
(2007) 04 AHC CK 0234
In the Allahabad High Court

Rakesh Kumar

APPELLANT

Vs

State of U.P. and Sir Shadi Lal Enterprises Ltd.

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 200, 313, 397, 401

Citation : (2007) 04 AHC CK 0234

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Aggrieved by his conviction u/s 630 of the Company. Act 1956 and sentence of Rs. 2000/- as fine, with further direction that the revisionist will vacate house No. C-2 Pilkhani Distillery Colony, Pilkhani and hand over vacant possession of the same to the complainant company M/S. Sir Shadi Lal Enterprises Ltd. dated 15.10.2005 passed by Special C.J.M., Meerut in Complaint Case No. 334 of 2003 M/S. Sir Shadi Lal Enterprises Ltd. Co. v. Rakesh Kumar and confirmed by Lower Appellate Court, Additional Sessions Judge, Court No. 10, Meerut in Criminal Appeal No. 82 of 2004, Rakesh Kumar Sharma v. Sir Shadi Lal Enterprises Ltd. Co. vide impugned judgement dated 7.12.2006 the revisionist Rakesh Kumar has filed the instant revision in this Court u/s 397, 401 Cr.P.C. challenging his aforesaid conviction and sentences recorded by Magistrate and confirmed by the Lower Appellate Court.

2. The synopsis facts of the revision are that M/S. Shadi Lal Enterprises Ltd. is a company under the Indian Companies Act, 1956, hereinafter referred to as the "Act" and is having its registered office at 4-A, Hansalya, 15 Barakhamba Road, New Delhi. The production unit of the company is Pilkhani Distillery & Chemical Works, Pilkhani, Police Station Sarsawa. Tehsil Nakur, District Saharanpur. Revisionist accused Rakesh Kumar was employed in the said distillery as Yeast Man. Being in service of the distillery Rakesh Kumar was allotted companies

residential quarter No. C-2 situated with the premises of Pilkhani Distillery Colony vide letter No. PD-762/93-94 dated 9.6.1993. The services of Rakesh Kumar accused revisionist was however terminated, on 18.9.2002 vide termination letter of the even date issued by General Manager, Pilkhani Distillery & Chemical Works, Pilkhani. Termination letter was dispatched to accused revisionist through registered post on his correct postal address but he refused to receive it. Management therefore got the termination letter pasted on the front wall of residential quarter No. C-2 occupied by accused revisionist on 20.9.2002. Another registered notice containing termination letter was dispatched to accused revisionist but the same was again returned unserved on 23.8.2002. Thereupon the company made a publication of the termination order in Hindi Daily Newspaper Amar Ujala on 5.10.2002. In spite of the aforesaid publication and pasting of notice accused revisionist did not contact General Manager of the company nor produced no dues slip before the General Manager of the company. Since the services of accused revisionist were terminated on 18.9.2002 complainant company though letter dated 20.9.2002 requested the accused to vacate company's quarter No. C-2 Pilkhani Distillery Colony, which was allotted to him. The said letter dated 20.9.2002 was sent to the accused revisionist through registered post on 21.9.2002 but the same also returned as the revisionist accused refused to honour the registered post. Again on 16.10.2002 the company for the second time dispatched letter of request for vacating the said quarter and also got pasted the said notice on the front wall of his aforesaid quarter. In both the notices company had asked the accused to vacate the quarter within a period of 15 days. Since the revisionist continued to occupy the quarter illegally after termination of his services the company became entitled for damages at the rate of Rs. 500/- per month and for recovery of possession.

3. Since there was no justification much less to say legal justification to occupy the premises the company left with no option invoked the power of the Magistrate by filing the complaint u/s 630 of the India Companies Act with the prayer that the accused revisionist be summoned and he be punished for violating Section 630 of the Indian Companies Act and accused be ordered to hand over actual physical vacant possession of the residential quarter no.C-2 Pilkhani Distillery Colony and be also ordered to pay damages to a tune of Rs. 500/- per month to the company with effect from 18.9.2002 (date of termination of service) till the actual delivery of possession. The aforesaid complaint (annexure No. 1) was filed on 13 th February 2003 through Sri R.K. Kalia Commercial Manager M/S. Sir Shadi Lal Enterprises Ltd. in the court of Special Chief Judicial Magistrate, Meerut, which was registered as Complaint Case No. 334 of 2003M/S. Sir Shadi Lal Enterprises Ltd. v. Rakesh Kumar. The Special C.J.M. Meerut recorded the statement of complainant R.K. Kalia u/s 200 Cr.P.C. and being satisfied that prima facie offence u/s 630 of the Companies Act was disclosed the Magistrate summoned the accused revisionist for the said offence.

4. In trial pre-charge statement of the accused was recorded wherein accused accepted allotment of the quarter C-2 to him on 9.6.1993 and also admitted it as

his residential abode. However he took the plea that his services had not been terminated and he had not received any notice regarding vacation of the said quarter. He also pleaded that his possession was not illegally as the case against his termination was pending before the Labour Court. He also pleaded that the company has not paid his legal dues and the complaint against him has been filed maliciously due to enmity. The accused revisionist claim to be tried for the said charge.

5. In the trial complainant R.K. Kalia examined himself as P.W.1 and he filed many documents on Fard Saboot being papers No. 4A/1 to 228A/1.

6. Accused revisionist in his statement u/s 313 Cr.P.C. reiterated his earlier statement and examined D.W.1 Ram Pal in his defence. He also filed documents vide Fard Saboot paper No. 30A.

7. Special Chief Judicial Magistrate after going through the evidences led in the trial and after scanning various documentary evidences filed by both the sides came to the conclusion vide his impugned judgement dated 15.10.2004 that R.K. Kalia had got the right to file complaint on behalf of the company as he was the Commercial Manager and was authorized to file the complaint by the company. Learned Trial Magistrate also came to the conclusion that quarter number C-2 was allotted to the accused revisionist on 9.6.1993 vide Exhibit Ka-2 and the services of the accused revisionist was terminated on 18.9.2002 vide Exhibit Ka-3. It also found that the notice of termination of service was given to the accused revisionist through registered post and also that it was pasted on the wall of his house and the same was also published in the newspaper vide Exhibits Ka-3, Ka-5, Ka-6, Ka-7 and Ka-11. Further analysing the case the trial Magistrate found the case of the prosecution proved to the hilt against revisionist accused for committing offence u/s 630 of Companies Act and therefore, it convicted him with a fine for Rs. 2000/- and ordered him to handover the vacant possession of quarter C-2 Pilkhani Distillery Colony to the complainant company within a period of two months failing which he will have to undergo one year and six months simple imprisonment. Trial Magistrate also directed that from 20.9.2002 the accused revisionist will pay damages to the company at the rate of Rs. 500/- per month till the date of actual vacation of the said quarter. It also directed that the amount of damages be paid within a period of two months from the date of the judgement.

8. Aggrieved by the aforesaid conviction and vacation order dated 15.10.2004, accused revisionist preferred Criminal Appeal No. 82 of 2004, Rakesh Kumar v. Sir Shadi Lal Enterprises Ltd. before Sessions Judge, Meerut. His appeal was heard and dismissed in part by Additional Sessions Judge court No. 10, Meerut vide his impugned order dated 7.12.2006. Lower Appellate Court confirmed the impugned judgement passed by Trial Magistrate dated 15.10.2004 with modification that the quarter be vacated within a period of one month by the revisionist and handed over vacant possession to the company and that the damages be also deposited within the said period calculating it from 20.9.2002

till vacation of the said quarter and in the event of default in payment of damages revisionist will under go six months simple imprisonment. Lower Appellate Court also directed the revisionist to appear before the Trial Magistrate on 8.1.2007. Aggrieved by the aforesaid two orders instant revision has been filed in this Court by the accused revisionist Rakesh Kumar.

9. I have heard Sri Sunil Vashisth learned Counsel for the revisionist and Sri Vivek Chowdhary learned Counsel for the respondent No. 2 complainant company and the learned A.G.A. from opposite sides at a great length and have gone through the record of this revision.

10. Learned Counsel for the revisionist contended that since the case was pending against the termination order, the possession of the revisionist was not illegal. He further submitted that since services of revisionist were terminated he was no longer in the service of the company and therefore, Section 630 of the Companies Act is not attracted at all. He further contended that the company had not paid legal remuneration to the revisionist and just to divest him of the same that the complaint was filed by the company against the revisionist.

11. Sri Vivek Chowdhary, learned Counsel for the respondent No. 2 complainant company as well as learned A.G.A., contrarily contended that the revisionist has not stated any new point and all the contentions raised by the revisionist in this revision are the same which were raised before both the Lower Courts and all the contentions have been repelled by both the courts below by recording the concurrent findings of fact, therefore this revision is merit less and deserves to be dismissed.

12. I have considered the contentions raised by both the sides. For a proper appreciation of the contentions raised a reference of Section 630 of the Companies Act seems to be necessary, which is quoted below:

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 withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorized 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 (ten 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.

13. In view of the aforesaid provision the first contention of learned Counsel for the revisionist which requires consideration is as to whether Section 630 of the

Companies Act applies also to an employee who was erstwhile in the service of company and subsequently his services has been dispensed with. The aforesaid submission no longer remains *res Integra* as it has been on more than once decided by the Apex Court in many judgements with binding precedents. The Apex Court has taken a view that Section 630 of the Companies Act also takes into its purview those employees also who were in the service of company and whose services were terminated subsequently. It also laid down that even relatives and dependants of such employee who were residing with him in the premises in question are also covered under that section. In *Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others*, it has been held by the Apex Court that Section 630 of the Companies Act is not a penal provision and therefore, strict construction like other criminal statutes does not apply in a proceedings u/s 630 of the Companies Act. It has further held that the employee or the officer of the company to whom the property of the company was allotted or anyone claiming through him such property as family members or heirs are also covered u/s 630 of the Companies Act and they can be proceeded with if they choose to remain in occupation, illegally without permission of company in the said premises and doesn't vacate it after being ask to vacate. Dealing with the said aspect of the matter Hon"ble G.P. Mathur, J. in paragraph 6 of the aforesaid judgement has elaborated the main ingredients and ambit of Section 630 of the Companies Act with the following observations:

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 an authorized by the Act. The dictionary meaning or 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 the property of the company is preserved and is not used of purposes other than those expressed or directed in the articles of association of the company or as authorized 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 Corporation of India Ltd.* 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: (SCC p.366)

7. 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 this 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 on the legislation which would suppress the mischief and advance the remedy.

14. His Lordships has further been please to hold in paragraph 9 of the aforesaid judgement as follows:

9. In *Gokak Patel Vokkari Ltd. v. Dundayya Gurushiddaiah Hiremath* the Court following *Baldev Krishna Sahi and Amrit Lal Chum* 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: (SCC pp. 153-54) "(w)e 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 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 authorized 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 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. After making a detailed discussion on the subject the Apex Court in paragraph 23 of the aforesaid judgement has held as follows:

23. If an erstwhile or former employee is prosecuted u/s 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or his is living elsewhere. In such cases 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 u/s 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non-delivery of the property of the company.

16. The same point was reconsidered in Shubh Shanti Services Ltd. Vs. Manjula S. Agarwalla and Others, In the aforesaid judgement Hon"ble P.P. Naolekar, J. speaking for the Bench has held in paragraph 13 as follows:

13. In the matter of Baldev Krishna Sahid v. Shipping Corporation of India Ltd. this Court resolved the conflict and has held that the expression "officer" or "employee" of the company applies not only to the existing officer or employee but also includes past officer or employee where such officer or employee either wrongfully obtained or wrongfully withheld or knowingly misapplied any property after termination of his employment. This decision was approved by a three-Judge Bench of this Court in Amrit Lal Chum v. Devoprasad Dutta Roy where it is held that Section 630 of the Act makes it an offence if an officer or employee of the company who was permitted to use the property of the company during his employment wrongfully retains or occupies the same after the termination of his employment and that there is no warrant to give a restrictive meaning to the term "officer or employee" appearing in Sub-section (1) of Section 630 of the Act as meaning only an existing officer or an existing employee and not those whose employment had been terminated or had otherwise come to an end.

17. In the aforesaid judgement the law laid down by the Apex Court in Lalita Jalan's case (supra) was quoted with approval in paragraph 16 thereof. While dealing with the purpose of Section 630 it has been held in the said judgement of Shubh Shanti Services Ltd. (supra) as follows:

From the above narration of authorities, it is absolutely clear that Section 630 of the Companies Act, does not only cover cases of the present employee or officer of the company and this provision strictly speaking is not penal in the sense as understood under penal law. The main purpose to make action an offence u/s

630 is to provide a speedy and summary procedure for retrieving the property of the company where it has been wrongly obtained by the employee 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 the officer or employee of the company if found in breach of the provision of Section 630 of the Companies Act and further to issue direction if the court feels it just and appropriate for delivery of the possession of the property of the company and to impose a sentence of imprisonment when there is non-compliance with the order of the court regarding delivery or refund of the property of the company.

18. Without loathing this judgement further with binding precedents on the point canvassed by learned Counsel for the revisionist which has been answered negative in other judgements also, I make a reference of some of these judgements here:

Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, BLLJ 135 R. Antony v. Renusagar Power Company Ltd.

19. In view of the above law laid down by the Apex Court the first contention of learned Counsel for the revisionist that since the services of revisionist accused was terminated, therefore, Section 630 of the Companies Act does not apply no longer holds good and is hereby repelled.

20. Coming to the next contention of the learned Counsel for the revisionist that since the termination order was under challenge before the Labour Court therefore the possession of the revisionist accused cannot be said to be illegal and he cannot be preceded with u/s 630 of the Companies Act is concerned, the said submission is also unmerited. In the aforesaid judgement of R. Antony (Supra) this Court has dealt with the said aspect of the matter and after relying upon Supreme Court judgements the said contentions has been answered in paragraph 11 and 12 thereof as follows:

11. It is true that an industrial dispute relating to the dismissal of the accused was pending before the Industrial court, but the order of dismissal has neither been set aside nor suspended. That order is still in force and will remain in force till it is set aside by the competent authority. In the circumstances it cannot be said that merely because an industrial dispute relating to the dismissal of the applicant was pending, the company could not file a complaint u/s 630 of the Companies Act. This question also came up for decision before the Madras High Court in Case P.V. George v. Jayems Engineering Company Private Limited (1990)2 Comp L.J. 62 (Mad). It was hold that the proceedings initiated by the employee challenging his dismissal from service were altogether distinct and different from prosecution launched by the company u/s 630 of the Companies Act. It was also observed that different considerations would prevail regarding the decision in respective cases and that pendency of proceedings challenging the order of dismissal can, by no stretch of imagination, be construed as a bar

against the institution of criminal proceedings u/s 630 of the Companies Act.

12. In view of the above discussion, it is held that the complaint u/s 630 of the Companies Act was not barred due to the pendency of the industrial dispute before the industrial court.

21. Further in present case, learned Counsel for the respondent also supplied in the Court the judgement of the Labour Tribunal in the case instituted by the accused revisionist against his termination order being Miscellaneous Case No. 105 of 2004, u/s 6F Industrial Disputes Act, 1947. A perusal of the said order indicates that service tribunal has rejected the application of the revisionist accused being paper No. 3D and 5D and it disposed off the objection of the company 8D and had vacated the status quo order dated 26.8.2004 passed in favour of the revisionist accused. By application dated 3D the revisionist accused had prayed before the Labour Court that status quo be maintained and the employers should be restrained from getting the residential quarter vacated by the revisionist accused who was applicant in the aforesaid proceedings before the Labour Court. Thus. the contention of the revisionist accused that there is proceedings before the Labour Tribunal, therefore, he should not be prosecuted u/s 630 of the Company Act also vanishes. Thus, the second contention of learned Counsel for the revisionist is also rejected.

22. No other point was argued before me in this revision by the either side.

23. Resultantly, this revision is dismissed and the impugned order dated 15.10.2004 passed by Special C.J.M. Meerut in Complaint Case No. 334 of 2003 as modified in appeal No. 82 of 2004 by Additional Sessions Judge, court No. 10, Meerut, vide his impugned judgement dated 7.12.2006 is hereby confirmed.

24. This order be certified to the Lower Court for its intimation.