BOMBEY HIGH COURT

Harkishin Lakhimal Gidwani

Vs.

Achyut Kashinath Wagh

Criminal Revision No. 494 of 1980

(V.S. Kotwal, J.)

11.09.1980

JUDGMENT

Kotwal, J.

1. This proceeding depicts rather a lamentable picture when a systematic attempt is being made to linger on the proceeding which otherwise requires an immediate attention and it also has an equally disturbing feature that a responsible officer of a company wants to take an absolutely unjustified advantage of the situation resting his claim on the niceties of technicalities.

2. The three termini which figure prominently in this proceeding are : (i) the company, (ii) the premises, and (iii) the employee of the company. The company is known as the English Electric Co. of India Ltd., a public limited company incorporated under the Companies Act, 1956, having its registered office at Calcutta and branch office functioning at Veer Nariman Road, Bombay - 20 (shortly called as "the company"). The premises in question comprise of a flat approximately 3,500 sq. ft. in are located at Mayfair Gardens, Little Gibbs Road, Bombay, and the third terminus is the petitioner who was at one time in the employment of the said company in its branch office at Bombay. The proceeding revolves around these three terminii.

3. The petitioner was appointed as the manager of the Bombay branch of the company some time in the year 1963. In his capacity as such, that is the manager of the company, he was allowed to enter into and use the said flat situate at Little Gibbs Road, Bombay, on and from 16th November, 1963, with a clear stipulation under the service conditions that the was to remain on the said flat only as long as he continued to be in the employment of the company, whereafter, he was enjoined to hand over vacant possession of the same to the company. The company at all relevant times and continues to be the lessee of the said premises which are owned by the New India Assurance Co. The company has been regularly paying all the rental charges and permitted increases to the tune of Rs. 1,157.80 per month and some other amounts were also paid to the

petitioner by way of servant's allowance. The petitioner continued to be serving the company in that capacity up to 30th June, 1978, on which date he retired from the service on attaining the age of 58 years. Thus, by 30th June, 1978, he was enjoined to vacate the said flat which was in his possession and to hand over vacant and peaceful possession thereof to the company. However, the petitioner took a very adamant attitude and put forth an excuse or a pretest and declined to vacate the premises. It appears, in the meantime, that by way of concession and only on humanitarian ground, the petitioner was allowed to remain on the premises for a short period so as to enable him to make arrangements for alternative accommodation and even then, this humanitarian and charitable consideration by the company was reciprocated by the petitioner in a most uncharitable and unfair manner by declining to vacate the premises on any count and at any time. There ensued some correspondence between the parties to which incidentally reference would be made at the proper juncture, when even after giving ultimatum to him, the petitioner stuck to his attitude and declined to vacate the premises, that the company was ultimately obliged to knock the doors of the court of law by filing a complaint in the Court of the Metropolitan Magistrate, 14th Court, Girgaon, which is subject-matter of criminal case No. 11/S of 1979, under Section 630 of the Companies Act, 1956 (shortly called as "the Act") on 18th December, 1978.

4. The learned Magistrate after taking cognizance of the said complaint and after observing the required formalities, issued process under Section 204, Criminal Procedure Code, for the offence under Section 630 of the Act, in response to which the petitioner-accused appeared in the court. The trial merrily on for some time without there being any progress though the matter did require some urgent attention.

5. However, it is after a considerable lapse of time that on 23rd May, 1980, the petitioner for the first time moved the trial court by an application praying for a discharge on the ground that no prima facie case has been made out. The learned Magistrate negatived the contention mainly on two counts, namely, that the case was a summons triable proceeding and, as such there was no question of discharge of the accused. On the second count, it was held that prima facie, Section 630 of the Act would be squarely applicable to the facts of the present case. In keeping with these findings, the said application of the petitioner was dismissed by the learned Magistrate on 27th June, 1980.

6. It is this order that is being impugned in this proceedings on behalf of the petitioner. It may be mentioned at this juncture itself that the revisional jurisdiction of this court is sought to be invoked by the petitioner as the petition is filed as a criminal revision application and the prayer made therein is that the complaint be dismissed. It is only during the course of the hearing of the matter that Sri Vakil, the learned counsel for the petitioner, made an oral motion that this should be treated in addition as proceeding under Section 482, Criminal Procedure Code, invoking the inherent powers of his court. However, no formal amendment was made, much less, any statement was added in the petition even thereafter at any time. By itself, it would be enough not

to accede to the request of the learned counsel, but, however, as the interest of justice is more paramount, I allowed the learned counsel for the petitioner to advance his submissions on that footing also when the ultimate prayer for quashing of the proceeding was made by the learned counsel.

7. It is pertinent to note and observe that the fact is not disputed about the petitioner being in possession of the flat and continues to be in such possession, wherein he was inducted only by virtue of his capacity as the manager of the company's branch officer in Bombay and further in spite of the company's requests and persistent demands, possession of the said premises has not been given by the petitioner, who still continues to reside in the said premises even after his retirement which was on 30th June, 1978. It may also be incidentally observed that the company has incur quite a substantial amount towards this flat and the more pertinent feature is that the company is required to allot the flat either to the successor of the petitioner or any other officer of the company.

8. Sri Vakil, the learned counsel for the petitioner, has strenuously submitted that this is a fit case either for dismissing the complaint or for quashing the proceeding under the inherent powers of this court. According to the learned counsel, notwithstanding the admitted person about the flat in question being in the contented possession of the petitioner, no prima facie case has been made out to proceed against the petitioner and that the issue of the process and continuation of the proceeding would amount to an abuse of process of law. Sri Vakil further submitted almost as a primary weapon in his armoury of contentions that, inasmuch as the petitioner ceased to be in the employment of the company, at the relevant time and at least on the date when the complaint was filed in the court, his client could not come within the clutches of the mischief as contemplated by Section 630 of the Act and further elaborated that the said provision will apply only to an existing officer of employee of the company and not to a past or ex-employee. He further submitted that the company may pursue the normal remedy for eviction if they so desire. An attempt was also made to submit that the recitals in the complaint indicate that the petitioner was allowed to continue in the premises on account of which the complexion is likely to be changed as it cannot be said that in that event the premises were wrongfully withheld by the petitioner.

9. Sri Modi, the learned counsel on behalf of the respondent-complainant, came out with equal force and clarity, repelling the contentions of the other side. He submitted that it is apparent even from a plain reading of the provisions of Section 630 of the Act that it would cover the situation as at hand, meaning thereby that if the company's flat is allotted to its officer while he is in service with an obligation to vacate the same on his going out of the company's employment and if he withholds the same even thereafter, then, he would certainly be liable under clause (b) notwithstanding that on the date of the complaint or the demand he may be out of employment. He also submitted that in fact in the instant case, even assuming otherwise, the company had demanded possession of the flat on the eve of the petitioner's retirement from serve or at any rate synchronizing with the moment of his retirement, and as such there can be no hurdle in his way.

He also submitted that the correspondence ensued between the parties would completely destroy the petitioner's claim that any fresh agreement was entered into between the parties under which his way on the premises was extended. He also submitted that the course of events in the trial court when after a lapse of time the accused asked for a discharge obviously indicates the inner desire entertained by the petitioner any how prolong the matter so as to postpone the evil day. He has also taken me through the various provisions to substantiate his claim.

10. As stated at the threshold, the main bone of contention revolves around the interpretation, of Section 630 of the Companies Act and once that hurdle is crossed, then, there is hardly any difficulty in arriving at a just conclusion of this proceeding. To recapitulate, the petitioner got possession of the flat in November, 1963, and he retired on 30th June, 1978, and thereafter, he has continued to stay in the flat completely declining to hand over possession. Admittedly, in the year 1963, not only he was in the employment of the company but he was inducted in the premises only by virtue of his capacity as the manager of the company and to that event was annexed a stipulation that he would be enjoined peacefully vacate the premises immediately on his retirement or his going out of service on any other count. The petitioner does not claim any right on his own to the said flat and the recitals in the complaint are clear that such conduct on the part of the petitioner would amount to wrongful withholding where under obviously a wrongful loss is being caused to the company who have been and are spending large amounts on the said flat and are further handicapped by not getting its possession so as to accommodate another officer, and causing wrongful gain to the petitioner when he is withholding the same without even any semblance of right. In that context, the more germane question that crops up for consideration is whether the said provisions of the Act would embrace a situation as in the instant case vis-a-vis an officer or an employee of the company who is out of employment at the material time though he may have obtained possession during the course of his employment. For a proper understanding and appreciation of the controversy in that behalf, it would not be out of place to reproduce the provisions of Section 630 of the Act as :

> "630. (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 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 withheld or knowingly misapplied, or in a default, to suffer imprisonment for a term which may extend to two years."

11. This section corresponds to Section 282A of the old Act which does not contain much

variations and I will have an occasion to refer to that part also. Relying on these provisions contained in Section 630 of the Act, Sri Vakil, the learned counsel for the petitioner, has very strenuously submitted that a harmonious reading of all the clauses contained therein must lead to the only conclusion that those will apply to only to an officer or employee of the company whose capacity as such continues to exist and would not apply to a past officer or ex-employee and he has also submitted that the legislative intent is reflected in the deliberate employment of certain terminologies not only in this provisions but also in other provisions which by a simple process of contrast, the legislative intent cant be brought on the forefront. The learned counsel submitted that whenever the Legislature wanted to embrace in the clutches of the said provision not only an officer or employee but also a past officer of an ex-employee, the Legislature did not hesitate to clarify that position in that provision itself and, therefore, contends the learned counsel, that by virtue of this contrast, it becomes manifest that the non-employment of the words "ex or past officer or past employee or the company", would make it clear that this provision would apply only to the existing officer or employee of the company. The learned counsel also submitted further that as the provision contained not implicitly but in express terms a penal consequences, then a strict construction is called for and it was the further plank of his submission that if at all a doubt exists then in respect of a penal statute or penal provision, it must be resolved in favour of the accused. He has also relied on the terminology "any such property" as contained in clause (b) of the said provision, on the basis of which a superstructure was sought to be built by the learned counsel which, with due respect to the learned counsel, has absolutely no basis. The learned counsel in substance submitted that though Clauses (a) and (b) of sub Section (1) of Section 630 of the Act are jointed by the word "or", it should in reality be read as "and". This was obviously to land in to a further argument that the terminology used in clause (b) must be read in consonance with that used in clause (a). To clarify this submission, the learned counsel contended that under clause (a) a situation is envisaged when an officer or employee will come in to the purview of this provision if he wrongfully obtains possession of any property of the company. This, according to the learned counsel, is one of the contingencies and not in its entirety. The further plank of his submission is more relevant to be considered as it was harped upon time and again. The learned counsel submitted that the phraseology "any such property" in clause (b) would mean the property as described in clause (a) and on the basis of this, the learned counsel wanted to read clause (b) as : "Having obtained possession of any property wrongfully" and it is in this manner that the term "any such property" was sought to be equated with the said terms contained in clause (a). The learned counsel also tried to rely on sub-Clause (2) of the said provision to bolster up his proposition.

12. Sri Modi, the learned counsel for the respondent, has with equal ability and force placed the other part of the coin which according to him is not only extremely harmonious but is the only natural consequences which must flow logically out of plain reading of the provision. Sri Modi submitted that the phrase "any such property" used in clause (b) refers to the last part of clause (a) which characterizes or describes the property and a combined reading of the said clauses would mean that what is contemplated by the term "any such property" in clause (b), is

tantamount to say, and is equated with the character of the property, that is to say, the property of the company. According to him, a distorted version of this provision was sought to be made on behalf of the petitioner which not only does not flow naturally and logically, but is so distortive that even at the cost of making violence to the language of the provision, the same cannot be harmonious with the words and phraseology used therein. Sri Modi, therefore, submitted that even without going into the legislative intent as the matter stands, as it is entirely free from doubt, and admitting of no other inference, a logical interpretation must be made with the resultant consequence that two contingencies are envisaged by the said provision which are separated by Clauses (a) and (b) and this separation is brought to the forefront by the deliberate user of the word "or" and non-user of the word "and". The learned counsel, therefore, submitted that clause (a) embraces a situation where an officer or employee obtains possession of the property of the company in a wrongful manner and that by itself is an offence and is also complete in itself. It is the second contingency that is embraced by clause (b) which may be de hors of clause (a) in so far as the words "wrongfully obtains" are concerned and the actual assistance that is required to be borrowed from clause (a) would be restricted only to the last clause phrase, namely, "any property of the company". The learned counsel, therefore, submits that the term "any such property" used in clause (b) precisely is to be equated with the term "any property of the company" in clause (a) and Sri Modi, therefore, submitted that this only characterised and identified the property and to accept the interpretation suggested by Sri Vakil would have practically disastrous results.

13. Before going to the other irregularities vis-a-vis recognized canons of interpretation of statutes, it would be desirable and essential to solve this riddle - if of course it can be so solved by a plain reading of the section - and if one is able to arrive at a firm conclusion without distorting the phraseology used or even without going into the legislative intent, then, that meaning which logically flows must be attached to the said phraseology and which, in turn, would mean that they would have been the only legislative intent apparent on the face of the record. It would, therefore, be in the fitness of things to have a marshalling of the said provision in its proper perspective.

14. The qualifying sentence which governs both the clauses relates to an employee or officer of the company. This means that it indicates the person who can commit the mischief as contemplated by the said two clauses. As per clause (a) it envisages the possession of a property. Further, the said property is characterized in terms labeling it as the property of the company and, lastly, the mode of obtaining the said possession is qualified by the first word, meaning thereby that it must have been obtained wrongfully. The dictionary meaning of the word "wrongfully" is to the effect that it has a meaning contrary to law and justice and it is in contrast with the word "unlawfully" and it has been observed that the said word "wrongfully" has a much broader and stronger meaning than the word "unlawfully". A wrongful act is also defined as any act which in the ordinary course will infringe upon the rights of another to his damage. Therefore, a conjoint reading of clause (a) would mean that an officer or employee of the company would make

himself liable under this provision if he wrongfully obtains possession of any property of the company. The reading of this sentence by itself is complete even if one dissects the clause which includes the noun and the verb, meaning thereby that the person is identified, the property is characterized and the act is also clarified. It is also important to note that the terminology is used in the present tense and, therefore, contemplates a situation were an officer or employee of the company wrongfully obtains such possession of the property of the company.

15. As stated earlier, the Legislature has deliberately employed the word "or" which joins the two Clauses (a) and (b) and its purpose is reflected in clear terms if one marshalls the provisions contained in clause (b) and it would leave no manner of doubt that apart from the purpose, this clause also embraces a situation which may be different from the one contemplated by clause (a). To start with, the commencing words are rather eloquent which read as under :-

> "having any such property in his possession," it is manifest that a situation is contemplated by the legislature itself that the property might be in the possession of person which may mean not necessarily co-terminus with the possession contemplated by clause (a) which is in the present tense.

To put in other words, clause (b) envisages that possession might have been obtained in the past and not necessarily on the day in question which is obviously in contrast with the phraseology used in clause (a). A separate entity or existence of clause (b) is again made manifest by a further reading of the said clause which contemplates that after having possession of such property, a further act is done by the officer, then only he will come within the clutches of the said clause and the said further act consists of two items : (1) wrongfully withholding of the property, or (2) application of the same knowingly to purposes other than those expressed or directed in the articles and authorized by the Act. Therefore, again a conjoint reading of the entire phraseology would mean in no uncertain terms that it embraces a situation where the property possession of which has been obtained in the past, still can be the subject-matter of an offence on account of certain overt act perpetrated by the officer if he willfully withholds the said possession or knowingly misapplies it. This is obviously in contrast to clause (a) which speaks at the bare minimum that it possession of the property is wrongfully obtained then also an offence can be said to have been committed. It is in this context that the user of the word "or" connecting the two clauses is very eloquent.

16. As stated earlier, Sri Vakil wants us to equate the terms "any such property" in clause (b) with the phraseology "wrongfully obtained possession" employed in clause (a). If this interpretation is upheld, then clause (b) would read as :

> "Having any such property in his possession and that possession is wrongly obtained and then wrongfully withholds it or knowingly applies to purposes other than those expressed in the articles..."

17. In the first instance, there will have to be the user of the term "in possession" more than once. However, making some charitable allowance in favor of the interpretation suggested by Sri Vakil, to put it at the minimum, the entire clause (b) would read as :

> "If any officer or employee of the company having any property of the company in his possession which was wrongfully obtained, wrongfully withholds it or knowingly misapplies it to purposes other than those expressed in the articles. ..."

18. Even on a plain reading, the irrational dent and the hollowness of the said claim can be exposed. Apart from involvement of making extreme violence to the language of the provision, even the resultant phraseology makes an absolutely irrational and illogical reading. That reading would mean that the property has, at the inception, got to be obtained wrongfully and having obtained such wrongful possession of the property of the company, there should have been a further wrongful withholding of the said property or its knowingly in application against the directions contained in the articles. In my opinion, such a proposition, for manifestly obvious reasons, cannot be accepted even for a moment.

19. As against this, Sri Modi is justified in submitting that it is the last phrase of clause (a), namely, "any property of the company" which would be embraced by the term "such property" employed in Clause (b), and if that submission is accepted then, in my opinion, the entire, so-called riddle is solved in a most simple manner and clause (b) in its entirely would read as :

> "If any officer or employee of the company having any property of the company in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed in directed in the articles and authorized by the Act, he shall on the complaint by the company be punishable. ..."

20. Really speaking, in my opinion, it hardly requires any further comments as the submission made by Sri Vakil vis-a-vis the interpretation of this clause is not only brittle but has absolutely no foundation. It is rightly contended by Sri Modi that there will have to be user of the word "wrongfully" twice in clause (b), first applying to the obtaining of the possession wrongfully and, secondly, to the withholding of the said property wrongfully. This would mean that withholding of the possession of the property in a wrongful manner would be covered by clause (b) only in one contingency, namely, that if the possession was initially obtained wrongfully. The illogical consequences of this would be that if at the inception the possession was obtained rightfully and if there is subsequently wrongful withholding thereof, then Clause (b) would not be attracted. This on the face of it, is untenable, apart from the legislative intent.

21. Apart from this, a very formidable clue is reflected in sub-Section (2) which, in my opinion, furnishes the perfect key to the riddle. To recapitulate, it is desirable to quote sub-Section (2) in

its entirety to understand this proposition, which reads as under :

> "(2) The court trying the offence may also order such officer of employee to deliver up or refund, within a time to be fixed by the court and 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."

22. In this sub-section also the phrase "any such property" has been utilized and the most important feature is that this qualifying term "any such property" governs all the three clauses which are specifically mentioned as : (1) wrongfully obtained, (2) wrongfully withheld, and (3) knowingly misapplied. It is thus clear that the terminology "any such property" pre-qualifies the existence of three further terms and also governs all the three contingencies and the legislative intent is made manifestly clear by the user of this terminology. This in fact supports the submission of Sri Modi that by the user of the phrase "any such property" what has been done by the Legislature is merely to tag a label or characterize the property as belonging to the company and the interpretation should go thus far and no further. A plain reading of Sub-Section (2) would, therefore, indicate that the court can take the action stipulated therein if any property of the company is wrongfully obtained or wrongfully withheld or knowingly misapplied. There is another angle to look at this, which would again expose the hollowness of the claim made by Sri Vakil. If the term "any such property" used in clause (b) sub-Section (1) of Section 630 of the Act is to be interpreted in the manner in which he wants us to do, then, there is no escape from the conclusion that the same interpretation will have to be put on the said term used in sub-section (2) as it is part and parcel of the same section, namely, Section 630 in which event, the result would be manifestly irrational, illogical and untenable. In the first instance, the term "wrongfully obtained" would have not only become redundant and unnecessary, but would have been altogether absent, as it would be included in the term "any such property", and, consequently, the said sub-section would have referred only to the other two categories, viz., "wrongfully withheld" or "knowingly misapplied". On the contrary, the user of both the terms "any such property" and "wrongfully obtained" would strongly indicate that both are independent of each other and not mutually inclusive or overlapping. This would be a further pointer to hold that the first term characterizes and specifies the property as being of the company, whereas the latter term suggests a mode of obtaining its possession. As said earlier, the term "any such property" governs all the three categories and is not restricted to only one, viz., "wrongfully obtained", and therefore, the plain and the most harmonious blending of the said provisions of sub-Section (2) would, in so far as is relevant, read as : "..... any property of the company, which is either, (a) wrongfully obtained, or (b) wrongfully withheld, or (c) knowingly misapplied ....." It would also be relevant to observe that the character of the property as being that of the company is specified at the threshold and the same is impliedly described and specified by carrying forward in the same strain in the following clauses of the said provisions considered as a whole, and, as such, it was not necessary to again clarify, described or re-enunciate the same, but it could well be represented by the concentrated or compact term as "such property" which is in

consonance with the normal legislative drafting practice.

23. Having regard to all these provisions and features, in my opinion, if any employee or officer while in continuation of his service, wrongfully obtains possession of any property of the company, he comes within the clutches of clause (a) of the said provision. An officer or employee who is already in possession of the property of the company, does a further act of wrongfully withholding the same or knowingly misapplying the same, then, he is covered by the ambit of clause (b), and this would, as a logical corollary, mean that the contingency under clause (b) may arise that a person may come into possession of the property of the company in a rightful manner in which event, he cannot be governed by clause (a), but, he will not go unpunished as the Legislature has taken care of this situation if it is found that having come into possession, may be even in rightful manner some time in the past, if he wrongfully withholds the said possession, then, he is governed by the provision contained in clause (b). This would again further reinforce my observation that clause (a) may apply to an officer of the company who continues to be in service because it is in that capacity only that he could obtain possession of the property of the company, as, normally, once he is out of service, he may not be able to lay his hand on any property of the company, much less, to obtain its possession even by wrongful means. If therefore, he is put in possession in a rightful manner, only by virtue of his capacity as an officer of the company during the continuation of his service, and if, thereafter, he wrongfully withholds the said property, then, he would be squarely covered under clause (b) and, in any opinion, it is this contingency that would cover a case under clause (b) not only of an existing officer of employee but, even a past employee or past officer of the company. It is in this context that one has got to bear in mind the distinction in two items, namely, the present tense and the past tense of securing possession in Clauses (a) and, (b) and secondly, the mode of committing mischief, as under clause (a), wrongfully obtaining the possession is the subject-matter, whereas, in clause (b) it pales into the background and what is brought to the forefront is the wrongful withholding of the property, which impliedly indicates that before withholding such property in a wrongful manner, such a person may have lawfully come into possession thereof and it also indicates the point of time when such possession can be tagged vis-a-vis the officer of the company. To put it another form, in clause (a) there should be obtaining of the possession which normally would be tagged to the officer of the company during the continuation of his service, whereas, in clause (b), the possession might have been obtained by the officer during the continuation of his service, which is the normal mode of obtaining possession, yet, he can commit an offence if, thereafter, he withholds the possession and this magnifies two aspects in that perspective, namely, that it indicates the point of time, that is, possession might be in the past though the withholding may be at the relevant time which, in turn, means that possession might be during the continuation of the service though the withholding might not necessarily be during the continuation of service, but after discontinuation of the service. In fact, it is this contingency which was more clear to the Legislature at the relevant time and it is precisely the same reason for which clause (b) has been enacted. In my opinion, therefore, there is absolutely no escape from the conclusion that a past officer or a past employee of the company who rightfully obtains

possession of a property by virtue of his capacity as such officer, during the continuation of his service, can commit the mischief of withholding the said property and such withholding can obviously be wrongful if he, without any semblance of right, declines to hand over possession to the company and that is how the property is deemed to have been wrongfully withheld. The term "withholding" is also pregnant with a further implication that he must be in possession initially and then only the question of withholding arises. The interpretation sought to be made by Sri Vakil is really founded on a misconceived notion or a confusion which arises on account of the fact that obtaining possession and withholding possession are sought to be confused. It is, therefore, manifest, in my opinion, without even going into the legislative intent, on a plain and rational reading of the entire provision that a contingency as propagated by Sri Modi on behalf of the complainant is fully and squarely covered by clause (b) of sub-Section (1) of Section 630 of the Act, which conclusion appears to be absolutely inescapable.

24. In this context, it is worth noting the provisions contained in Section 441 of the Indian Penal Code, which also furnishes a guideline. Criminal trespass has been defined in Section 441 as :

> "441. Whatever enters into or upon in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.
> or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,
> is said to commit 'criminal trespass'."

25. Even a cursory reading of the two clauses of the said section would bring to the forefront a very close nexus in the matter of interpretation which was sought to be placed by Sri Modi on behalf of the company. A person may commit criminal trespass if he enters upon the property in the possession of another with a particular object either to commit the offence or to intimidate, insult to annoy such person, and such an offence can be equally committed if a person at the inception has lawfully entered into possession of the property of another though, thereafter, he remains in the said property unlawfully with a particular intention to intimidate, insult or annoy that person. It is clear that at the inception, the entering into the property may be unlawful if it is accompanied by a certain intent. However, a second contingency is also contemplated under which a person may lawfully enter into the property and still he may continue to remain therein if it is annexed by the requisite intention and in both the contingencies, the offence would be committed. It would thus indicate that both such situations may arise logically and apart from that it also indicates another aspect, namely, that, in the said provision also, the terminology "such property" has been utilized. Even a plain reading of the two clauses would make it clear that what was sought to be conveyed by the said terminology "such property" was only that the property was of a particular person. This would again indicate that in a similar situation, such terminology is the only inevitable terminology which is used. Though on the basis of the reading of the provision of Section 630 of the Act itself, I am holding in favor of the interpretation

suggested by Sri Modi, reference to Section 441, Indian Penal Code, is made to a limited extent.

26. This would again be enough to pull down the curtain on the entire controversy. However, certain facets can be incorporated in this context which may not be redundant and which would be essential for further reinforcing the conclusion which I have arrived at. As I have stated earlier, even without going into the legislative intent and even without referring to the well-settled cannons of interpretation of statutes, on a plain reading of the said provision, I am firm in my opinion that the situation in which the petitioner has landed himself is clearly covered notwithstanding the fact that, at the relevant time, the petitioner ceased to be in the employment of the company. However, if any further support is necessary, then, it can be obtained on the basis of several other features which have been rightly canvassed by Sri Modi on behalf of the company to which at least a cursory and incidental reference has become inevitable.

27. It cannot be ignored that if the interpretation sought to be place by Sri Vakil is to be accepted apart from the most irrational reading of the provision, the consequence would be not only disastrous but almost preposterous. This would incorporate a fraud even openly and on great dimensions. Thus, a very shrewd officer who has an evil design and scheme in his mind which is hatched for some time can translate the said design into action in a very intellectual manner without coming into the clutches of the provisions of law. Thus, if an officer in inducted into the premises only because he was entitled to the same by virtue of his capacity as an officer with a clear stipulation that his possession was to co-terminate with the date of his retirement or discontinuance from service or severing ties with the company in any manner such an officer hardly a month prior to the date of his retirement may skill fully withdrawn from the company in a permissible manner or in a lawful process and thereafter when the company indicates its desire for getting the flat back, he may come out with a specious plea that he is no more in the employment of the company and thereby compelling the company to run down from one court to another which would consume years together and during which time as a conqueror, this officer can continue to stay in the flat even under the nose of the officials of the company. The same criticism would apply with equal force to the contingency when the officer retires in due course and then refuses to vacate the premises. In either of the cases, there would be a triumphant expression on his face, a trump-card in his packet and treachery in his design. In my opinion, this can hardly be the intention of the Legislature and such a narrow interpretation which was sought to be placed would logically lead to this illogical conclusion.

28. With some utility, I may quote the term "withholding" as defined in law dictionary, as :

> "The word has a definite signification and does not import the fraudulent obtaining of money or other property from a person, but the retention of the money or other property to which that person is entitled, before it reaches that person's hands and passes under his dominion and absolute control."

29. This is self-explanatory and the combined reading of the definition of both the terms "wrongly" and "withholding" makes the picture clear and complete.

30. Sri Modi, the learned counsel, further submitted that prescribing the same quantum of punishment for the commission of the mischief under both the Clauses (a) and (b) is yet another criterion in support of his submission vis-a-vis the interpretation of this provision, otherwise, the provision contained in clause (b) would have been the aggravated form of the mischief, inasmuch as, first, there is wrongful obtaining of the possession and it is thereafter and in addition thereto that there is wrongful withholding of such wrongfully obtained possession. Sri Vakil submitted that when the alternative and the normal remedy is available, such as in an ejectment suit, the company cannot have a short-cut practically by way of summary eviction by resorting to these provisions and this itself indicates that the Legislature could not have intended to cover the case of a past employee and, therefore, these provisions should be strictly construed. This submission also has not substance. On the contrary, a reading of the said provisions together make the purpose thereof quite prominent, inasmuch as, while the anxiety is to protect the property of the company when for the conviction for the breach of clause (a) or (b), the punishment prescribed is only a sentence of fine up to Rs. 1,000, discretion is given to the court to direct delivery of possession of property within a stipulated time, failing which, the court is empowered to inflict a more serious sentence which is not restricted only to one of fine but consists of substantive sentence also. It is also worth nothing that a right is given not only to the company but even to its creditor or contributory to file such a compliant which is again an indication in support of the view that the dominant purpose is to protect the property of the company. Existence of a normal remedy would hardly be a ground to bar such a remedy under these provisions.

31. Sri Modi, the learned counsel, then submits that normally the court should be anxious to adopt such interpretation of the relevant provision which would further and promote the object and policy of the Legislature and thereby not to encourage by any such interpretation the commission of the mischief as propriety requires that the purpose of interpretation would be to suppress such mischief. Reliance was placed by the learned counsel on the ratio in *Sadashiv v. State*[1], That was a case under the Prevention of Food Adulteration Act when an interesting question arose as to whether the expression "butter" within the meaning of the relevant rule could cover butter prepared from curd. A submission to the effect that, according to the said rule, "butter" would mean such product prepared exclusively from milk or cream or both and on the basis thereof, it was canvassed that it would not cover butter prepared from curd. Repelling this submission, it was observed (p. 244) :

> "It is well settled that, so far as possible, the court should adopt that interpretation, which will promote and further the object and policy of the legislation and suppress the mischief which the statute was enacted to prevent."

[1] AIR 1960 Bom 243 [FB]

32. Sri Modi, therefore, in my opinion, relied rightly on the ratio of this decision in support of his

contention that the interpretation suggested by Sri Vakil would obviously destroy the furthering of the object and policy and suppressing the mischief.

33. Sri Modi then submitted without prejudice to his contention that really there is no scope for any doubt about the interpretation and that even assuming that a doubt may creep in, yet, it should be resolved in such a manner on the basis of the existence of the two views in favor of one against creating anomaly, or in other words, if two views are possible, one leading to an anomalous result, then, it would be the cardinal principle not to construe the provision so as to lead to such an anomalous result. In that behalf, he has relied on the ratio in *Veluswami v. Raja Nainar,* , wherein it is observed (head-note) :

> "It is no doubt true that if on its true construction, a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law. But when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is the duty of a court to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies."

34. I am maintaining that in reality two views are not possible at all; however, this has been referred to by way of abundant caution in order to dispel any doubt even about the existence of such two views and, in that event, if one view leads to the most logical conclusion and the other to the anomalous result, then, for obvious reasons, the latter cannot be accepted. It is true that it is indicated that if on a true construction, only such interpretation is possible which may lead to an anomalous result, then, in that event, the court may not have any option by to adopt the same. In my opinion, this contingency is poles apart in the instant case, as really speaking, the result on the suggested interpretation as canvassed by Sri Modi is the most logical and harmonious one.

35. The submission made by Sri Vakil on behalf of the petitioner about the strict construction in respect of a provision entailing into penal consequence can well be met with effectively by relying on the ratio of a decision in *Narendrakumar v. State*[2]*,* which has also been rightly relied upon by Sri Modi, wherein it is observed (pp. 188, 189) :

> "As far as the second and alternative limb of his argument is concerned, Mr. Mody has relied upon another rule of construction stated in Maxwell ..... that if there are two reasonable constructions, the court must give the more lenient one which will avoid the penalty in any particular case. That rule of construction does not, however, lay down that if any two constructions are possible in regard to a penal statute, the more lenient one must be adopted, but what it lays down is that if the words of a statute are capable of two reasonable constructions, the court must adopt the more lenient one which will avoid the penalty .....
>
> In Maxwell on the Interpretation of Statutes, it is, however, stated .... that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest

propose of the legislation, the court should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that the Legislature would legislate only for the

[2] AIR 1972 Bom 184

purpose of bringing about an effective result .....

The same rule has been cited in another way by Maxwell .... when it is stated that where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result the court must do some violence to the words and so achieve that obvious intention and produce a ration construction .... the position in regard to the construction of a penal section is that if the only reasonable way of construing such a section, without stretching its language, is one which goes against the accused, to so construe it would not violate the rule of strict construction of penal statutes."

36. It is, therefore, rightly submitted by Sri Modi, which is by way of very effective reply to the submission of Sri Vakil about the construction of such provision which entails into penal consequence. Even in such cases, the said ratio indicates that if some violence is necessary, then, that has got to be done irrespective of the fact that a penal consequence is likely to flow therefrom, provided the interpretation contains logic. It is thus apparent that merely because a penal consequence is likely to flow out of the provision, a construction should be artificially and mechanically brought into existence even at the cost of distorting the phraseology and twisting the meaning merely to achieve a very theoretical principle which obviously lies in the vacuum, namely, that an accused should not be punished, such a proposition cannot be accepted. In my opinion, the stretching of such provision with such a speculative object would require entering into an arena of conjectures and doing violence to the language deviating from the normal practice of interpretation of statues. It is rightly submitted that if on a plain reading or even having regard to the intent and other incidental aspects and on interpreting the provision in a rational manner, the consequence ultimately results in the nature of penal consequence against the accused, then, merely to avoid that result to interpret in an artificial manner would obviously destroy the very process of interpretation as also the very purpose of the legislative intent and, in that event, it is rightly submitted that one should not so much concentrate on the resultant consequence vis-a-vis the accused persons.

37. Sri Modi has also rightly submitted that the interpretation sought to be placed by Sri Vakil, if accepted, is bound to lead almost to futility and, therefore, for obvious reasons, the court would be slow in upholding the same in the context of the doctrine of futility. If, on the contrary, a rational reading of the provision makes it harmonious and in consonance with the object and purpose, then, the resultant consequence of futility must be, as far as possible, avoided.

38. Sri Modi has also submitted that the employment of such, each and every, word is with some purpose and the Legislature must always be guided by the fact that it does not waste its words or

make comments in vain and, therefore, effect must be given to all the terminology used by the Legislature in its logical and natural meaning, which has been well enunciated in *Quebec Railway v. Vandry*[3]

39. Sri Modi, the learned counsel, as indicated earlier, submitted that the term "such property" characterized and described as "property of the company" which is the last phrase of clause (a) and it is in that context that the earlier term has been used, which is obviously a referable term. This was again obviously to avoid duplication of the

[3][1920] AC 662; AIR 1920 PC 181

employment of the same term, as it is normally done when the word "property" figures more than once in the same provision. In other words, it was not necessary again to refer in clause (b) to the property as "property of the company". It is in this context that the character of the property, namely, being that of the company, was being recognized and that the said label was tagged to it. In addition thereto, Sri Modi, the learned counsel, submitted further that even the character or the capacity of the person concerned, namely, in this concerned case, the person who wrongfully withheld the property, is described by a particular label in the context of the situation, and in the nature of things, it was not necessary to separate the character which was subsisting or the one which was held in the past. Such a label is always tagged for identification to point out the relationship and the obligations flowing there from not only during its subsistence but even after its termination. Reliance was rightly placed on the ratio in *Nagin v. Haribhai*[4], In the said case, the provisions of the presidency Small Cause Courts Act, 1882, as substituted by the Presidency Small Cause Courts (Maharashtra Amendment) Act, 1975, and in particular Section 41 thereof as so substituted was under scrutiny vis-a-vis its interpretation. A contention was raised therein that the said provision would apply to the licensor and licensee and would not cover the case of persons who once held the relationship of licensor and licensee but such relationship had come to an end. Provisions of various other statutes such as the Matrimonial Acts, the Transfer of Property Act, etc., and the terminology used therein were also considered while repelling this contention when, ultimately, it was held that it would cover not only the subsisting but even the past relationship. This court in the final analysis observed (head-note) :

> "The words 'a licensor and licensee' and 'a landlord and tenant' have been used in this section in accordance with a very well-settled and normal legislative drafting practice. In various statutes dealing with rights and obligations arising out of a jural or contractual relationship and enforcement of such rights and obligations, the parties are described by the legal character they bear. Words which describe a person's legal character - the character which he either holds or has once held - are used in statutes as a means of identification or a label to point out the particular rights and obligations which arise out of such relationship either during its subsistence or after its termination, that is, either existing relationship or erstwhile relationship."

40. This ratio also, therefore, supports the contention as raised by Sri Modi and reinforces my conclusion that the provisions of the Act would effectively cover the case of not only the subsisting relationship but even of a past one, that is, it would apply not only to an officer who continues to be in the employment of the company but even to a past officer of employee.

41. Sri Vakil relied on two provisions of the Act and the ratio in another decision to substantiate his contention that when the Legislature intended to cover the case not only of the present employee but also of the past employee, then, specific mention in that behalf is made in the statute. In that behalf, reference is made to the provisions contained in section 543 and 545 of the Act. Section 543 speaks of the powers of the Court to assess the damages against the delinquent directors while Section 545 contemplates prosecution

[4] AIR 1980 Bom 123

of such delinquent officers and members of the company. This submission can be disposed of on a short premise, as these sections have their own peculiarities as these relate to the winding-up proceedings as contained in Pt. VII of the Act. Section 543 makes it very clear that in the course of the winding-up of a company, categories mentioned therein including any past or present director has misapplied or retained any money or property of the company amongst other things, then, on an application by the official liquidator the court may examine into the conduct of such persons which my follow certain consequences. Section 545 also deals with a situation during the course of the winding-up of a company. It is obvious that in view of that situation itself reference to the past director alongwith the present director or other officers become inevitable. That can hardly serve as an analogy to the instant case. Sri Vakil then placed reliance on the ratio of a decision of this Court in *State v. Girdharlal Bajaj*[5] wherein it has been held in support of his contention that an employee does not include an ex-employee. That was with reference to the provisions contained in Section 419 of the Act which contemplates that an employee shall be entitled in certain circumstances to see the bank receipts for any money or security which has been referred to in Sections 417 and 418, the former refers to the employees' securities deposited in the bank, while the latter refers to the provident fund of the employees. It is in that context that this court has held that Section 419 is restricted to the present employee and would not cover the case of a past employee. However, in my opinion, that again can hardly furnish an analogy to jump to the conclusion that the absence of user of the words "past employee" is the surest indication of the exclusion of the past employee. It is rightly submitted by Sri Modi that there is a peculiarity attached to Section 419 itself, inasmuch as, during the continuation of service, the officers or the employees are expected to be vigilant about the working of the company vis-a-vis the properties and monies own which they are vitally interested and it is in that c context that they have ample opportunity as also the right to inspect the accounts and also to verify the holdings of the bank to achieve that object. If that is done, then, really speaking, nothing further is required to be done after going out of the employment at which stage the only right vests in them and the only thing with which they are concerned is about getting back the said amount. It is in that context that the provisions of Section 419 are enacted which could hardly furnish any

analogy or comparison in the instant case. Some of the observations in the said decision, on the contrary, support the contentions raised by Sri Modi that if at all any intention is to be gathered then it can be safely stated that all these enactments are purpose-oriented. Thus, it is observed (pp. 1117, 1121, 1120 of 32 Comp Cas) :

> "If that be the object of the enactment, it is contended, it would amount to defeating the right of an employee not to permit him an inspection after he ceases to be an employee ..... It seems to us that the Legislature contemplated that it would be a serious inroad upon the rights of the employer to permit the employee, who has ceased to be an employee, to inspect the securities and bank receipts for moneys of this former employer. ..... Moreover, it seems to us that when sections 417, 418, 419 and 420 of the Companies Act, 1956, were enacted, the present day notions of social justice between the employer and the employee were not the same and it conceivable that the Legislature may have thought that upon termination of the contract of service, the employee should relegated to his normal

[5][1962] 32 Comp Cas 1114; 63 Bom LR 743

> remedies of a suit ..."

42. Apart from the observations in the said decision being restricted to the peculiar provisions of these four sections, this, on the contrary, indicates that the court felt that the said provisions are purpose-oriented. If that be so, Sri Modi poses a pertinent query. Provisions of Section 630 also should be construed in that context and in the same vein so as to find out the purpose for which those were enacted. It is not necessary to have a further probe in this behalf, inasmuch as I have already held that the primary and the most essential purpose of enacting such a provision was to avoid such a mischief which can easily be committed by an erring officer taking shelter behind such technicality and the precise purpose further is not to entail the company into any loss of property. If that is the purpose, it appears to be obviously manifest that it is a justified submission that as Section 419 was interpreted on the foundation that it is purpose-oriented, then Section 630 also should interpreted on the same basis and to achieve that purpose as a logical corollary, the interpretation suggested by Sri Modi is the only available one in the circumstances. This decision, therefore, which has been relied upon by Sri Vakil is in reality of no assistance to the petitioner.

43. Reliance was also then placed rightly on a decision in *Re Veerappan*[6] Really speaking, as the matter appears to be very clear, containing not even a grain of doubt, one need not bother to go to the other authorities. However, a similar situation had arisen except the change in the nature of the property. In the said case, where the managing agent of a bank failed to deliver up to the liquidator appointed by the court in winding-up proceedings, certain jewels which admittedly belonged to the bank. The defence was that he was not possession of the jewels as those were pledged with certain persons. This defence was not accepted by any court. He was prosecuted under Section 238A (1) (b) and also under Section 282A of the Indian Companies Act, 1913.

Though he was convicted on both the counts, yet, a sentence under Section 282A was not formally recorded though it was stipulated under that provision, but he was directed to return the jewels within a definite period falling which, he was sentenced to suffer a particular term of imprisonment. The matter went up to the High Court and the conviction under Section 282A was upheld though it was corrected when the High Court found that the learned Magistrate had not recorded a sentence in that behalf. The High Court held that so far as the claim of possession is concerned, there was no satisfactory evidence and, therefore, the conviction under Section 238A could not be upheld. However, while upholding the conviction under Section 282A, the High Court observed that the jewels belonging to the bank in possession of the accused were wrongfully withheld by him and such wrongful withholding could squarely be covered by the provisions which are corresponding to Section 630 of the new Act. It is relevant to note that even at the relevant time, that is at the time of withholding, the accused had ceased to be the managing agent of the bank. This would, therefore, mean that even after severing his connections with the bank, wrongful withholding of the property of the bank entailing into a penal consequence is envisaged by Section 282A (old Act) which provisions are corresponding to Section 630 of the new Act. This authority, therefore, squarely covers the facts in the instant case.

44. In the final analysis, on a resume and survey of the entire canvas vis-a-vis the provisions contained in Section 630 of the Act, some of the features and deductions

[6][1944] 14 Comp Cas 149; [1945] 46 Cr. LJ 347 (Mad)

would flow logically and inescapably :

(A) Clause (a) is self-contained and independent of Clause (b). with the capacity of creating penal liability.

- and, it would as well embrace a case of an existing employee or officer of the company.

(B) Clause (b) is equally independent and distinct from clause (a) as regards penal consequences.

- it would as well squarely cover the case of a past employee or officer of the company.
- entitlement to the property of the company has its existence contingent on the right and capacity of the officer by virtue of his employment.
- such a right can be transformed into actually getting possession of the property of the company which is again solely by reason of the employment.
- the duration of such right and claim over the property would be co-terminus with the term of employment.
- therefore, the capacity, the right to possession created thereunder and the duration during which such capacity exists and the right can be exercised, are the features integrally blended.
- consequently, 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 ipso facto coming into existence.
- if, therefore, in such an event, with the wiping out of the right and the obligation

surviving, the property is held back and possession retained wrongfully, it would amount to wrongful withholding of the property of the company.

- the existence of the capacity, occurring of the right and actual possession would be while in employment, while withholding may be even after termination of employment.

- such obtaining of possession may even be rightful and yet, the withholding may be wrongful.

- the former act, therefore, would be in the past, while the latter present, with reference to the point of time, obviously, as possession would precede the act of retention or withholding, through it affords an opportunity for such an act.

- however the subject-matter, viz., the property of the company, the authorm, viz., the person in possession, and the corresponding right and liability of the parties to take back and hand over the property, remain unchanged. There is thus an obvious continuity and an inseparable nexus.

- consequently, the property is restricted and referable only as the property of the company; and employee or officer of the company may come into possession of the said property - even rightfully - during the subsistence of employment which may be an event in the part; such person, having the said property in his possession, may wrongfully withhold it which may be an event at present and even after termination of employment and that would complete the circuit.

- by any yardstick and on any premise, 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 penal consequences within the meaning of Section 630(1)(b) of the Act.

45. In this view of the matter, on the question of interpretation of the relevant provisions of the statute, I am firm, in my opinion, that there is no substance in any of the contentions and the prosecution must continue and go to its logical end on the bias of the allegations made in the complaint and an opportunity will have to be given to the complainant to substantiate their claim.

46. Some aspects are disturbing. It is very interesting to not that the complaint was filed on behalf of the company on 19th December, 1978. The process was issued in response to which the petitioner appeared in the court and the matter lingered on without there being any progress of the proceeding. It is very surprising to note that for months together, it did not occur to the petitioner to move the trial court for the relief which he claimed for the first time by tendering an application on 23rd May, 1980, which was decided on 27th June, 1980. Sri Modi is quite justified in criticizing this conduct of the petitioner though it was sought to be explained away by the learned counsel for the petitioner on a very specious ground that the delay was only account of lethargy. In my opinion, this delay is thoroughly unexplained and this will be one of the grounds which will have to be considered whether, even otherwise, a relief can be granted in favor of such a petitioner. But the matter does not rest there, because for the first time in the month of May, 1980, the petitioner comes out almost with a very strange request that he is entitled to earn discharge. The learned Magistrate has rightly brushed aside this contention on a short ground that

this was a case of summons tribal procedure. In the first instance, it required full 18 months to realize the deficiency in the complaint and, secondly, he came out with a request which obviously could not be granted in law. It is true that in the Code of Criminal Procedure, a contingency is contemplated where under the Magistrate may consider and treat a proceeding as a warrant procedure even in respect of cases triable as summons procedure. However, it has its own limitation as is evidenced by the provisions contained in Section 259 of the Code. It is not necessary for me to reproduce the said section as, in my opinion, absolutely no ground has been made out for attracting the said provisions and the more important part is that the trial had not even commenced. The said provision, therefore, has no application at all. If that be so, then there is no other provision under which such a relief could be claimed. The application in that behalf, therefore, was also misconceived.

47. The matter again does not rest there because there is yet another infirmity. As stated at the outset, the petitioner has invoked the revisional jurisdiction of this court as the petition filed by him is styled as a criminal revision application. In spite of that, at the hearing of this proceeding, an oral motion was made by Sri Vakil on behalf of the petitioner that he may be permitted to invoke the inherent powers of this court under Section 482 of the Criminal Procedure Code, though significantly, when the petition was filed, the petitioner was not intending to pursue this path. However, in order to do justice to the matter, such a concession was allowed in favour of the petitioner. However, having given this concession, Sri Vakil then came out with the contention that this court has no limitation in exercising these powers for the purpose of the quashing of the proceeding. As against this, Sri Modi, the learned counsel for the complainant, submitted that it is not as if such provision should be so liberally construed, in favour of the quashing of the proceeding, as such inherent powers have got to be very sparingly used. According to the learned counsel, the conduct of the petitioner and his attitude and the glaring facts and circumstances of the present proceeding justify him (the counsel) to submit that such a petitioner does not deserve the exercise of the inherent powers. Sri Vakil submitted that if a process is allowed to be issued and the trial continues, then, it will be an abuse of the process of the court, and to prevent or avoid such in abuse, interference by this court is necessary. To say the least, in my opinion, the facts are so glaring that if such a course is adopted, then, not only the interest of justice would be destroyed, but, there would obviously be a wrong user of discretion under the inherent powers of this court in favour of a person who does not deserve such exercise of discretion in his favour. Apart from this, the question of law is obviously against him and the facts are practically staring in his face.

48. In *R.P. Kapoor v. State of Punjab*[7], it has been enunciated that there may be some categories of cases where the inherent jurisdiction to quash the proceedings can be exercised when at the threshold itself there is a legal bar or when the complaint by itself on a plain reading does not make out an offence or even though the allegations do constitute an offence, yet, there is no legal evidence. In my opinion, this case is not covered by either of the three categories. It is true, as observed in *State Karnataka v. L. Muniswamy*[8], that (head-note) :

"In the exercise of the wholesome power under Section 482 (of the Criminal Procedure Code) the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed."

49. It is not necessary to multiply this principle propagated in a catena of cases, the net result of which would be that each case will have to be decided on the facts of the said case. However, reliance can be placed on the ratio in *Kurukshetra University v. State of Haryana*[9], wherein it is observed (headnote) :

"Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

50. Apart from this, the well-settled principle in the matter of quashing of the proceeding when the trial is at the threshold when only process has been issued, has been high-lighted in several decisions. Thus, for instance, it has been observed in *Hareram v. Thikaram*[10], that (headnote) :

"Where the Magistrate after taking cognizance of the offence and perusal of the record and having been satisfied that there were prima facie grounds for issuing process against certain persons, ... issued process against them, (then, he) could to be said to have exceeded the power vested in him."

51. It has been further observed (headnote) :

"As the Magistrate is restricted to finding out whether there is a prima facie case

[7] AIR 1960 SC 866 [9] AIR 1977 SC 2229
[8] AIR 1977 SC 1489 10 AIR 1978 SC 1568

or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited, the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons."

52. This Court had also expressed a view on the same lines about the powers of the Magistrate at the time of issuance of the process and the corresponding powers of this court when a relief was asked for quashing of the proceeding on the ground that the process has been wrongly issued in *Jacob Harold v. Vera Aranha*[11] In the said ratio, it has been observed that at the stage of issuing process, it is not the duty of the court to find out as to whether the accused will be ultimately convicted and the only requirement is about the existence of prima facie case and in the same context, it has been clearly observed that in such cases, when relief of quashing of the proceeding

is asked for after issuance of process, then, inherent powers may be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities.

53. In my opinion, therefore, on the premises as regards the interpretation of Section 630 of the Act, the issuance of process is manifestly justified and it cannot be said that there are no prima facie grounds for the learned Magistrate, to get himself satisfied, for proceeding with the case when he issued the process. Inherent powers under these circumstances for quashing of the proceeding cannot be obviously invoked. In these circumstances, the proceeding will have to be continued in the trial court.

54. Sri Vakil then submitted that the correspondence ensued between the parties to which a reference is made in the complaint, itself indicates that even after June 30, 1978, that is, after the date of his retirement, the petitioner was allowed to continue to stay over in the premises and the time for vacating was extended which according to the learned counsel may create a new and separate agreement between the parties under which he gets a right to stay over in the said premises. It may incidentally observe that this is also not factually correct, if one merely peruses the complainant in which contents of some of the letters are indicated. It is apparent that is was entirely on humanitarian grounds that the company gave a concession to the petitioner to stay over in the premises for a few days and this concession was obviously annexed with a definite qualification asking the petitioner to give an unequivocal undertaking to the effect that he would vacate at the end of the stipulated time. Now, the most surprising feature is that all along this remained in the nebulous state of a proposal which was never accepted by the petitioner, much less, he had assured the company in any manner, and on the top of it, in his letter dated 7th August, 1978, when for the first time, he chose to outer some words on paper, he made it very clear to the company that he never accepted the proposal and no agreement had been arrived at between the parties. This, in my opinion, has enough impact on destroying the submission made by Sri Vakil in this behalf. It will also indicate that the petitioner himself is not realign on the existence of and agreement as such. The course of events and the contents of the said letter, therefore, clearly indicate that no right has ensued in favour of the petitioner even on account of the inclination of the company to extend a concession only on humanitarian grounds and the texture remains the same, namely, that the petitioner continued to wrongfully withhold the premises.

[11][1979] Cr. L.J. 974 (Bom)

55. Sri Modi, the learned counsel submitted that in the instant case, even apart from everything including the controversy on the question of interpretation of the said provision - though he claims that there is no scope for any controversy as such - still the facts and the recitals in the complaint even on a plain reading would show that the company ally shad demanded the vacant possession of the flat the moment the petitioner retired from the service of the company and was thus out of employment and in that context, the question whether he withheld the property while he was out of employment would really pale in the background. There is an adequate force in this submission also as the facts stated in the complaint do justify such a submission. In effect,

therefore, irrespective of the said controversy vis-a-vis the said provisions of the Act, the petitioner can be deemed to have wrongfully withheld possession of the property of the company which is squarely covered by the said provisions.

56. Sri Vakil, the learned counsel submitted that really speaking, any such prosecution under the provisions of the said Act, when launched after the retirement of the employee or the officer would always be unsustainable, inasmuch as, the points of time of going out of the employment and making the demand and lodging the complaint are quite distinct. There is hardly any substance in this contention also. Sri Vakil, the learned counsel, even went to the extent of submitting that the demand should be made and the complaint should be lodged in such a manner and as such point of time as to synchronies and become identical with the moment of retirement and he clarified by submitting that even one second elapsing thereafter would make the prosecution infructuous. To say the least, I am a little surprised that such an argument has been advanced with all seriousness and it is mentioned only for being rejected. It is too much to accept and expect that the company should be ready with the notice and the complaint drafted at mid-night, and must start moving even before the loss of one second and if such a course is not adopted by the company, then, the petitioner would be completely out of their reach.

57. Having considered all these features, I have not even the slightest reservation that the petitioner's case is squarely covered by the said provision of the Act. I am tempted to observe, which I am sure will to be out of place, that if such persons who were one time officers of the company who could get the benefit of possession of such a huge flat merely in their capacity as such officers, are not to be embraced by these provisions of the Act, then, it would entail into disastrous results completely destroying the plain reading of the provision, the legislative intent and the purpose of such an enactment to ward off the attack on a very specious ground that the company may take recourse to normal remedy for evicting the petitioner, so that, during all these years, the petitioner would be in a dominating position sitting tight with an expression of victory on his face and treachery in the design.

58. It is also to be remembered that no evidence so far has been recorded when only process has been issued. The scheme of the Code of Criminal Procedure indicates that on taking cognizance, the Magistrate may either straightway issue the process or postpone the same during the course of enquiry under Section 202, Criminal Procedure Code and thereafter, may dismiss the complaint under Section 203 if there is no sufficient ground to proceed, or otherwise, may go to the other lap when he can issue process under Section 204, Criminal Procedure Code. It is well settled that the requirement for dismissal of the complaint under Section 203 is the formation of the judicial opinion by the Magistrate that there are no sufficient grounds for proceeding and it is further well settled and for that purpose, it is not the function of the magistrate to launch a full-dressed enquiry to find out if the accused would ultimately be convicted or acquitted.

This aspect has been made abundantly clear in *Debendra Nath v. State of West Bengal*[12], This

court has also re-enunciated this principle in *Jacob Harold v. Vera Aranha*[13] observing that at the stage of issuance of the process, the only object would be to determine whether there are sufficient grounds for proceeding further or not and not to find out whether the accused would be ultimately convicted or acquitted. In *Smt. Nagawwa v. Veeranna*[14], it has been reiterated that the scope of enquiry under Section 202, Criminal Procedure Code, is extremely limited essentially for the purpose of finding out whether a prima facie case for issuance of process has been made out and that though the Magistrate is given discretion, there appears to be a very thin line of demarcation and the Magistrate is not expected to examined the entire case on merits with a view to find out whether or not the allegations in the complaint, if proved, will ultimately end into conviction, as these considerations are totally foreign to the scope and ambit for an enquiry under Section 202 which culminates under Section 204 of the Code. Thus, viewed on the touch-stone of all these judicial pronouncements, I am of the firm opinion that this is not a case at all wherein the complaint could have been dismissed, but, this is not a case at all wherein the complaint could have been dismissed, but, this is pre-eminently a fit case where the process has been rightly issued. The complainant will have to be given a reasonable opportunity to ventilate his grievances, to bolster up his case and substantiate his allegations, by tendering relevant evidence in which event, even the defence would be entitled to substantiate their claim. All this obviously requires the continuation of the trail and to say the least, the complaint or the prosecution cannot be throttled or short-circuited at the threshold itself.

59. All said and done, in the instant case, there are obviously sufficient grounds to proceed against the accused and, further, the interpretation about the relevant provisions of the Act being negatived, it follows that a prima facie case has been properly and adequately made out by the respondent-complainant and as such, the trial must reach its logical destination.

60. In the result, the rule is discharged. As the matter is pending in the trial court for quite some time, it would be in the fitness of things and in the interest of justice, as the delay should not defeat the cause of justice, that the learned trial Magistrate shall expedite the hearing in this matter.

61. At this juncture, Sri Adi P. Gandhi, the learned counsel on instructions from the clients, makes an oral motion with a request for leave to appeal to the Supreme Court and for grant of requisite certificate of fitness. In my opinion, the facts are manifestly glaring and the law is well settled. Absolutely, no ground is made out in support of this request. The oral motion rejected.

[12] AIR 1972 SC 1607 [14] AIR 1976 SC 1947

[13][1979] Cr LJ 974 (Bom)