

(1999) 06 CAL CK 0018
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 2903 of 1997

Manas Kumar Ghosh

APPELLANT

Vs

T.T.P. Mahmood and Another

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Companies Act, 1956 — Section 630
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 406, 428

Citation : (2000) 2 CALLT 423 : 104 CWN 83 : (2000) 86 FLR 898

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Dilip Kumar Dutta, Mr. Amith Bhattacharjee and Mr. Arup Ch. Chatterjee, for the Appellant; Mr. Samarjit Ghosh, for the Respondent

Judgement

G.R. Bhattacharjee, J.—This criminal revisions is directed against the order of the learned Additional Sessions Judge, 11th Court Alipore dated the 8th August. 1997 passed in Criminal Motion No. 122 of 1997.

2. The present petition has been filed by Sri Manas Kumar Ghosh who is the Assistant Manager of the Shipping Corporation of India. The opposite party No. 1. T.T.P. Mahmood was an employee of the Shipping Corporation of India and under a written agreement the opposite party was allowed to occupy a flat of the said Corporation in this capacity as an employee on condition that he will have to vacate the fiat and deliver possession of the same in favour of the Corporation on his retirement or removal or resignation from service. In due course the opposite party No. 1 retired from the service of the Corporation on 30.11.92, but as in spite of such retirement and in spite of demand of the Corporation, the opposite party No. 1 did not deliver possession of the fiat in favour of the Corporation, the Corporation filed a petition of complaint in the year 1993 u/s 630 of the Companies Act, 1956. As the criminal proceeding under the said section of the Companies Act was not proceeding with due expedition the matter was brought before this Court and a learned single Judge of this Court, viz, S.K. Tiwari, J. by

an order dated 24th September. 1996 directed the learned Magistrate of the trial Court to dispose of the case expeditiously, preferably within four months from the date of communication of that order. It is needless to mention that in spite of such order the proceeding in the Court of the learned Magistrate was not concluded. It may be mentioned here that sometime in the year 1995 the Company also filed a civil suit against the opposite parties for recovery of the possession of the flat and for damages which is also yet pending. The opposite party No. 1 filed an application before the learned trial Court for staying the criminal proceeding on the ground, as submitted, of the pendency of the civil suit. That application was, however, rejected by the learned trial Court. Being aggrieved by such rejection, the opposite party filed a revisional application before the learned Sessions Judge and the same was disposed of by the learned Additional Sessions Judge by his impugned order dated 8.8.97 against which the company has preferred the present revisional application. The learned Additional Sessions Judge by his impugned order directed that the learned trial Magistrate would conclude the evidence of the complainant/prosecution but the accused opposite parties shall not be examined u/s 313 of the Code of Criminal Procedure nor shall, judgment in the case u/s 630 of the Companies Act, be delivered till the disposal of the concerned title suit being T.S. No. 88 of 1995 pending in the Court of the learned Second Munsif, Alipore.

3. It is contended on behalf of the opposite party No. 1 that since a civil suit for possession and damages is pending over the self same matter the criminal proceeding should be quashed or be stayed till the disposal of the civil suit. It may incidentally be mentioned here that the opposite party No. 1 also filed a civil suit, as submitted, for his retrial benefits. Be that as it may, the question which is now required to be decided is whether the pendency of the civil suit filed by the Company for possession of the flat and for damages debars the criminal proceeding or necessitates stay of the same till the disposal of the civil suit. The learned advocate for the opposite party No. 1 submits that in view of the pendency of the civil suit brought by the company itself, the criminal proceeding itself should either be quashed or stayed till the disposal of the civil suit. In support of his such contention he refers to two decisions of the Supreme Court, namely, Bal Kishan Das Vs. P.C. Nayar, and Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, as well as a single Bench decision of Bombay High Court, namely. Vishanjee Durgarmal Futani & Ors. v. Mrs. Krishna Mohanlal Futnani & Anr. Bombay 1990 Company Cases. 585. The two Supreme Court decisions referred to above were considering the question where a criminal charge of breach of trust was involved. Obviously in view of the said Supreme Court decisions. If the facts of the case indicated that the matter is purely of civil nature then a criminal proceeding over the self same matter will not be tenable. None of the said two decisions was dealing with, a case u/s 630 of the Companies Act. In the present case, the opposite party No. 1 was occupying the flat of the Company as its employee and it is the case of the Company that even after retirement from the service, the opposite party No. 1

has been illegally retaining the same and is not delivering the possession of the same to the company. Such allegation no doubt prima facie makes out a case triable u/s 630 of the Companies Act. The Bombay High Court decision referred to by the learned advocate for the opposite party No. 1 no doubt deals with a case which was brought not only u/s 630 of the Companies Act but also under sections 120B/406 and 428 of the Indian Penal Code. But in that case the dispute was not between the Company and its employee. It was a dispute between two brothers. The perspective there was totally different from what it is obtaining in the present case where the employer-employee relationship between the parties at all material time is not in dispute. Prima facie the company has a cause of action against the opposite party No. 1 u/s 630 of the Companies Act. The mere fact that they have also a remedy for possession and damages in civil law and in pursuance of that they have also filed a civil suit for such relief does not make section 630 of the Companies Act inoperative in respect of the said matter nor can that be a good ground for staying the proceeding u/s 630 of the Companies Act. In support of his submission in this respect the learned advocate for the petitioner Company has referred to a decision of this court in A.C. Base v. The State 97 CWN 1 and also the Supreme Court decision in Atul Mathur v. Atul Kaira & Anr. 1989 SCC CRI 761, it has been held in the said Supreme Court decision that merely because the accused had screamingly filed a suit in Civil Court it can never be said that the Civil Court was in seisin of a bonafide dispute between the parties and as such the criminal Court should have stayed its hands when the company filed a complaint u/s 630 of the Act and that if such a view is taken it would not only lead to miscarriage of Justice but also render ineffective the solitary provision of section 630. The principle enunciated in the said Supreme Court decision is also applicable in the present case. However, it is to be mentioned here that in the present case the civil suit that has been filed is that of the company and that the civil suit filed by the opposite party No. 1 is only for his retiral benefit as submitted.

4. Having regard to the facts and circumstances, I have, therefore, no manner of doubt that in the facts and circumstances prima facie appearing in the case the company can seek relief both under the civil law as well as u/s 630 of the Companies Act and there is no bar against the simultaneous continuance of both sorts of proceedings. In the result I direct that the learned Court below will proceed with the proceeding u/s 630 of the Companies Act and conclude the same in accordance with law as early as possible, desirably within a period of four months from the date of communication of this order notwithstanding the pendency and continuance of any civil suit in the matter. The impugned order of the learned Additional Sessions Judge stands set aside and the present revisional application stands allowed.

As submitted, this order be communicated to the learned Court below through special messenger at the cost of the petitioner and the cost is to be deposited in course of next week.

5. Application allowed