

(1995) 09 MAD CK 0059

Madras High Court

Case No: Criminal O.P. No. 2579 of 1995 and Criminal Miscellaneous Petitions No"s. 1861 and 1862 of 1995

G. Rangaswami

APPELLANT

Vs

Coimbatore Pioneer Mills Ltd.

RESPONDENT

Date of Decision: Sept. 1, 1995

Acts Referred:

- Companies Act, 1956 - Section 630, 630(1)

Citation: (1995) 84 CompCas 736 : (1995) 2 LW(Cri) 601

Hon'ble Judges: C. Shivappa, J

Bench: Single Bench

Judgement

Shivappa, J.

The petitioner is seeking quashing of the proceedings in S.T.C. No. 594 of 1995 on the file of the Judicial Magistrate No. VI,

Coimbatore.

2. The respondent herein has filed a complaint for an offence u/s 630 of the Companies Act, 1956, alleging that the petitioner herein was once the

managing director of the complainant-company and resigned his office on September 26, 1994, which came into effect from September 30, 1994,

and thereafter he ceased to be the managing director. The petitioner is residing in ""Pioneer House"", which was till recently the property of the

respondent-company. By means of an agreement dated October 3, 1994, this ""Pioneer House"" was exchanged with another house called

Chandra House"", which belonged to Chandra Textiles, a joint stock company, registered under the Companies Act. The agreement dated

October 3, 1994, has been entered into between the complainant company on the one hand and Chandra Textiles Limited on the other. By virtue of the agreement, the property ""Pioneer House"" has become the property of Chandra Textiles. The petitioner herein is one of the directors in Chandra Textiles and as such he continues to reside in Pioneer House. The petitioner, while he was the managing director of the respondent-company, was given certain perquisites and amenities to be enjoyed by him.

3. Item No. 4 in the schedule attached to the complaint is a Hindusthan Contessa car, bearing registration No. PY-018-7155, which was purchased by the respondent-company and given to the petitioner for his use as managing director. Item No. 5 is a diesel generator set, which was erected in Pioneer House, which was the property of the respondent-company. Items Nos. 4 and 5 still continue to be in the possession of the petitioner, notwithstanding the fact that he ceased to be the managing director of the respondent-company. Items Nos. 2 and 3 in the schedule are computers, whereas item No. 1 is an automatic exhaust gas analyser. According to the respondents, these three items were purchased by the respondent-company from its funds. They have been housed in the automobile division of the respondent-company, which is functioning under the name and style of ""Pioneer Power System"". This automobile division was established by the respondent-company on June 29, 1995, as per the resolution of the board meeting dated June 29, 1995. Items Nos. 1 and 2, which were in the premises of the respondent-company, were removed to the premises of Sri Ranga Vilas Ginning and Oil Mills in Pappanaickenpalayam by the petitioner. Sri Ranga Vilas Ginning and Oil Mills is a partnership firm of which the petitioner is one of the partners. Likewise item No. 3 has been removed from the premises of the respondent-company, namely, Pioneer Power System, to the registered office of Chandra Textiles Limited, Avanashi Road, Coimbatore, by the petitioner. The petitioner is a director in Chandra Textiles Limited and according to the respondent, the petitioner has no right whatsoever to remove these three items from the premises of the respondent-company, which are under his control. These three items have been removed by the petitioner on

September 19, 1994, when he was one of the managing directors of the respondent-company, even without a gate pass. The case of the

respondent herein is that the petitioner cannot hold those properties, when he ceased to be the managing director of the respondent-company. In

spite of requests, his not handing over the properties is bad in law and his possession becomes wrongful. Besides items Nos. 1 to 3, mentioned in

the schedule, are the properties which have been removed without even a gate pass and he is using items Nos. 1 and 2 in Sri Ranga Vilas Ginning

and Oil Mills, of which he is one of the partners and likewise he is using item No. 3 in the premises of the head office of Chandra Textiles.

Therefore, it becomes apparent that he knowingly uses those articles for purposes other than those for which they are expressly meant. These

articles have been purchased by the respondent-company only for and on behalf of the company and for its own use and not for the use of

anybody else. Therefore, it is clear that the petitioner has committed an offence u/s 630 of the Companies Act. It is further alleged that these

articles are very costly articles and continued wrongful retention of these articles by the petitioner has resulted in a great loss to the respondent-

company. The respondent has also denied in paragraph 16 that the matter is seized by the arbitrator and K. Rajagopal is an arbitrator, and also

denied the averment regarding suppression of facts and contended that the complaint has been taken on file by the court on February 27, 1995,

and Mr. K. Rajagopal's decision is said to have been made on March 7, 1995, which is subsequent to the complaint.

4. Repelling these averments, the petitioner contended that the complaint smacks of mala fides and it is an abuse of the process of the court and of

law and it has been filed merely to enable the respondent to harass, and coerce the petitioner and contended that this is a matter of civil wrong at

best and in view of the memorandum of understanding dated July 15, 1994, the petitioner has rights and it is a matter to be adjudicated in

accordance with law in arbitration proceedings. Learned counsel for the petitioner invited my attention to paragraph 17 of the memorandum dated

July 15, 1994.

5. The point for consideration is whether the complaint of the respondent herein is liable to be quashed u/s 482 of the Code of Criminal Procedure

?

6. In the complaint, the complainant has alleged that the petitioner ceased to be the managing director, he had no right to retain the properties

mentioned in the schedule, he had stealthily removed those properties without the gate pass, he had no right to retain those properties and they

were purchased from the funds of the complainant-company and meant for the use of the company and not for anybody else. Since the petitioner

ceased to be the managing director, he has no right to use any of the properties and on the other hand retention of the properties in his custody

attracts section 630 of the Companies Act.

7. Section 630 of the Companies Act reads as follows :

Penalty for wrongful 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.

8. It contemplates and makes the retention of any property belonging to the company punishable, when he ceases to be an officer of the company.

Learned counsel in support of his contention relied on a decision of this court in Ganesan v. State [1995] 39 MLJ (CrL.) 357 at paragraph 5 and

contended that if, on a consideration of the relevant materials, the court is satisfied that no offence is disclosed, it will be the duty of the court to

interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

9. He relied on a decision of the Supreme Court in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, ,

to contend that having regard to the fact situation in the given case at best it can be a civil wrong and not a case for prosecution in a criminal court.

10. Learned counsel for the petitioner cited a decision of the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, ,

wherein the Supreme Court has given a list of myriad kinds of cases, though not exhaustive, wherein such power of quashing should be exercised.

Learned counsel relied on one such illustration, namely, where the complaint is so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, in such an event the complaint

should be quashed.

11. Learned counsel for the respondent contended that this court cannot take into consideration the documents produced by the petitioner at this

stage without legal proof and relied on a decision of the Delhi High Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, ,

wherein the Supreme Court has held that proceedings against an accused at the initial stages can be quashed only if on the face of the complaint or

the papers accompanying the same, no offence is constituted. The test is that taking the allegations and the complaint as they are, without adding or

subtracting anything, if no offence is made out, then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482,

and invited my attention to the decisions in *Raj Kapoor and Others Vs. State and Others*, , *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi*

and *Others*, and *Dr. Sharda Prasad Sinha Vs. State of Bihar*, , and this court in *S. Jothilingam v. State* [1995] 2 LW (CrL.) 438 has held that

taking the allegations in the complaint as they are, without adding or subtracting anything, if no offence is made out, then only, the court is justified

in exercising its power u/s 482 of the Code of Criminal Procedure, 1973. If the contention of learned counsel for the petitioner is acceded to, it

amounts to analysing the truth or otherwise of the allegations in the complaint, which could not be relied on without legal proof and also amounts to

evaluating the genuineness or otherwise of the materials alleged in the complaint. The Supreme Court, in *State of Tamil Nadu v. Thirukkural*

Perumal [1995] 3 JT 166, has deprecated the practice of evaluating the material, which is yet to be produced before the trial court and held that

the court is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the complaint. Therefore, it is

not appropriate to take into consideration the memorandum referred to by learned counsel for the petitioner.

12. The next contention of learned counsel for the petitioner is that at best the allegations in the complaint may amount to a civil wrong. There are a

large number of cases, where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly co-extensive

and essentially differ in their context and consequence. When the petitioner has no right to retain the properties under the Companies Act, it is

punishable, when the respondent-complainant alleges that the petitioner has no authority to retain and his possession is wrongful, it is a matter of

evidence.

13. In *Pratibha Rani Vs. Suraj Kumar and Another*, , the Supreme Court has taken the view that, providing a civil remedy does not in any way

take away a right to file a criminal complaint, if the properties belong to the respondent-complainant.

14. The scheme of section 630 of the Companies Act contemplates right to possession and the duration of occupation are all features, which are

integrally blended with the employment and the capacity and the corresponding rights are extinguished with the cessation of employment and an

obligation arises to hand over the allotted property back to the company. Where the property of the company is held back whether by the

employees, past employee or any one claiming under them, the retained possession would amount to wrongful withholding of the property of the

company actionable u/s 630 of the Act. Section 630 of the Act is a penal provision and, therefore, must be subject to strict construction and in

essence, sub-section (1) of section 630 makes it an offence where any officer or employee of a company wrongfully withholds possession of such property of the company. It, inter alia, regulates the affairs of the company including the control of the management and protection of the property of the company. It provides speedy relief to the company, where its property is wrongfully obtained or wrongfully withheld by an employee or an officer.

15. In Smt. Abhilash Vinodkumar Jain Vs. Cox and Kings (India) Ltd. and others, , the Supreme Court has held that a complaint is maintainable for the retrieval of a company's property wrongfully withheld by an employee or past employee or an officer concerned, or any one claiming under him. The retained possession would amount to wrongful withholding of the property of the company and actionable u/s 630 of the Act. It has been held by the Supreme Court in paragraphs 9, 10 and 11 of its order (at pages 33 and 34) :

A three-judge Bench later on in Amrit Lal Chum Vs. Devoprasad Dutta Roy, , while hearing an appeal from the judgment of the Calcutta High Court in Amritlal Chum v. Devi Ranjan Jha [1987] 61 Comp Cas 211 held that section 630 of the Act plainly makes it an offence if an officer or employee of a company who was permitted to use the property of the company during his employment wrongfully retains or occupies the same after the termination of his employment. It was opined that it is the wrongful holding of the property of the company after the termination of the employment which is an offence u/s 630(1) of the Act and that there is no warrant to give a restrictive meaning to the term "officer or employee" appearing in sub-section (1) of section 630 of the Act as meaning only an existing officer or an existing employee and not those whose employment had been terminated or had otherwise come to an end. The Bench approved the law laid down by this court in Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, .

In Atul Mathur Vs. Atul Kalra and Another, , this court once again emphasised that the object of the provisions of section 630 of the Act is to retrieve the property of the company and that even though the provisions are penal in nature, the object of the provision is required to be given a

purposive interpretation so as not to choke the beneficial provision. The Division Bench once again followed the judgment in Baldev Krishna Sahi

Vs. Shipping Corporation of India Limited and Another, .

In Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath and Others, , the Division Bench reviewed the previous judgments rendered

by this court and, relying upon the law laid down in Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, and Amrit Lal

Chum Vs. Devoprasad Dutta Roy, held that the offence u/s 630 of the Act is not such as can be said to have been consummated once for all and

that the offence continues until the officer or employee delivers up or refunds the property of the company when ordered by the court to do so

within a time fixed by the court and in default to suffer the term of imprisonment as may be imposed by the court. It was held that "officer or

employee" u/s 630 of the Act, includes both present and past officers and employees.

16. It has further held that though section 630 of the Act falls in Part XIII of the Companies Act and provides for penal consequences for wrongful

withholding of the property of the company, the provisions, strictly speaking, are not penal in the sense as understood under the penal law. The

provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully

obtained or wrongfully withheld by an employee or officer or an ex-employee or officer or any one claiming under them. Therefore, there is no

merit in the contention of learned counsel for the petitioner that it is a civil remedy and a criminal complaint amounts to an abuse of the process of

the court.

17. Whether a memorandum of understanding between the petitioner and Devarajan can bind the corporate body ? Whether possession is

wrongful ? Whether the petitioner has a right to hold the properties ? These are all disputed questions of fact, which can be decided only during

trial. It is not appropriate for this court to evaluate the genuineness, credibility, reliability or otherwise of the right source of purchase, manner of

removal and authority to retain those properties; the ingredients of section 630 of the Companies Act are all matters of evidence and the petitioner

has an opportunity and stage to urge all his contentions and no prejudice is caused to him. I see no justification to consider the memorandum of understanding relied on by learned counsel for the petitioner at this stage. Keeping all these circumstances in view, there is no justification to quash the proceedings. Accordingly, the petition is dismissed. Consequently, Criminal Miscellaneous Petitions Nos. 1861 and 1862 of 1995, are also dismissed.