
(2000) 07 BOM CK 0046

In the Bombay High Court

Case No : Criminal Revision Application No. 135 of 1999

Tariq Razi Azmi

APPELLANT

Vs

The Tata Hydro-Electric Supply Co. Ltd. and others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Companies Act, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 397

Citation : (2000) 5 BomCR 211

Hon'ble Judges : D.K. Trivedi, J

Bench : Single Bench

Advocate : Wallodew, for M.M. Vashi, for the Appellant; Shirish Gupte, Sanjog Parab and H.N. Vakil, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Judgement

D.K. Trivedi, J.—I have heard this matter at length earlier on 5th July, 1999 and the matter was kept today high on board considering the request that the petitioner wants to submit proposal to the respondent-company for settlement even in respect of action taken against the applicant wherein the petitioner's services were terminated by the company on 30th August 1997 and for which, the petitioner workman had moved the Labour Court challenging the said action which is pending.

2. During the hearing when the matter was called out today, on behalf of the applicant, without prejudice, a proposal submitted by the applicant through the advocate to the Solicitor of the respondent company for settlement incorporating certain conditions by his letter dated 9th July 1999 and the Solicitor after consulting his clients, has communicated the reply to the said proposal vide their letter dated 12th July 1999 indicating that the proposal is not acceptable. Hence, as the proposal of the applicant was not acceptable, there is no possibility of settlement.

3. The petitioner-accused has challenged by way of filing this revision application

the judgment and order passed by the learned Addl. Sessions Judge, Thane in Criminal Appeal No. 25 of 1998 filed by the petitioner-appellant wherein dealing with the appeal of the appellant, the learned Addl. Sessions Judge, Thane, has on examining the contentions raised before him and on appreciating the oral as well as documentary evidence, dismissed the appeal of the appellant and confirmed the judgment and order of conviction recorded by the learned Judicial Magistrate, F.C., Vashi, Navi Mumbai dated 30th March 1998 passed in Criminal Case No. 562 of 1997 convicting the petitioner-accused for the offence u/s 630 of the Companies Act and ordered to pay a fine of Rs. 1000/- per month on each month during which the offence is recovered started from September 1997 until the date of restoration of possession of the premises of the Company and the accused was directed to hand over the possession of the flat within one month from the date of the order. In event of the accused committing default, accused was ordered to suffer R.I. for two years. At the hearing of this revision application, I was taken through the judgment of the learned Magistrate as well as the judgment and order confirming the conviction and sentence passed by the learned Addl. Sessions Judge, Thane.

4. During the hearing, certain judgments were cited before me viz. the judgment in the matter of Damodar Das Jain Vs. Krishna Charan Chakraborti and another, , (2) judgment in the matter of Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, . On behalf of the respondent, reliance is placed on the decision in the matter of Atul Mathur. v. Atul Kali and another, reported in 1990(68) CompCas 324.

On considering the submission and on going through the judgment under challenge, it is to be noted that the complaint was filed by the respondent against the present petitioner-accused for the offence u/s 630 of the Companies Act, 1956 giving details for the alleged offence and the said complaint was registered before the learned Court of Judicial Magistrate, F.C., Thane being Criminal Case No. 4609 of 1996. The petitioner-accused has pleaded not guilty to the charge and as per his defence, his case is of total denial. According to him, he is entitled for a flat as per the Companies Rules as he has not received any letter from the Company for revoking the agreement between him and the Company. The evidence was recorded by examining on Shri Anil Shantaram Karnik P.W. 1 at Exhibit 14. In his evidence, it is transpired that the employees who are appointed at Head Office are not given company quarters. It is also borne out from evidence that in the year 1974, the accused was given a loan for purchase of flat at Borivli and in addition, he was getting rent subsidy for the flat at Borivli. It is further transpired from the evidence that he has also produced certain documents and application of the accused submitted by the applicant dated 13th June 1998 and the undertaking of the accused dated 17th June 1988 wherein the accused has stated that the flat is required for him for two years only during that period he will make his all alternative arrangement. Even the allotment letter was given in favour of the accused for a period of two years. Even the undertaking is given by the accused wherein he has undertaken and

signed by the accused which is also produced at the instance of the said witness at Exhibit 20. The witness has also in chief admitted that the said flat was not belong to the Company but the company has taken it on care taker basis from one Mr. P.J. Namjoshi who was also an employee of the company. Shri Namjoshi was retired from the company on or about October 1996 and he requested the Company for return of the said flat. He has also produced said letter dated 30th August 1965. It is further transpired from the evidence of Shri Karnik about giving loan in favour of the accused in November 1996 for construction of house on his plot at Koparkhairne and the company has given loan of Rs. 31,000/- from the provident fund account of the accused. The witness has also stated that the accused was dismissed from service from 31st August 1997 and the termination letter is also produced on record at Exhibit 26 dated 1st September 1997. In the cross examination the defence has suggested that the flat in question is not of the company as even as per the evidence in chief the witness has in clear terms stated that the flat belongs to Shri Namjoshi which fiat was taken by the company on care taker basis. The witness has also admitted that he has no authority to initiate criminal complaint. The witness has also produced the care taker agreement entered into between the company and Shri Namjoshi at Exhibit 29. It is further found from his evidence that as per the said agreement, the said agreement was in force upto 30th June 1998 and the said agreement was also not registered and witness has further admitted in cross examination that the allotment of flat in favour of the accused is on the basis of undertaking filed by the accused. The learned Judicial Magistrate, F.C. on considering the evidence oral as well as documentary evidence and considering the provisions of section 630 of Companies Act, relied upon the decision in the matter of Smt. Abhilash Jain v. Cox & Kings India Ltd. and others, reported in 1995(4) Bom.C.R. 351 : AIR 1995 S.C 1502 and (2) in the matter of Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, , has accepted the evidence of the complainant and on considering the documentary evidence, namely the allotment letter, the undertaking of the applicant, has held that the accused is guilty for the offence for which he was tried and accordingly recorded the conviction order by imposing sentence of fine and also directed him to hand over the possession of the fiat in favour of the company. Against the said judgment and order of conviction, the accused has, preferred appeal before the learned Addl. Sessions Judge and on considering the findings recorded by the trial Court, on the basis of oral as well as documentary evidence and on considering the submission, in light of the decisions cited before him, and on considering the provisions of the Companies Act, the learned Judge has dismissed the appeal by recording the findings that the accused has withheld the flat wrongfully and illegally and thereby guilty for the offence u/s 630 of the Companies Act and even observed that no illegality is found in the judgment and order of the trial Court and accordingly dismissed the appeal. It is this judgment of the Appellate Court is challenged by the accused in this revision application.

5. I was taken through the documents on the record viz. allotment letter of flat

issued in favour of petitioner, document Exhibit 18 which was given by the applicant-accused by way of undertaking that he will hand over possession of the flat in question within the stipulated time in favour of the Company. I am conscious of the fact that the concurrent findings are recorded by both the courts below and more particularly, the document Exhibit 18 and the letter of allotment of the flat in favour of applicant clearly indicates that the flat in question was not given by way of service condition to the petitioner and the Company was entitled to get back the possession of the flat in question from the petitioner-accused. As the concurrent finding is recorded by the courts below and considering my power of revision, it is difficult for this Court to interfere with the said judgments which are based on appreciation of evidence.

6. Accordingly, this revision application fails and same is dismissed.

7. At this juncture, the learned advocate appearing on behalf of petitioner-accused has sought for stay of the operation of this order. The learned Counsel appearing on behalf of the respondent has vehemently opposed the prayer for stay and more particularly, on the ground that even as per the undertaking filed by the petitioner in favour of Company which is proved and further that as per the allotment of flat in favour of petitioner was granted for a period of two years and the petitioner is withholding the said flat unauthorisedly and in turn, the Company is required the possession of the said flat for being allotted to other employee of the Company. Considering the request for stay of the operation of this order as the petitioner wants to challenge this order in Apex Court, this request for stay is required to be entertained by giving some reasonable time and accordingly, this order is stayed upto 15th August 1999.

8. Revision Application dismissed.