

(2024) 10 GUJ CK 0068
In the Gujarat High Court

Case No : Criminal Appeal (Against Acquittal) No. 1241 of 2024

Mafatlal Industries Ltd Thro Ankit Girishkumar Patel Versus APPELLANT
Vs
Naranbhai Dahyabhai Raval Legal Heirs Of Decd. Dahyabhai RESPONDENT
Somabhai Raval & Anr.

Date of Decision : 30-10-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 313(4), 378, 378(4)
Companies Act, 1956 — Section 630, 630(b), 630(1), 630(2)
Limitation Act, 1963 — Section 22

Citation : (2024) 10 GUJ CK 0068

Hon'ble Judges : M. K. Thakker, J

Bench : Single Bench

Advocate : Apurva Vakil, Jeet B Karia, Amit R Joshi, Jay Mehta

Final Decision : Allowed

Judgement

M. K. Thakker, J

1. This appeal is filed under section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") challenging the judgment and order of acquittal dated 13.10.2023 passed by learned 5th Additional District and Sessions Judge, Kheda in Criminal Appeal No. 40 of 2021 acquitting the respondent-accused from the charges and setting aside the judgment and order passed by the learned Judicial Magistrate First Class, Nadiad dated 18.02.2021 in Criminal Case No.202 of 2010.

2. The facts in a nut shell arising from the present case is as under:

2.1. The complainant company is situated at Nadiad and complainant is the senior officer serving in the complainant company. The company is having its residence and it is allotted to its officers or employees till their service in the complainant Mill.

2.2. The father of the respondent-accused was serving in New Shorok Mill which

is one of the division of the complainant company situated at Asarwa and the father of the respondent-accused was allotted room no. 87 till his service period and necessary leave and licence agreement was executed between the complainant and the deceased father of the accused on certain conditions. On allotting room no.87 deceased Dahyabhai Somabhai started to use the said room thereafter, deceased Dahyabhai had voluntarily resigned on 01.07.1978 from the mill and despite he was under obligation to hand over vacant and peaceful possession he did not vacate the premises. Therefore, notice was issued by the complainant company to hand over the possession on the deceased Dahyabhai Somabhai and despite the service of the same, he did not hand over the possession of room no.87 to the complainant. Thus, complainant company had filed Civil Suit being Civil Suit No.48 of 1980 in Civil Court, Nadiad and decree was passed in favour of the complainant. The said judgment and decree was challenged before District Court, Nadiad who has also confirmed the judgment and decree of the learned trial court. Against that order, deceased Dahyabhai filed Second Appeal before this Court which resulted in favour of the respondent-accused and the judgment and order of the both the court below was set aside and this Court has remanded the matter back to the Civil Court, Nadiad with direction that suit was to be refiled as de novo. The complainant company has withdrawn this suit with liberty to file afresh on 29.06.1984. Thereafter, the complainant company filed criminal complaint under section 630 of the Companies Act, 1956 against Dahyabhai Somabhai in the year 1991.

2.3. On 29.11.2005 said Dahyabhai Somabhai Raval expired and due to death of Dahyabhai Somabhai Raval the complaint came to be abated. After the death of the father the respondent-accused, who is the legal heir (son) of the deceased employee, continued to be in wrongful possession of the said room no.87. Thereafter, on 12.01.2010 complainant company filed criminal case being Criminal Case No.202 of 2010 before the Additional Chief Judicial Magistrate, Nadiad under section 630 of the Companies Act, 1956 seeking prayer to deliver the property to the appellant company as per section 630(2) of the Companies Act against accused no.1 Naranbhai Dahyabhai Raval and accused no.2 Babubhai Dahyabhai Raval who continued to be in wrongful possession of Room No.87. Accused no.2 namely Babubhai Dahyabhai Raval passed away during the pendency of the criminal case therefore, trial qua him was abated.

2.4. On 18.02.2021 learned trial court has passed the judgment and order convicting the accused no.1 for the offence punishable under section 630(b) of the Companies Act imposing the fine of Rs.1,000/- and in default to pay the same, the accused was ordered to undergo simple imprisonment of ten days. It was further directed to the accused no.1, under section 630(2) of the Companies Act, to hand over the possession of room no.87 to the appellate company on or before 18.04.2021 and in default it was ordered to undergo rigorous imprisonment of one month. Being aggrieved and dissatisfied by the aforesaid judgment and order of conviction, respondent-accused has preferred the appeal before the learned Additional District and Sessions Judge, Kheda being Criminal

Appeal No. 40 of 2021 which was allowed by the learned appellate court and the judgement and order of conviction was reversed, which is the subject matter of challenge before this Court in the present appeal.

3. Heard learned senior advocate Mr.Apurva Vakil with learned advocate Mr.Jeet Karia for the appellant-original complainant and learned advocate Mr.Amit Joshi for the respondent-accused.

3.1. Learned senior advocate Mr.Apurva Vakil for the appellant-original complainant has submitted that judgement and order of the learned Appellate Court acquitting the respondent-accused was passed only on the ground that there was no leave and licence agreement executed between the appellant-company and the respondent-accused. The agreement which was executed was between the company and its employee i.e the deceased Dahyabhai Somabhai and as the respondent-accused is not an Officer of the company therefore, the criminal proceedings cannot be initiated against him and they cannot be held liable for the offence punishable under section 630 of the Companies Act. Learned senior advocate Mr.Apurva Vakil submits that section 630 of the Act will cover within its ambit not only employee or officer but also past employee or past officer or the legal heirs of the deceased employees or anyone claiming under them in possession of the property. Learned senior advocate Mr.Apurva Vakil submits that the purpose to make an action an offence under section 630 is to provide speedy and summary procedure for retrieving the property of the company where it has been wrongfully obtained by the employees or officer of the company or where the property has been lawfully obtained but unlawfully retained after termination of the employment of the employee or the officer and to impose a fine on officer or employee of the company if found breach of the provisions of section 630 of the Companies Act.

3.2. Learned senior advocate Mr.Apurva Vakil submits that learned appellate court has also committed error in holding that during the life term of the employee no proceedings were initiated. Learned senior advocate Mr.Apurva Vakil submits that in the year 1991 the complaint has already been filed against the employee and due to the death of the respondent-accused same was abated, however, thereafter also the respondent-accused who are the heirs of the deceased employee continued in the wrongful possession of the property of the appellant company. Therefore again, after issuing notice the complaint came to be filed under section 630 of the Companies Act against respondent who are the heirs of the deceased employee and that fact was disclosed by the complainant in the memo of the Criminal Case No.202 of 2010.

3.3. Learned senior advocate Mr.Apurva Vakil has relied on the decision rendered by the Apex Court in the case of Lalita Jalan and Ors. Vs Bombay Gas Co.Ltd. (2003) 6 SCC 107 and submitted that Apex Court has also held in this decision that when employee himself is not in occupation of the said premises due to his death or his living elsewhere, all those who come in possession of such premises with the express or implied consent of the employee, including the person

inducted by them are liable to be prosecuted under section 630 of the Companies Act. Learned senior advocate Mr.Apurva Vakil has also relied on the statement recorded under section 313 of the Cr.P.C. wherein, the accused had admitted that the premise was given to his father by leave and licence agreement which was produced below Exh.66 on the terms that on termination or resignation the possession of the premises would be handed over to the complainant company and it is further admitted that the father of the respondent-accused had given his resignation on 01.07.1978 and submitted that stage of section 313 of the Code provides the accused to explain the circumstances appearing in the evidence against him and when the accused himself is admitting with regard to the possession of the property which was given to his father who resigned from the services on 01.07.1978, that would be the material circumstance which goes against the respondent accused. Learned senior advocate Mr.Apurva Vakil submits that by discarding all the provisions of the law learned appellate court has acquitted the respondent-accused by setting aside the judgement and order of learned trial court. Learned senior advocate Mr.Apurva Vakil submits that as the despite the resignation of the deceased employee complainant company is still unable to take the possession of the property, therefore, this appeal be allowed and the respondent be convicted for the charges with direction to hand over the possession within a prescribe time.

3.4. This appeal was vehemently opposed by learned advocate Mr.Amit Joshi for the respondent-accused who submitted that the civil suit which is filed by the appellant company went up to this Court and thereafter, on demanding the same to refile as a de novo the suit was withdrawn by the complainant company. Learned advocate Mr.Amit Joshi submits that thereafter, no suit was filed before the competent court and the complainant company had adopted this penal remedy by filing the complaint under the Companies Act. Learned advocate Mr.Amit Joshi submits that even after the death of the deceased father, criminal complaint came to be abated in the year 2005 then also the company had not filed any proceedings immediately and after 5 years delay, the criminal case was filed against the heirs of the deceased employee. Learned advocate Mr.Amit Joshi submits that learned appellate court is justified in observing that there was no leave and licence agreement executed between the company and the respondent-accused and therefore, it cannot be said that prosecution against the respondent-accused is maintainable. Learned advocate Mr.Amit Joshi submits that in fact the suit came to be filed by the respondent-accused against the complainant company seeking mandatory injunction which is pending for adjudication. Learned advocate Mr.Amit Joshi submits that as the civil court has already seized with the matter this Court may not interfere with the impugned judgement and order of acquittal. Learned advocate Mr.Amit Joshi has relied on the evidence of the complainant who was examined below Exh.67 and submitted that the complainant has admitted in his cross-examination that no room number is stated in the leave and licence agreement which is produced below Exh.66. Learned advocate Mr.Amit Joshi submits that neither any descriptions were

mentioned in the agreement and there was a material alteration in the Exh.66 and therefore, learned appellate Court has rightly acquitted respondent-accused from the charges.

3.5. Learned advocate Mr.Amit Joshi has relied on the decision rendered by the Apex Court in the case of Shubh Shanti Services Ltd. Vs Manjula S.Agarwalla and Ors reported in (2005) 5 SCC 30 wherein, the Apex Court has held that no directions can be given under section 630(2) of the Companies Act for delivery of the actual possession of the property if the civil suits are pending before the civil court. It is open for the complainant company to approach the civil Court for the suitable orders but in any case the respondent-accused cannot be held liable to be convicted for the offence punishable under section 630(2) of the Companies Act. Learned advocate Mr.Amit Joshi submits that that there was no illegality or perversity in the impugned judgement and order of acquittal and this Court in exercise of the power under section 378 of Cr.P.C. would be loathe in converting the acquittal into conviction in absence of any legality or perversity in the findings recorded by the learned appellate court. Learned advocate Mr.Amit Joshi submits that in overall circumstances the appeal deserves to be dismissed and the judgement and order of learned appellate court requires to be confirmed.

4. Having heard the learned advocates for the respective parties and on perusing the record and proceeding, it transpires that leave and licence agreement was executed between the complainant company and deceased Dahyabhai Somabhai on 10.08.1967. The relevant portions of the leave and licence agreement produced below Exh.66 is reproduced hereinbelow:

Conditions of permission given for usage of the Room

(1) The Company has given you personal license for usage of the room on the condition that you are in employment of the mill.

(2) You shall have to pay Rs. 22=00 in words Rupees Twenty Two Only in advance every month towards the license fee. If you fail to do so, such amount shall be deducted from your salary or from the dues that Company owes you for the work done or it shall be recovered by selling out your belongings.

(3) The room shall be vacated and returned in the same condition as was allotted.

(4) The person holding the license shall not be entitled to any right or interest over the room.

(5) The person holding the license shall not be entitled to transfer the said license to any other person in any manner.

(6) The license to use the room shall stand to have been ceased automatically for the following reasons.

1. When you are laid off, dismissed or relieved from the service.

Note: Regardless of your being laid off, dismissed or relieved from service is

lawful or illegal, the said license shall automatically deem to have been ceased abruptly.

2. If you willingly stop doing service of the Company by tendering resignation yourself or for any other reason.

3. As the license is personal, if you allow someone to use it without taking prior permission of the Company.

4. If the room is not used as is expected from a prudent man.

5. If you move out of station without intimating the Company in writing.

6. If you indulge into littering, quarreling, mischief, gambling or intoxication or in any such inappropriate behavior.

7. If you commit any sort of criminal offence or immoral turpitude.

(7) When the license given by us stands ceased automatically as mentioned above or in case we cancel the license in time of our need without providing any reason thereof, the said license shall be considered as ceased. Immediately upon cancellation of the license, you, the license holder shall be responsible for handing over the direct and physical possession of the room by vacating it. Accordingly, if you do not hand over the possession, we, ourselves, shall take over the possession and usage of the said room. In such event, if any damage or loss is caused to you or your belongings, we shall not at all be held responsible for the same in any manner.

(8) xxx

(9) xxx

4.1. Undisputedly the deceased employee has resigned voluntarily from the employment on 01.07.1978. Thereafter, deceased Dahyabhai Somabhai Raval has not handed over the possession of room no.87 which was given pursuant to the leave and licence agreement. Therefore, legal notice came to be given which is produced below Exh.93 on 07.12.1978 calling upon Dahyabhai Somabhai to hand over the possession of room no.87 and to pay the damages. The said notice was neither replied nor complied with, therefore, the Civil Suit No.48 of 1980 filed before the Civil Judge Senior Division, Nadiad against Dahyabhai Somabhai for getting back the possession of the room no.87. The same was decreed in favour of the appellant company and was confirmed by the appellate court. The Second Appeal which was preferred before this Court was allowed and the direction was issued to refile de novo suit against respondent-accused, however, the suit came to be withdrawn vide order dated 29.06.1984. Thereafter, another legal notice was given to Dahyabhai Somabhai Raval on 10.01.1985 and then complaint was filed in the year 1991 under section 630 of the Companies Act which fact was disclosed in the impugned complaint by the complainant. During the pendency of the complaint said Dahyabhai Somabhai passed away on 29.11.2005, therefore, complaint came to be abated and again another

complaint came to be filed being Criminal Case No.202 of 2010 against respondent-accused. It is contended by the respondent-accused that complaint is barred by limitation as the same was filed after five years of the death of the deceased employee. At this stage Section 22 of the Limitation Act, 1963 is required to be referred which is reproduced hereinbelow:

22. Continuing breaches and torts.—

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

4.2. It appears that there was a continuous cause of action and therefore, no limitation would apply in filing the complaint before the court of law. The learned appellate court has acquitted the respondent-accused only on the ground that there was no leave and licence agreement executed between the complainant and the respondent-accused who are the heirs of the deceased employee.

4.3. The moot question arise for consideration is that whether the respondent-accused, having not vacated the room no., 87 on the death of Mr.Dahyabhai Somabhai to whom it was allotted in his capacity as employee of the company fall within the ambit of section 630 of the Act or not?

5. For considering the above issue, the section 630 of the Companies Act, 1956 is required to be referred which is reproduced hereinbelow:

"630. 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 withheld or directed ingly applies it to purposes other than those expressed the complain in the articles and other the he shall, on the complaint of the Company do authorised by thisontributory thereof, be punishable with fine which may extend to 10[ten] thousand rupees.

(2) The Court trying the offence may also order such Officer or employee to deliver up or refund, within a time may also order such 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"

5.1. The main ingredients of section is wrongful withholding the property of the Company or knowing applying it to purpose other than those expressed or directed in the Articles and authorised by the Act. The meaning of withholding in the dictionary is to hold back, to keep back, to restore or to decline to grant. The holding back or keeping back is not an isolated act, but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the employee of the company does

any act by which the property given to him is wrongfully withheld and not given back to the company it would amount to the offence within the meaning of section 630 of the Act. The object of inducing the provisions is that property of the company is preserved and is not used for the purpose other than those expressed or directed in the articles of association of the company or as authorised by the provisions of the Act. Person who ceased to be an officer or employee is bound to return back the property which was possessed by him in the capacity of the employee of the company.

6. The decision relied by the learned advocate for the appellant company in the case of Lalitha Jalan (*supra*) is required to be considered at this stage and the relevant paragraphs are reproduced herein below:

"6. The question which requires consideration is whether the appellants having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as Director of the Company, come within the ambit of Section 630 of the Act. The main ingredient of the Section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the Section is that property of the company is preserved and is not used for purposes other than those expressed or directed in the Articles of Association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company. In *Baldev Krishna Sahi v. Shipping Corpn. of India Ltd. and Anr.*, [1987] 4 SCC 361, the Court was called upon to consider the question whether the words "officer or employee" existing in sub-section (1) of Section 630 should be interpreted to mean not only the present officers and employees of the company but also to include past officers and employees of the company. It was held that a narrow construction should not be placed upon sub-section (1) of Section 630, which would defeat the very purpose and object with which it had been introduced but should be so construed so as to make it effective and operative. The Court held as under in para 7 of the report:

"7. The beneficial provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the

company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

9. In *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath and Ors.*, [1991] 2 SCC 141, the Court following *Baldev Krishna Sahi (supra)* and *Amrit Lai Chum (supra)* held that Section 630 of the Companies Act embraced both present and past officers and employees within its fold and having regard to the words "wrongfully withholding the property" observed that the offence continues until the property so obtained or withheld is delivered or refunded to the company. It will be useful to reproduce here the relevant portion of para 26 of the report.

We are of the view that the offence under this Section is not such as can be said to have consummated once for all. Wrongful withholding or wrongful 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 of 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 up 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

15. Section 630 of the Act is in two parts. Clause (b) of sub-section (1) thereof lays down that if any officer or employee of a company having any property of the company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act, he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to Rs. 10,000. At this stage no substantive sentence can be awarded. Sub-section (2) thereof empowers the Court trying the offence to order such officer or employee to deliver up or refund within 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. Sub-Section (1), wherein wrongfully withholding the property of the company has been made an offence, is punishable with fine only and it does not provide for imposing any substantive sentence. It is only where the Court directs the officer or employee to deliver or refund the property within a fixed period and such order of the Court is not complied with and the property is not delivered or refunded that a sentence of two years can be awarded. Therefore, it is non-compliance or non-observance of the order of the Court regarding delivery or refund of the property which results in making the person so directed liable for being awarded a substantive sentence of imprisonment. In *Abhliash Vinodkumar Jain* (supra) this has been clearly elaborated in para 16 of the report and it has been held that it is in the event of the disobedience of the order of the Court that imprisonment for a term which may extend to two years has been prescribed. This provision makes the defaulter, whosoever he may be, who disobeys the order of the Court to hand back the property to the company within the prescribed time, liable for punishment.

19. Even otherwise as shown earlier, the wrongful withholding of property of the company has been made punishable with fine only. A substantive sentence or imprisonment can be awarded only where there is a non-compliance of the order of the Court regarding delivery or refund of the property. Obviously, this order would be passed against a specific person or persons whether an employee, past employee or a legal heir or family member of such an employee and only if such named person does not comply with the order of the Court, he would be liable to be sentenced which may extend to imprisonment for two years. At this stage, namely, where the Court would award a substantive sentence of imprisonment for non-compliance of its order the question of enlarging or widening the language of the Section cannot arise as the order would be directed against a specifically named person."

7. This decision was followed by the decision rendered by the Apex Court in the case of *Gopika Chandrabhushan Saran and Anr. Vs XLO India Ltd and Anr.* reported in (2009) 3 SCC 342. The relevant portion is reproduced hereinbelow:

"23. The ratio laid down in the above said two cases makes it explicitly clear that Section 630 of the Act will cover within its ambit not only the employee or officer but also the past employee or the past officer or the heirs of the deceased employee or anyone claiming under them in possession of the property.

The legal heirs or representatives in possession of the property acquire the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the employee or the officer and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company.

24. The case in hand is the one which falls under the first part of clause (b) of

sub-section (1) of Section 630. The suit premises was allotted to Mr. C. B. Saran, the predecessor-in-interest of the appellants, in his capacity as a Managing Director of the respondent company. The appellants herein had no direct relationship with the respondent company. Both of them came in possession of the suit premises through the original allottee of the said premises, namely, Mr. C. B. Saran, who has since died. The company has every right and jurisdiction to preserve its property and to see that the same is not used for purposes other than the one expressed or directed in the articles of association of the company.

25.. On a careful reading of the ratio of the decisions in Abhilash Vinodkumar Jain (supra) and Lalita Jalan (supra), it is explicitly clear that they are squarely applicable to facts of the present case. When the legal representatives of the original allottee withhold the property wrongfully the company is entitled to invoke the provisions of Section 630 of the Act so as to retrieve the property being withheld wrongfully. The above quoted decisions have also laid down that all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act as is done in the present case.

26.We may also mention that the averment of the learned senior counsel appearing for the appellants that the proceedings under Section 630 should have been stayed as the civil suit was pending, is without any merit in the light of the decision of this Court in Atul Mathur v. Atul Kalra, reported in (1989) 4 SCC 514, wherein it was held that stay of proceedings by the criminal court under Section 630 of the Act, whenever a suit has been filed would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630. the said observations are extracted herein below:

"16.....Merely because Respondent 1 had schemingly filed a suit before tendering his resignation, it can never be said that the civil court was in seisin of a bona fide dispute between the parties and as such the criminal court should have stayed its hands when the company filed a complaint under Section 630. If a view is mechanically taken that whenever a suit has been filed before a complaint is laid under Section 630, the criminal court should not proceed with the complaint, it would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630.

27.Considering the facts and circumstances of the present case, we hold that the respondent company was within its jurisdiction to get the suit premises vacated under the provisions of Section 630 of the Act. We also hold that the learned courts below were justified in arriving at a finding that the provisions of Section 630 of the Act are applicable to the facts and circumstances of the present case. Consequently the courts below also acted within their power and jurisdiction in directing for vacation of the suit premises by the appellants.

28.While upholding the said order of the courts below, we however observe that the proceedings were initiated in the Small Causes Court by filing a suit which is pending as of now. There was an interim order passed in the said suit directing for maintenance of status quo. Since we have held that the provisions of Section 630 of the Act are applicable to the present case, we hold that the directions of the court below in this case would be implemented subject to the condition that if the aforesaid suit is decided in favour of the appellants, the appellants shall be entitled to a order of restitution, if so directed, in accordance with law and that such an order shall be given effect to in accordance with law."

8. This Court has also considered the decision rendered on the similar issue in the case of Prahladbhai Rajaram Mehta Vs Popatbhai Haribhai Patel reported in 1995 (2) G.L.H. 473. The relevant paragraphs is reproduced herienbelow

"32.The Supreme Court in Jain Ink Mfg. Co. v. LIC of India, AIR 1981 SC 670, had an occasion to consider the provisions of sections 3(a), 14 and 25B of the Public Premises Act and section 1 of the Delhi Rent Control Act. The question was whether the provisions of the Public Premises Act would override the provisions of the Delhi Rent Control Act. The Supreme Court held that in both the Acts, there is a non-obstante clause but the question to be determined is whether the non-obstante clause operates in the same field or two different spheres though there may be some amount of overlapping. Both the scope and the object of the Public Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Public Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in section 2 of the Public Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither corporations nor the Government nor corporate bodies. Even under the Rent Act, by virtue of an amendment a special category has been carved out under section 25B which provides for special procedure for eviction to landlords who require premises for their personal necessity. It is clearly held that there can be no doubt that the Public Premises Act as compared to the Rent Act which has a very broad spectrum is a special Act and overrides the provisions of the Rent Act.

33.In the said decision, it is also held that the provisions of the Slum Areas (Improvement and Clearance) Act, 1956, are earlier and the provisions of the Public Premises Act are subsequent and therefore, the provision of the Public Premises Act will override the Slum Areas Act. It has been vehemently contended that the criminal prosecution should not be allowed to continue in view of the bona fide dispute of tenancy raised by the tenant-employee. In other words, it is contended that once the bona fide dispute with regard to tenancy is raised, the criminal prosecution should not be allowed and the parties should be permitted to exhaust their rights and remedies under the civil law. This contention cannot be sustained. What is a bona fide dispute is the question of fact depending upon the circumstances of the case. Apart from that, the mere raising of a bona fide

dispute would not constitute a hurdle in the criminal prosecution under section 630 and with a view to support this contention and with a view to appreciate the important question, it would be necessary to refer to relevant case-law. The Bombay High Court has consistently held that under the guise of bona fide dispute criminal prosecution under section 630 cannot be sacrificed. It is consistently held that section 630 plainly makes it an offence if an officer or employee of a company, who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment. The term officer or employee in section 630 applies not only to existing officers or employees, but also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property of the company, or (b) having obtained such property during the course of his employment, withholds the same after the termination of his employment. The prosecution cannot be stalled on the ground of alleged bona fide civil dispute. In *Baldev Krishna Sahi v. Shipping Corporation of India Ltd.* [1988] 63 Comp Cas 1, the Bombay High Court took the view that prosecution under section 630 against a service occupier who has retired from the company will be competent and maintainable even if the accused or the employee has filed a suit in the civil court on the ground of tenancy. The contention that there is a bona fide civil dispute between the parties which can be resolved in a civil court and, therefore, on that ground, summary proceedings under section 630 should not be permitted to thwart legal rights pertaining to tenancy under the Bombay Rent Act is without any substance. Where there is a statutory provision and statutory remedy, providing effective and efficient speedy mechanism for conviction and eviction for the service-occupiers of the company, it cannot be said that the parties should only be permitted to resolve their dispute in the civil court. Admittedly, there is no question of title involved in the present case. There is no dispute about ownership of the property. There is no dispute about termination of service. It is succinctly established without any doubt that the respondent was inducted in the company's premises on account of his being in the employment of the company. The right to occupy the company's premises is found to be coterminous with termination of service. When the service or employment has come to an end, the right to occupy premises of the company also ends. Protection under the provisions of the Bombay Rent Act does not exclude or supersede the special provisions made for the said class of companies in section 630 which provide speedy and effective summary machinery for conviction and eviction. In this connection, it may be noted that a similar contention was raised before the Bombay High Court in *Baldev Krishna's case* [1988] 63 Comp Cas 1 which was rejected relying on three earlier decisions of the Bombay High Court. The Bombay High Court held in *Krishan Avtar Bahadur v. Col. Irwin Extross* [1986] 59 Comp Cas 417, while dealing with almost identical facts that merely because the petitioner had raised a dispute of tenancy, criminal proceedings under section 630 cannot be stayed. The Bombay High Court again took the consistent view in *Harkishin Lakhimal Gidwani v. Achyut Kashinath Wagh* [1982] 52 Comp Cas 1 and also in *Govind T. Jagtiani v. Sirajudin S. Kazi*

[1984] 56 Comp Cas 329. Following the ratio in the aforesaid three decisions, the Bombay High Court thus once again took the same view in Baldev Krishna's case [1988] 63 Comp Cas 1. In Baldev Krishna Sahi v. Shipping Corporation of India Ltd. [1988] 63 Comp Cas 1; AIR 1987 SC 2245, the Supreme Court has upheld the view taken by the Bombay High Court that criminal proceedings cannot be stalled or stayed on the specious plea of tenancy under the Rent Act raised by the accused employee. The following observations of the Supreme Court are very important:

"The beneficent provision contained in section 630, no doubt penal, has been purposely enacted by the Legislature with the object of providing a summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

41. A contention is also raised that the prosecution is barred by the period of limitation in view of Section 468 of the Code. Section 468 provides bar to taking cognizance after lapse of period of limitation. Section 468(2)(c) provides period of limitation of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. The offence punishable under Section 630 of the Companies Act is punishable with imprisonment for a term exceeding three years. The criminal complaint is filed, admittedly, after the period of three years. However, this contention of bar of limitation cannot be accepted as it is without any substance in view of the provisions of Sec. 472 of the Code. Sec. 472 provides that in case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. The respondent-accused voluntarily retired from service with effect from 1-9-1984. Therefore, according to the defence of the accused, the complaint ought to have been filed on or before 1-9-1987 in view of Sec. 468(2)(c) of the Code. The complaint is filed on 18-10-1988 under Sec. 630 of the Companies Act.

42. In light of the aforesaid circumstances and considering the provisions of Sec. 630 of the Companies Act, provisions of Sec. 472 of the Code will be attracted. 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 offenders possession is delivered up or returned to the company. The offence under Sec. 630 is not such as can be said to be one time, one for all wrongful withholding of the property of the company. Thus, it is a continuing offence and shall continue until the property is delivered to the

company. Therefore, Sec. 472 of the Code will apply and not provisions of Sec. 468 of the Code. This proposition of law is also very much established and settled by the Apex Court in *Gokak Patel Volkar Ltd. v. D. Gurushiddaiah Hiremath*, (1991) 71 Comp. Cases 403.”

9. The decision relied by the respondent-accused in the case of *Shubh Shanti Sevices* (supra) for the purpose that civil suits if pending then appropriate remedy would lie before the civil court. If the facts of the case is to be considered, then it was the case where the appellant company has filed suit before the competent court seeking possession of the property. In that scenario it was held by the Apex Court that as accused were not in employment of the company nor the company has authorised to remain in possession of the same, the possession of the company’s property by the respondent- accused after service of the notice to vacate the premise by the company is wrongfull withholding of the property of the company and accused by having wrongfully withholding the property of the comapny and not delivering the property of the company have committed offence and the interim orderof the High Court dated 16.11.1998 in the civil suit filed by the appellant company does not wipe out offence already for which the criminal complaint was filed. Subsequent to that order, the possession may not be wrong but from the date of complaint till the date of order, the respondent has wrongfully withheld the property attracting the offence under section 630(1) of the Companies Act and in that as civil suit was pending, therefore, symbolic possession was directed to take to the court receiver and with regard to the actual possession no direction was given under section 630(2) of delivery of actual possession of the property and it was kept open for the petitioner to approach civil court for suitable orders.

10. In the instant case, suit was filed by the respondent-accused in the year 2022 seeking mandatory injunction which is subsequent to the decree passed by the learned trial court and during the pendency of the criminal appeal before the learned appellate court. As till date no injunction or any relief has been granted in favour of the complainant, therefore, this Court deems it fit not to make any observations with regard to the pendency of the proceedings. However, the facts remains that respondent-accused did not vacate the premise after the death of father who has also resigned during his life time from the employment.

10.1. The learned advocate for the respondent Mr.Joshi has further contended that no room number is stated in the leave and licence agreement which is produced at Exh.66, however, during the statement recorded under section 313 of the Code, it is admitted to have been in possession of room no.87 by the respondent-accused. The evidentiary value of section 313 statement is discussed by the Apex Court in the case of *Mannu Sao Vs State of Bihar* reported in 2010 12 SCC 310. The relevant paragraphs are mentioned hereinbelow:

“12. Let us examine the essential features of this Section 313 Cr.P.C. and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of

Section 313 of the Code.

13.As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or in the alternative to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross- examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14.The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put as evidence against the accused in any other enquiry or trial for any other offence for which such answers may tempt to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution."

10.2. Similar observations are made in the case of *Khairuddin & Ors. Vs.State of West Bengal* reported in 2013 5 SCC 753. The relevant paragraphs are mentioned hereinbelow:

"15. That the statement of an accused made under Section 313 Cr.P.C. can be taken into consideration is not in dispute; not only because of what Section 313 (4) of the Code provides but also because of the law laid down by this court in

several pronouncements. We may in this regard refer to the decision of this Court in *Sanatan Naskar and Anr. v. State of West Bengal* (2010) 8 SCC 249, where this Court observed:

"21. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. ...

22. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. ... Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence".

11. There are two stages for the accused to explain the circumstance appearing in evidence against him and the court may at any stage, without previous warning to the accused, put such question to him as the court considers necessary and after the witness of prosecution have examined and before he is called for his defence question may general on the case, provided that in summons where the court has dispensed with the personal attendance of the accused. The accused have refused to answer such question or gives any false answer in that situation, section 313 provides that it would not render him liable to punish him for such refusal to answer or such false answer, however, the

answers given by him may be taken into consideration in such inquiry or trial and to be in evidence against him in any other inquiry in to, or trial for, any other offence which such answer may tend to show he has committed.

11.1. The question put before the respondent-accused while putting incriminating evidence against him is the material evidence which can certainly be looked along with other evidence which was produced by the complainant during trial. Therefore, considering overall circumstances, this Court is of the view that respondent no.1 who is in occupation of room no.87 situated at New Sharrock Nagar, Nadiad, as well as his relative or anyone else is required to be directed to hand over the possession of the property to the petitioner Company.

11.2. Considering the object of section 630 of the Companies Act for speedy remedy and accused and his relative who has wrongfully withheld the room no.87 shall need be directed to vacate the quarters and hand over the vacant and peaceful possession to the appellant company whose other labourers are working with it are deprived of its enjoyment due to this illegal manner of occupation, this Court is of the opinion that learned appellate court has overlooked the ill intent of the respondent-accused who enjoyed for these many years of the benefit of room no.87 which was allotted to the father of the respondent in service.

12. This Court is conscious of the fact that this appeal is against the judgment and order of acquittal however at the same time, if on fact as well as on law, conclusion drawn by the trial Court based on appreciation of evidence unless compelling, cogent and substantial reasons appear for interference and when findings of the appellate Court are not palpably wrong, manifestly erroneous or demonstrably unsustainable, acquittal is not to be reversed or disturbed. When acquittal is based on the surmises and conjectures and not substantiated by law and evidence on record, an Appellate Court may reappraise and review the entire evidence to see that undue benefit is not given to the accused.

13. Resultantly, this appeal succeeds and is hereby allowed. The impugned judgment and order of acquittal dated 13.10.2023 passed by learned 5th Additional District and Sessions Judge, Kheda in Criminal Appeal No. 40 of 2021 is hereby quashed and set aside and the judgment and order passed by the learned Judicial Magistrate First Class, Nadiad dated 18.02.2021 in Criminal Case No.202 of 2010 is hereby confirmed.

14. It is further directed to the respondent no.1 accused or any of his relatives or anyone else inducted through him shall hand over the peaceful and vacant possession of room no.87 to the appellant company within a period of three months from today, or shall undergo imprisonment as directed by the learned trial court in the judgment and order dated 18.02.2021 in Criminal Case No.202 of 2010.

15. Resultantly, this appeal is allowed.