the observation in CrI. R. C. No. 33 of 1996, cannot be taken into account for the purpose of coming to the conclusion that there is a material change to entertain the present petitions. The only course open to the petitioner is to move the apex court if aggrieved by the orders passed by this court in the two petitions on the earlier occasion. Hence, there is no difficulty in coming to the conclusion that the present petitions filed u/s 482 of the Criminal Procedure Code to review the order earlier passed by this court are not maintainable and they are nothing but an abuse of the process of the law.

12. For the reasons stated above, both the petitions are dismissed. Consequently, all criminal miscellaneous connected petitions are also dismissed.