

V.M. SHAH

A

v.

THE STATE OF MAHARASHTRA AND ANR.

AUGUST 25, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

*Companies Act, 1956 : Section 630.*

*Company—property of—Withholding by employee—Prosecution for—Conviction by Criminal Court—Civil Court's finding that employee had independent tenancy rights and not through company—Held until set aside by Appellate Court the finding recorded by Civil Court get precedence over findings of Criminal Court—Conviction under section 630—Held unsustainable.*

C

**Respondent 2-Company instituted proceedings against its appellant-employee under section 408 of the Indian Penal Code and Section 630 of the Companies Act, 1956 on the ground that the latter had failed to deliver possession of the flat which was given to him during the course of his employment. The Trial Court convicted the appellant under section 630. The appellate Court confirmed that conviction but altered the sentence. The High Court confirmed the order of the appellate Court.**

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**During the pendency of the criminal proceedings, the Company filed a suit in the small Causes Court for eviction of the appellant, pleading that the Company had tenancy rights in the flat in question which was given to the appellant in lieu of his services on leave and licence basis. Consequently upon his resignation he was enjoined to deliver possession of the flat to the Company. The appellant contested the suit on the ground that he was not in occupation of the flat as employee of the Company but had independent tenancy rights. Rejecting the Company's case, the Trial Court dismissed its suit and held the appellant had proved that he had independent tenancy rights. Against this order, the Company preferred an appeal, and it is pending.**

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**In appeal to this Court on the question whether the appellant's conviction under section 630 was sustainable :**

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**A Allowing the appeal, this Court**

**HELD : 1.** It cannot be said that the appellant has been in wrongful possession of the property entailing his conviction and punishment under section 630 of the Companies Act and requiring handing over of the possession of the flat. [84-D]

**B**

2. The civil court after full dressed trial, recorded the finding that the appellant had not come into possession through the company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and, if so warranted, reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the criminal court, in particular, in summary trial for offences like the one under section 630. The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the civil court; and neither the finding of the civil court gets disturbed nor the decree becomes inoperative. [83-H; 84-A-C]

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**E**

*Baldev Krishna v. Shipping Corporation of India Ltd.*, AIR (1987) SC 2245; *Atul Mathur v. Atul Kalra & Anr.*, [1989] 4 SCC 514; *Gokak Patel Volkart Ltd. v. D.G. Hiremath & Ors.* JT (1991) 1 SC 376 and *M.S. Shriff v. State of Madras*, AIR (1954) SC 397, referred to.

**F**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1011 of 1995.

From the Judgment and Order dated 28.4.95 of the Bombay High Court in Crl. No. 1222 of 1995.

**G**

Santosh Hegde, P.K. Dey, Ms. Rani Jethmalani and A.A. Khan for the Appellant.

V.P. Vashi and K.J. John for the Respondents.

The following Order of the Court was delivered :

**H**

Leave granted.

This appeal by special leave arises from the judgment and order dated April 28, 1995 by the Bombay High Court in Criminal Application No. 1222 of 1995. The appellant had joined the services of M/s. Rallis India Ltd. on March 10, 1965. He had occupied a residential flat at Morena No. 11, M.C. Dhanuka Road, Bombay. He resigned on July 15, 1986. The Rallis India Ltd., the second respondent ('the company' hereinafter), initiated proceedings in January, 1987 against the appellant under s.408 IPC and s.630 of the Companies Act for the continued occupation of the appellant in the said flat. The Magistrate, by his order dated October 12, 1994, found the appellant guilty of offence under s.630 of the Companies Act and directed restitution of the flat. On appeal, the Session Judge partly allowed it by his Judgment dated March 20, 1995, altering the sentence while confirming the conviction. The High Court confirmed the same by the impugned order.

The primary question in this case is whether the conviction under s.630 of the Companies Act sustainable? We have heard the counsel on both sides. Pending criminal proceedings, the Company laid L.E. & C. Suit No. 104/126 of 1989 in Small Causes Court, Bombay for eviction of the appellant. The case set out in the plaint and evidence adduced in proof of the issues framed therein was that the Company had tenancy rights in the flat. Consequently upon joining the service, the appellant was inducted into possession. On his resignation and acceptance thereof, he ceased to be an employee of the Company. Consequently, the appellant is enjoined to deliver possession of the premises to the Company but he failed to do so.

The case set up by the appellant and evidence adduced in proof thereof was that there is no jural relationship between the appellant and the Company. He is not in occupation of the premises in his capacity as an employee of the company. He is a tenant under Mr. Badani and others on a monthly payment of rent to his landlord. The Company had surrendered the tenancy rights in the flat to the owners due to dilapidation of the building etc. Thereafter, the appellant occupied the flat and was in possession thereof as a direct tenant with the landlords.

The trial court after considering the entire evidence recorded the findings by his judgment and decree dated June 9, 1995 holding that the Company failed to prove that they are the tenant in respect of the suit premises. They had not given the premises to the appellant under leave

A and licence agreement, as pleaded by them in the plaint. The Company failed to prove that the appellant is a licensee of the suit premises. It also failed to prove that the premises were given to the appellant in lieu of his services. On the other hand, the appellant proved that he is a monthly tenant of the premises with the landlords Badami etc. Accordingly, the suit was dismissed. We are informed that an appeal has been filed before the bench of Small Causes Court and it is pending.

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D Sri Santosh Hegde, learned Senior counsel for the appellant, contended that whatever may be the findings recorded by the criminal court and affirmed by the High Court on the liability of the appellant to deliver possession to the Company by operation of s.630(1) of the Companies Act, they are no longer tenable in view of the findings recorded by the Civil Court. Therefore, the orders passed under s.630(1) of the Companies Act is illegal and unsustainable. Sri Maisty, learned counsel for the Company, contended that the findings of the small Causes Court are contrary to the evidence and clearly unsustainable. In view of the concurrent findings recorded by the criminal courts for offence under s.630(1) of the Companies Act, the order passed thereunder does not become illegal. Therefore, the appellant is liable to be ejected and needs no interference under Art. 136 of the Constitution.

E In *Baldev Krishna v. Shipping Corpn. of India Ltd.*, AIR (1987) SC 2245, this Court considered the scope of sub-s.(1) of s.630 of Companies Act and held that an officer or an employee of a Company who obtains possession of any property of the Company during the course of his employment, to which he is not entitled but for employment, if he does not deliver possession of such property to the Company, after termination of his property to the company, he would be in wrongful possession of such property. Therefore, the existence of the relationship of employer and employee is a condition precedent of an employee. If the Company, having any property of the Company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles of company and authorised by the Companies Act, he will be liable for the punishment under s.630.

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H In *Atul Mathur v. Atul Kalra & Anr.*, [1989] 4 SCC 514, another bench of this Court, held that because of mere pendency of a suit in a civil court it cannot be said that the civil court is in seizin of the *bona fide* dispute

between the parties, and as such the criminal court should have stayed its hands when the Company filed a complaint under s.630 of the Act. Such a view would lead to miscarriage of justice and render s.630 ineffective. Dispute regarding claim of property between Company and its employee depends upon facts in each case. Merely because Company's claims to possession was refuted by the employee, it would not amount to bona fide dispute. The criminal court, therefore, would be entitled and competent to proceed with the enquiry on the complaint filed on behalf of the Company and decide the matter according to law.

*Gokak Patel Volkart Ltd. v. D.G. Hiremath and Ors.*, JT (1991) 1 SC 376 is also relied on Sri Maistry. Therein, the question was whether the failure to deliver possession and the wrongful withholding of the property would be a continuing offence? This Court held that failure to deliver possession or wrongful withholding the property would be a continuing offence and period of limitation must be counted accordingly.

*M.S. Shariff v. State of Madras*, AIR (1954) SC 397 is also pressed into service. Therein, this Court held that as between the civil court and the criminal proceedings, the criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility of conflicting decisions in the civil and criminal Courts is not a relevant consideration. Law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant except for certain limited purposes, such as sentence or damages. The only relevant consideration is the likelihood of embarrassment. Another relevant factor to be noted is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should await till everybody concerned had forgotten all about the crime. Public interest demands that criminal justice should be swift and it should ensure that the guilty is punished while the events are still fresh in public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case may make some other course more expedient and just. Therefore, each case had to be considered on its own facts.

As seen that the civil court after full dressed trial recorded the

- A finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negated. Until that finding is duly considered by the appellate Court after weighing the evidence afresh and if it so warranted reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the trial court, in particular, in summary trial for offences like the one under s.630. The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial Court and neither the finding of the civil court gets disturbed nor the decree becomes inoperative.

- D In these circumstances, we are clearly of the opinion that it cannot be held that the appellant has been in wrongful possession of the property entailing his conviction and punishment under s.630 of the Companies Act and requiring handing over of the possession of the flat. The appeal is accordingly allowed. No Costs.

T.N.A.

Appeal allowed.