

(1987) 01 MAD CK 0060
In the Madras High Court
Case No : Criminal M.P. 8801 of 1986

V. Balasubramanian	Vs	APPELLANT
The E.I.D. Parry (India) Ltd.		RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

Companies Act, 1956 — Section 630

Citation : (1987) 01 MAD CK 0060

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; V. Nataraj, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Natarajan, J.—The accused in C.C.304 of 1988 on the file of the Judicial First Class Magistrate, Cuddalore has preferred this petition under S.482, CrI.P.C., to quash the proceeding against him. The facts which are necessary for the disposal of the petition are briefly as follows:-The petitioner herein was employed as a greaser in the mechanical department attached to the respondent factory, and during the course of employment, he was allotted a residential quarters bearing door No. 5 Moral Labour Quarters. The Petitioner had ceased to be an employee of the company and hence he has no right to continue to occupy the premises and he is wrongfully withholding the property without delivering the property to the complainant. Hence the complaint was filed under S.630 of the Indian Companies Act. It is further stated that the offence committed by the petitioner-accused is a continuing offence and hence there is no limitation. The Magistrate took cognizance of the case and ordered further proceeding. The petitioner, who is the accused, has preferred this petition, for quashing the said complaint on the following grounds. According to him, as against the order of termination of service, industrial dispute has been raised in I.D.320 of 1984 before the Third Additional Labour Court, Madras, and it is part-heard. It is further stated that Mr. G. Selvaraj, Secretary of the respondent company, is not

authorised by the Company to file the complaint and as such the complaint filed by him ought not to have been entertained by the Court. There is no Board's Resolution authorising him to file the complaint on behalf of the company. It is further stated that the complaint filed under S.630 of the Companies Act, is not maintainable since he is legally in possession of the same and hence he has not committed any offence. The further ground for quashing is that the complaint is motivated and it is filed only with a view to prevent him to prosecute I.D.320 of 1984, and the dispute is essentially of civil nature. On the other hand it is the contention of the respondent that even though the petitioner challenged the order of discharge by raising a dispute before the Third Additional Labour Court, Madras, in I.D.320 of 1984, admittedly as on the date of the complaint the petitioner is not an employee of the respondent. Once a workman is discharged or terminated from service, he should hand over possession of the quarters so allotted to him by the company and on failing to do so, he would be liable for the prosecution under S. 630 of the Companies Act, and the respondent company had right to initiate action under S. 630 of the act after giving notice to the petitioner. It is further submitted that the complainant is authorised by the Company to file the complaint as he is an occupier of the factory and he is also a power of attorney holder of the company and he is authorised to sue and be sued in any court of law. He has been duly authorised to exercise such power. It cannot be said that the institution of the complaint by him is not valid. It is reiterated that since the petitioner was permitted to use the property of the company during his employment and since he retained the same after termination, his act amounts to wrongful withholding and his action is an offence under S. 630 of the Act.

2. It is not in dispute that the petitioner was employed as a greaser and he was allotted the quarters by virtue of the order dated 24th February, 1982, as seen from the photostat copy of the order produced along with the petition, on a monthly rent of Rs. 10. Cl. 4 of the said order directs that any employee occupying a company's house must vacate such a house within 14 days of his ceasing to be employed by the company. It is the admitted case of both the parties that the service of the petitioner was terminated from 1st February, 1984, and in respect of the same, proceedings are pending in I.D. 320 of 1984, before the third Additional Labour Court, Madras and that it is part-heard. Since the petitioner failed to vacate the premises after his ceasing to be an employee in spite of the notice, the complaint has been filed.

3. S. 630 of the Companies Act reads as follows:--

630. Penalty for wrongful withholding of property:--

(1) If any officer or employee of a company.....

(a).....

(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 authorised 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 one 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.

3. This section has been the subject-matter of the decisions reported in H.L. Gidwani v. Achyur Kashinath Wagh 1982 52 C.C. 1, and Govind T. Jagtiani v. Sirajuddin S. Kazi 1984 56 C.C. 329. In H.L. Gidwani v. Achyur Kashinath Wagh 1982 52 C.C. 1, the scope and applicability of S.630, Companies Act were dealt with and it was ultimately held:

...Such obtaining of possession may even be rightful and yet, the withholding may be wrongful-- by any yardstick and on any premises, therefore, an act of wrongfully withholding any property of the Company would squarely apply even to a past employee or officer of the company, entailing into a penal consequences within the meaning of S. 630(1) (b) of the Act.

In that decision, the scope of S. 482, CrI.P.C., was also considered with reference to the earlier decisions in R.P. Kapur Vs. The State of Punjab, , State of Karnataka Vs. L. Muniswamy and Others, , and Hareram Satpathy Vs. Tikaram Agarwala and Others, , and ultimately it was held that the learned Magistrate rightly took cognizance of the Offence and issued process and there was no scope for quashing under S. 482, CrI.P.C. a Govind T. Jagtiani v. Sirajuddin S. Kazi (1984) 56 C.C. 329 it was held:

S. 630 applies not merely to existing officers and employees of a company but also to ex-employees and ex-officers. The features and deduction which flow logically and inescapably on an analysis of S. 630 are that--(i) Cl. (a) of S. 630 is self-contained and independent of Cl. (b) with the capacity of creating penal liability embracing the case of an existing employee or officer of the company (ii) Cl.(b) is equally independent and distinct from Cl. (a) as regards penal consequences squarely covering the case of a past employee or officer; (iii) The entitlement of an officer to the property of the company is contingent on the right and capacity of the officer by virtue of his employment which is transformed into actual possession of the property and the duration of such right would be conterminous with the terms of employment. Therefore, the capacity, right to possession and duration of it being features integrally, blended with the termination of the employment, the capacity and the corresponding right are extinguished with the obligation to hand over the property back to the company. If the property is held back, the retained possession would amount to wrongful withholding of the property of the company. While the existence of the capacity, right and possession would be during employment, the withholding may be even after the termination of the employment and though the possession as it

precedes the act of retention or withholding may be rightful in the past affording an opportunity to withhold. The Legislature has employed deliberately the word "or" which joins Cls. (a) and (b) of S.630 (1) and the commencing words of Cl. (b) namely "having any such property in his possession" make it manifest that the Legislature has itself contemplated a situation where the property might be in the possession of a person not necessarily contemporaneous with the possession under Cl. (a) which is in the present tense, and the use of the words "any such property" in sub-S. (e) of S. 630 also furnish a clue, prequalifying the existence of three further contingencies of wrongful withholding and knowingly misapplication and this is merely to tag a label or characterise the property as belonging to the company.

Ultimately the application for quashing was dismissed holding that S. 630 of the Companies Act cannot be held to be ultra vires Art. 14 of the Constitution, that the challenge to S. 630 is not sustainable and that the ex-employee has been rightly prosecuted for withholding possession of the property. The object of the section was also considered in the said decision as one to control the administration and protect the property of the company and if any officer or employee wrongfully withholds the property belonging to the company there is nothing illegal to provide such a provision to protect the properties of the company and it is clear that there is a rational relation to the subjects sought to be achieved by the Act. The Learned Counsel for the petitioner mainly contended that it is essentially of a civil nature. In view of the fact that the withholding of the premises of a company by an ex-officer or ex-employee is an offence, it cannot be said that it is a Civil dispute as contended by the Learned Counsel for the petitioner. Learned Counsel for the petitioner also contended that under S. 23, I.P.C, wrongful gain and wrongful loss have been defined and that the mere retention of the property after termination of his service would not come under the said definition. The definition of wrongful gain and wrongful loss in S. 23, I.P.C., would not apply to the instant case, as under S. 630 of the Companies Act, wrongfully withholding the property itself is an offence. The question of causing wrongful loss or getting wrongful gain does not arise. Hence, I do not find any merit in the said contention.

4. Next it was submitted by the Learned Counsel for the petitioner that the respondent-complainant kept quiet for two years and thereafter the complaint was filed with a view to prevent him prosecuting I.D. 320 of 1984 pending before the Third Additional Labour Court. It has to be noted that if once it is held that the petitioner is liable for prosecution under S. 630. Companies Act, for wrongfully withholding the property after ceasing to be an employee of the company, the mere fact that there was a delay on the part of the respondent to file the complaint cannot be said to be a mala fide act, and in any event, the delay itself is not a ground for quashing the complaint against him. Learned Counsel for the petitioner relied on the decision reported in *Sharda Prasad v. State of Bihar* 1. 1977 L.W. (CrL.) 16 (S.N.) : AIR S.C. 1754 where it was held:--

It is now settled that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under S. 482, CrI.P.C., to quash the order passed by the Magistrate taking cognisance of the offence.

I do not think that the ratio laid down in the said decision is helpful to the case of the petitioner, as in the instant Gait, it cannot be said that there are no allegations to constitute an offence under S.630, Companies Act. On the other hand, necessary allegations are alleged in the complaint and the Magistrate has rightly taken cognisance of the offence. Learned Counsel for the petitioner also submitted that there is no definition for the word "employee" in the said Companies Act. Learned Counsel also submitted that in State Vs. Girdharlal Bajaj and Another, it has been held that the word "employee" means an employee as such and not an ex-employee or past employee or a person whose contract of service has been put an end to. The said decision is not applicable to the facts of this case. The above quoted decision relates to the right of an employee to see the Bank's receipt for moneys or securities referred to in Ss.417 and 418, Companies Act and in that context it was held that an ex-employee has no right to demand inspection of securities in which provident funds are invested. Even in the said decision it was held--

The first and cardinal rule of construction of a statute is to give effect to the words of the statute; but it is only in exceptional cases, where there is any doubt or difficulty as to the interpretation of the statute or any word thereof, that the court can legitimately look to the object of the enactment or the purpose for which it was made.

On going through the relevant provision of S.630, Companies Act, and its objects, it cannot be said that an employee, whose service is terminated and who wrongfully withheld possession of the property of the company, is not liable for the prosecution under S.630, Companies Act. It is also contended on behalf of the petitioner that the complaint under S.630, Companies Act can be taken cognisance of only subject to S.621, Companies Act, and that the complaint ought not to have been taken cognisance of by the Judicial First Class Magistrate, since it was not the complaint filed in accordance with S.621 of the Companies Act. It is to be noted that S.621, Companies Act would come into play only in respect of the offences under this Act by the Company or any officer thereof. The proviso to S. 621 makes it clear that the right of the company to prosecute any of its officers is not affected by this section. Hence, I am of the view that S. 621 has no application to the proceedings instituted by the Company under S. 630 against its employee and as such, there is no force in the said contention also. For all these reasons, I am of the view that the action of the petitioner, who was admittedly permitted to occupy the property during his employment, in not vacating the premises after termination of his employment would certainly amount to wrongful withholding which would attract the prosecution under S. 639 Companies Act I am in agreement with the view expressed in H.L. Gidwani v.

Achyut Kashinath Wagh (1982) 52 C.C.1 and Govind T.J. Jagtiani v. Sirajuddin S. Kazi (1984) 56 C.C. 329. Hence, I am of the view that the petition is liable to be dismissed.

6. In the result, the petition fails and stands dismissed. However, in view of the representation made by the Learned Counsel for the petitioner that the proceeding in I.D. No. 320 of 1984, before the Third Additional Labour Court, Madras, has almost come to an end and there is no likelihood of the final disposal within a month or two the proceedings before the Judicial First Class Magistrate, Cuddalore in C.C. 304 of 1986 is hereby stayed for a period of three months from the date of this order and after expiry of the period the Magistrate is directed to proceed with the trial of the case.

7. The First Additional Industrial Tribunal, before whom I.D. 320 of 1984 is pending, is directed to dispose of the matter within six months from this day.