

(1993) 04 BOM CK 0038
In the Bombay High Court
Case No : Criminal Appeal No. 92 of 1986

Kannankandi Gopal Krishna Nair

APPELLANT

Vs

Prakash Chunder Juneja and another

RESPONDENT

Date of Decision : 19-04-1993

Acts Referred:

Companies Act, 1956 — Section 630, 630(2)

Citation : (1993) 3 BomCR 116 : (1994) 81 CompCas 104 : (1993) CriLJ 2791 : (1994) 1 LLJ 146

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

Bench : Single Bench

Advocate : V. P. Vashi, for the Appellant; C.C. Chhaya and D.T. Palekar, for the Respondent

Judgement

M.F. Saldanha, J.—Though this appeal is just one more of the numerous litigations relating to the non-return of a company flat by an ex-employee, it raises certain interesting legal aspects of far-reaching consequences. The first question that arises is as to whether the employee whose wife has subsequently purchased the premises and, therefore, become the owner thereof can still be ordered to restore the possession to the company which continues to be the tenant. Since section 630 of the Companies Act, 1956, deals essentially with the question of wrongful withholding, the restoration of possession is a necessary relief which can and must be granted regardless of the change of ownership.

2. The more important dimension, however, surrounds the anatomy of the offence. The accused resigned from the services of the company on February 28, 1977, and the resignation was accepted with effect from March 1, 1977, and the company called upon him to restore possession of the flat by March 31, 1977. The accused is in possession of the premises up to date, which works out to a period of a little over 16 years. The offence u/s 630 of the Companies Act is a continuing offence and, consequently, it is an offence which recurs for the period during which it continues. Where an offence is repeated, in relation to premises,

the court will have to define the unit in relation to which the offence can be associated and the penalty awarded would, therefore, have to be in consonance with the number of times the offence is repeated. This is the only fair and logical approach which a court ought to adopt in a situation such as this. It is pointed out that the accused has retained the possession of the premises with a degree of brazenness for as long as 16 years and deprived the company of the use thereof. It would be irrational, therefore, to award a fine of Rs. 1,000 in such a case where the occupation has continued for 16 years and the punishment would, therefore, have to be in consonance with the number of times that the offence has been repeated. In keeping with that principle, therefore, since the premises are let out on a monthly basis as is the position in the present case, the court would have to treat the offence as one recurring from month to month and the accused would, therefore, be liable for payment of fine in respect of the offence that recurs for every month starting from April 1, 1977, until the date of restoration of possession. As regards the incidental relief, even though it is submitted that the accused cannot be ordered to restore possession to the company since the flat now belongs to his wife, the argument is fallacious and as long as the tenancy rights are alive, the company would be entitled to an order for restoration of possession, in default of which the accused would be liable to a sentence of two years" rigorous imprisonment.

3. A curious position in law arises in the case of a continuing offence and it was traditionally contended that in such instances the continuation of the offence up to its cessation must be treated as constituting one punishable act. If this view were to be upheld, it would provide a premium to an offender who indulges in a legal wrong over a protracted period of time and is awarded a single punishment as prescribed by law. It is essential to adopt a more rational and fundamentally correct approach in such cases whereunder the offence must be treated as having been repeated from day to day or from month to month during its pendency and the unit of punishment prescribed for the offence be applied in accordance with that time frame. This concept alone will be in consonance with the view that the punishment must bear a direct nexus and proportion to the gravity of the offence and should not be inversely proportioned thereto.

4. The courts have been flooded with prosecutions instituted by companies u/s 630 of the Companies Act and it has been demonstrated that this provision of law has almost been rendered impotent by employees and ex-employees who hold on to company property by litigating for decades together. At the end of this long exercise, if the accused loses, the company is expected to consider itself fortunate if the premises are restored and the offence, if any, is to be treated as, to use a common parlance expression, "forgiven and forgotten". Another ploy that has been successfully employed in these cases is to take advantage of the desperation of the poor landlord who, in the midst of these legal skirmishes, genuinely feels that it is better to make the best of the bad bargain by selling out to the party in possession. The accused who, on the one hand, has frustrated the law as far as section 630 of the Companies Act is concerned thereafter contends

that he cannot be ordered to restore possession of his own flat. In other words, through such a devious procedure, the accused is permitted to take advantage of his own wrong which is anathema to accepted canons of criminal jurisprudence. Such gymnastics, if permitted, will have the effect of nullifying the rule of law and the courts, with some clear thinking, will, therefore, have to adopt a no-nonsense policy in the event of such mischief.

5. The courts, particularly in the city of Bombay, are groaning under the weight of such frivolous and avoidable litigation which is used as an umbrella for delaying and defeating the application of clear and enforceable legal provisions and if honesty and respect of the written word of a contract is to be meaningful, a stop will have to be put to this class of unjustified litigation. This case presents an incidence of such a situation and the issues involved therein being common to thousands of other such cases, require to be clearly adjudicated as they are of some consequence. To begin with, the relevant facts which, to my mind, are themselves gross.

6. The accused, who is respondent No. 1, joined Hindustan Ciba-Geigy Ltd. as an assistant officer on April 1, 1962. He was originally allotted a flat in Silver Oak building under an agreement dated August 4, 1967. On January 1, 1968, he was promoted as manager and flat No. 2 in Cote D'Azur was allotted to him and the garage was allotted a month later. The agreement in respect of the premises is dated December 5, 1975. Respondent No. 1-accused resigned his services on February 28, 1977, the effective date being March 1, 1977. What transpired around this point of time is of consequence.

7. The agreement dated December 5, 1975, which is at exhibit P-7, is a contract under which the accused was permitted the use of the flat by virtue of his employment with the company for which eight per cent. of his monthly salary was deductible. There was no ambiguity with regard to this agreement which specified in clause (a), inter alia, that the licence shall automatically terminate on the licensee ceasing to be the company's employee on account of his resignation, retirement, etc. This clause is quite specific about the legal obligation that devolves on the licensee when such termination takes place whereby the licensee and all other persons using the flat along with him are required to remove themselves and their belongings within a period of seven days. I need to clarify here that clause (9) does not provide for any right of occupation to continue in the event of there being any subsisting dispute with regard to the cessation of employment or matters incidental thereto. This aspect of the matter is of some consequence. Clause (10) states very specifically that no easementary or tenancy rights of any type are created in favour of the licensee, that it is only a right of user that is granted, that the possession of the premises is that of the company and that the accused in his capacity as an employee is granted the restrictive right of using the premises by virtue of a status as an employee of the company. The accused does not dispute having signed this agreement and, consequently, the validity thereof cannot be

questioned. By memorandum dated November 12, 1975, addressed to the accused, the keys of the garage were handed over to him and it was specified that the same was to be used only for the purpose of parking the car and for no other purposes and that on termination of the leave and licence granted in respect of the said flat, the accused was required to hand over vacant possession of the garage also. The accused has signed this memorandum and accepted the conditions mentioned therein.

8. On February 28, 1977, the accused wrote a letter to the company tendering therewith his resignation from the service of the company and further stated in the said letter that as per his service agreement dated May 23, 1963, he was giving six months' notice with effect from March 1, 1977, and that he intended to avail of his privilege leave due to him towards the end of the notice period. On the very same day, the company acknowledged receipt of the accused's said letter of resignation and informed him that his resignation was accepted with effect from March 1, 1977, and that the accused would be paid six months' salary in lieu of the notice given by him. By the said letter, the company requested the accused to hand over to the company its car which was in his possession and informed him that the company's personnel department would arrange to settle his account when he handed over vacant possession of the company's flat occupied by him. The accused handed over the car to the company immediately on March 2, 1977. On the very next day after accepting the resignation of the accused, the company wrote to him a letter on that day, namely, March 1, 1977, advising him that in accordance with clause (9) of the memorandum of agreement dated December 5, 1975, between the company and the accused, the accused was not entitled to use and occupy the said flat and as agreed to between the company and the accused, the accused should take immediate steps to hand over vacant possession of the company's flat occupied by him as soon as possible, but in any case not later than March 31, 1977. It was further stated in the said letter that the extended period had been allowed to the accused as a very special case and that vacant possession of the said flat was required by the company early as it has been allotted to another executive. The accused sent a reply dated March 25, 1977, wherein he falsely alleged that it was understood that he would continue to occupy the said flat until the six months' notice period had expired and assured the company that he would vacate the flat latest by August 31, 1977.

9. The falsity of the abovementioned allegation of the accused is borne out by the fact that the accused had written on March 9, 1977, to the company about the settlement of his provident fund account. The accused in the said letter specifically asked the company to arrange to send to him his statement of account of the provident fund up to the end of February, 1977. By his said letter, the accused had requested the company to send to him urgently a cheque for the full amount payable to him (including interest) from his provident fund account. Thus the accused has admitted that the last day of his employment with the company was February 28, 1977. The accused received from the company

his own contribution to the provident fund up to February 28, 1977, plus 100 per cent. of the company's contribution up to February 28, 1977, with interest thereon up to February 28, 1977, in full and final settlement of all his claims against the provident fund. The accused has passed a receipt dated April 5, 1977, acknowledging receipt of the total amount of Rs. 1,30,572.90 for his provident fund as stated above.

10. As the accused thereafter failed and neglected to hand over possession of the said flat, correspondence was exchanged wherein the accused falsely contended that in respect of the said flat, an understanding was arrived at on February 28, 1977, between the company and the accused that the accused would be allowed to continue to occupy the said flat until six months' notice period expired. By March 31, 1977, the accused ought to have vacated the said flat which was in his possession and handed over peaceful possession of the said flat to the company. The accused ought to have also handed over vacant and peaceful possession of the said garage to the company.

11. As the accused did not hand over possession of the said flat, the company filed a suit against the accused in the Court of Small Causes at Bombay being Suit No. L.C. No. 164/225 of 1977 for a decree and an order directing the accused to quit, vacate and deliver to the company possession of the said flat and for other reliefs. The said suit was contested by the accused and ultimately a decree was passed in the said suit on November 29, 1979, directing the accused to hand over vacant possession of the said flat to the company on or before November 29, 1979. The accused has preferred an appeal against the said decree and order dated November 29, 1979, which is pending. In the said appeal, on an application made on behalf of the accused, stay of execution of the decree was granted by an order dated July 29, 1980. The company preferred a writ petition, being Writ Petition No. 2785 of 1980 against the said order dated July 29, 1980, and on October 6, 1980, when the said writ petition came up for admission, the accused appeared through his advocate and gave an undertaking to the hon"ble court that possession of the said flat would not be surrendered or parted with by the accused pending the appeal filed by him. In view of the said undertaking, the order dated July 29, 1980, granting stay of execution of the decree was confirmed and the said Writ Petition No. 2785 of 1980 by the company was rejected.

12. As the accused has not handed over possession of the said garage, the company has filed against the accused a suit in the Court of Small Causes at Bombay, being L.E. and C. Suit No. 291/394 of 1980 for recovery of possession of the said garage. The accused has apparently till date not filed his written statement in the said suit. The said suit is pending disposal.

13. The company thereafter filed a SLP before the Supreme Court against the order of the Bombay High Court which came to be disposed of on March 6, 1981, on a statement being made by the wife and daughter of the accused that they would all file undertakings within four weeks that they would not transfer or deal

with or dispose of the premises until the disposal of the proceedings that were pending before the Court of Small Causes at Bombay.

14. As respondent No. 1, who was an employee of the company, had wrongfully withheld handing over possession of the said flat, the company through its officer Shri K. G. K. Nair filed a criminal case against him under the provisions of section 630 of the Companies Act in the Court of the Metropolitan Magistrate, 14th Court at Girgaum, Bombay. The case was numbered as Criminal Case No. 141/S of 1980. Process was issued on the complaint and the accused was served. In that proceeding, the accused filed an application dated March 1, 1981, briefly contending that by virtue of the civil proceedings that were pending and the statement that had been made on behalf of the company in those proceedings that the criminal complaint required to be filed, the learned Magistrate by an order dated January 14, 1982, stayed the proceedings. The company filed Criminal Revision Application No. 53 of 1982 in the Court of Sessions, Greater Bombay, which came to be allowed and the stay order was vacated.

15. Another disturbing feature that had come to light from the record of this case is that the wife and daughter of the accused by an assignment dated September 3, 1979, took over the ownership of the flat subject to the tenancy of the petitioner-company and it subsequently transpired that they, in turn, had let out the premises to a limited company by the name of Indofil Chemicals Ltd. and that this fact was withheld while obtaining stay of execution of the decree passed by the Court of Small Causes.

16. The company filed a contempt petition before the Supreme Court, but it is not very clear from the record as to what order the Supreme Court passed in the said contempt proceedings. The criminal case was thereafter taken up for hearing and the company examined two witnesses, K. G. Nair (PW-1) and K. J. Shetty (PW-2). The defence examined the clerk from the Court of Small Causes, who produced the copy of the decree filed in that proceedings. In this statement, the accused contended that he had originally not taken up the plea of subtenancy as his dues had not been settled by the company. He admitted that his provident fund dues of Rs. 1,30,000 had been paid to him. He contended that even though a decree was passed against him by the Court of Small Causes and he was directed to vacate the flat before December 29, 1979, his wife had purchased the flat on September 3, 1979. In sum and substance, apart from some minor technicalities that were pleaded, the defence put forward by the accused, which is rather confused, appears to suggest that the accused expected the company to accept the position that he was a lawful subtenant, though at other places, it was suggested to the witnesses that there was an understanding between the accused and the company that it would surrender its tenancy in favour of the accused. There is a parallel contention adopted by the accused who has also raised the plea that since his wife and daughter have subsequently become owners of the flat, there is no wrongful withholding of the premises by him. In his defence, the accused had contended that two officers of the company

Shri Puran and Dr. Gaud were allowed to take over the flats allotted to them on the company surrendering its tenancy and he contended that this was the understanding on which the flat was allotted to him and that, therefore, there was no question of wrongful withholding. The learned Metropolitan Magistrate at the conclusion of the trial recorded a finding that having regard to the contentions raised by the accused and, more importantly, the fact that he was residing in the premises with his wife and daughter who, in turn, had become the owners of the flat, it cannot be contended that he was wrongfully withholding the same and accordingly dismissed the complaint and acquitted the accused. The company after obtaining leave from this court challenged the order of acquittal through the present appeal, which was filed in the year 1986. Due to the backlog of pending cases, the appeal had not come up for hearing all these years. The company through its counsel made an application that the appeal be taken up for hearing expeditiously and, pursuant to that application being granted, the matter was heard.

17. Shri Vashi, learned counsel appearing on behalf of the appellant, has taken me through the material on record, the bulk of which consists of the orders passed in the various proceedings and copies of the plaints, petitions, etc. As far as the accused is concerned, Shri Vashi pointed out to me that the evidence is clear and conclusive that he was an officer of the company and that he was allotted the flat and garage by the company under a simple licence which document is on record and that the clauses of this document very specifically indicate that no rights whatsoever have devolved on the accused and that he was permitted the use and occupation of the premises during the limited period of time when he was an officer of the company and that he was obliged to restore the possession when asked to do so or when he ceased to be an employee of the company. It is also undisputed that the accused resigned from the services of the company and that the plea of so-called sub-tenancy was nothing but an afterthought and emerged for the first time several months after he had resigned from the service of the company, in the course of the correspondence. Since that issue is sub-judice in a sense that I am informed that there is an appeal pending before the Court of Small Causes, I do not propose to comment on that aspect of the case because the short question before me is as to whether the premises would come within the legal definition of property of the company and whether the accused can be said to have wrongfully withheld the same.

18. Learned counsel appearing on behalf of respondent No. 1 placed emphasis on the fact that the accused did not raise any contentions immediately after his resignation because he was desirous of first collecting all his dues and that this was the reason why the plea was put forward at a belated stage. This explanation to my mind is a hollow one and, as is evident from the record, totally lacking in honesty. The further plea that was canvassed by learned counsel for the accused was that the wife and daughter of the accused have purchased the flat in the year 1979 and that nothing would, therefore, survive in this proceeding because they have become owners of the flat and have every right to

reside in the premises and that the accused, as a part of the family, is entitled to stay there with them. Learned counsel contended that it would be a misapplication of law if the accused were to be convicted and punished for staying in his own flat or that if he were to be ordered to restore possession of the premises to the company under these circumstances. This is a very confused, weak and wholly untenable argument because the change of ownership, to my mind, is completely irrelevant to the present proceeding. It is also very clear that the premises were wrongfully withheld by the accused who in law was obliged to restore possession immediately on ceasing to be an employee of the company and it was at that point of time that the offence was committed. The offence continues and as has been pointed out by the Supreme Court, it recurs and any subsequent developments such as institution of civil proceedings which were obviously in order to play for time or were an attempt to get out of the criminal liability, or for that matter the change of ownership cannot have the effect of purging the offence which continues and recurs until the property is restored to the company.

19. It is unnecessary for me to go into the details of the evidence led before the trial court because even in the cross-examination of the two witnesses, nothing of any significance has emerged. The learned Magistrate was impressed by the fact that the company is alleged to have facilitated the take-over of the premises in two other cases and the accused had contended that there was a similar understanding with him. The accused sought to take advantage of the fact that this understanding had been entered into with one Shri Kamat and the learned Magistrate has observed in the judgment that the non-examination of Shri Kamat would result in an adverse inference. This finding is incorrect for the reason that the plea of the defence runs completely contrary to the documents on record and one cannot expect that in the case of a public limited company, there were any such dubious agreements or understandings. If the accused was so confident about there being any substance in this plea, nothing prevented him from establishing it by even summoning Shri Kamat. Merely because an accused raises a far-fetched plea and throws up the name of some officers of the company, to my mind, there is no obligation cast on the prosecution to examine that officer. The material on record conclusively establishes that the accused was entrusted with the company's property and that he has wrongfully withheld that property from the company and the offence u/s 630 of the Companies Act stands established.

20. Once again in this case, as with most others, a plea has been put forward about an arrangement that is alleged to have been discussed but which never materialised. It has become a regular feature for the defence in these cases to contend that there was an understanding that the company would relinquish its rights in the premises in favour of the employee or that the company would give him the option to buy it at a concessional rate. The fact of the matter is that such an agreement did not materialise and, to my mind, even if the employee had asked for it or the company had considered it, both situations are thoroughly

irrelevant and to my mind unconscionable. Whether the company is the owner or a tenant makes little difference because residential premises, particularly in the city of Bombay, are extremely valuable and it is, therefore, quite improper to conceive of situations whereby valuable assets of the company can be gifted away to ex-employees to the prejudice of the company. I see little justification behind the ethics, or lack of it, in such transactions because the company's property is not for being gifted away, particularly when it is required to accommodate future employees. In any event, such offers or attempts to alienate company property, which fortunately did not fructify, cannot create any rights whatsoever in the employee and, therefore, such defences are no more than so much of wishful thinking. The courts in any event cannot take cognizance of such happenings even if they went up to the stage of a veritable miss between the cup and the lip. What needs to be emphasised is that the character and the complexion of the property being a company asset does not change merely because somebody negotiated for it or tried to get hold of it and it is that character of the property which makes for the essence of an offence of wrongful retention.

21. Shri Vashi, learned counsel appearing on behalf of the appellant, has relied on the well known decision of the Supreme Court in the case of Baldev Krishna Sahi v. Shipping Corporation of India Ltd. [1988] 63 Comp Cas 1 (SC) in which case the Supreme Court had occasion to interpret section 630 of the Companies Act rather comprehensively. Even though the main issue involved in that decision was as to whether the term "officer" or "employee" included past officers or employees, which the Supreme Court answered in the affirmative, the judgment also very clearly lays down that the retention or wrongful withholding of company property of which the employee obtained possession constituted an offence u/s 630 of the Companies Act. What needs to be emphasised here is that this provision of the Companies Act does not concern the aspect of title, but it is exclusively confined to the aspect of possession. It is in these circumstances, therefore, that the courts have consistently applied section 630 of the Companies Act even in cases of residential accommodation which admittedly does not belong to the company, but in respect of which the company is in exclusive possession. In other words, the right of user in respect of property, movable or immovable, which is conferred on an employee by virtue of his status as an officer or employee of the company and which gets extinguished on the cessation of the contract of service, cannot be extended and this provision of law prescribes a penalty in such cases where an attempt is made to wrongfully extend it and also empowers the court to ensure that possession is restored. That order is essential as otherwise the whole purpose of the law would be frustrated in so far as in cases where the property is of considerable value, an accused would prefer to pay the fine of Rs. 1,000 and to hold on to the flat.

22. Shri Vashi also placed reliance on a decision of the Supreme Court in the case of Atul Mathur v. Atul Kalra [1990] 68 Comp Cas 324 (SC). In this case, the Supreme Court clarified that the pendency of a civil proceeding did not in any

way debar a company from instituting proceedings u/s 630 of the Companies Act. What was also emphasised in this decision was that section 630 of the Companies Act is intended to provide speedy relief to a company when its property is wrongfully retained or withheld. This last aspect of the matter is of some consequence because the familiar modus operandi employed, as has happened in the present case, is to take advantage of the overloading of the courts by starting some frivolous litigation in civil court, adopting pleas that are couched in the garb of legality and this handle is used to either usurp the property or to retain it for decades together. The important issue that arises, therefore, is as to whether when there is a special provision, specifically directed at restoration of possession of that property, its effect can be defeated or totally nullified by having resort to other parallel proceedings and in my considered view that can never be the case. If such a procedure were to be allowed, it would be tantamount to obliterating section 630 of the Companies Act. The High Courts and the Supreme Court have times without number repeatedly stressed that section 630 of the Companies Act is armed with coercive provisions which is why it is within the domain of a criminal court and, to my mind, those provisions must be enforced in the manner in which they were expected to be. There the provision provides for speedy remedy and where the courts say that this is the position, something will be seriously wrong if the net result is otherwise.

23. On the basis of the arguments canvassed by learned counsel, the position that emerges is that the withholding of the flat in question, which was undoubtedly wrongful and which constitutes an offence punishable u/s 630 of the Companies Act, was committed on and from April 1, 1977, when the accused was required in law to have restored possession to the company. Admittedly, that possession has not been restored and there is no order from any court of competent jurisdiction justifying the wrongful retention or possession by the accused. On the contrary, there is a decree of a civil court passed against the accused and it may be that by virtue of the appeal that is pending, as an interim arrangement, the company has been restrained or has agreed not to execute that decree. This, to my mind, does not alter the position vis-a-vis the present proceeding and to that extent, therefore, the accused would be liable for punishment until such time as the property is restored to the company. The offence having been committed and the offence being a continuing one, the accused is liable to be convicted u/s 630 of the Companies Act.

24. The interesting question arises as to whether an order u/s 630 of the Companies Act can be passed in this case. In a proceeding of the present type, the relief granted by the court u/s 630 to the aggrieved party, namely, the company, would be totally illusory unless an order under sub-clause (2) is also passed. Learned counsel appearing on behalf of the respondent-accused contends that the wife of the accused had purchased the flat from the landlady in September, 1979. He further points out that the wife of the accused filed a suit against the company terminating the tenancy on the ground of bona fide use and requirement and that in these circumstances, there can be no question of the

accused restoring possession to the company because effectively the flat belongs to his wife and he is in possession of the flat and the family is, therefore, staying in the flat since they own the premises. The argument seemingly appears both profound and unassailable. What I need to point out is that the provisions of section 630 of the Companies Act cannot be nullified by parallel arrangements of this type. I do not desire to comment on either the legality or propriety of the transaction of sale/purchase of the premises because none of these documents is before this court nor is that transaction the subject-matter of this proceeding. Accepting the position that after a particular date, the wife of the accused has become the owner of the flat, to my mind, the position remains totally unaltered. The real test would be of examining the situation whereby the wife of the accused purchased the flat from the landlady at a point of time when the accused had not wrongfully withheld it and, therefore, when possession was rightfully with the company, the company would have been entitled to continue in possession regardless of the change in ownership until the tenancy was validly terminated and the wife of the accused obtained possession through due process of law. That requirement cannot be short-circuited by any devious arrangement and, therefore, orders in this proceeding shall have to be passed regardless of the change of ownership.

25. This court will, while passing orders, have to take due notice of the pending litigations between the parties. To that extent, therefore, the accused will have to be directed to hand over vacant possession of the premises to the company by September 30, 1993. Even though the accused is not entitled, on the record of this case, to any indulgence or consideration from this court, I have taken note of the fact that there may be practical difficulties in the way of the accused who would have to shift to some other suitable premises by way of securing such accommodation and completing the process of shifting, etc. Also, in the event of the respondent-accused desiring to carry the matter higher, it is only fair that reasonable time be afforded to him.

26. Shri Vashi, learned counsel appearing on behalf of the appellant, advanced the submission that the offence u/s 630 of the Companies Act is a continuing offence and in this regard, he relied on the decision of the Supreme Court in the case of *Gokak Patel Volkart Ltd. v. D. G. Hiremath* [1991] 71 Comp Cas 403. The Supreme Court was dealing with a group of cases from Karnataka and had occasion to interpret in detail another facet of section 630 of the Companies Act and it would be useful to reproduce the observations of the Supreme Court in this regard (at page 415) :

"The expression "continuing offence" has not been defined in the Code. The question whether a particular offence is a "continuing offence" or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

Applying the law enunciated above to the provisions of section 630 of the

Companies Act, we are of the view that the offence under this section is not such as can be said to have been consummated once for all. Wrongful withholding, or wrongfully obtaining possession and wrongful application of the company's property, that is, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offender's possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose or refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It is not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e., with the delivering up or refund of the property. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly misapplied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. This, in our view, is sufficient ground for holding that the offence u/s 630 of the Companies Act is not a one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the instant complaints could not be said to have barred by limitation. The submission that when the first respondent, upon his retirement, failed to vacate and deliver possession of the company's quarters to the company the offence must be taken to have been complete has, therefore, to be rejected."

27. In the light of the aforesaid judgment, Shri Vashi contended that there is no bar of limitation that can be canvassed as against the company and the respondent-accused's counsel, who had pointed out this aspect of the case to me, was required to concede that in view of the conclusive pronouncement of the Supreme Court in the cases referred to supra, which against dealt with non-return of premises to a limited company wherein prosecutions had been instituted u/s 630 of the Companies Act is a valid and binding judgment and that it applies squarely to the present proceeding.

28. In this context, it would be useful to make a reference to the following decisions as also to certain publications and certain text-books as the issue relating to a continuing offence is something which has apparently not been considered in sufficient depth by the courts in our country while interpreting section 630 of the Companies Act :

Best v. Butler and Fitzgibbon [1932] 2 KB 108; Verney v. Mark Fletcher and Sons Ltd. [1909] 1 KB 444; King v. Taylor [1908] 2 KB 237; London County Council v. Worley [1894] 2 QB 826; Black's Law Dictionary, fourth edition (revised) (para

21); Black's Law Dictionary, fifth edition (Special Deluxe) (para 7); Halsbury's Laws of England, volume 45, fourth edition (para 1389) and Salmond and Heuston : Law of Torts, 19th edition, page 50 (para 9).

29. The Supreme Court in Gokak Patel Volkart's case [1991] 71 Comp Cas 403, had occasion to deal with the issue from a very limited angle in so far as the bar of limitation having been canvassed in those proceedings, the court desired to examine the question as to whether the offence was complete and consummated in the true sense of the term at the commencement of the period when the premises were wrongfully withheld or not returned or whether the offence was continuing or in other words "alive" when the company approached the criminal court a long time later and the accused had not still restored possession of the premises. In the present proceeding, I am required to consider a new facet and an entirely different one, namely, the question as to what would be a fair punishment which the court can award to the accused person in a situation where the offence still subsists after the lapse of 16 years on the accused stating that he will not restore possession to the company. The court is presented with a defiant situation and the argument advanced on behalf of the respondent-accused is that this court is helpless because of the fait accompli. Whether a court is helpless or whether within the framework of the law, a court would be justified in prescribing a punishment that is in consonance with what is just in the face of a continuing offence is the question at issue.

30. Coming to the definition of the term "continuous offence", it will be useful to refer to the definitions from Words and Phrases :

""Continuing" means enduring, not terminated by a single act or fact. "Continuous crime" consisting of continuous series of acts."

31. According to Black's Law Dictionary, fifth edition (Special Deluxe), "continuing" means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is committed over a span of time." As to the period of the statute of limitation in a continuing offence, the last act of the offence controls the commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse." So also a continuous crime means "one consisting of a continuous series of acts, which endures after the period of consummation, as, offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act."

32. The corresponding concept of continuity of a civil wrong is to be found in the

Law of Torts. Trespass to land in the English law of torts (trespass quire clauses fregit) consists in the act of (1) entering upon land in the possession of the plaintiff, or (2) remaining upon such land, or (3) placing or projecting any object upon it - in each case without lawful justification.

33. Trespass by remaining on land, as we read in Salmond and Heuston on the Law of Torts, 19th edition, page 50 : "Even a person who has lawfully entered on land in the possession of another commits a trespass if he remains there after his right of entry has ceased. To refuse or omit to leave the plaintiff's land or vehicle is as much a trespass as to enter originally without right. Thus, any person who is present by the leave and licence of the occupier may, as a general rule, when the licence has been properly terminated, be sued or ejected as a trespasser, if after request and after the lapse of a reasonable time he fails to leave the premises."

34. Trespass in Law of Torts may be continuing one. The authors write : "That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions *de die in diem* so long as it lasts, is sufficiently obvious. It is well-settled, however, that the same characteristic belongs in law even to those trespasses which consist in placing things upon the plaintiff's land. Such a trespass continues until it has been abated by the removal of the thing which is thus trespassing; successive actions will lie from day to day until it is so removed : and in each action damages (unless awarded in lieu of an injunction) are assessed only up to the date of the action. Whether this doctrine is either logical or convenient may be a question, but it has been repeatedly decided to be the law."

35. Again, if the entry was lawful, but is subsequently abused and continued after the permission is determined, the trespass may be *ab initio*. In 1610, six carpenters entered the Queen's Head Inn, Cripple gate and consumed a quart of wine (7d) and some bread (1d), for which they refused to pay. The question for the court was whether their non-payment made the entry tortious so as to enable them to be sued in trespass quire clauses fregit. The court held : "When entry, authority or licence is given to anyone by the law, and he doth abuse it, he shall be a trespasser *ab initio*," but that the defendants were not liable as their non-payment did not constitute a trespass. The rule is that the authority, having been abused by doing a wrongful act under cover of it, is cancelled retrospectively so that the exercise of it becomes actionable as a trespass.

36. In Halsbury's Laws of England, fourth edition, volume 45, para 1389, it is said :

"If a person enters on the land of another under an authority given him by law, and, while there, abuses the authority by an act which amounts to a trespass, he becomes a trespasser *ab initio*, and may therefore be sued as if his original entry were unlawful. Instances of an entry under the authority of the law are the entry of a customer into a common inn, of a reversioner to see if waste be done, or of

a commoner to see his cattle."

37. To make a person a trespasser ab initio, there must be a wrongful act committed; a mere non-feasance is not enough.

38. It would be useful at this juncture to reproduce the provisions of section 630 of the Companies Act, which reads as under :

"Penalty for wrongful withholding of property. - (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."

39. The Supreme Court in Gokak Patel Volkart Ltd.'s case [1991] 71 Comp Cas 403 observed as follows (at page 409) :

"Thus, both wrongfully obtaining and wrongfully withholding have been made offences punishable under sub-section (1). Under sub-section (2) knowingly misapplication has also been envisaged. The offence continues until the officer or employee delivers up or refunds any such property if ordered by the court to do so within a time fixed by the court, and in default to suffer the prescribed imprisonment. The idea of a continuing offence is implied in sub-section (2)."

40. The Supreme Court, in the case of State of Bihar Vs. Deokaran Nenshi and Another, had occasion to lay down the position in law and Shelat J., for the court, observed as follows :

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence

which takes place when an act or omission is committed once and for all."

41. Their Lordships referred to English cases : *Best v. Butler and Fitzgibbon* [1932] 2 KB 108, *Verney v. Mark Fletcher and Sons Ltd.* [1909] 1 KB 444v. *Taylor* [1908] 2 KB 237 and *London County Council v. Worley* [1894] 2 QB 826. In *Best v. Butler and Fitzgibbon* [1932] 2 KB 108 in England, the Trade Union Act, 1837, by section 12 provided that if any officer, member or other person being or representing himself to be a member of a trade union, by false representation or imposition obtained possession of any moneys, books, etc., of such trade union, or, having the same in his possession wilfully withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was held to be a continuing offence, presumably because every day that the moneys were wilfully withheld, an offence within the meaning of section 12 was committed.

42. In *Verney's* case [1909] 1 KB 444, section 10(1) of the Factory and Workshop Act, 1901, inter alia, provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Its sub-section (2) provided that a factory in which there was contravention of the section would be deemed not to be kept in conformity with the Act. Section 135 provided penalty for an occupier of a factory or workshop if he failed to keep the factory or workshop in conformity with the Act. Section 146 provided that information for the offence u/s 135 shall be laid within three months after the date at which the offence came to the knowledge of the inspector for the district within which the offence was charged to have been committed. The contention was that in May, 1905 and again in March, 1908, the fly-wheel was kept unfenced to the knowledge of the inspector and yet the information was not laid until July 22, 1908. The information, however, stated that the fly-wheel was unfenced on July 1, 1908, and that was when the offence charged. It was held that the breach of section 10 was a continuing breach on July 10, 1908, and therefore, the information was in time. The offence u/s 135 read with section 10 consisted in failing to keep the factory in conformity with the Act. Every day that the fly-wheel remained unfenced, the factory was kept not in conformity with the Act, and, therefore, the failure continued to be an offence. Hence the offence defined in section 10 was a continuing offence.

43. In *London County Council's* case [1894] 2 QB 826, section 85 of the Metropolis Management Amendment Act, 1852, prohibited the erection of a building on the side of a new street of less than fifty feet in width, which shall exceed in height the distance from the front of the building on the opposite side of the street without the consent of the London County Council and imposed penalties for offences against the Act and a further penalty for every day during which such offence should continue after notice from the County Council. The court construed section 85 to have laid down two offences : (i) building to a prohibited height, and (ii) continuing such a structure already built after

receiving a notice from the County Council. The latter offence was a continuing offence applying to anyone who was guilty of continuing the building at the prohibited height after notice from the County Council.

44. In *Gokak Patel Volkart Ltd.*'s case [1991] 71 Comp Cas 403, the Supreme Court had occasion to observe as follows (at pages 414-415) :

"Section 472 of the Code of Criminal Procedure deals with continuing offences and says :

"In the case of continuing offence, a fresh period of limitation shall begin to run at every moment of time during which the offence continues."

The concept of a continuing offence does not wipe out the original guilt, but it keeps the contravention alive day after day. It may also be observed that the courts, when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature, should give due weight and consideration to the provisions of section 473 of the Code which is in the nature of an overriding provision and, according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code of Criminal Procedure, any court may take cognizance of an offence after the expiration of a period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice.

The expression "continuing offence" has not been defined in the Code. The question whether a particular offence is a "continuing offence" or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

Applying the law enunciated above to the provisions of section 630 of the Companies Act, we are of the view that the offence under this section is not such as can be said to have been consummated once for all. Wrongful withholding, or wrongfully obtaining possession and wrongful application of the company's property, that it, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offender's possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose or refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It is not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e., with the delivering up or refund of the property. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end

to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly misapplied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. This, in our view, is sufficient ground for holding that the offence u/s 630 of the Companies Act is not a one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the instant complaints could not be said to have been barred by limitation. The submission that when the first respondent, upon his retirement, failed to vacate and deliver possession of the company's quarter to the company, the offence must be taken to have been complete, has, therefore, to be rejected."

45. Drawing a parallel from this judgment, what emerges from the concept of a continuing offence is that the anatomy of such an offence presents another important aspect, namely, that the offence has been committed and is, therefore, actionable at the point of time when the property was wrongfully withheld and that as the aforesaid decisions indicate and, as has been pointed out by the Supreme Court, the offence "recurs". It is precisely for this reason that we have a parallel in section 472 of the Code of Criminal Procedure which prescribes that a fresh period of limitation shall commence at each point of time when the offence is continuing. This aspect of recurrence of an offence, to my mind, would also provide the basis for prescribing punishment that would be in consonance with the period of time during which the offence was recurred.

46. Confining the consideration to the facts of the present case where the property consists of a residential flat on which the company is required to pay rent or compensation from month to month, the wrongful withholding of the premises by the accused from month to month will constitute a recurrence of the offence from month to month. To my mind, the legal injury that has been done to the company runs parallel to the wrongful gain or wrongful benefit derived by the accused from month to month and for this purpose, the only unit that can be correctly applied in such cases would be the period of one month since the tenancy runs from month to month. There is no dispute in this case that the company is required to pay to the landlord the rent/compensation from month to month and, therefore, the wrongful loss has occurred to the company every month and the corresponding wrongful gain has accrued to the accused from month to month. In this view of the matter, to my mind, the accused would be liable to be penalised from month to month during the entire period during which the offence has recurred. In the present instance, the accused was liable to restore possession of the premises to the company on March 30, 1977, and he shall, therefore, be liable to a fine in the sum of Rs. 1,000 per month from April 1, 1977, for every month that he has been in possession of the premises until the date on which possession is restored to the company. The trial court shall accordingly compute the amount of fine recoverable from the accused and shall taken appropriate steps for ensuring that the same is paid.

47. The last issue that falls for determination in this case is as to whether the

order u/s 630(2) of the Companies Act can be passed. As far as that aspect of the matter is concerned, Shri Vashi submitted that, in the event of this court holding that the accused is liable to be convicted, such an order must follow as of course. Learned counsel appearing on behalf of respondent No. 1-accused stated that on the special facts of this case, no such order can be passed. The reason given by him is that by a document dated September 3, 1979, the wife and daughter of the accused have purchased the flat in question. He contends that since the wife and daughter of the accused with whom he is living are the owners of the premises, they are virtually occupying their own flat and in these circumstances an order u/s 630(2) of the Companies Act would not be competent.

48. Assuming that the wife and daughter of the accused have become the owners or, in other words, landlords/landladies of the premises, the limited alteration in the situation would be that the relation between then and the company would be one of landlord and tenant, but this to my mind would not in any manner defeat the possessory rights of the company by virtue of the subsisting tenancy. It is precisely for this reason that a suit has been instituted in the Court of Small Causes by the new owners against the company for restoration of possession. That proceeding is subsisting and if the plaintiffs succeed, they would most certainly be entitled to restoration of possession. In the light of that proceeding, it would be necessary for this court to prescribe that on the accused handing over possession to the company, the company shall not create any third party rights and further that in the event during the intervening period until the disposal of the proceeding before the Court of Small Causes the company puts any of its other officers in possession of the premises, they shall obtain an unconditional undertaking which shall equally bind the company and the concerned officer and his family and which shall be filed in the eviction proceedings before the Court of Small Causes, and such possession shall be subject to the final orders in those proceedings.

49. To my mind, it would be quite impermissible for a court to allow the present situation to be used as an automatic termination or cessation of the company's tenancy. If the argument canvassed by learned counsel on behalf of the respondent-accused were to be accepted, it would lead to the absurd situation that the offending party, namely, the accused, gets the full advantage of his own wrong merely by purchasing the premises and thereafter contending that the company is automatically ousted. It would be essential as stated earlier to consider a situation whereby the ownership of the premises had changed with some other officer in occupation and it is precisely that situation that is required to be contemplated.

50. In this view of the matter, it would be perfectly legitimate for this court to pass an order sub-section (2) of section 630 of the Companies Act and the respondent-accused is accordingly directed to hand over vacant and peaceful possession to the appellant-company of the premises, namely, the flat and the garage that were allotted to him, at the very earliest but in any event not later

than September 30, 1993. In making this order, I have taken into account the fact that the respondent-accused may require reasonable time to arrange for alternate accommodation as also the fact that the respondent-accused may desire to carry the matter higher in which case appropriate time would be required for filing a SLP to the Supreme Court.

51. Before parting with this appeal, it is essential that certain guidelines be formulated in relation to the conduct of these proceedings instituted u/s 630 of the Companies Act, if the law is to be meaningfully applied and if a total sabotage of the relevant provisions of the Companies Act is to be countermanded. In this appeal, we are faced with the atrocious situation of the accused having successfully succeeded in dodging the operation of law for 16 years and the record of this case is not very different from that of other similar proceedings. As indicated by me earlier, the pendency of proceedings and the multiplicity thereof coupled with the protraction of each of them is contraindicated by the position in law which enunciates in crystal clear terms that the provisions of section 630 of the Companies Act are intended to provide speedy and efficacious redress in cases where a company's property is wrongfully withheld. Towards restoring this property, it is essential that a conscious effort be made, particularly by the subordinate courts, to ensure that the delay factor is controlled to the maximum extent and the following guidelines are required to be observed :

(a) That the complaints be taken up and disposed of on a priority basis, the accent being on the avoidance of any unwarranted delay.

(b) That the trial courts should address themselves to the fact that the scope of the enquiry in a proceeding u/s 630 of the Companies Act is extremely restricted in law and, consequently, the parties be confined within those narrow ambits without being permitted to dilate or protract the proceeding through extraneous avenues.

(c) That no frivolous applications for adjournment, stay of proceedings, etc., should be permitted by the trial courts because the history of those proceedings indicates that each of such stages is responsible for further litigation and years of delay. The law is well-settled now with regard to the position that the pendency of other civil proceedings is no bar to the decision of an application u/s 630 of the Companies Act which fact should be taken cognizance of in such situations.

(d) That the appeal courts, i.e., the Court of Sessions, in the first instance, must judiciously scrutinise and vigorously examine the revision applications and appeals before granting stay orders.

(e) That applications for discharge on frivolous and untenable pleas are required to be speedily and effectively disposed of and are not to be used as handles for protracting the litigation.

52. The appeal is accordingly allowed. The judgment and order of the trial court

are set aside. Respondent No. 1-accused is convicted u/s 630 of the Companies Act and is ordered to pay a fine in the sum of Rs. 1,000 per month for each month during which the offence has recurred starting from April 1, 1977, until the date of restoration of possession of the premises to the company. The accused is further directed to hand over vacant possession of the two premises to the company latest by September 30, 1993. In the event of the accused committing default of this order, he is sentenced to suffer rigorous imprisonment for two years. The appeal is allowed.