

(1993) 10 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Misc. Application No's. 8512 of 1989, 876 and 9225 of 1990, 8158 and 11920 of 1991, 5815, 6024, 6025, 6234, 8109, 8110, 8512 and 16301 of 1992 and 1597, 2247 and 7210 of 1993

Misri Lal Shah

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 11-10-1993

Acts Referred:

Companies Act, 1913 — Section 282A, 630
Criminal Procedure Code, 1973 (CrPC) — Section 309, 482
Income Tax Act, 1961 — Section 276C, 277
Industrial Disputes (Central) Rules, 1957 — Rule 4
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 6E, 6E(2), 6F

Citation : (1993) 17 ACR 737

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : P.C. Jhingan, for the Appellant; N.B. Singh, for the Respondent

Judgement

M.C. Agarwal, J.—These are applications u/s 482, Code of Criminal Procedure, seeking to quash the complaints lodged against the applicants u/s 630 of the Companies Act.

2. Since the points involved in all these cases are identical, with the consent of parties, they were heard together and are disposed of by this common-order,

3. The applicants, excepting R. Antony in Criminal Misc. Application No. 8158 of 1991, were employees of M/s. Hindalco Industries Limited, Renukoot, district Sonbhadra. As employees of the said company, they were allotted residential quarters by the employer for purposes of their residence during the term of employment. Applicant Jagdhari Ram was retired by the company from service with effect from 31st December, 1991. The other applicants have been dismissed from service by the said employer on various dates. In some cases, industrial disputes arising out of the dismissal/retirement have been referred to the Labour Court/Industrial Tribunal and the same are pending. In some cases, conciliation

proceedings under Rule 4 of the U.P. Industrial Disputes Rules are pending and in some cases, the employees' applications u/s 6-E(2)(b) of the U.P. Industrial Disputes Act are pending. After the dismissal/retirement, the employer M/s. Hindalco Industries Limited asked the respective applicants to vacate the residential flats occupied by them. Since the employees did not comply with the company's request, complaints u/s 630 of the Companies Act have been lodged by the employer and the accused applicants have been summoned by the Special Chief Judicial Magistrate, Allahabad.

4. R. Antony, the applicant in Criminal Misc. Application No. 8158 of 1991, was an employee of M/s. Renusagar Power Company Limited. He has been dismissed with effect from 15th December, 1990, and Adjudication Case No. 3 of 1990 about his dismissal is pending. The employee is also alleged to have made a complaint against the employer u/s 6F of

the Industrial Disputes Act. The employer M/s. Renu Sagar Power Company Limited has lodged a complaint against the applicant because the latter has not vacated the company's residential accommodation that is occupied by him.

5. The employer Respondents filed counter affidavits and the learned Counsel for the applicants wanted time to file rejoinder affidavits. The learned Counsel for the employer Respondents then stated that he would not rely on the counter affidavits and, therefore, the cases were heard on the agreement that the counter affidavits filed by the employer Respondents would not be looked into.

6. The facts are not in dispute. All the applicants were allotted residential quarters by the employer in connection with their employment. The employment of the applicants has been terminated by retirement and dismissal etc. and in spite of oral and written requests by the employer, the employees have not vacated the residential quarters. A perusal of the dates of dismissal etc. and the dates on which the company lodged the complaints u/s 630 of the Companies Act would show that the company has not acted in haste and the complaints were filed sufficiently after the termination of employment.

7. Section 482, Code of Criminal Procedure under which the present applications have been moved relates to the inherent powers of the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The contentions raised on behalf of the applicants is that the proceedings under the labour laws regarding the termination/dismissal etc of the applicants are pending and till those proceedings are decided, the initiation of the proceedings u/s 630 of the Companies Act is an abuse of the process of Court which this Court should prevent by exercising its inherent jurisdiction.

8. Section 630 of the Companies Act provides penalty for wrongful withholding of property. If any officer or employee of a company wrongfully withholds the company's property, he shall on a complaint of the company...be punishable with fine which may extend to one thousand rupees. Under Sub-clause (2) of Section 630, the Court trying the offence has the power to order the officer or employee

to deliver the property wrongfully withheld or in default, to suffer imprisonment for a term which may extend to two years.

9. As is evident, in these cases, the residential flats were allotted to the employees in connection with their employment. The employment has been terminated and, therefore, the continued occupation of those quarters by the employees after the company's request to vacate the same prima facie amounts to wrongful withholding of the flats.

10. Learned Counsel for the applicants relied upon a judgment of the Hon'ble Madras High Court in *Re: J. Loomchand Sait v. The Official Liquidator* AIR 1953 Mad. 595 in which it was held that to render the accused liable to penalty u/s 282-A (equivalent to present Section 630, there should be proof of fraudulent intention. This view does not seem to be tenable in view of the judgment of the Hon'ble Supreme Court in *Baldeo Krishna ShaM v. Shipping Corporation of India* AIR 1987 SC 2245 and *Atul Mathur v. Atul Kalra* 1990 68 Company Cases 324. In *Baldeo Krishna's* case (Supra), the Hon'ble Supreme Court observed as below:

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.

11. In both these cases, the office of the Company had not vacated the residential accommodation provided by the company after termination of their employment and the Hon'ble Supreme Court held that they could be rightly dealt with u/s 630 of the Companies Act. The question of any fraudulent intention, therefore, does not arise and what is important is the wrongful withholding of the property.

12. Learned Counsel for the applicants also contended that the dues of the employees in relation to gratuity etc. have not been paid by the employer and, therefore, as held by the Madras High Court *Doraiswami Goundan Vs. Subramania Mudaliar*, the withholding of the Company's property was not wrongful. That was a case where a director of the company had withheld certain immovable properties of the company. The said director had obtained a money decree against the company and under the decree, a first charge on the disputed movable properties was created in favour of the said director. It was on those facts that it was held that the director could not be proceeded with u/s 282-A of Companies Act, 1913 for withholding those properties. As is evident, that was a case based on totally different facts. In the present applications, there is no allegation whatsoever that any dues of the employees have been withheld by the

employer and, for that reason, they are justified in withholding the possession of the flats in question. This point, therefore, is not available to the applicants in the present proceedings.

13. It was contended that in respect of some of the employees, industrial disputes are pending before the Labour Court/Industrial Tribunal and in respect of some, the employer's applications u/s 6-E(2)(b) of the U.P. Industrial Disputes Act are pending and, therefore, the proceedings u/s 630 of the Companies Act could not be validly launched.

14. As is admitted in all these cases, the employer has terminated the employment by passing orders of dismissal from service and, in one case, by making an order of superannuation. The contention of the learned Counsel for the applicants is that these orders are not final unless upheld by the authorities dealing with Industrial and labour disputes. The learned Counsel has not pointed out to me any provision of law which provides that an order of dismissal, termination or superannuation would be effective only after it is approved by the labour authorities or the industrial dispute, if any, raised in that regard is finally-decided. Of course, if the Labour Court or the Industrial Tribunal holds that the termination or dismissal was unlawful, the same would be deemed to be ineffective right from the beginning, but unless such an order is passed, the termination/dismissal holds good and is effective: for all purposes.

15. Learned Counsel for the applicants referred to the definition of "workman" in Section 2(z) of the U.P. Industrial Disputes Act which includes within the category of workman any such persons who has been dismissed, discharged or retrenched. This definition is intended to serve a special purpose relating to the termination of disputes of persons who have been dismissed, discharged or retrenched and who challenged the same by raising industrial disputes. If such persons were not included in the definition of "workman" then the authorities under the Act would have had no jurisdiction to be a workman. It is for that purpose that in the definition of "workman", dismissed, retrenched or discharged employees have also, been included. This definition, however, does not, in my view, mean that for all purposes, such person continues to be a workman. This special purpose is clear from the definition of "workman" in the said Sub-section (z) because it is clearly specified that for the purpose of any proceedings under this Act in relation to an industrial dispute, a dismissed, discharged or retrenched employee is included in the definition of workman.

16. the contention, therefore that till the industrial dispute is finally decided the relationship of master and servant continues between the employer and the employee and, therefore, the employer cannot ask - the employee to vacate the residential quarter allotted to him is not tenable.

17. It was lastly contended that the employer has moved applications u/s 6-E(2)(b) of the U.P. Industrial Disputes Act in some cases and those applications are pending. Copies of such applications have not been appended with the Petitioners

u/s 482 Code of Criminal Procedure and therefore, the exact, nature and scope has not been specified. Section 6E of the U.P. Industrial Disputes Act provides that during the pendency of any conciliations proceedings before a conciliation Officer or Board or of any proceedings before the Labour Court or Tribunal in respect of any industrial dispute, the conditions of service etc. of the employee shall remain unchanged. Sub-section (2)(b) however, provides that during the pendency of any such proceedings in respect of an industrial dispute, the employer may in accordance with the Standing Orders applicable to a workman concerned in such dispute, for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman. As is evident, all the employees, in the present applications, have been dismissed or retired from service. The employment is completely terminated and the question of further punishing them for any misconduct or of changing their conditions of service does not arise.

18. As stated above, these are petitions u/s 482, Code of Criminal Procedure seeking to invoke the inherent jurisdiction of the High Court to prevent an abuse of the process of law. No such abuse of the process of law has been made out and prima facie the employer is proceeding in accordance with law. Though the employees may have a chance of success in the proceedings pending under the U.P. Industrial Disputes Act, but, as observed by the Hon''ble Supreme Court in *P. Jayappan v. S.K. Perumal* AIR 1984 SC 1693, a mere expectation of success in some proceedings in appeal or reference cannot come in the way of institution of criminal proceedings. The Hon''ble Supreme Court was dealing with a prosecution u/s 276-C of the Income Tax Act and it was contended on behalf of the accused that the assessment proceedings under the Income Tax Act had not been concluded. The Hon''ble Supreme Court held that the pendency of the assessment proceedings had no relevance to the question of maintainability of the prosecution and the same could not be quashed u/s 482, Code of Criminal Procedure on the ground that it is a premature one. The Hon''ble Supreme Court observed as follows:

If may be that in an appropriate case the criminal Court may adjourn or postpone the hearing of a criminal " case in exercise of its discretionary power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the Criminal Proceedings. There is no rigid rule which makes it necessary for a criminal Court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which, may have some bearing on it is pending elsewhere. But this, however, has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances cannot be quashed on the ground that it is a premature one. On a careful consideration of the relevant provisions of the Act, we are of the view that the pendency of the re-assessment proceedings cannot

act as a bar to the institution of the criminal prosecution for offences punishable u/s 276C or Section 277 of the Act. The institution of the criminal proceedings cannot in these circumstances also amount to an abuse of the process of the Court.

19. The above principles apply to the facts of the present case with equal force, and, therefore, the filing of the complaints u/s 630 of the Companies Act by the employers against the present applicants cannot be held to be an abuse of the process of the Court.

20. For the above reasons, the present petitions have no force and are hereby dismissed. The interim order staying the proceedings before the Special Chief Judicial Magistrate, Allahabad, are hereby vacated.

21. It is made clear that any observation made in this judgment are restricted to the disposal of the present applications only and are not intended to conclude or prejudice any contention that may be raised by the parties at the trial court.