

Baldev Krishna Sahi

Vs

Shipping Corporation of India Limited and Another

Special Leave Petition (CRI) No. 1765 of 1987

(A. P. Sen, B. C. Ray JJ)

17.09.1987

JUDGMENT

SEN J. –

1. The Companies Act, 1956, by section 630, enacts :

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 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.

2. The only question involved in this special leave petition is as to the scope and effect of sub-section (1) of Section 630 of the Act. The controversy is as to the meaning of the term 'officer or employee' used in sub-section (1) of Section 630 and as to be the meaning of the words 'any such property' in clause (b) thereof and there is a conflict of opinion between the High Courts of Calcutta and Bombay on the question. On a literal construction of the term 'officer or employee' occurring in sub-section (1) of Section 630 of the Act, the High Court of Calcutta in *Amritlal Chum v. Devi Ranjan Jha* ((1987) 61 Com Cas 211) held that it refers only to the existing officers and employees of a company. It also held that the words 'any such property' in Section 630 (1)(b) relate to property specified in clause (a) viz. property of a company wrongfully taken possession of by a present officer or employee of the company. The High Court of Bombay, on the other hand, has placed a beneficent construction on the provisions contained in Section 630 and, according to it, the term 'officer or employee' in sub-section (1) of Section 630 must be interpreted to mean not only the present officers and employees of a company but also to include past officers and employees of the company. It is also of the view that the words 'any such property' in clause (b) qualify the words

'any property of a company' appearing in clause (a). That has been the consistent view taken by the High Court of Bombay in a series of cases. See : Harkishin Lakhimal Gidwani v. Achyut Kashinath Wagh ((1982) 52 Com Cas 1), Govind T. Jagtiani v. Sirajuddin S. Kazi ((1984) 56 Com Cas 329) which have since been followed in a series of cases referred to by the learned Single Judge (Ashok Agarwal, J.)

3. The issues involved in the special leave petition are of considerable importance to the corporate sector as many of the business organisations, both in the public as well as the private sector, are required to provide residential accommodation to their officers and employees as a condition of their service to attract better talent and have of necessity to purchase residential flats in multi-storeyed buildings in large cities and towns for the use of such officers and employees during the course of their employment, and the question is whether the provisions contained in sub-section (1) of Section 630 which provide for the launching of a prosecution against an officer or employee of a company for wrongful possession of such property under clauses (a) and (b) of sub-section (1) of Section 630 and for the recovery of such property by the issue of process under sub-section (2), also extend to past officers and employees of the company and whether the court trying the offence has the power to issue process under sub-section (2) against such officer or employee. At the conclusion of the hearing we had by a short order dismissed the special leave petition and held that the view expressed by the learned Single Judge following the earlier decision of the High Court in Harkishan Lakhimal Gidwani ((1982) 52 Com Cas 1) and reiterated in Govind T. Jagtiani ((1984) 56 Com Cas 329) was to be preferred to the view to the contrary expressed by the High Court of Calcutta in Amritlal Chum ((1987) 61 Com Cas 211). As the respondent, Shipping Corporation of India, a public sector undertaking, was in dire need of the flat in question which is situate in a posh locality like the Cuffe Parade in Bombay, for the use of its senior executives, we could not accede to the request of learned counsel for the petitioner to refer the case to a Bench of three Judges and heard learned counsel for the parties at quite some length on August 27, 1987, and dismissed the special leave petition. The reasons therefore follow.

4. At the very threshold, it is necessary to set out a few facts. The petitioner, Baldev Krishna Sahi, was an Under Secretary to the Government of India in the Ministry of Shipping and Transport and on May 21, 1974, accepted employment as Joint Manager in the Mogul Line Limited, a Government of India undertaking, after obtaining release from government service. He was first allotted service quarter. In 1975 the company purchased a spacious flat, being flat No. 151 in Jolly Maker Apartment III at 119, Cuffe Parade and the petitioner being the seniormost executive was allotted the flat for his residence. The petitioner retired from the service of the company on or about September 30, 1984. Prior to that, i.e. On September 26, 1984 he addressed a letter requesting the company to permit him to continue to live in the company's premises during the period of his accumulated leave after his retirement, i.e. for a period of six months, undertaking to vacate the flat as early as possible. It appears that the company on humanitarian grounds acceded to this request and permitted the petitioner to stay on in the company's flat for six months after his retirement and in accordance with the company's rules, he was required to pay compensation for the use of the premises. After the expiry of the said period of six months, the company addressed a letter dated April 26, 1985 requesting the petitioner to vacate the premises stating that if he failed to do so, he would be liable to pay higher compensation as per the company's rules. Since the petitioner failed to vacate the flat, the company initiated proceedings for his eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The estate officer by order dated December 2, 1985, directed the eviction of the petitioner. The petitioner carried an appeal to the City Civil and Sessions Court, Bombay but the same was dismissed by the Principal Judge, City Civil Court, by his order dated January 16, 1986. He then preferred a revision to the High Court and the High Court by

its order dated January 28, 1986 allowed the same, set aside the eviction order and directed the Estate Officer to give a personal hearing to the petitioner. Instead of availing of that opportunity, the petitioner on March 3, 1986 moved the High Court by a petition under Article 226 of the Constitution and obtained ad interim stay of the proceedings before the Estate Officer. A few days thereafter, i.e. On March 7, 1986 the petitioner instituted a suit being Civil Suit No. 1382/86 in Small Causes Court, Bombay seeking a declaration that he was a tenant of the disputed flat, which is now pending.

5. In view of this, the company was constrained to lodge a complaint against the petitioner under Section 630 of the Act in the Court of the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay, alleging that he was wrongfully withholding the flat in question which had been given to him for his residence during the period of his employment and thereby committed an offence punishable under Section 630. The learned Magistrate by his order dated May 22, 1986 took cognizance of the complaint against the petitioner and directed issue of process. On June 30, 1986 the company merged with the Shipping Corporation of India and all its assets and liabilities were taken over by the Corporation. The Corporation in the counter-affidavit, inter alia has pleaded that there is acute shortage of housing accommodation in the Metropolitan City of Bombay and it becomes necessary for the Corporation with a view to attract good talent to provide suitable housing accommodation to its officers and employees, and that due to acute financial liquidity, it is not possible for the Corporation to buy property in Bombay for this purpose. It is further pleaded that the petitioner was given the flat for his residence during the period of his employment and that he was bound to vacate the same after his retirement. It is asserted that the petitioner with a dishonest intention is wrongfully withholding the flat and has instituted false and frivolous proceedings with the ulterior object of protracting and delaying the eviction proceedings. We are informed that the petitioner has been deliberately and dishonestly withholding the flat covering an area of 1750 square feet in Cuffe Parade which is a posh area, valued at approximately Rs. 30 lakhs and putting it to his own use contrary to the terms of his employment.

6. The first and foremost argument of learned counsel for the petitioner is that the provision contained in Section 630 of the Act is a penal provision and therefore must be subject to a strict construction and there is no room for intendment. It is submitted that on a true construction, the scope and effect of the section was limited to such property of the company which was wrongfully obtained by an officer or employee of the company. Emphasis was placed upon the words 'any such property' in clause (b) of sub-section (1) for contention that clause (b) does not stand by itself but is inter-connected with clause (a) and therefore both clauses (a) and (b) must be read together. In essence, the submission is that sub-section (1) of Section 630 of the Act makes it an offence where any officer or employee of a company wrongfully withholds possession of such property of the company. Secondly, it is contended that the Legislature never intended to include past officers and employees of a company within the ambit of Section 630 of the Act which provides for prosecution of an officer or employee of a company for wrongfully withholding the property of the company inasmuch as it has used different language where it was so intended, namely, in Section 538 and 545. The entire argument of learned counsel is based upon the judgment of the High Court of Calcutta in Amritlal Chum case ((1987) 61 Com Cas 211). We are afraid, we find it difficult to subscribe to the narrow construction placed by the High Court of Calcutta on the provision contained in sub-section (1) of Section 630 of the Act which defeats the very purpose and object with which it had been introduced.

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.

8. Section 630 of the Act which makes the wrongful withholding of any property of a company by an officer or employee of the company a penal offence, is typical of the economy of language which is characteristic of the draftsman of the Act. The section is in two parts. Sub-section (1) by clauses (a) and (b) creates two distinct and separate offences. First of these is the one contemplated by clause (a), namely, where an officer or employee of a company wrongfully obtains possession of any property of the company during the course of his employment, to which he is not entitled. Normally, it is only the present officers and employees who can secure possession of any property of a company. It is also possible for such an officer or employee after termination of his employment to wrongfully take away possession of any such property. This is the function of clause (a) and although it primarily refers to the existing officers and employees, it may also take in past officers and employees. In contrast, clause (b) contemplates a case where an officer or employee of a company having any property of a company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. It may well be that an officer or employee may have lawfully obtained possession of any such property during the course of his employment but wrongfully withholds it after the termination of his employment. That appears to be one of the functions of clause (b). It would be noticed that clause (b) also makes it an offence if any officer or employee of a company having any property of the company in his possession knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. That would primarily apply to the present officers and employees and may also include past officers and employees. There is therefore no warrant to give a restrictive meaning to the term 'officer or employee' appearing in sub-section (1) of Section 630 of the Act. It is quite evident that clauses (a) and (b) are separated by the word 'or' and therefore are clearly disjunctive.

9. The High Court of Calcutta in *Amritlal Chum* case ((1987) 61 Com Cas 211) obviously fell into an error in seeking to curtail the ambit of Section 630 (1)(b) by giving a restrictive meaning to the term 'officer or employee' which must take its colour from the context in which it appears. The whole object of enacting sub-section (1) of Section 630 is the preservation of the property of a company by the creation of two distinct offences by clauses (a) and (b) which arise under different sets of circumstances, and it would be rendered nugatory by projecting clause (a) into clause (b). There is also no warrant for the construction placed by the High Court of Calcutta on the words 'any such property' occurring in clause (b) as applicable to such property of a company, possession of which is wrongfully obtained by an officer or employee of the company i.e. refers to the whole of clause (b). According to the plain construction, the words 'any such property' in clause (b) relate to any property of a company as mentioned in clause (a).

10. Section 630 of the Act plainly makes it an offence if an officer or employee of the company who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment. By a curious process of reasoning, the High Court of Calcutta in *Amritlal Chum* case ((1987) 61 Com Cas 211) held that Section 630 of the Act applies only to the existing officers and employees and not to those whose employment has been terminated. In somewhat similar facts, an officer of Messrs Jardine Hendersons Limited who

had been placed in possession of a furnished flat in premises No. 27, Ballygunj Park, Calcutta as a condition of his service, wrongfully retained possession thereof after ceasing to be an officer of the company. The question was whether he had thereby committed an offence punishable under Section 630 of the Act. N. G. Chaudhuri J. speaking for himself and G. C. Chatterjee J. held that the opening words of sub-section (1) of Section 630, namely, 'if any officer or employee of a company' qualify 'the acts of delinquency' specified in clauses (a) and (b) thereof. He further held that the High Court of Bombay was in error in laying down in Govind T. Jagtiani case ((1984) 56 Com Cas 329) that for purposes of prosecution, clause (a) of Section 630 (1) was referable to existing officer or employee of a company, while clause (b) was wide enough to include former or past officer or employee of the company inasmuch as on a plain reading of the section, the two clauses do not permit different interpretations, as suggested. Further whenever the framers of the law in their wisdom thought it proper to bring within the mischief of the provisions of the Act former officers or employees of a company, they did not hesitate to do so and they expressly legislated. In particular, the learned Judge referred to Section 538 which provides for prosecution for offences by officers of companies in liquidation and uses the expression 'a past or present officer of a company, etc.', as also Section 545 which provides for prosecution of delinquent officers and members of a company during the course of winding up and uses words 'any past or present officer etc.'. Upon that basis, he observed that there was no reason to give a twisted and laboured interpretation to the provisions of Section 630 of the Act which its plain reading does not permit. The learned Judge also referred to the words 'any such property' in clause (b) as taking in the property mentioned in clause (a) i.e. property wrongfully obtained. The reasoning of the learned Judges does not bear scrutiny and renders clause (b) of Section 630 (1) wholly redundant.

11. It is the wrongful withholding of such property, meaning the property of the company after termination of the employment, which is an offence under Section 630 (1)(b) of the Act, as rightly pointed out by V. S. Kotwal J. in Harkishin Lakhimal Gidwani v. Achyut Kashinath Wagh ((1982) 52 Com Cas 1). The facts were also identical as here. The petitioner there was the General Manager of a company known as the English Electrical Company of India Limited, a company incorporated under the Companies Act, 1956 having its registered office at Calcutta. He had been allotted the premises of a flat, approximately 3500 square feet in area, located at Mayfair Gardens, Little Gibbs Road, Bombay. He had been inducted into the flat only by virtue of his capacity as the General Manager of the company's branch office at Bombay but the company allowed him to retain the same on humanitarian grounds for a short period after his retirement to enable him to find alternative accommodation. This humanitarian and charitable consideration shown by the company was reciprocated by the petitioner by adopting an adamant attitude and he declined to vacate the same on one pretext or another. The question was whether such wrongful retention of the flat amounted to an offence under Section 630 of the Act. The court repelled the contention that Section 630 of the Act applies only to the existing officers and employees of the company and not to former officers and employees, and that the phrase 'any such property' used in clause (b), even though clauses (a) and (b) are separated by the word 'or' which must in the context in which it appears be read as 'and' and so construed, must mean withholding of property wrongfully obtained by an existing officer or employee. Kotwal, J. on a careful analysis of Section 630 held that the provisions of the section apply not only to the present officers and employees of the company but also to past officers and employees, and observed :

It is held that the features and deductions which flow logically and inescapably on an analysis of Section 630 are that : (i) clause (a) of the section is self-contained and independent of clause (b) with the capacity of creating penal liability embracing the case of an existing employee or officer of the company. (ii) Clause (b) is equally independent and distinct from clause (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 the actual possession of the property and the duration of such right would be coterminus with the terms of employment.

In Govind T. Jagtiani v. Sirajuddin S. Kazi ((1984) 56 Com Cas 329), Kanade, J. followed the critical analysis of Section 630 made by Kotwal J. as above, and observed that the entitlement of an officer to the property of the company and the duration of such right would be coterminus with the terms of employment and the right would stand extinguished with the termination to the employment giving rise to an obligation to hand over the property back to the company, and observed :

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 withholding may be wrongful in the present case.

The learned Judge (Ashok Agarwal J.) observes that that has been the consistent view of the High Court and has referred to the subsequent decisions of Khatri J. and Kurdukar, J. In our considered opinion, the construction placed by the High Court on the provisions contained in Section 630(1) is the only construction possible. We accordingly uphold the view of the High Court of Bombay that the term 'officer or employee' of a company applies not only to existing officer or employees but also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property, or (b) having obtained such property during the course of his employment, withholds the same after the termination of his employment. The decision to the contrary of the High Court of Calcutta in Amritlal Chum case ((1987) 61 Com Cas 211) does not lay down good law and is overruled.

12. In the result, the special leave petition must fail and is dismissed with costs. The petitioner is given one month's time to vacate the premises failing which the respondents will be at liberty to take such proceedings as the law provides. We direct the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay, to proceed with the trial of Criminal Case No. 76/S/1986 and dispose it of as expeditiously as possible and in any event, not later than four months from today.

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