

(1993) 12 BOM CK 0023

In the Bombay High Court

Case No : Criminal Writ Petition No. 414 of 1992

Smt. Abhilash Vinodkumar Jain

APPELLANT

Vs

Cox and Kings (India) Ltd. and others

RESPONDENT

Date of Decision : 13-12-1993

Acts Referred:

Companies Act, 1956 — Section 630

Citation : (1995) 84 CompCas 1 : (1994) CriLJ 1635 : (1994) 3 RCR(Criminal) 84 : (1994) 2 RCR(Criminal) 320

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

Bench : Single Bench

Judgement

M.F. Saldanha, J.—One more dimension concerning the ambit and scope of section 630 of the Companies Act, 1956, has been canvassed in this case. The issue is briefly summarized in the question as to whether the criminal action contemplated u/s 630 of the Companies Act for retrieval of company property or premises wrongfully withheld is maintainable against the legal heirs of a deceased employee. More exactly, the two possible situations that are illustrated are, firstly, where the employee has died in service and the legal heirs wrongfully withhold possession of the premises, and, secondly, where the employee himself, who has wrongfully withheld the premises, dies during the pendency of the section 630 proceedings and the legal heirs continue to wrongfully withhold the premises. Having regard to the fact that section 630 of the Companies Act, 1956, refers to action only against officers/employees of a company which as now clarified by the Supreme Court necessarily includes ex-employees, whether legal heirs who wrongfully withhold company property can claim that they are outside the ambit and scope of section 630 of the Companies Act and, therefore, immune from criminal prosecution. The answer in both cases is an emphatic no.

2. Simultaneously, a curious contention was raised in all solemnity and seriousness and argued threadbare with the assistance of hundreds of authorities and comparisons with the provisions of scores of other statutes in support of the

plea that section 630 of the Companies Act is discriminatory vis-a-vis employees of companies as a class and that it singles them out for penal action in cases of wrongfully withholding of property, whereas no such steps are provided for in relation to all other classes of employees and that, consequently, section 630 of the Companies Act is liable to be struck down as being ultra vires the provisions of article 14 of the Constitution of India. The petition having been admitted, at which time a speaking order was passed to the effect that the point requires consideration, I have examined it threadbare only to conclude that the challenge is thoroughly devoid of substance. Section 630 of the Companies Act incorporates a simple provision whereby a criminal court is empowered to direct the restoration of the property to the company and to impose a fine and, in appropriate cases, a jail sentence as a penalty for defaulting. The section applies to any employee of a company who commits the offence of wrongfully withholding company property and it is well-settled law that the Legislature is empowered to make separate provision for a class of such persons. The categorisation is neither arbitrary nor unreasonable and the provision does not single out one or several persons for hostile discrimination, but only prescribes a penalty for those persons who commit an offence. I see little difference between this provision of law and any other penal provision and the argument that its application to company employees as a class constitutes discrimination is illogical and untenable.

3. The Supreme Court has recently come down heavily on a class of litigation indulged in for purposes of compounding a wrongful act such as withholding of property and has specifically directed such attempts to be curbed at the threshold. To my mind, this proceeding can aptly be defined as a fake litigation on which over a hundred hours of judicial time were consumed. The trial is yet to conclude before the learned Magistrate and the proceedings have been successfully stalled for over a year, thanks to this petition. Though it is unusual to award costs in a criminal proceeding, this court is left with no option except to award exemplary costs so that this at least would act as a deterrent. Simultaneously, it is essential to issue certain directions to the trial court for prompt disposal of the case without permitting any laxity whatsoever.

4. The petitioner, Smt. Abhilash Vinodkumar Jain, has been prosecuted by Cox and Kings (I.) Ltd. for offences under sections 403, 406 and section 441 of the Indian Penal Code and section 630 of the Companies Act. The learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra at Bombay, has issued process against the petitioner and the proceeding has been numbered as Criminal Case No. 60/S of 1990. Essentially, the company contends that it is the owner of Flat No. 1102/C on the 11th floor of Kanti Apartments, Mount Mary Road, Bandra (West), Bombay-400 050, and that the flat in question is at present occupied by the present petitioner. The late husband of the petitioner, Vinodkumar Jain, was employed as the financial controller of respondent No. 1-company. It is contended by the petitioner that the flat in question was allotted to him by the company and that there was an understanding to the effect that he would be

allowed to occupy the same until the date of his retirement. Several other statements have been made in the petition along these lines which I am not reproducing because the company has seriously contested the correctness of all of them. The petitioner's husband, Vinodkumar Jain, died on October 11, 1987. He was a relatively young officer and appears to have died of a sudden heart attack. It is contended on behalf of the company that on humanitarian grounds, sufficient time was given to the petitioner to vacate the company flat and that all dues had been settled immediately. She was orally requested by the company's executives and subsequently this was followed by a written notice. Instead of vacating the premises, the petitioner filed R.A. Declaratory Suit No. 5857 of 1989 in the Court of Small Causes at Bombay and obtained the usual injunction restraining the company from dispossessing her save and except through due process of law. The company, in its turn, instituted proceedings before the criminal court through Criminal Case No. 60/5 of 1990. After process was issued and the petitioner was served, the company applied to the learned Chief Metropolitan Magistrate for expeditious hearing of the criminal case and an order dated July 14, 1992, was passed expediting the trial. Thereafter, the petitioner filed an application for stay of the proceedings before the learned Magistrate on the ground that the civil suit is pending before the Court of Small Causes at Bombay between the same parties. This stay was to be argued, but in the meanwhile, the petitioner moved this court in or about September, 1992, praying for an order quashing the criminal proceedings. The basic contention canvassed was that the petitioner is not an officer or employee or, for that matter, a past officer or employee of the company, that the entrustment of the premises was not done to her and that, consequently, the prosecution was improper and impermissible.

5. Essentially, what was contended was that the criminal proceedings even though maintainable against an employee or the ex-employee could not be directed against the petitioner since she answers neither of these two descriptions and would, therefore, have to be quashed and they are, therefore, not maintainable. Subsequently, the petition has been amended and a challenge to the vires of section 630 of the Companies Act has been included, the principal plank being that section 630 of the Companies Act is discriminatory in so far as it provides for prosecution in the case of employees of companies and no other classes of employees who may have wrongfully retained premises allotted to them in connection with their employment and that, consequently, the section is liable to be struck down.

6. When the petition came to be admitted, my brother, Shah J., passed a speaking order to the effect that the point canvassed on behalf of the petitioner requires consideration, but at the same time having regard to the character of the proceedings, namely, the fact that the accused is in occupation of premises which the company claims with some degree of urgency, the petition was made peremptorily returnable in December, 1992. As the matter could not be taken up, it was once again listed and in the month of April, 1993, the hearings

commenced. Shri Sakhardande, learned counsel appearing on behalf of the petitioner, contended that he desired to argue both the contentions that are the subject-matter of this petition in extenso in so far as the first issue, namely, the aspect of applicability of section 630 of the Companies Act to the present petitioner, who is the legal heir of the company's employee, has been the subject-matter of an earlier decision of this court and similarly the question of vires of section 630 of the Companies Act had also been raised at an earlier point of time, but it was Shri Sakhardande's contention that a perusal of those judgments will indicate that the point was not canvassed with the degree of seriousness and on the basis of the decisions which he desires to put forward. It is Shri Sakhardande's contention that the earlier decisions are not only distinguishable but that he would be able to convince this court that a different view ought to be taken in the matter. Towards this end, he has filed before me a set of nine compilations containing submissions, legal contentions, copies of decisions and extracts of the various legal provisions to which Shri Sakhardande referred in the course of his arguments. I need to compliment learned counsel for two things, firstly, the degree of industry and research that has gone into the preparation of these compilations, and, secondly, for the truly excellent presentation of the case. Nobody could have done a better job of the subject and even though, to my mind, it is not necessary to deal in extenso with all this material, I have heard learned counsel at great length for as many as twenty days and have also very carefully perused all the material produced by him before me before arriving at a decision in the matter. So outstanding was the total preparation and presentation of the case that quite apart from the compliments which Shri Sakhardande received from the presiding judge, Shri Iqbal Chagla, one of the very senior and outstanding counsel of this court who represents the respondents unreservedly stated that Shri Sakhardande deserved appreciation of the highest order. It is, indeed, a pleasure when members of the Bar research and argue a matter with such a high degree of skill on both sides. So much for the quality of the exercise; the desirability and the justification therefore at an interlocutory stage in a case where the premises have been withheld from the company for as long as six years is the more important facet.

7. Coming to the first contention raised by Shri Sakhardande, he submitted that the premises in question were allotted to the late husband of the petitioner in his capacity as an officer of respondent No. 1-company. There is also a contention in the petition to the effect that this entrustment was with the understanding that the petitioner would occupy the premises until the date of his formal retirement in 2016 A.D. Nothing has been produced in support of this contention and I would be justified in straightaway rejecting it, not because respondent No. 1-company has denied it but principally because it would be rather absurd to suggest that any company while employing a young man in his twenties would allot a company flat to him with an assurance that the occupation would continue till his date of retirement which would be about 30 years thereafter and that too regardless of whether he continues with that company or whether he survives

that entire period. Prima facie, it is impossible to accept such a contention, but in any event that issue is not very relevant for the decision of the present petition.

8. It is contended by Shri Sakhardande on behalf of the petitioner that section 630 of the Companies Act specifically empowers a company to prosecute an employee who is in possession of company property and is wrongfully withholding the same. Shri Sakhardande emphasises the fact that according to him that right of the company stood extinguished on the death of the employee, namely, the petitioner's husband. He capitalised on the fact that, admittedly, for some time thereafter the company permitted the present petitioner who is the wife to continue in occupation of the premises and it is Shri Sakhardande's contention that this grant in favour of the present petitioner constituted the confirmation of a license on her. He states that the present petitioner is, therefore, a licensee of the company independently of the allotment made to her late husband and having regard to her status, both legal and otherwise, the invocation of section 630 of the Companies Act is impermissible.

9. On the facts, Shri Sakhardande contended that after the death of the petitioner's husband, the company permitted her to continue in occupation and even if it was at the request of the petitioner, this constitutes the grant of a license within the meaning of section 52 of the Easements Act. Learned counsel has relied on the definition of the term "license" as it appears in section 52 of the Easements Act in support of this argument. I need to straightaway record that the argument itself is thoroughly misconceived in so far as the company had never granted any license to the present petitioner. It was only an indulgence or in other words reasonable time to vacate which is distinguishable from conferring on an occupant the right to occupy and stay in the premises. The transaction is clearly distinguishable and can never be stretched to make out a license having been conferred on the petitioner.

10. Shri Sakhardande relied on Halsbury's Laws of England, fourth edition, volume 27, paragraph 10, and on a decision in the case of Townsend v. Electrical Yarns Ltd. [1952] 1 All ER 918 , in support of his contention that even if the permission to occupy one's property has devolved out of humanitarian considerations, the same can be construed in law as a license. It needs to be clarified here that the circumstances under which the right of occupation was granted need to be examined and the proposition can only flow from a set of facts which are similar to the present case. Learned counsel drew my attention to three more decisions : (i) Sohanlal Naraindas v. Laxmidas [1966] 68 Bom LR 400 , (ii) Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik, , and (iii) Murray, Bull and Co. Ltd. v. Murray [1952] 2 All ER 1079 (QB) and contended that in these cases where a party had been permitted to continue in occupation, the courts had held that the same constituted a license. I have carefully considered the judgments in question and find that they were not similar on the facts. The circumstances under which the courts recorded a finding in those cases are clearly distinguishable from the present ones. In this context, Shri

Sakhardande sought to distinguish the present case from the decision in the case of Raja of Vizianagaram v. Official Liquidator, Vizianagaram Mining Co. Ltd. [1952] 22 Comp Cas 1 (Mad), wherein the learned judges have held that the act of permitting a person to occupy the flat for some extended period of time was nothing more than a mere concession which is distinguishable in law from the grant of a license. The effort is futile.

11. One cannot do violence to a legal concept and more so when it is not only defined in the statute, but interpreted time and again by legal thinkers, authors and court decisions. The crux of the matter is really that there never was any privity of contract between the petitioner and respondent No. 1-company, who are the owners of the flat. The petitioner came to occupy the premises being the wife of the company's employee. The duration of the original entrustment or allocation was co-extensor with the service period of the employee and came to an end when that contract of service was prematurely terminated on the untimely death of the employee. It was a sad event and the officers and the management of the company acted with a degree of kindness and magnanimity. Had they been insistent, they could have refused to grant the petitioner time to vacate, but in the present case, it was purely an act of goodness on the part of the company in permitting the petitioner reasonable time to shift out. It is unfortunate, to say the least, that this goodness has virtually been abused and an attempt has been made to appropriate the premises. Not only has the petitioner refused to vacate but she has dragged the company through a series of unnecessary litigations. I am constrained to observe that from the manner in which the present petition was argued almost interminably, one got the impression that the solitary object is to keep the litigation going endlessly so that the petitioner can continue occupying the premises for another decade at least. A court of law will, of necessity, have to take a serious view of the matter in these circumstances.

12. The sequitur of what was argued under this head is that section 630 of the Companies Act is inapplicable in cases where a company has granted a license to occupy in favour of a third party, i.e., a non-employee. As far as the first part of the argument is concerned, I have already held that both on the facts and in law, the contention is wholly and completely misconceived. No license was either granted to the petitioner nor can it be held that she is in occupation in her capacity as a licensee. Under these circumstances, the contention raised under this head is wholly without merit and the same stands rejected.

13. Shri Sakhardande canvassed a subsidiary argument concerning the matter of jurisdiction on the part of the Magistrate to entertain the present proceedings. He contended that the deceased husband of the petitioner was a service tenant and sought to place reliance on the decision in the case of Governor-General of India in Council Vs. Corporation of Calcutta, . Once again, I need to record that the decision is wholly inapplicable. Shri Sakhardande has thereafter proceeded to contend that since the occupation is pursuant to the creation of a service

tenancy, the exclusive jurisdiction in respect of any action concerning the same vests in the Court of Small Causes u/s 28 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. The alternative submission is that the only proceedings whereby an erstwhile service occupant of his heirs can be removed from licensed premises is u/s 41 of the Presidency Small Causes Courts Act, 1888. In this context, reliance was placed on the case of Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel, . I only need to observe that there are cases and cases and we are concerned with the facts of the present one wherein it is impossible to argue that either a license or a service tenancy was in existence. I do not, therefore, need to labour the point in so far as it is more than abundantly clear that the Court of Small Causes could have no exclusive jurisdiction to entertain a proceeding on the present set of facts. It is a case of wrongful withholding of company property simpliciter and the jurisdiction to try the case vests in the Metropolitan Magistrate before whom the prosecution was very correctly instituted. There is no ground whatsoever on which the jurisdiction of the learned Magistrate to try the proceeding can be either undermined or questioned.

14. That brings me to the more substantial part of the challenge canvassed in the present petition and, in fact, the main ground as originally urged. As indicated by me earlier, Shri Sakhardande contended that section 630 of the Companies Act speaks of and refers to any officer or employee of a company. It is his case that a plain and liberal construction of the section, which happens to be a criminal statute and which must, as of necessity, be strictly construed, would permit the prosecution of an officer or employee of the company and nobody else. Learned counsel points out that, admittedly, the petitioner is not an officer or employee of respondent No. 1-company and as such the Companies Act cannot be pressed into service against the present petitioner. Shri Sakhardande reinforced his arguments by placing reliance on a decision of the Madhya Pradesh High Court in Beharilal Gupta v. Binod Mills Co. Ltd. [1985] 64 Comp Cas 177 (MP) wherein the High Court quashed a prosecution u/s 630 of the Companies Act holding that it is not applicable to relatives of an officer or employee of a company. I need to record, however, that the case in question presented a very different situation in so far as the proceedings against the wife and nephew of the director were quashed not in the absence of the original employee but on the ground that the prosecution could not be extended to cover those persons. This distinction, to my mind, would make a substantial difference because the original employee was very much on the scene. Here, we are faced with an unusual situation where the employee has died and it is the legal heir who is in possession of the property and who is withholding it from the company. Shri Sakhardande also relied on a decision of this court in the case of Aravind Kotecha v. Mahesh Kumar Mathur [1992] CrLJ 124: [1994] 79 Comp Cas 338, wherein certain observations were made by me to the effect that section 630 of the Companies Act applies only to an officer or employee of the company and not to "third parties". This decision was subsequently set aside by the Supreme Court,

apart from which it is quite inappropriate to cite it de hors the facts. That was a case in which a director of a company fraudulently surrendered possession of a company flat and section 630 of the Companies Act proceedings were instituted against the party who had taken possession of the flat in question. The applicability of section 630 of the Companies Act to an outsider on those facts was held to be improper. That case, however, has nothing to do with the facts of the present proceeding.

15. The main hurdle in Shri Sakhardande's way is a decision of this court in the case of Abdul Quayaum Ansari v. State of Maharashtra [1990] 2 Bom CR 473: [1990] 70 Comp Cas 368 wherein Agarwal J. held that section 630 of the Companies Act applies to the heirs and legal representatives of the employee or officer of the company. While so doing, he held that section 630 of the Companies Act is not a purely penal provision and that the beneficent object of the Act and the intention of the legislation justified the giving of an extended meaning to the expression "officers or employees of the company".

16. Shri Sakhardande draws my attention to the Commentary on the Companies Act by Ramaiya, wherein at page 220, the learned author has submitted that the view in question is not correct. Learned counsel further contends that the view of Agarwal J. is not only incorrect but that it is not a binding precedent since it is per incuriam. He has cited two decisions of the Supreme Court in support of this last proposition, which are (i) Municipal Corporation of Delhi Vs. Gurnam Kaur, and (ii) State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, . The question as to whether a judgment is to be treated as per incuriam or not is an issue that I shall deal with subsequently after setting out the submissions of Shri Chagla on this aspect of the case. I do not dispute the fact that there are situations in which a judgment will have to be treated as being per incuriam. That issue is not of paramount importance, however, because this is a court of co-ordinate jurisdiction and if, for better reasons or on the basis of substantial material that was not placed before Agarwal J. a different view is possible, it is certainly open to this court to take that view. The earlier judgment is not binding on this court in that sense, though it is a judgment that is to be respected and one that would normally be followed unless there are compelling circumstances not to do so.

17. A reading of Agarwal J.'s judgment indicates that he proceeded on the footing that :

(i) Section 630 of the Companies Act is not purely penal because the main thrust thereof is on speedy recovery of the company's property by punishment.

(ii) The death of the concerned officer/employee pending prosecution does not cause abatement and the same can be continued against his legal representatives because their possession is as much wrongful as that of the prosecuted officer and they are as much liable as the officer to return the property of the company.

(iii) By a little extension of the said principle the learned judge held that death of the prosecuted officer pending prosecution does not result in the abatement thereof and entitles the company to continue with the prosecution against his legal representatives. Even after the death of the concerned officer/employee, action u/s 630 can be initiated against his legal representatives.

(iv) The learned judge undertook the exercise of liberal construction of section 630 so as not to defeat the (beneficent) object and purpose to promote the object of the statute.

18. Shri Sakhardande submitted with utmost deference to the learned judge that the aforesaid submissions are incorrect in law. As regards the first aspect, namely, the question as to whether section 630 of the Companies Act, 1956, is purely penal, he relied on the decision of the Supreme Court in the case of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, , expressly holding that the section is a penal provision. It is, therefore, submitted that section 630 of the Companies Act must be construed as being what Shri Sakhardande terms as purely penal. The logical extension of the argument being that in that case the wording of the section will have to be rigidly circumscribed to what is literally set out therein and that it would not be permissible to extend the scope under any circumstances or to widen it. The decision of the Supreme Court, referred to supra, would only assist Shri Sakhardande to the limited extent of demonstrating that the failure to return company property or the wrongful withholding thereof would have penal consequences. One needs to take note of the fact that this section does not provide for any imprisonment, but only a monetary fine and that too one limited to Rs. 1,000 as it is only if the order to restore possession is defied that the question of a jail sentence comes in. What was, in fact, pointed out by the Supreme Court and which, to my mind, is obvious is that since the jurisdiction is with a criminal court and since a fine and jail sentence could be awarded as punishment that this section of the Companies Act will have to be characterised as a penal provision, but as I have indicated above, the more apt description of the section would be to characterise it as Agarwal J. has done as being not purely penal. The Companies Act is not a penal statute and the fact that it provides for a penalty alone is really what takes section 630 of the Companies Act within the jurisdiction of a criminal court.

19. Black's Law Dictionary defines the term "penal" as punishable, inflicting a punishment, containing a penalty or relating to a penalty. The dominant intention embodied by the Legislature in section 630 of the Companies Act is an order for restoration or possession of the property which is why the punishment provided is only token and incidental. It was for this reason and, to my mind, very rightly that Agarwal J. used the expression "not purely criminal". I would prefer to describe the section as being quasi-criminal to the extent that the dominant relief permissible and, in fact, the main one, is the restoration of the property and the punishment for withholding it is the incidental part. Such provisions, though few and far between, are not foreign to criminal law and can be found for

instance in section 145 of the Code of Criminal Procedure, 1973.

20. Shri Sakhardande advanced the submission that if the proceedings u/s 630 of the Companies Act are held to be maintainable against the legal representatives of a deceased employee, it would amount to either rewriting the section or, in effect, grafting on to it something that is not contained therein. To my mind, this criticism is unjustified because through a process of legal fiction, it is the legal heir who replaces the original employee or, in other words, substitutes for him and it would, therefore, be incorrect to contend that anything is being added on to the section in place of what was not originally there. The important point to be noted here is that the legal heir is in law no different from the original employee and is, therefore, not to be equated with a third party. Furthermore, the deceased employee being the custodian of the company property so entrusted, the obligations or liabilities attached to such entrustment necessarily bind the legal heir who comes into possession of that property on behalf of the deceased.

21. Shri Sakhardande thereafter went on to contend that the cause of action abates on the death of the employee and he sought to rely on the provisions of section 394 of the Code of Criminal Procedure, 1973, which provides for abatement of appellate proceedings on the death of an accused person. I do not propose to deal with the case law cited by Shri Sakhardande under this head for the reason that we are not concerned here with abatement of proceedings because this is not a case where an employee who has wrongfully withheld possession of the premises has died during the pendency of the case and where the prosecution was sought to be continued against the original employee. In the present instance, the employee has died in service and it is the legal representative who stepped into his shoes who has committed the act of wrongfully withholding the premises and to the extent that the legal heir, namely, the wife, is acting in the position of the employee, an action u/s 630 of the Companies Act would clearly and certainly be maintainable.

22. Since the point has been raised and argued before me, I need to also deal specifically with a situation where an ex employee wrongfully withholds possession of the premises and dies before the conclusion of the proceedings. In such a situation, the question would arise as to whether the original proceedings can be continued against the legal heirs. Unlike in civil proceedings, in a criminal case there is no question of bringing the heirs on record for the reason that the prosecution itself abates on the death of the accused. If, however, instead of surrendering the premises the legal heirs continue to wrongfully withhold the premises, they would most certainly be liable to be prosecuted u/s 630 of the Companies Act. One needs to take into account the simple fact that as the legal heirs of the deceased, these persons have effectively obtained control of the company property, the character of which property has not been altered. The law makes provision for the restitution of that property to the company and it would be absurd to argue that merely because of the intervention of death a third

party, even if he/she is a legal representative, can acquire any better right to the retention of that property than what vested in the deceased. The essence of a criminal action stems from the fact that the right to retain the property has been extinguished and the accused-employee is withholding possession despite the extinction of any such legal right. The position of the heirs can be no better in these circumstances. Therefore, to my mind, it does not make any difference whatsoever as to whether the prosecution was commenced before the death of the employee or after, the legal heirs would still be criminally liable. The only distinction that needs to be made is that if the employee has died while the proceedings were on, that the same would have to be recommenced after his death, if the heirs insist on wrongfully retaining the property.

23. While dealing with the reasoning adopted by my brother, Agarwal J., Shri Sakhardande was critical of the reference made by the learned judge to the principle of liberal construction and to the fact that an extended meaning has been given to the expression "officer or employee of a company". Shri Sakhardande went on to contend that this line is fallacious because it can amply be demonstrated that the section is, in fact, penal and towards this end, he sought to place reliance on the decision of the Supreme Court in the case of *W.H. King Vs. Republic of India and Another*, ; as also on the decision of the Supreme Court in the case of *Tolaram Relumal and Another Vs. The State of Bombay*, . Shri Sakhardande placed reliance on the observations of the Supreme Court to the effect that it is not competent for the court to stretch the meaning of the expression used by the Legislature in order to carry out the intention of the Legislature. I need to record here that the two decisions, referred to supra, were cases under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, and that both the facts and the law are clearly distinguishable. Frankly, we are not, in the present instance, concerned with extending or stretching the wording of the section, but the short issue under debate is confined to deciding as to whether on the death of the officer or employee, the legal representative who substitutes for that very person is liable or not. Shri Sakhardande relied on a series of decisions, most of them being of the apex court, all the way down to *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, , wherein the Supreme Court held that those not covered by the express language of the special statute should not be subjected to the special provision by stretching the express language of the special statute. None of these cases arose under the provisions of the Companies Act and, therefore, to insist on borrowing the principle enunciated therein would not be altogether appropriate.

24. Lastly, Shri Sakhardande relied on a passage from Maxwell on the Interpretation of Statutes, 12th edition, page 239, in support of his contention. To my mind, the principle of strict construction is not to be confused with literal construction nor, for that matter, can one play with words in these situations. The interpretation and application of the law in the case of a penal statute is required to be done by the courts in consonance with achieving the end result that the law is required to achieve and towards this objective the court is required to grasp

the basic essence of that provision and give effect to it without being fettered by difficulties which words or expressions may seemingly create. That the term "officer or employee of a company" must necessarily include the heirs and legal representatives is not only a requirement of law which stems from first principles but anything to the contrary would lead to a downright frustration of the provisions of section 630 of the Companies Act, if it confers a license on the heirs or legal representatives of the wrongdoer to continue the offence for which the law would have otherwise punished the said officer or employee. The utter absurdity of the argument is further illustrated by the fact that it could never be intended that whereas the offence committed by the original employee is punishable u/s 630 of the Companies Act, the extension or continuation of that offence is immune from punishment when it is committed by the heirs and legal representatives of the very employee. I do not need to labour further in this regard and I am in total agreement with the view expressed by my brother Agarwal J.

25. The second basic head of challenge presented by Shri Sakhardande on behalf of the petitioner centres around the alleged infraction of the guarantee of equality by section 630 of the Companies Act. He has summarized his challenge under four heads as follows :

- (a) the classification of company employees thereby made by the Legislature is repugnant to article 14 of the Constitution,
- (b) the object of the impugned classification is discriminatory,
- (c) the classification has no relation with the object, and
- (d) the procedure under the impugned provisions is harsher than the one under the ordinary law.

26. I need to preface the consideration of this argument by the fact that the principles of constitutional law are now well-defined. It is true that in the course of the last 40 years, in thousands of cases, the guarantee of equality and the principle relating to discriminatory treatment has been interpreted by the Supreme Court as also by various High Courts. The canons of law are now well defined and in his effort to convince the court that the vires of section 630 of the Companies Act are seriously suspect, Shri Sakhardande has argued the matter for several days and has drawn my attention to parallel provisions in different rules, orders and Acts, to decisions, both of Indian and foreign courts, to the views of learned authors and has also advanced submissions based on the legislative history of the provision. I have not restricted the arguments of learned counsel at any stage and by virtue of change of my assignment, the judgment was required to be reserved and in the course of the last several weeks, I have very carefully re-read all the material that was placed before me under these heads. Much of it is illustrative, none of it is directly on the point and, in my considered view, the challenge itself is devoid of justification. It is, therefore, unnecessary for me to burden this judgment with a mechanical reproduction of

that material which, even if summarized, would occupy the greater part of a couple of hundred pages. I am, however, constrained to observe that the courts, particularly in this State, have noted with a degree of pain and concern that litigation of this type is invariably resorted to in different courts with the sole objective of gaining mileage and it is not unusual to come across a situation where through the assistance of such litigation the premises are wrongfully retained even for as many as 15 to 20 years. Legal ingenuity is boundless and the challenge on the ground of vires always appears very profound at the first blush. Undoubtedly, a court before which such a challenge is raised in the first instance is required to examine the challenge threadbare which I have done. Having, however, meticulously examined every aspect of this head of challenge and unhesitatingly arrived at the decision that it is totally devoid of substance, I propose to briefly summarise the salient points of the submissions and my conclusions thereon.

27. Dealing with the first aspect, namely, classification, Shri Sakhardande, through elaborate use of comparative charts and detailed references to the various provisions as also to the Indian Companies Act, 1913, sought to point out that section 630 of the Companies Act, 1956, came into force with effect from April 1, 1956. In sum and substance, Shri Sakhardande contends that under the law, remedies are available to the owner of property or premises in case of wrongful retention and that there is no justification to incorporate a penal provision only in the case of employees of companies who indulge in this particular act. Shri Sakhardande drew my attention to the fact that there are partnership firms, societies, proprietary firms, statutory corporations and Governments, all of whom have employees and that none of the other categories of employees other than those employed by companies are vulnerable to a prosecution and that, consequently, the classification itself is unjustified. Learned counsel seeks to point out that this is a special provision that hits only employees of companies and does not affect any of the other classes of employees and that the classification is, therefore, unreasonable. I do not propose to examine the case law on the subject because the argument itself is fallacious in so far as it is a well-settled principle that it is permissible to make special provisions for special categories where the Legislature considers it essential.

28. A parallel may be drawn from the fact that under the Public Premises (Eviction) Act, it is unnecessary for eviction proceedings to be adopted before any legal forum, whereas such a provision does not govern other classes of employees. These provisions are, undoubtedly, different, both in their content and effect, but they do not single out any individual or class of individuals to hostile treatment under the law nor is the method of classification irrational. An employee of a company has a status that is not comparable nor is it identical with that of all other employees and it is, therefore, perfectly permissible to make a provision that governs that class of persons. The law permits categorisation, but what the law prohibits is arbitrary or irrational categorisation and in so far as the Companies Act, which deals with all facets of the working of

a company, makes a provision in respect of retrieval of company property, one cannot read into it any shred of arbitrariness, unreasonableness or hostility. In the absence of these elements, one could go on endlessly comparing one provision of law with the other, but such differences are essential, they are necessary, they are legally permissible and they would not offend the mandate of article 14 of the Constitution of India. I am unable to agree with Shri Sakhardande when he contends that the classification is unscientific, that it is artificial or that the company employees have been mechanically grouped together.

29. Coming to the object being allegedly discriminatory, Shri Sakhardande contends that there is nothing on record to indicate as to why special treatment has been accorded as far as the retrieval of only company property is concerned. He further contends that this confers a special benefit of privilege to companies and subjects the employees to a special burden and a liability. I need only to point out that this argument virtually stretches the logic too far in the sense that there is no special benefit that is conferred on companies. What the Legislature has provided for is that in a situation where an employee, in the course of his service, is entrusted with company property, the wrongful withholding thereof can result in a prosecution. It is quite obvious that the legislative intent behind this provision was that in the case of a company, it would become virtually impossible for it to continue functioning if its property were to be wrongfully withheld by its employees. Such a situation could obviously lead to economic consequences and to the total collapse of the unit in a given situation. Obviously, therefore, it was essential to bring in a provision whereby such property could be speedily restored, for which purpose a special provision has been incorporated. There is a definite and rational justification and need for such a provision which cannot, therefore, be wrongly defined as an act of favouritism. More so, it would not lie in the mouth of an offender to contend that such a provision is wrong or discriminatory, particularly when there is a clear and definite objective and justification for it. I do not see anything discriminatory in this provision and the argument under this head will, therefore, have to be rejected.

30. I need only to deal, in passing, with the submission of learned counsel that in the absence of a rational nexus between the provision and the objective, the same will have to be struck down because the only possible answer to this contention is that the Legislature, for good reasons, thought it very essential to provide for a speedy remedy in relation to the return or retrieval of company property and this can by no stretch of imagination be categorised as irrational. Towards this end, if the Legislature provided for the resort to the jurisdiction of a criminal court, one can never categorise the provision to be devoid of containing a rational nexus to the objective. It was quite clear that the normal civil remedies which are complex and time-consuming were not intended to be resorted to in the case of company property and in sum and substance the provision of an expeditious remedy for retrieval of the company property, to my mind, completely establishes the rationality between the provisions of law and the

object sought to be achieved.

31. The essence of Shri Sakhardande's challenge on the ground of infraction of article 14 of the Constitution of India is that the impugned procedure prescribed u/s 630 of the Companies Act is harsher than the ordinary procedure and that, consequently, the provision is discriminatory. Towards this end, again, Shri Sakhardande proceeded to make good his submissions by adverting to the parallel provision applicable to other clauses of employees as also to a virtual string of cases. I have refrained from reproducing this material, though I did go through it very carefully because, in my considered view, every submission advanced by learned counsel requires to be examined with a degree of care, as it is often that an unusual angle or a novel point is presented, quite possibly one which virtually breaks new ground. Unfortunately, the basic premise on which this argument is founded is fallacious because the status of employees of different types of corporations and concerns cannot be equated with each other nor, for that matter, can the provisions of law, that govern each of these. To quote a simple example, under the Companies Act, the liability of a director is limited, whereas under the Partnership Act, the liability of a partner is immensely wider and, if Shri Sakhardande's argument were to be upheld, it could be argued that a partner is more vulnerable, that he is exposed to harsher provision and discrimination. Different classes of employees are not equally situated. The concerns that employ them are dissimilar and it is, therefore, perfectly justifiable to make provisions that are appropriate or what the Legislature considers reasonable and necessary for the management of that class or type of organisation. Section 630 of the Companies Act, to my mind, contemplates a situation that has reached epidemic proportions, particularly in the city of Bombay. The civil courts are choked up with litigation and the criminal courts, though faced with a similar situation, are able to work only marginally faster. A convenient ploy that is adopted, therefore, is to pay a nominal court fee and to institute some frivolous civil proceedings against a company and thereafter contend that unless the criminal case is stayed, the civil proceedings will be rendered infructuous. These are virtually sham arguments and this court has had occasion more than once to record that the trial courts should guard against entertaining any such pleas. The present proceeding is illustrative of a similar modus operandi where a suit is filed in the Court of Small Causes, in the first instance, and there after an application for stay is presented before the trial Magistrate and before that application could be decided, the present petition has been filed before the High Court. It is not difficult to squeeze out seemingly profound contentions in each of these proceedings in order to keep them alive, but the bottom line of the whole situation is that the law is given a go-by and the wrongdoer seemingly gets away with his acts and injustice of the highest order is done to the aggrieved party to whom, ironically enough, the justice-dispensing system is supposed to provide relief.

32. It is in this context that I fail to see any semblance of discrimination in the argument that the accused is subjected to a harsher procedure than that to

which other clauses of employees are subjected. The two situations cannot be compared nor can there be any argument with regard to the rigours of the provisions. Oftentimes, it is essential to make a provision that is in the public interest, such as the one incorporated in section 630 of the Companies Act and the grievance regarding harsher treatment or rather more rigorous action as projected by Shri Sakhardande can be fully answered by demonstrating that public servants alone, though in common parlance employees like all other classes, are governed by the provisions of the Prevention of Corruption Act and if they indulge in acts of a certain type are liable to be prosecuted, whereas other classes of employees are not subjected to such legal hazards. This would not render the law discriminatory. It is in these circumstances, and after a thorough consideration of everything that has been argued at great length by Shri Sakhardande, that I am constrained to reject the challenge in toto.

33. In reply to the contentions canvassed by Shri Sakhardande, Shri Chagla has contended with both the case law as also the arguments though with considerable brevity. I do not mean to undermine the considerable research put in and the material presented by learned counsel, both of which are of a high order, but to which it is unnecessary to advert to in any great detail. To start with, Shri Chagla submitted that the applicability of section 630 of the Companies Act to the legal heirs of an officer employee is virtually concluded by the decision of my brother Agarwal J. in *Abdul Quayaum Ansari Vs. State of Maharashtra* and another, , and that the distinctions sought to be canvassed are groundless. Shri Chagla has referred to several provisions of the English courts in support of his submission that this judgment is good law. I have had occasion to deal with that aspect of the matter earlier and I have already held that regardless of the submissions canvassed on behalf of the present petitioner, I am in agreement with the ratio laid down in that judgment. Similarly, the question of the vires of section 630 of the Companies Act had come up for consideration before this court in *Govind T. Jagtiani Vs. Sirajuddin S. Kazi* another, but there again it is the contention of Shri Chagla that the decision has set the issue at rest and that Shri Sakhardande is wrong in contending that the court hardly examined the issue. On a consideration of that judgment, I do find that, perhaps, the point was not argued in such detail as was done in the proceedings before me, but it would be wrong to contend that the court had no occasion to deal with it on the merits. Effectively, the court has considered the challenge along the same lines as was raised in these proceedings and, to my mind, that decision cannot be faulted. I have referred specifically to these two cases, principally because they effectively deal with the two main planks that are the subject-matter of Shri Sakhardande's arguments. Even though learned counsel is entitled to try and distinguish these decisions or, for that matter, to produce material and convince the court that another view is possible and even though I must say that he has made a valiant effort in this direction, unfortunately his attempts have been unsuccessful.

34. Shri Chagla has basically contended that a plain reading of section 630 of the

Companies Act indicates that it is a special provision for the expeditious retrieval of company property. This being the dominant and only purpose behind the enactment of these provisions, a court cannot permit it to be defeated because of the demise of the employee concerned. As long as one maintains an unclouded view of the intention of the Legislature, there will be no difficulty in interpreting the section very clearly and correctly and holding that the legal heir who steps into the shoes of the employee will be as much liable if the offence is sought to be continued. This court had occasion to consider the view taken by the Supreme Court in *Gokak Patel Volkart Ltd.*'s case [1991] 71 Comp Cas 403 wherein, while interpreting section 630 of the Companies Act, the Supreme Court held that the offence in question is a continuing one. On a detailed consideration of the law, this court had occasion to hold in *Hindustan Ciba Geigy Ltd.*'s case that the offence is not only a continuing one, but that it recurs from time to time which is why a fine of Rs. 1,000 per month was imposed in that matter for every month of wrongful withholding. Applying that principle, there would be no difficulty in concluding that even on the facts of the present case where the legal heir continues to withhold company property wrongfully, the action contemplated u/s 630 of the Companies Act and the penalty prescribed therein would be applicable because the offence has recurred after the death of the employee and at a point of time when the legal heir has committed it. It is in these circumstances that I considered it unnecessary to enter into any detailed discussion with regard to several other aspects of the matter canvassed by Shri Chagla and the many decisions, both Indian and English, referred to by him because all that material is essentially rendered academic in the light of the view taken by me.

35. Having regard to this position, the petition fails and stands dismissed. It is essential that certain directions be issued to the trial court in this case which principally will, undoubtedly, hold good in all such proceedings u/s 630 of the Companies Act. The jurisdiction conferred on the learned Magistrate is a special one and could, perhaps, be comparable with that u/s 138 of the Negotiable Instruments Act. All that the learned Magistrate is required to examine in such a proceeding is the question as to whether the company property has been wrongfully withheld and, if so, to pass an order for its restoration and to compute the fine payable for the period of retention and the manner of such computation as has been already laid down in *Hindustan Ciba Geigy Ltd.*'s case. This is virtually a summary procedure and even though efforts will undoubtedly be made before the trial court to complicate the issue by referring to angles and documents and material that are wholly and completely irrelevant for the decision of the proceedings, the learned Magistrate ought to take up these cases on a priority basis, restrict the scope of the evidence and the arguments to that which is strictly germane to the short issue involved and to dispose of the matter within the minimum time. I do concede that the trial courts are required to give priority to custody cases and other such criminal proceedings, but it should not be difficult for the learned Magistrates, if the aforesaid procedure is strictly adopted and if adjournments are refused on all except absolutely genuine

grounds, to dispose of complaints u/s 630 of the Companies Act within an outer limit of six months from the date on which they are filed. These cases should be specially numbered, taken up on a priority basis and summarily disposed of because experience has shown that when they are allowed to drift, as is happening till now, they linger on for anything from 5 to 10 years in the trial courts.

36. The Supreme Court recently had occasion to deal with a class of litigation that is indulged in for ulterior reasons and, while doing so, to characterise that litigation as "fake" litigation. As indicated by me, the points canvassed in these proceedings are concluded by earlier judgments of this court which are binding. These judgments are still good law and in these circumstances, there was virtually no justification to interrupt the trial except in order to gain mileage. The premises ought to have been restored to the company in the year 1987, six years have elapsed and the trial has not yet commenced in spite of an order for expedition that has been passed in these proceedings. The present petition has been prosecuted with a degree of militancy and in such detail that over a hundred hours of judicial time, which this court can scarcely afford to devote to proceedings of this type, were utilised in this exercise. Due to the change of assignment after I commenced with the hearing before the summer vacation and since I have been continuously on the Division Bench, there was no option except to hear this matter specially and the court had to specially sit on several Saturdays and holidays for this purpose. It is necessary sometimes to firmly dissuade litigants from adopting such tactics and one of them would be by saddling the party concerned with exemplary costs. Having regard to the amount of judicial time that has been expended in this matter, to my mind, the costs are required to be quantified at Rs. 25,000. The petitioner shall deposit the costs with the office of this court within a period of 30 days from today.

37. The criminal writ petition accordingly fails and stands dismissed. Rule to stand discharged. The records and proceedings if called for shall forthwith be returned to the trial court and the parties are directed to appear before the learned Magistrate on Friday, 7th January, 1994. The learned Magistrate shall fix a date for proceeding with the matter after hearing learned counsel on both sides and shall thereafter hear and dispose of the complaint on a priority basis, and, in any event, before February 28, 1994.

38. Before parting with this judgment, I need to observe that almost 40 years have elapsed since section 630 of the Companies Act was brought on the statute book. Obviously, when the penalties were originally prescribed, the type of property that is likely to be withheld, more importantly, the value of that property and, above all, the staggering loss caused to the company if the property were to be withheld over a long period of time, were aspects that had not been sufficiently highlighted. In the course of the last decade where real estate prices, not to mention compensation, have risen out of all proportion, the penalty prescribed u/s 630 of the Companies Act in cases relating to retention of

flats or residential premises can only be likened to a flea bite. Having regard to these almost innocuous penalties that are provided for, employees are emboldened to commit these offences almost with a sense of defiance and impunity. On an equation of the nature of the offence and the ingredients thereof, one sees little difference between this charge and the one u/s 409 of the Indian Penal Code. It is in these circumstances that, to my mind, it is very much in the public interest that section 630 of the Companies Act be amended and that the penalties prescribed be brought on par with those provided for u/s 409 of the Indian Penal Code. This is very much in the public interest. To quote a parallel, it is not very long ago that the Government took stock of the fact that the widespread obnoxious practice of issuing cheques that were dishonoured required to be curbed and the introduction of section 138 of the Negotiable Instruments Act and the penalty prescribed therein have had a salutary effect already. The Registrar shall forward a copy of this judgment to the Secretary, Company Law Board, as also the Secretary to the Government, Ministry of Law, Government of India, both of which authorities shall consider the recommendations made by this court and take appropriate steps thereon expeditiously.

39. After judgment was pronounced, learned counsel appearing on behalf of the petitioner advanced a submission that since the challenge in this case is confined to two pure points of law, the petitioner desires to carry the matter higher in appeal. He also pointed out to me that the petitioner is a lady, that she is a widow, and that the Supreme Court is likely to break for some time on vacation and that having regard to all these factors, stay for a period of eight weeks should be granted. Shri Vashi on behalf of respondent No. 1-company opposes the application. He pointed out that even during the pendency of this proceeding the High Court had not granted any blanket stay of the trial and, furthermore, even if the recording of evidence were to be commenced in January, 1994, the petitioner will have adequate time to move the apex court and obtain appropriate orders thereafter.

40. In the course of the judgment, I have made very specific observations which are to the effect that I have thoroughly disapproved of the stoppage of the trial at an interlocutory stage through the filing of the present proceeding. Furthermore, I have also pointed out that section 630 of the Companies Act has been specifically put on the statute book with the express purpose of ensuring efficacious and speedy retrieval of company property. These legal provisions cannot be either defeated, frustrated or put into cold storage through litigation at an interlocutory stage. Having regard to this position, the application for stay is rejected. It is, however, necessary to clarify that no prejudice whatsoever will be caused to the present petitioner in so far as the recording of evidence, arguments and decision of the proceedings before the trial court will, undoubtedly, take several weeks. The judgment has been signed by me today and copies are immediately made available. The petitioner, therefore, has adequate time to seek further legal redressal without being prejudiced by the

fact that trial is proceeding. Under these circumstances, I am not inclined to stay the operation of the judgment and, as indicated earlier, the application for stay stands rejected.