

Jagdish Chandra Nijhawan

Vs

S. K. Saraf

Criminal Appeal No. 353 of 1989

(G. T. Nanavati, S. P. Kurdukar JJ)

27.11.1998

JUDGMENT

NANAVATI, J. -

1. This appeal arises out of the judgment and order passed by the High Court of Calcutta allowing Criminal Revision No. 624 of 1986 and setting aside the order of discharge passed by the Court of the Judicial Magistrate, Alipur, in Criminal Case No. C/194 of 1985. The learned Magistrate had discharged the appellant on the ground that the complaint filed by the respondent and the material on record disclose that the dispute is really of a civil nature.

2. Sometime before 29-4-1983, the appellant retired as Chairman and Managing Director of Andrew Yule & Co. Ltd. ABC Products Ltd. (for short "ABC") desired to employ him as its President and put him in overall charge of management. It, therefore, entered into an agreement with the appellant on 29-4-1983 and appointed him as the President. Under the agreement, the appellant was to be provided with rent-free furnished flat described in the Schedule to that agreement. ABC Consultants (P) Ltd., stated to be a sister concern of ABC, was the lessee of that flat. As the ABC wanted to employ the appellant as the President, it requested ABC Consultants (P) Ltd. to grant to it and the appellant permission to use and occupy the said flat. On 29-4-1983, ABC Consultants (P) Ltd. granted that permission with a condition that the appellant was allowed to use it till he remained with ABC. The appellant joined ABC on 16-5-1983 and was put in possession of the said flat. On 1-11-1983, ABC passed a resolution appointing the appellant as Managing Director of the Company. The terms and conditions of appointment were as mentioned in the draft agreement prepared in that behalf. The appellant's term under the said draft agreement was for a period of 5 years from 1-11-1983. On 21-1-1985, the Company Law Board approved the appointment of the appellant as Managing Director not for the full term of 5 years but for 11 months only. The decision of the Company Law Board was communicated to the appellant on 5-2-1985. On 11-3-1985, he was again informed by ABC that in view of further limited extension of his term by the Company Law Board, he is treated as having ceased to be the Managing Director of the Company w.e.f. 1-10-1984 and as his employment thus stood terminated, he was called upon to hand over possession of the flat to it. As the appellant did not comply with the request, ABC lodged a complaint on 12-7-1985 through its Commercial Manager, Mr Saraf against the appellant for offences punishable under Section 630 of the Companies Act, 1956 and Sections 406, 408 and 409 of the Indian Penal Code. ABC also filed a suit on 9-12-1985 against the appellant for recovery of possession of the flat. On 6-1-1986, the learned Magistrate discharged the appellant holding that the dispute between the parties is of a civil nature. It was against that order that ABC filed a revision petition before the High Court.

3. The High Court held that the material on record discloses a prim facie case under Section 630 of

the Companies Act and, therefore, the learned Magistrate acted illegally in discharging the accused. As regards the charge under Sections 408 and 409 IPC, the High Court was of the view that prima facie, the Company has not made out any case of criminal misappropriation or criminal breach of trust, warranting frowning of a charge under Sections 406, 408 and 409 IPC. With this observation, it has left that question open for consideration by the learned Magistrate. Taking this view, the High Court allowed the revision application, quashed the order of discharge and remanded the case back to the learned Magistrate for disposal in accordance with law.

4. Mr R. F. Nariman, learned Senior Counsel appearing for the appellant, contended that the High Court has misconstrued the nature of the allegation made in the complaint and it has wrongly held that the said complaint and the material on record prima facie disclose that the appellant is wrongly withholding the property of the complainant-Company. After going through the material on record and the judgment of the High Court, we are of the view that the High Court should not have interfered with the order of discharge passed by the learned Magistrate.

5. It is not in dispute that the appellant was put in possession of the flat pursuant to the agreement dated 29-4-1983. The agreement discloses that the appellant joined ABC mainly because he was offered a flat in "Travail Court". That becomes apparent from the conditions contained in paras 6.1, 6.1.1, 7.2, 7.2.1 and 7.2.4 of the agreement and the assurance obtained by the appellant from ABC Consultants (P) Ltd. before joining. The relevant paragraphs of the agreement are as under :

"6.1 In case the date of termination be earlier than 30 months from the date of commencement, then :

(i) If such termination be at the instance of the Company, then the employee and/or the employee's wife shall continue to enjoy rent-free accommodation during their respective lives but only until the employee takes up any other profession, vocation or business;

(ii) If the termination be due to the resignation of the employee, then the employee shall within 30 days from the date of termination hand over to the Company vacant possession of the said flat together with all fixtures and fittings;

(iii) In the event of the death of the employee or in case the termination be due to physical or mental disability of the employee, the employee and/or his wife shall continue to enjoy such rent-free accommodation on the same terms and conditions as contained in clause (i) hereinabove;

6.1.1 In case the date of termination be after 30 months from the date of commencement, then, irrespective of the reason of such termination, the employee and his wife shall be entitled to rent-free accommodation during the period of their natural lives; but only until the time the employee takes up any other employment, business, profession or vocation.

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7.2 Regarding the flat :

7.2.1 It is clarified that extending accommodation by the Company as stipulated hereinabove is one of the primary considerations due to which the employee has agreed to take up the Company's employment and the same is and shall be the essence of the contract.

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7.2.4 In case, however, the Company loses the right of tenancy and/or occupancy of the said flat due to any reason whatever and the employee and/or his wife continue to be entitled to the benefit thereof in terms hereof, then in such event, the Company shall arrange an alternative accommodation of a similar nature, locality and covered area for the employee and/or his wife."

6. Though the initial appointment of the appellant was as President of ABC, subsequently by mutual consent he was appointed as Managing Director of ABC. The appellant's tenure as the Managing Director came to an end as the Company Law Board agreed to his appointment for a limited period only. The appellant had neither resigned nor taken up any employment elsewhere. It is also not alleged that he had started any business, profession or vocation. It was ABC which informed the appellant that his employment stood terminated with effect from 1-10-1984. Therefore, prima facie, sub-para (i) of para 6.1 would apply to the facts of this case. The contention raised on behalf of ABC that when the appellant became the Managing Director of ABC, he should be deemed to have resigned as the President of ABC does not prima facie appear to be correct. We are not dealing with this aspect any further as the civil suit filed by ABC against the appellant is still pending and we do not want our observations to prejudice the case of either party. We only say that the trial court was right in holding that the dispute between the parties is of a civil nature and that in view of the facts and circumstances of the case, it is not possible to say that the appellant has wrongfully withheld the property of ABC in his possession. An important circumstance which came into existence meanwhile is that the appellant purchased the flat from its owner on 12-11-1984 and has thus become an owner of it. It is also significant to note that ABC was not the lessee of the flat and except for the permission granted by ABC Consultants (P) Ltd. to it and the appellant, it has no right, title or interest in that flat. ABC Consultants (P) Ltd. has not chosen to revoke the licence in favour of the appellant or take any action against him. In case of the appellant ceasing to be entitled to occupy the flat, ABC has prima facie no right of occupying or using it independently. All these material aspects have not been properly appreciated by the High Court. Therefore, the judgment and order passed by the High Court deserves to be set aside.

7. We, therefore, allow this appeal, set aside the order passed in Criminal Revision No. 624 of 1986 and restore the order of discharge passed by the Court of the Judicial Magistrate, Alipur, in Criminal Case No. C/194 of 1985.