

Smt. Abhilash Vinodkumar Jain vs Cox & Kings (India) Ltd. Ors on 21 March, 1995

Equivalent citations: 1995 AIR 1592, 1995 SCC (3) 732, AIR 1995 SUPREME COURT 1592, 1995 (3) SCC 732, 1995 AIR SCW 2497, (1995) 2 CHANDCRIC 97, (1995) 2 ALLCRILR 24, (1995) 84 COMCAS 28, 1995 CRILR(SC&MP) 324, 1996 HRR 146, (1996) 72 FACLR 197, (1996) 1 CURCRIR 162, 1995 CALCRILR 234, (1996) 1 CURLR 18, 1996 LABLR 193, (1995) 2 MADLW(CRI) 428, (1995) 2 MAH LJ 630, (1995) 2 MAHLR 376, (1995) 2 SCJ 118, 1995 SCFBRC 517, 1995 CRILR(SC MAH GUJ) 324, (1995) 2 SCR 873 (SC), (1995) 2 COMLJ 193, (1995) 2 CRIMES 239, (1996) BANKJ 53, (1995) 3 RECCRIR 397, 1995 SCC (CRI) 590, (1995) 3 JT 528 (SC), (1995) 4 BOM CR 351

Author: K.S. Paripoornan

Bench: K.S. Paripoornan

PETITIONER:

SMT. ABHILASH VINODKUMAR JAIN

Vs.

RESPONDENT:

COX & KINGS (INDIA) LTD. ORS.

DATE OF JUDGMENT 21/03/1995

BENCH:

ANAND, A.S. (J)

BENCH:

ANAND, A.S. (J)

PARIPOORNAN, K.S. (J)

CITATION:

1995 AIR 1592

1995 SCC (3) 732

JT 1995 (3) 528

1995 SCALE (2) 323

ACT:

HEADNOTE:

JUDGMENT :

DR. ANAND, J.:

1. Leave granted

2. Both those appeals raise a common question of law and are being disposed of by this common judgment.

3. The admitted facts, which alone are relevant for the purpose of those appeals and are not in dispute are that the appellants in both the cases are the legal heirs of the employee/officer who died in harness while serving with the respective respondent company. The concerned employee in both the cases had been allotted premises during their service by the respective employer (respondent company) and on the failure of the appellants to handover the vacant possession of the allotted premises after the demise of the employee/officer concerned, prosecutions were launched against them (legal heirs) under section 630 of the Companies Act, 1956 (hereinafter referred to as the Act').

The appellants approached the High Court through petitions under Section 482 Cr.P.C. seeking quashing of the proceedings on the ground that the provisions of Section 630 of the Act cannot be invoked against the legal heirs of deceased employee, who had died in harness, and as such the complaint against them under Section 630 of the Act was not maintainable. The High Court dismissed their petitions filed under Section 482 Cr. P.C. Hence, these appeals.

4. The meaningful question and as a matter of fact the only question which has been canvassed before us is : whether a petition under Section 630 of the Act is maintainable against the legal heirs of deceased officer or an employee for retrieval of the company's property?

5. With a view to answer the question, it is desirable that we may first notice the provisions of Section 630 of the Act. The said Section reads:-

630. Penalty for wrongful withholding of any 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.

6. There was a divergence of opinion between various High Courts regarding the interpretation of the expressions "any officer or employee of a company" occurring in Clause (1) of Section 630 of the Act. The Bombay High Court in *Harkishan Lakhimal Gidwani v. Achyut Kashinath Wagh* ((1982) 52 Company Cases 1)) gave a broader interpretation to the words and held that the expression would include an ex-officer or an ex-employee of the company also while the Calcutta High Court in *Amrit Lal Chum v. Devi Ranjan Jha* {(1987) 61 Company Cases 21 1)} gave a narrow interpretation and opined that an ex-officer or an ex-employee is not included in the said expression and that the applicability of the provisions is restricted to an existing employee or officer. The High Court of Madhya Pradesh in *Beharilal and Another v. Binod Mills Company Limited* [(1987) 3 Comp LJ 246 (NV)] following the Calcutta High Court view held that the provisions embodied in Section 630 (1) of the Act do not contemplate criminal proceedings being launched against relatives of an erstwhile employee or officer for recovering the possession of the property of the company.

7. The Court while hearing an appeal against the judgment of the Bombay High Court in *Baldev Krishna Sahi v. Shipping Corporation of India Limited & Anr.* { 1988 (1) SCR 168} resolved the conflict and set the controversy at rest. It held that the expression "officer" or "employee" of a company applies not only to existing officers or employees but also includes past officers or employees, where such officer or employee either (a) wrongfully obtains possession of any property, or (b) having obtained possession of such property during his employment, wrongfully withholds the same after the termination of his employment. The Court opined:

"The beneficial provision contained in s. 630 no doubt penal, has been purposely enacted by the legislature with the object of providing summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the Court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy.

Section 630 of the Act which make the wrongful withholding of any property of a company by an officer or employee of the company a penal offence is typical of economy of language which is characteristic of the draughtsman of the Act. The Section is in two parts. Sub- s.(1) by clauses (a) and (b) creates two distinct and separate offences. First of these is the one contemplated by cl.(a), namely, where an officer or employee of a company wrongfully obtained possession of any property of the company during the course of his employment, to which he is not entitled. Normally, it is only the present officers and employees who can secure possession of

any property of a company. It is also possible for such an officer or employee after termination of his employment to wrongfully take away possession of any such property. This is the function of cl. (a) and although it primarily refers to the existing officers and employees, it may also take in past officers and employees. In contrast, cl.(b) contemplates a case where an officer or em-

ployee of a company having any property of a company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. It may well be that an officer or employee may have lawfully obtained possession of any such property during the course of his employment but wrongfully withholds it after the termination of his employment. That appears to be one of the functions of cl.(b). It would be noticed that cl.(b) also makes it an offence if any officer or employee of a company in his possession knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. That would primarily apply to the present officers and employees and may also include past officers and employees. There is therefore no warrant to give a restrictive meaning to the term 'officer or employee' appearing in subs, (1) of s. 630 of the Act. It is quite evident that clauses (a) and (b) are separated by the word 'or' and therefore are clearly disjunctive". (Emphasis supplied)

8. This Court then held that decision of the Calcutta High Court in *Amrit Lal Chum's* (supra) as erroneous and overruled the same. It was opined that the restrictive meaning to the term 'officer or employee' which must take its colour from the context in which it appears would defeat the object of the provisions of Section 630 of the Act viz., preservation of the property of company by the creation of two distinct offences by clauses (a) and (b) which arise under different set of circumstances. The Bench noticed with approval the judgment of the Bombay High Court in *Harkishan Lakhimal Gidwani v. Achyut Kashinath Wagh & Anr.* (supra) and *Govind T. Jagtiani v. Sirajuddin S.Kazi & Anr.* {[1984] 56 Company Cases 329}.

9. A three Judge Bench later on in *Amrit Lal Chum v. Devoprasad Dutta Roy & Anr. etc.* (1988 (2) SCR 733), while hearing an appeal from the judgment of the Calcutta High Court in *Amrit Lal Chum's* case (supra) 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 under Section 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 in 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's* case (supra)

10. In *Atul Mathur v. Atul Kalra and Another* ((1989) 4 SCC,

514) 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's case (supra).

11. In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath And Others {(1991) 2 SCC, 141}}, the Division rendered by this Court and relying upon the law laid down in Baldev Krishna Sahi's case (supra) and Amrit Lal Chum's case (supra) held that the offence under Section 630 of the Act is not such as can be said to have 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' under Section 630 of the Act includes present and past officers and employees.

12. Thus, it would be seen that this Court has consistently taken the view and repeatedly emphasised that the provisions of Section 630 of the Act have to be given purposive and wider interpretation and not restrictive interpretation. In the four cases referred to above, this Court was not required to directly consider and deal with the question whether the provisions of Section 630 of the Act can be invoked against the legal heirs, for wrongfully withholding the property of the company, on the death in harness of an employee or officer of the company to whom the property was allotted. In these two appeals that precisely is the issue which invites our attention.

13. The logical deduction of the analysis of Section 630 of the Act in the light of the law laid down by this Court is that :

(i) Clause (a) of the Section is self-contained and independent of Clause (b) with the capacity of creating penal liability embracing the case of an existing employee or officer of the company and includes a past officer or a past employee of the company;

(ii) Clause (b) is equally independent and distinct from Clause (a) as regards penal consequences and it squarely applies to the case of past employees or officers;

(iii) the entitlement of the officer or employee to the allotted property of the company is contingent upon the right and capacity of the officer or the employee by virtue of his employment to continue in possession of the property belonging to the company, under authority of the company and the duration of such right is coterminous with his/her employment.

14. Thus, inescapably it follows that the capacity, 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 handover the allotted property back to the company. Where the property of the company is held back whether by the employee, past employee or any one claiming under them, the retained,

possession would amount to wrongful withholding of the property of the company, actionable under Section 630 of the Act. The argument of the learned counsel for the appellants that since the provisions of Section 630 of the Act are penal in nature the same must be strictly construed and, the parties which have not been expressly included by the legislature in Section 630 (1) of the Act, cannot by any interpretive extension be included in the said provision, ignores the situation that by a deeming fiction, the legal representatives or heirs of a past employee or officer, in occupation of the prop-

erty of the company, would continue to enjoy the personality and status of the employee or the officer only, An argument quite similar in nature was raised in Baldev Krishna Sahi's case (supra) also while resisting the extension of the provisions of Sections 630 of the Act to the past employee or past officer and rejecting the same. this Court opined :

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

We are in respectful agreement with the above view and are of the opinion that the legal representatives or the heirs of the deceased employee or officer would squarely fall within the ambit of Section 630 of the Act. To exclude them, by giving a restrictive interpretation to the provisions would defeat the very object of the provision which declares the wrongful withholding of the property of the company to be an offence. It Is immaterial whether the wrongful withholding is done by the employee or the officer or the past employee or the past officer or the heirs of the deceased employee or the officer or anyone claiming their right of occupancy under such an employee or an officer. It cannot be ignored that the legal heirs or representatives in possession of the property had acquired the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the officer or the employee and not on any

independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

15. Even 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 anyone claiming under them. In our opinion, a proper construction of the Section would be that the term "officer or employee" of a company in Section 630 of the Act would by a deeming fiction include the legal heirs and representatives of the employee or the officer concerned continuing in occupation of the property of the company after the death of the employee or the officer.

16. Under sub-Section (1) of Section 630 for the wrongful obtaining of the possession of the property of the company or wrongfully withholding it or knowingly applying it to a purpose other than that authorised by the company, the employee or the officer concerned is "punishable with fine which may extend to one thousand rupees." The "fine" under this subsection is to be understood in the nature of "compensation" for wrongful withholding of the property of the company. Under sub-section (2) what is made punishable is the disobedience of the order of the Court, directing the person, continuing in occupation, after the right of the employee or the officer to occupation has been extinguished, to deliver up or refund within a time to be fixed by the Court, the property of the company obtained or wrongfully withheld or knowingly misapplied. Thus, it is in the event of the disobedience of the order of the Court, that imprisonment for a term which may extend to two years has been prescribed. The provision makes the defaulter, whether an employee or a past employee or the legal heir of the employee, who disobeys the order of the Court to hand back the property to the company within the prescribed time liable for punishment.

17. The object of the Companies Act *inter alia* is to regulate the affairs of the companies including the control of the management and protection of the property of the company. The object of Section 630 of the Act has, thus, a direct nexus with the object of the Act. It is precisely for this reason that in *Gokak Patel Volkart case* (supra) this court held the offence under Section 630 of the Act to be "a continuing offence."

18. Section 630 of the Act provides speedy relief to the company where its property is wrongfully obtained or wrongfully withheld by an "employee or an officer" or a "past employee or an officer" or "legal heirs and representatives" deriving their colour and content from such an employee or officer" in so far as the occupation and possession of the property belonging to the company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation

or death of an employee, would render the "holding" of that property wrongful and actionable under Section 630 of the Act. To hold that the "legal heirs" would not be covered by the provisions of Section 630 of the Act would be unrealistic and illogical. It would defeat the "beneficient" provision and ignore the factual realities that the legal heirs or family members who are continuing in possession of the allotted property, had obtained the right of occupancy with the concerned employee in the property of the employer only by virtue of their relationship with the employee/officer and had not obtained or acquired the right to possession of the property in any other capacity, status or right. The legislature, which is supposed to know and appreciate the needs of the people, by enacting Section 630 of the Act manifested that it was conscious of the position that today in the corporate sector - private or public enterprise - the employees officers are often provided residential accommodation by employer for the 'use and occupation' of the concerned employee during the course of his employment. More often than not, it is a part of the service conditions of the employee that the employer shall provide him residential accommodation during the course of his employment. If an employee or a past employee or anyone claiming the right of occupancy under them, were to continue to 'hold' the property belonging to the company, after the right to be in occupation has ceased for one reason or the other, it would not only create difficulties for the company, which shall not be able to allot that property to its other employees, but would also cause hardship for the employee awaiting allotment and defeat the intention of the legislature. The courts are therefore obliged to place a broader, liberal and purposeful construction on the provisions of Section 630 of the Act in furtherance of the object and purpose of the legislation of construe it in a wider sense to effectuate the intendment of the provision. The "heirs and legal representatives" of the deceased employee have no independent capacity or status to continue in occupation and possession of the property, which stood allotted to the employee or the officer concerned or resist the return of the property to the employer, in the absence of any express agreement to the contrary entered with them by the employer. The Court, when approached by the employer for taking action under Section 630 of the Act, can examine the basis on which the petition/complaint is filed and if it is found that the company's right to retrieve its property is quite explicit and the stand of the employee, or any one claiming through him, to continue in possession is baseless, it shall proceed to act under section 630 of the Act and pass appropriate orders. Only an independent valid right, not only to occupation but also to possession of the property belonging to the company, unconnected with the employment of the deceased employee can defeat an action under Section 630 of the Act if it can be established that the concerned deceased employee had not wrongfully nor knowingly applied it for purposes other than those authorised by the employer. In interpreting a beneficial provision, the Court must be forever alive to the principle that it is the duty of the court to defend the law from clever evasion and defeat and prevent perpetration of legal fraud.

19. Thus, our answer to the question posed in the earlier part of this judgment is in the affirmative and we hold that a petition under Section 630 of the Act is maintainable against the legal heirs of the deceased officer/employee for retrieval of the company's property wrongfully withheld by them after the demise of the employee concerned. The High Court was, therefore, right in dismissing the petitions filed by the appellants under Section 482 Cr. P.C. and declining to quash the proceedings

initiated by the employer of the deceased employee for retrieval of the company's property under Section 630 of the Act. These appeals consequently fail and are dismissed. No costs.