
The Indian Hotels Co. Ltd. Vs Bhaskar Moreshwar Karve and another

Criminal Revision Application No. 33 of 1993

Court: Bombay High Court

Date of Decision: July 6, 1993

Acts Referred:

COMPANIES ACT, 1956 & Section 630#Criminal Procedure Code, 1973 (CrPC) & Section 482

Citation: (1994) 1 BomCR 3 : (1994) 96 BOMLR 831 : (1994) 81 CompCas 132 : (1993) CriLJ 3370

Hon'ble Judges: M.F. Saldanha, J

Bench: Single Bench

Advocate: Rafique Dada, V.P. Vashi and J. V. Vashi, for the Appellant; Sudhir Shah and R.F. Lambey, APP., for the Respondent

Judgement

1. This proceeding is reminiscent of the allegoric reference to the proverbial serpent that attempted to sting the hand that was feeding it milk. Harsh

as this may seem, a narration of the facts would indicate how appropriate the analogy is, the central issue canvassed in the case being one that is

customarily pleaded as a defence in prosecution u/s 630 of the Companies Act, 1956, the law on the point requires to be settled. It has almost

become routine in this class of litigation, for a contention to be adopted by the defence, that a promise was made to the accused ex-employee by

or on behalf of the Company that the premises in question would be sold to the employee at book value or, in other words, for a fraction of the

real market value or, in the case of rented premises, that the tenancy would be surrendered in favour of the occupant. This contention is pleaded in

all seriousness and it is contended that the accused is entitled to enforce his rights by insisting on specific performance by the Company and that,

consequently, the ingredient of wrongful retention or withholding of the premises is absent. Litigations are commenced in the Civil Courts for a

declaration that the accused should be declared tenant or that he is entitled to enforce the sale at book value to himself for a totally unreal

consideration on the ground that he is an intending purchaser, apart from other parallel proceedings in various Courts, and the criminal persecution

instituted by the Company is sought to be stayed on the ground that the accused has raised issues which are within the exclusive jurisdiction of a

Civil Court where the accused can confidently assure himself that the first round of litigation will not be over for at least two decades if the requisite

dilatory tactics are resorted to.

2. The Courts in this country, and in particular the apex Court, have held with consistent regularity that Section 630 of the Companies Act is a

penal provision and that it is intended to provide an expedient and sure fire remedy for recovery of Company property that is wrongfully withheld,

the term "property" being inclusive of residential premises retained by employee or ex-employees, who undoubtedly would use every available

means to retain the property for so long as possible and to even appropriate it wherever the situation permits. The application of the law against

such wrong-doers is not to be in a weak, long-drawn out insipid action which would have the effect of encouraging dishonesty, but the approach

has to be strong, vigorous and efficient if there is to be respect for the rule of law. The Courts have hitherto interpreted Section 630 of the

Companies Act and have crystallised the position. That the remedy prescribed by the Section is required to be speedy, that it is required to be

effective and that, consequently, it must necessarily yield the desired result is how the Section has been interpreted. What is, in fact, happening in

the proceedings is exactly the reverse and it is, therefore, necessary to ensure that the law is given effect to and not put into cold-storage.

3. To state the central point in this proceeding, which briefly is that the accused was allotted and is in occupation of residential flat No. 32 on the

third floor of Mehr-Dad building, Cuffe Parade, Bombay-400 005, along with a garage in the same building since about the year 1978, in his

capacity as an officer of the Indian Hotels Co. Ltd. (hereinafter referred to as "the Company"). At the time of the purchase, the Company had paid

Rs. 1,70,000/- for the property. The accused conveyed a request in the year 1978 to the Managing Director of the Company that he should be

permitted to purchase the flat in question at book value. The Managing Director, Mr. Karkar, intimated to him that he viewed the proposal

favourably, but that the same was subject to the sanction of the Board of Directors. The accused contends that he is entitled to apply the doctrine

of promissory estoppel in so far as a promise was held out to him that the flat would, in fact, be sold to him at book value and that it was because

of this assurance that he did not acquire suitable residential accommodation for himself. The matter was hanging fire for several years and ultimately

placed before the Board in 1989 when the Board of Directors of the Company rejected the proposal. The accused, who had in the meanwhile

retired, continued to reside in the premises without making any payments whatsoever to the Company and the Company had to prosecute him u/s

630 of the Companies Act. Criminal Case No. 2199/5 of 1989 was filed by the Company in the Court of the learned Additional Chief

Metropolitan Magistrate, 37th Court, Esplanade, Bombay, charging the accused with having committed an offence punishable u/s 630 of the

Companies Act.

4. The accused has filed a suit, which is pending in the High Court, being Suit No. 2187 of 1992, on 20-5-1992, wherein he has prayed for a

decree of specific performance against the Company for compelling it to sell the flat to the accused at book value.

The accused contends through some involved and difficult process of reasoning that he is entitled to enforce the assurance given to this effect, and

that the adjudication of the case is purely within the ambit of the Civil Court. Simultaneously, he states that by canvassing such a plea he is entitled

to claim total immunity in the criminal prosecution because he is legally justified in retaining the possession of the premises and is, therefore, not

wrongfully withholding the same. I found it difficult to read much logic into the aforesaid contentions apart from there being precious little legal

justification in the argument, but this point has been argued at length and therefore, requires to be settled, more so since such pleas are being

canvassed with regularity in Section 630 of the Companies Act proceedings and are responsible for abnormal delays in the disposal of cases. The

law on the point, therefore, requires to be stated.

5. As far as the criminal prosecution was concerned, the accused had earlier approached this Court by way of Criminal Application No. 2491 of

1990 contending that the criminal proceedings against him ought to be quashed. After hearing parties, Dhabe, J. passed a speaking order dated 5-

11-1990 and held that it was not a fit case in which the powers u/s 482 of the Code of Criminal Procedure ought to be invoked and rejected the

petition. The accused filed an appeal to the Supreme Court, being Criminal Appeal No. 164 of 1991. It is obvious from the order of the Supreme

Court dated September 12, 1991 that the Court was not inclined to entertain the appeal whereupon the petitioner sought the leave of the Court to

withdraw it. The petition was disposed of with the observation that the appeal is dismissed as withdrawn. The Court, however, expressed no

opinion on the merits of the case and directed the trial Court to hear and dispose of the case preferably within a period of six months from the date

of the receipt of the order. The trial thereafter proceeded and when it came to the stage of framing charge, the accused once again seriously

contended that he should be discharged. The defence taken before the trial Court is exactly the same, namely, that it was promised to the accused

that the flat would be sold to him at book value, that consequently he did not acquire a place of his own and that the Company is, therefore,

estopped from going back on the promise. The learned Magistrate, after hearing the parties, rejected the application for discharge by an order

dated 23-11-1992 and 1-12-1992 framed charge against the accused for an offence u/s 630 of the Companies Act.

6. The accused thereafter filed Criminal Revision Application No. 378 of 1992 before the Court of Session for Greater Bombay, principally

contending that the framing of the charge against him was unjustified and once again pleading the point regarding promissory estoppel. The matter

was finally heard by the Court of Session and His Honour Judge Deshpande by his judgment dated 1-3-1993 upheld the plea raised by the

accused. The revision was allowed, the order of the Metropolitan Magistrate dated 23-11-1992 was set aside and the accused was discharged. It

is against this order that the Company approached the High Court through the present petition. When this petition came up for admission, after

hearing the learned Counsel on both the sides and on a consideration of the order dated 1-3-1993 passed by the Court of Session, it appeared

that the case did require reconsideration. Shri Washi, on behalf of the petitioner, had pointed out to me that in the year 1991, the Supreme Court

had directed that the proceeding be disposed of within six months, that the order of the Supreme Court dated 12-1-1991 was binding on the

Courts below, that almost two years had passed and the proceeding had not yet terminated in the trial Court. The learned Counsel pointed out to

me that the accused has retired from the services of the Company, that the Company badly requires the premises for its other officers and that,

consequently, the matter ought to be disposed of on a priority basis. The only point that arose for consideration in the matter was as to whether the

accused plead and enforce the doctrine of promissory estoppel and to this extent on the facts of this case and a consideration of the law appeared

to be an important argument. The Supreme Court direction, on the one hand, the need of the Company on the other and the fact that the trial was

already part-heard before the learned Magistrate were grounds that required expeditious hearing. The matter was, therefore, admitted and fixed

for final hearing on 20-4-1993.

7. The petition was taken up for hearing in the third week of April and the learned Counsel on behalf of the petitioner pointed out to me the facts of

the case, the correspondence on record, the notes of evidence, the orders, etc., on two main points and submitted that there can be no two

opinions about the fact that the accused had wrongfully retained the flat and if at all anything was to be said in favour of his defence that the same

could only be taken cognizance of at the time of the main judgment. He submitted that interference by the learned Sessions Judge and that too at

the stage of framing of charge was wholly improper and consequently that the proceedings be remanded to the trial Court for a decision on merits.

Shri Sudhir Shah, learned Counsel appearing on behalf of the respondents, defended the order of the learned Sessions Judge who had discharged

his client. Shri Shah was eloquent in his arguments, which arose also long-winded, and he maintained that this Court must look at all the material on

record, particularly the documents which were rather voluminous. After the case was heard for a considerable period of time, I informed Shri Shah

that the plea of promissory estoppel canvassed by him which is the only defence in this case was wholly without substance and that the order of the

Sessions Court would have to be set aside.

8. It is not obligatory on the part of the Court to forewarn a litigant, but out of a sense of fairness, as is often done by the superior Courts, I pointed

out to Shri Shah that at the interlocutory stage it did not appear advisable for him to invite an order on merits from the High Court. It had been

pointed out to me by the learned Counsel on behalf of the Company that in this very case on an earlier occasion when the matter had been taken to

the Supreme Court in appeal that their Lordships, after hearing learned Counsel for the accused, informed him that if he desired an order on merits

the same was bound to adversely affect him at the trial, at which time the accused sought the leave of the Court to withdraw the appeal. The

learned Magistrate has yet to hear the parties and to decide as to whether the accused is liable to be convicted and in these circumstances it

appeared indiscreet to invite an order on merits from the High Court. Shri Shah stated that after considering the matter and after obtaining the

instructions from his client that they desired that the matter be disposed of on merits and that this Court should hear the parties completely and

indicate its decision. Shri Shah stated that he was confident of succeeding in the case and if he did not, that his client would like to carry the matter

higher and that he has considered the implications of an order on merits being passed at this stage and that he would like a total adjudication of the

matter on merits. It does often happen in judicial proceedings, such as when a reference is made, that a superior Court decides the issue and after

resolving it merely re-transmits the matter to the lower Court for disposal in the light of the law as laid down. The arguments thereafter continued

right until the vacation and after the reopening of the Court. In view of my Division Bench assignment, I sat specially on a Saturday to hear the

matter so that the arguments could be heard completely. This was done on 19-6-1993 and the matter was kept for judgment. While going through

the record and the compilations, I was surprised to find an engrossed compilation entitled ""Written Arguments which were advanced orally on

behalf of respondent No. 1."" The compilation runs into something like 52 pages and there is a lot of material, particularly case law that was never

even referred to in the course of the arguments. The Court was never informed that this was being filed nor was the leave of the Court obtaining for

placing it on record. I sent for the Sheristedar and enquired from him, whereupon he informed me that after I had heard Counsel, concluded the

hearing and left the Court Room that Shri Sudhir Shah, learned Counsel appearing on behalf of respondent No. 1, had tendered this compilation to

him and requested him to put it into the case papers. He admitted that it was a lapse on his part to have taken the compilation from the learned

Advocate, but that he did so because the Advocate told him that he had mentioned it to the Judge after the argument, that he was filing written

submissions. This last statement is a false one. Normally, written submissions and compilations are not only helpful but are useful. I, therefore,

decided to scrutinise the compilation when I found that a reference has been made to a very large number of cases which were never cited.

9. In the present instance, I was sorry to find that the manner in which this compilation was attempted to be smuggled on record was particularly in

an attempt to put the Court in the wrong box and prepare some technical grounds for protracting the proceedings further. Various statements and

various cases are referred to, which I was not aware of since there was not even a remotest reference of those in the arguments of Shri Shah and

the attempt is quite obvious to make a grievance that this Court has ignored and overlooked all this material. What is far more serious is the fact

that virtual allegations of bias and pre-conceived notions have been attributed to the Judge which, apart being false and unfair, prima facie

constitute contempt of Court.

10. Regardless of the practice adopted by the learned Advocate, I have at all times been fair and absolutely impartial to both the parties and shall

continue to do so. Having read the compilation, I have taken the trouble to ensure that everything which the accused desires to point out through

his learned Counsel will be considered on merits. In so far as the misconduct is concerned, it is necessary to uphold the need for proper behaviour

in the course of judicial proceeding and not to permit unhealthy and dishonest practices and to this extent, therefore, appropriate proceedings

under the Contempt of Courts Act in respect of the compilation are being adopted separately.

11. Shri Vashi, learned Counsel appearing on behalf of the petitioners, and Shri Sudhir Shah, learned Counsel appearing on behalf of respondent

No. 1, have presented their respective cases with a degree of thoroughness that is commendable. Learned Counsel are agreed on one aspect,

namely, that the correspondence and the documents that are on record are admitted by both sides. Undoubtedly, the areas of differences are with

regard to what exactly the record can be said to truly represent. For this purpose, I have culled out on a datewise basis the important factual

material that is relevant for this case, as a decision on merits would require an appraisal of this material. The chronology that emerges on such an

examination is as follows :-

1) January 1956 .. The accused joined the Company as Vice-President

(Corporate Administration).

2) 1971 .. The accused was allotted as an officer of the

Company a Company flat No. 12-A in Mehr-Dad

Building, Cuffe Parade, Bombay-400 005.

3) 9-10-1978 .. The Company purchased flat No. 32 in the same building for a consideration of Rs. 1,70 lakhs with all charges and taxes. At the request of the accused the flat was allotted to him for his occupation during the period of his employment with the Company. He had represented that he was booking an ownership flat at Shivaji Park, Dadar, which was expected to be ready for occupation in about two years" time. The accused had requested for allotment of the said flat during that period.

4) 22-7-1978 .. Accused wrote to the Managing Director of the Company, Mr. Karkar, informing him that as his children were grown up and settled down, he intends going into business and, therefore, he was retiring prematurely by March 1979. He had requested that he be allowed to buy the Company"s flat and car at book value, ""if permitted"".

5) 27-7-1978 .. Reply from the M.D. informing the accused that he had discussed the proposal concerning the flat and the car with the then Dy. Managing Director of the Company, Mr. Natarajan, that they were in principle agreeable to the same with some modifications and subject to Board"s approval.

6) 31-7-1978 .. Letter from the accused to the Managing Director informing him, inter alia, that he proposed to pay for the Company"s flat and the car from the Provident Fund and Gratuity, and also setting out as to what he intended to do after prematurely retiring from the Company.

7) 30-4-1991 .. Accused wrote to the Managing Director of the Company as to how he could not retire prematurely, but once again requesting that he

would like to buy the flat in question.

8) 7-6-1984 .. Accused wrote a note to the M.D. to allow him

to buy the Company's

flat at book value and

stating that he would like to buy the flat

immediately and requesting him to arrange to

take steps to effect the sale.

9) 25-9-1987 .. Accused wrote to the Managing Director of the

Company informing him that the Company

Secretary and the accused had met the

Company's tax consultant Mr. D. M. Harish on

22-9-1986 to find out about the feasibility of

effecting the sale of the said flat by the Company

to the accused at book value, the

suggestions given by Mr. Harish and requesting

that the required resolution be passed at the

Board meeting to be held on 29-9-1986.

10) 3-10-1986 .. Reply from the M.D. to the accused pointing

out that there had been dramatic change in

the real estate prices and, therefore, that

he finds it difficult to approach the Board

with a proposal that the flat be sold at book

value to the accused. The Managing Director

had offered an alternative proposal regarding

another flat which, if approved, the Managing

Director was to go to the Board and work out the

formula. The Managing Director had expressed

confidence that he

would be able to persuade the Board to agree

to certain concessions, but pointed out that

he would not be able to help much if the

accused still requested that he be allowed to

buy the present flat. As regards the flat in

question, the Managing Director had clarified

that at the highest, he could approach the

Board with a recommendation to allow the accused to buy the flat at a cost which will be 10% less than the market value.

11) 23-2-1987 .. Letter from the accused to the M.D.

mentioning that he had all along proceeded on the assumption that the very flat would be sold to him at book value.

12) 28-4-1987 .. Reply from the M.D. pointing out that there

has been an abnormal rise in the cost of housing in Bombay and that consequently he could not approach the Board for selling of the flat to respondent No. 1.

13) 30-5-1987 .. Note from the Managing Director to the

accused that he should accept the alternative flat offered to him.

14) 15-5-1989 .. Accused retired from the service of the Company.

15) 30-8-1989 .. Letter from the Managing Director to the

accused that the Board had considered his request in the meeting held on 6-6-1989, that the same had been turned down and an offer was still made to the accused with regard to some alternative accommodation.

16) 19-1-1990 .. Letter from the accused to the Managing

Director of the Company stating that the earlier commitments made were irrevocable, that they cannot be annulled for any subsequent reasons and calling upon the Managing Director to honour the same.

17) 13-7-1990 .. Letter from the Managing Director to the

accused stating that he had placed the correspondence between the accused and himself before the Board and that the Board did not accede to the request of the accused.

18) 11-8-1990 .. Letter from the accused once again insisting

that the flat in question be sold to him at

book value.

19) 20-8-1990 .. Letter from the Secretary of the Company

recording that the Company is withdrawing the

offer of alternate accommodation and calling

upon the accused to hand over possession of

the flat.

20) 20-8-1990 .. The Company filed the criminal complaint

against the accused for the offence under

Section 630 of the Companies Act.

21) 20-5-1992 .. The accused filed a suit in the High Court at

Bombay, being Suit No. 2187 of 1992, against

the Company for specific performance of the

agreement to sell the flat and the garage at

its book value.

22) 17-12-1992 .. The Company filed a suit in the Small Causes

Court at Bombay against the accused and his

family members for obtaining vacant

possession of the flat.

12. The above essentially represents the correct sequence of events. Shri Vashi, on behalf of the petitioners, points out to me that there could be

no ambiguity about the fact that the request for sale of the flat to the accused at book value had come from him at a time when he was

contemplating premature retirement. Shri Vashi states that all this had transpired in the mid seventies at which time many of the better companies

used to permit some of the Senior Executives the facility of purchasing used items like cars, furniture, etc., at book value which the companies in

any case were disposing of. As far as the flats are concerned, since it was always a problem for companies to find sufficient accommodation for

their Executives, such proposals could not be acceded to. When the accused conveyed his request to the Managing Director, which was very

shortly after the purchase of the flat, the book value of the flat would have been the same as the market value at which the flat had been bought.

The Managing Director and the Vice-President, prima facie, felt that this would not prejudice the interest of the Company and that the proposal

could be put up to the Board, the decision being ultimately that of the Board. Shri Vashi emphasised the fact that in the case of a limited company

and that too in matters of alienation of property, the decision to dispose of such property can only be taken by the Board of Directors and that no

other officer of the Company is empowered to either take the decision or enter into a contract that binds the Company. Even at that stage, Shri

Karkar while indicating his personal reaction that the proposal appeared to be good enough as far as he was concerned, clearly indicated with the

use of the words ""with some modifications and subject to Board's approval"" that he had no power to decide the matter. What is important is that

nothing was concluded at that point of time.

13. Coming to the next stage, namely, the meeting with the Company's Tax Advisor in September 1986 which is relied upon heavily by the

accused, Shri Vashi points out that in none of the documents produced up to this point of time was there any concluded agreement or assurance

that the flat would be sold to the accused or that this would be done at book value. He further states that the advice of the Company's Tax

Advisor was sought for purposes of ascertaining his views with regard to the proposal from the accused because the accused was still persisting

with his request. What is important is that Shri Vashi points out that in the letter dated 3-10-1986, the Managing Director has recorded a

significant fact, namely, the abnormal rise in real estate prices. This meant that the book value or the price at which the accused wanted to buy the

flat was approximately 1/25th of the market value and Shri Karkar himself informed the accused that he finds it difficult to even approach the

Board with such a proposal. He states that the accused was a Senior Officer of the Company and in order to be helpful to him that Shri Karkar

even put forward the alternative proposal that the Company would consider certain concessions in case the accused approved of some other flat

and that he would go to the Board to work out the formula. Shri Vashi emphasised the fact that Shri Karkar clearly informed the accused that he

would not be able to help if he insisted on buying the present flat and that the only recommendation, which he could even put up, was that it be

offered to the accused at a price 10% less than the market value. The accused was still persistent with his request and on 28-4-1987 Shri Karkar

once again recorded the fact that the unforeseen rise in the cost of housing in Bombay, which he himself had not foreseen earlier, virtually

precluded him from approaching the Board to sell the flat to respondent No. 1. On 30th May, 1987, the Managing Director had even written to

him again that he should accept some other flat. Shri Vashi explains that the Managing Director of the Company just could not consider a proposal

to dispose of the flat at a throw-away price, quite apart from the fact that it was improper and illegal and the law itself would not permit it. It would

be very damaging to the interest of the Company as it would be the loss of a valuable asset and would involve the Company in huge expenditure

when a replacement has to be bought. He states that though not obligatory, it was a gesture of kindness and magnanimity that the accused was

offered an alternative flat. The record indicates that this proposal was never accepted by the accused and that he adamantly stayed on in the

present flat. In sum and substance, Shri Vashi submits that there was no promise, no assurance, no obligation and no concluded contract between

the Company and the accused for sale of the flat to him at book value. He contends that the accused is attempting to distort the record and that he

is putting forward false claims which are only in an effort to prolong the litigation and get out of the criminal liability.

14. This essentially is the main controversy in the present proceeding. Shri Shah has repeated ad nauseum that the Company had promised to sell

the flat to him at book value. When I asked him to produce any documents or evidence in support of this contention, he stated that the reaction of

the Managing Director to the initial proposal of the accused in 1978 when he had asked for the flat and a car at book value signifies that the

proposal was accepted and concluded and that according to Shri Shah the Board's approval was a mere formality. Shri Shah repeated several

times in his arguments that a commitment made by Shri Karkar as M.D. binds the Company. In this case, I find no such commitment having been

made. It needs to be clarified, however, that in matters of alienation of property, no such commitment made by any officer at any level could either

be valid or binding - it is only the Board in whom the powers vest.

15. Shri Shah then proceeded with a starting argument, namely, that the Managing Director had assured the accused that he could persuade the

Board to give the flat to him and that the Managing Director, Shri Karkar, was, consequently, instrumental in the accused not buying a flat of his

own at that time because of the assurance that this flat would be given to him. I pointed out to Shri Shah that this argument runs contrary to the

facts on record and that apart from Shri Karkar's letters that even his own client's correspondence does not support any such version. At this,

Shri Shah attempted to contend that the Court must accept his client's word that because he was confident of getting the present flat at book

value, that he did not purchase another flat. Since Shri Shah had made a direct accusation that it was Shri Karkar who stopped his client from

purchasing another flat, I asked Shri Shah to substantiate this statement from anything on record, but apart from making this statement in the air, he

was totally unable to do so. Shri Shah then adverted to the fact that since his client had "understood that he was getting the flat and since Shri

Karkar kept him in hopes that his client did not purchase another flat at a point of time when he was in a position to do so." The first part of the

submission is contrary to the record and as far as the second part of it is concerned if the accused for whatever reason did not purchase a flat of

his own, I see no justification in his trying to insist on the Company providing him accommodation at a later point of time. This demand is not only

illogical but it is absurd.

16. I have devoted considerable time both in the Court Room and while deciding this case to a meticulous examination of the record because Shri

Shah's contention is that his client is entitled to spell out an agreement to sell from the correspondence and the events that transpired and that, in

these circumstances, he is justified in his demand for specific performance of what he termed as an agreement to sell. This is interlinked with his

contention that the doctrine of promissory estoppel would be applicable in the present case. Shri Shah has contended further that not only did the

Company hold out a promise to his client but that his client altered his position to his prejudice by thereby refraining from purchasing a flat of his

own. I have already held that there was no promise, no assurance or no contract and I do not accept that the accused did not purchase a flat of his

own in the circumstances so pleaded by Shri Shah.

17. To my mind, the entire plea with regard to promissory estoppel is completely and totally misconceived. To start with, on facts, the record

unmistakably indicates that there was no promise and, therefore, there can be no estoppel. One requires to approach the situation, however, from

a slightly deeper angle which I consider it necessary because it is not only a question of arriving at a conclusion as to whether from an appraisal of

the material on record the doctrine of promissory estoppel applies or not. I need to go a stage further and to record that the argument should be

tested from another aspect, namely, the question as to whether the accused could have insisted on the purchase of a flat in a situation whereby

even the Board of Directors might have agreed to sell the Company property to an employee at a ridiculously low price. Shri Shah has used the

term "book value", but one needs to be a little more honest and realistic. The price at which the accused is asking for the flat works out to about

100th the real value or market value of that property in the city of Bombay today. Not only would the Tax Laws not permit this but it would be a

fraud on the Company and it would be wrong on the part of the Board of Directors to even contemplate a transaction of this type. More

importantly, one needs to bear in mind that even the Board of Directors of a limited company are the trustees as far as its property is concerned

and that they will not be acting in consonance with law or in the public interest or, for that matter, the interest of the shareholders if they permit this.

If such favouritism were to be shown to selective employees who are allowed to take away Company property at ridiculously low prices, to my

mind, even if such transactions are approved of, the contracts would have to be struck down on the ground that they are illegal and against public

policy. Viewed at from any angle, therefore, record of this case apart, there is no justification even to the remotest extent for the application of the

doctrine of promissory estoppel. Even in those of the cases where such promises are pleaded or even established, a Court of law will have to

ignore them. I do not see any merit whatsoever in this plea and the detailed reasoning set out by the learned Sessions Judge upholding this

contention is not only a wrong appraisal of the record but a total misleading of the law.

18. As regards the justification for framing of charge, Shri Vashi clearly points out that the accused was permitted residence in the premises in his

capacity as employee of the Company and that, consequently, on his ceasing to be an employee of the Company, i.e., when he retired from

service, that he was legally obliged to restore the Company's property and in not doing so, he has wrongfully withheld the same. Shri Vashi points

out to me that the accused has no locus standi to be in the premises which, admittedly, belong to the Company and he is in wrongful occupation of

even after he is repeatedly called upon to hand over possession. He submits that the offence is complete and that, consequently, the charge has

validly been framed against the accused. The only justification pleaded in the cross-examination and in the material that was brought on record was

that the accused is an intending purchaser, that the Company is wrong in not having completed the sale transaction and that, therefore, he is not

liable to restore possession. As indicated by me earlier, the defence plea is wholly and completely baseless and looked at from no angle can it

justify the wrongful retention of the premises. The learned Magistrate was, therefore, fully justified in framing the charge against the accused.

19. Shri Shah has insisted on arguing every conceivable aspect of the matter on merits and has insisted that this Court must examine it which makes

it inevitable that this Court must express its views and record its findings. This has been done in spite of my having repeatedly brought it to his

notice that at the interim stage, it may not be the best course of action. Shri Shah has relentlessly pursued his arguments and has attacked the

validity of the Board decision dated 6th June, 1989 refusing to accept his client's proposal for purchase of the flat at book value. The first

contention is that as regards some of the items on the agenda, a note was put up that the Board was requested to approve of the item in question,

but that as far as this item was concerned, the Board was asked only to decide. According to Shri Shah, the Managing Director Mr. Karkar and

the Company Secretary were obliged to request the Board to decide the proposal favourably. To say that there is no substance in this argument

would be an understatement. To my mind, the office of the Company has acted correctly in so far as the correspondence was put up to the Board

and it was left to the Board to consider the merits of the matter and take a decision. I need to mention here that the Board of a Company is obliged

to act fairly, but at all times in accordance with law and, to my mind, where an absurd proposal was put up that an employee requests that a

property be sold to him for a microscopic fraction of its market value, the Board has acted very correctly in having rejected such a proposal.

20. Shri Shah contended that the papers had not been circulated to at least one of the Board Members and that, therefore, the decision is bad,

Frankly, I do not see how in a prosecution u/s 630 of the Companies Act the learned Advocate expects this Court to go behind the Board

decision on all sorts of frivolous and unsustainable pleas. The hollowness of the arguments presented is aptly illustrated by the next submission

whereby it was contended that the Board completed 16 items in 45 minutes and that, therefore, the Directors did not apply their minds to the

subjects. The fact that they could have read the material earlier and dealt with each item on the agenda without any loss of time is totally

overlooked. The present proposal itself was so inherently unacceptable that I do not visualise the Board of any responsible Company spending

more than half a minute to consider it. Again, Shri Shah argued that some of the employees, directors were junior to Shri Karkar, that some of the

Senior Directors had not attended and that had Shri Karkar so desired, he could have persuaded the Board to accept the proposal because Shri

Karkar is a senior and a highly respected Director and the Board would normally go by his advice. Shri Shah contends that in Shri Karkar not

having voted in favour of the proposal and having abstained from voting, that he acted wrongly and unfairly and in Shri Shah's words, that the

decision is consequently vitiated"". Shri Karkar was a party to the correspondence between the parties. In the latter of the correspondence he has

himself indicated a valid reason, namely, the high value of the property as being the ground for his not being in favour of the proposal and in these

circumstances, he has acted very correctly in not having taken any part when the matter came up for consideration before the Board. I have

considered these submissions advanced by Shri Shah because he has insisted on adopting this line of argument even though I told him that this

Court is neither obliged nor required to go into all these questions, but he still maintains that they are intrinsically interlinked with the main issue and,

therefore, must be adjudicated upon.

21. Shri Shah then went over to another submission. He cited the decision of Rege, J. (as he then was) in the case of Damodardas Jain v. K. C.

Chakravarty 1984 Mah LJ 952 : 1985 Tax LR 2018, wherein the learned Judge has held that the issues involved in that dispute wherein a

prosecution u/s 630 of the Companies Act was pending were ones which were of a civil nature and which were required to be decided by a Civil

Court and the learned Judge, therefore, disapproved of a criminal Court deciding those issues. Shri Vashi was quick to point out to me that apart

from the facts in the present case being totally distinguishable from the one in the proceeding decided by Rege, J. that the legal issues involved are

also entirely different. He also pointed out that the Supreme Court in the case of Atul Mathur v. Atul Kalra, 1989 SCC (Cri) 761, has virtually set

aside this decision. He also relied on the following three judgments wherein three single Judges of this Court have taken a contrary view :-

(i) Criminal Revision Application No. 252 of 1987 C. Y. Patil v. Chander Batheja, decided on 26-10-1988 by Tated, J.

(ii) Criminal Revision Application No. 234 of 1986 M. Y. Gaitondde v. Pradip Kumar Das decided on 3-12-1986 by Kantharia, J.

(iii) Criminal Revision Application No. 272 of 1990 Lt. Col. M. K. Puri v. J. S. Bhatia decided on 19-9-1990 by Chavan, J.

22. To my mind, it is necessary to ascertain as to whether at all on facts the issue involved are such that it is inadvisable or impermissible for a

criminal Court to decide them, and secondly, whether there is any bar for doing so. A complicated question of title such as a case in which there is

a substantial dispute on facts supported by evidence as to whether at all the character of the property is such that it conforms to the legal definition

of Company property and where, for instance, the person in occupation has already asked for a declaration from the competent civil Court that he

is, in fact, the de facto and de jure owner of the premises; the question of title could best be adjudicated by a Civil Court rather than by a

Magistrate in a proceeding u/s 630 of the Companies Act. Another instance could perhaps arise where there is substantial material to support a

bona fide plea of tenancy. I have been guarded in using the words substantial and bona fide because I do not have in mind the numerous cases

where a frivolous plea is put up merely in order to delay the bad day. What is contemplated is a genuine case where the Court of Small Causes

may be the only competent forum to finally decide the status of the party in which case a criminal Court may not be the competent forum. In the

present case, no such plea has been canvassed. On the present record, I see nothing that would justify the arguments that the learned Magistrate is

precluded from deciding any aspect of the matter or that he is not competent to do so. This submission, therefore, is devoid of substance and must

be rejected. Shri Shah was alluding to the fact that his client's civil suit is pending, but he again overlooks the all important angle that the

proceeding is between the same parties, the issues are common, i.e., promissory estoppel, the material relied on in the civil suit is the very same

evidence that has been evaluated in this proceeding - to my mind this is only an attempt to litigate and delay, both of which are characteristics of

Section 630 proceedings in the city of Bombay.

23. Lastly, Shri Shah relied on a decision in case of Rajaram Gupta and Others Vs. Dharamchand and Others, , a copy of which judgment he did

not produce before me. He, however, advanced the proposition that where an accused has been discharged, a higher Court ought not to lightly set

aside that order unless it is demonstrated that there is gross miscarriage of justice and that the order itself is perverse in law. I have taken

cognizance of the several decisions wherein such a principle is enunciated, such as where the accused has been acquitted and the law states that

the acquittal ought not to be set aside merely because another view is possible. This unfortunately is not such a case. I have recorded a clear and

conclusive finding that the grounds on which the learned Sessions Judge has discharged the accused are wholly and completely unsustainable. The

view taken runs contrary to the law as laid down by the Supreme Court and by this Court and several other High Courts. It is a total misreading of

the facts and a misconception of the law. The result of such a decision is that the accused who is in wrongful occupation of the premises is

permitted to continue and the Company which is entitled to restoration of the premises is deprived from such a relief. That the decision has resulted

in a gross miscarriage of justice and that it would unfortunately come within the legal definition of ""perverse"" is the only possible conclusion and it is,

therefore, imperative that the order in question be set aside.

24. Shri Shah on behalf of the accused, who is an ex-employee, contended that the Courts while considering applications u/s 630 of the

Companies Act are very much concerned about the case from the angle of the Company which pleads that it has been deprived of the user of the

property, that loss has been caused, that it requires the same back, etc., but that unfortunately the other half of the picture has not been given

sufficient weight. It was, therefore, his request that the Court should view the matter from the opposite angle for purposes of appreciating his

arguments. It was unnecessary for him to make such a request because any Court which includes this one must necessarily take cognizance of

every aspect, more so the one in which the accused is placed particularly in a criminal prosecution. Shri Shah pointed out to me that the accused

joined the Company in the year 1956 and worked there for 34 years until his retirement in 1989. The learned Advocate got a bit emotional while

stating that his client has given his life for the Company, that he is today an old man retired from service and that his client virtually feels cheated and

let down. He projected the view that the insistence on the part of his client that the flat be sold to him at book value is fair and justified in these

circumstances and that equities are in favour of his client. According to Shri Shah, such a course of action would be most appropriate having

regard to the excellent service record of his client and that this is the very least that the Company ought to do for him. I need to record here that in

disputes of the present type where it is a company v. an employee that the battle is an unequal one and I am conscious of the fact that special

consideration must be accorded to the point of view of the employee. This has been done at all stages even to the extent of allowing his learned

Advocate to carry on for much longer than necessary. In the circumstances, it is most insulting to the presiding Judge when statements attributing

bias are then made by Counsel. If the expectation is that the Court must bend over backwards to help a wrongdoer, it is asking for the impossible.

25. I proceed on the assumption that the accused was a good officer and that he rendered praiseworthy service for the Company while he worked

for it, but the flaw in the argument is that the accused in the present case was extremely well-compensated for his services all through his period of

employment and when he retired, he collected a substantial sum of money by way of terminal benefits which again were not withheld even though

he had not restored the possession of the flat. It would be difficult to visualise a situation where an employee has been better treated and one needs

to note that the accused held a top position in the Company and it was least expected from an old person that he would behave in the manner in

which he has thereafter done. Shri Vashi described his conduct as nothing short of treachery. I prefer not to comment about this aspect of the

matter except to record that it is entirely at the benevolence of the management to commend or place on record a career of good service and it is

not unknown for a Company to give such a retiring employee a memento. Under no circumstances, however, would it justify the management of

the Board picking out a particular employee and handing over to him on a platter valuable property belonging to the Company which the learned

Counsel informed me is valued at a crore of rupees. I am not concerned with the estimates of the market value, but with the principle involved,

namely, that company property is not for being gifted away or bartered because the law does not sanction this. Again, it would be a most improper

and unhealthy practice because it would give rise to a situation whereby certain employees who have towed the line of the management would go

home with a huge bonanza; whereas those who have been principled and required to take unpleasant decisions at times being sent home without

such rewards. In any event, that issue just does not arise in the present proceeding because the Company has not offered the flat to the accused,

but on the contrary is aggrieved by the fact that he is not returning it and requests for legal redress by way of an order for its recovery.

26. In the course of his arguments, Shri Shah was particularly severe on Shri Karkar, the Managing Director of the Company. He not only

attacked him but he even made direct allegations against him. He sought to contend that Shri Karkar has defrauded his client, that he has acted

dishonestly and that he has even avoided coming to give evidence. On a perusal of the material before me, I am of the view that these accusations

were thoroughly unjustified. To my mind, the Company and Shri Karkar have shown not only a very high degree of kindness and consideration to

the accused but they were even magnanimous enough to help him by considering an alternative flat. The statements made by Shri Shah about Shri

Karkar on the record of this case would, in fact, be more appropriate vis-a-vis the conduct of his own client. This is a case in which an attempt has

been made to appropriate a valuable property of the Company virtually for a song. The attempt failed and thereafter the litigation has been

protracted and dragged on so that the accused can continue in occupation and that too absolutely free of cost. This unfortunately is the return

meted out to the Company by a senior responsible officer who, as the correspondence indicates, was given the very best of terms, the very best of

treatment and who has taken complete advantage of all of it. It was for this reason that I have observed that the facts of this case are reminiscent of

the proverbial serpent that stings the hand which feeds it.

27. The Criminal Revision Application accordingly succeeds. The rule is made absolute. The order of the learned Sessions Judge dated 1-3-1993

is set aside and, consequently, the order of discharge in favour of respondent No. 1 is also set aside. The proceedings before the trial Court are

restored. The office shall forthwith send back to the trial Court the A. & P. in this case, if the same has been called for.

28. In view of the earlier directions of the Supreme Court and having regard to the fact that the evidence has already been practically concluded

before the trial Court, the learned Magistrate shall proceed with the trial, according it top priority. He shall bear in mind the guidelines laid down by

this Court in the Hindustan Ciba Geigy"s case, a copy of which judgment shall be made available to him by the petitioner"s learned Advocate. The

parties are directed to appear before the trial Court on 12-7-1993 and the learned Magistrate shall dispose of the proceeding on a priority basis,

preferably within an outer limit of eight weeks thereafter.

29. Revision allowed.