

(2004) 11 AP CK 0094

In the Andhra Pradesh High Court

Case No : Criminal R.C. No's. 1760 to 1771 of 2004

Tatineni Venkata Krishna Rao

APPELLANT

Vs

K.C.P. Sugar and Industries Corporation Ltd. and Another

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Companies Act, 1956 — Section 630
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2005) 1 APLJ 149 : (2006) 133 CompCas 422 : (2005) 106 FLR 60 : (2007) 74 SCL 123

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Prattipati Venkateswarlu, for the Appellant; K. Ravindra Kumar and Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—This batch of revision cases, having common features, arises from a common point of significance in relation to the offence u/s 630 of the Companies Act, 1956 (for short "the Act") and its interpretation and hence, they have been heard and disposed of together.

2. The brief facts of these revision cases are as follows:

3. The petitioners are the employees of the first respondent-corporation and were allotted quarters to occupy the same for the convenience of the work. As per the terms and conditions, the petitioners have a right to stay during their tenure of employment or till their allotment is terminated by a notice either oral or in writing by the corporation. When the petitioners illegally participated in the strike and did not resume the work in spite of repeated demands made by the first respondent, they were dismissed from the service as per Clause 26 of the Standing Orders of the first respondent. On such dismissal, they have no right to continue to withhold the possession of the quarters of the first respondent and

hence, they were directed to vacate their respective quarters forthwith by notice, dated February 27, 2001. In spite of notice, instead of vacating the quarters, the petitioners continued in occupation of the property and approached the Industrial Tribunal for appropriate relief. Hence, the first respondent filed a petition before the Special Judge for Economic Offences, Hyderabad, for eviction of the petitioners under the provisions of Section 630 of the Act. After taking into consideration the oral and documentary evidence, the learned Special Judge came to the conclusion that the complainant/first respondent proved its case against the accused for the offence u/s 630 of the Act and the accused were sentenced to pay a fine of Rs. 1,000 each, in default, to undergo simple imprisonment for three months each and they were also directed to vacate the premises and hand over the possession of the quarters to the complainant/first respondent within one month from the date of the said judgment, failing which, the accused have to undergo simple imprisonment for a period of three months each and also directed to pay usual rental charges for such occupation.

4. Aggrieved by the same, all the accused preferred appeals before the Metropolitan Sessions Judge, Hyderabad, contending that they are workmen of the complainant/first respondent and since they raised industrial disputes before the Industrial Tribunal, which are pending, order of eviction will cause hardship to them as they are residing therein with their family members. The learned Metropolitan Sessions Judge after elaborately going through the facts of the case dismissed the appeals confirming the conviction and the sentence passed by the learned Special Judge for Economic Offences, Hyderabad, and directed the accused to vacate the quarters within one month from the date of the judgment, if they are not already vacated. Aggrieved by the same, the present revision cases are filed.

5. Learned counsel for the petitioners/accused contends that Section 630 of the Act does not attract for due eviction of the petitioners and hence, the complaints filed by the first respondent are liable to be dismissed and the petitioners/accused are entitled for acquittal.

6. It is convenient to consider the said submission in the context of Section 630 of the Act and a decision of the apex court in Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, .

7. Section 630 of the Act reads as hereunder:

Section 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.

8. In the above case the first respondent had taken on lease a flat in a building and the same was allotted to N.K. Jalan, in his capacity as director of the company. A1 and A2 are the son and daughter-in-law of N.K. Jalan and A3 is the son of A1 and they were in occupation of the premises after the death of N.K. Jalan. The company purchased the flat and filed a criminal complaint u/s 630 of the Companies Act against A1 who is the son of N.K. Jalan and Ors. and it was stayed in a company petition and finally, the Magistrate issued process against the accused. Aggrieved by the same, the accused moved an application for recall of the process issued against them and for their discharge and the same was rejected by the Metropolitan Magistrate, Mumbai. Thereafter, they preferred the petition u/s 482 of the Criminal Procedure Code and under Article 227 of the Constitution of India in the High Court of Mumbai challenging the process issued against them contending that they cannot be prosecuted u/s 630 of the Act and the complaint filed against them is an abuse of the process of the court and it is liable to be quashed and the said petition was dismissed.

9. The apex court in paragraph No. 6 held that 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 and authorized by the Act. The object of enacting the section is that the property of the company is preserved and is not used for 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 relying various earlier judgments, viz., in Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, wherein the apex court at paragraph 7 held that (page 520 of 114 Comp Cas):

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 his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy.

10. The Supreme Court further disagreeing with the observations in J.K. (Bombay) Ltd. v. Bharti Matha Mishra 2001 104 Comp Cas 424 : 2001 2 SCC 700 while approving the view expressed in Smt. Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd. 1995 84 Comp Cas 28 : 1995 3 SCC 732 wherein it is held that

(page 529 of 114 Comp Cas)

The object of Section 630 of the Act is retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employee or officer or anyone claiming the occupancy through such employee or officer. The view expressed in Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, clearly sub-serves the object of the Act, which is to the effect of recovering the possession of the property belonging to the company.

11. Held, the view expressed in Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, is justified and should be accepted in interpreting the provision of Section 630 of the Act.

12. In view of the same, the submission made by learned Counsel for the petitioners that the quarters, which were allotted to the petitioners, would not come within the purview of the property possessed by the first respondent cannot be accepted. It is strenuously argued that all the petitioners who are not the employees of the company, but only the workmen cannot be evicted inasmuch as the employees of the company can only be evicted. I see no force in the said submission.

13. The very fact in the employment cards of all the employees disclose that all of them are the employees of the first respondent, which include clerical, workmen or others for all purposes including for the purpose of payment of gratuity.

14. In view of the foregoing discussion, I am of the view that the impugned judgments do not require any interference of this Court. Hence, all the revision cases are liable to be dismissed.

15. Accordingly, these criminal revision cases are dismissed.