

Hyderabad Trade Expocentre Pvt. Ltd vs Mr.C.V. Ramana on 12 March, 2015

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IN THE COURT OF MS. HEMANI MALHOTRA, ADDITIONAL
SESSIONS JUDGE-05 (CENTRAL), TIS HAZARI COURTS
DELHI

CA.No. 53/14

M/s ITE India Pvt. Ltd
having its registered office at
I-83, Lajpat Nagr, II
New Delhi - 1100024

Hyderabad Trade Expocentre Pvt. Ltd
having its registered office at
I 83, Lajpat Nagr - II
New Delhi - 1100024

Versus

Mr.C.V. Ramana
Raj Niwas, 105, Pratap Nagar,
Mayur Vihar Phase I
New Delhi

Also at
Flat No.401,
Sarda Residency
Plot No. 14/3, In Sy.No.106,
Padmavathinagar,
Errammanzil Colony,
Hyderabad, Andhra Pradesh

Date of institution :18.0

Date of conclusion of arguments/
reservation of Judgment :02.0

Date of pronouncement of judgment :12.03.2015

Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana

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JUDGMENT

1. Present appeal has been preferred by the appellants against the impugned judgment dated 11.02.2013 passed by the learned M.M, Tis Hazari, Delhi in complaint case bearing No.167/13 titled as ITE India Private Limited and another Vs C.V.Ramana whereby the complaint of the appellants was dismissed.

2. The brief facts, necessary for the disposal of the present appeal as alleged in the complaint case No.167/13 are that the appellant No. 1 is a Company and appellant no.2 is fully owned subsidiary of appellant no.1. Appellant No. 1 is the sole and absolute owner of flat no.401, Sarada Residency situated at Padmavathinagar, Errammanzi Colony, Hyderabad, Andhra Pradesh having become the owner of the flat since 31.08.2005. The respondent was an employee of the appellant no. 1 from 10.08.1998 up to March 2005 and thereafter an employee of the appellant no. 2 from April 2005 up to 9.01.2013. The respondent took the possession of the flat in question on 16.09.2005 on the basis of the permission given by appellant no. 1 and has been residing therein since then. After 09.01.2013, he left the employment of appellants but continued residing in the said flat unauthorizedly since 10.01.2013 and despite requests, respondent failed to vacate the said flat. The respondent thus, committed the offence punishable u/s 630 of the Companies Act as well as under Sections 408/441/447 of the IPC.

3. After filing of the aforesaid complaint, pre-summoning evidence was recorded and the learned Trial Court after hearing the arguments on the point of summoning of the accused passed the impugned order which is under challenge.

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4. I have heard the learned counsels for the parties at length and have gone through the trial court record as well as the citations relied upon by the learned counsels for the parties with utmost care.

5. It was very vehemently urged by the learned counsel for the appellants that the impugned order suffers from illegality and is totally perverse. It was further contended that it was wrongly held by the learned Trial Court that Section 630 of the Companies Act is not made out in the facts and circumstances of the present case, whereas the fact is that the appellant no. 2 is fully owned subsidiary company of appellant no.1 and it can thus be safely deduced that the respondent was also an employee of appellant no. 1 during the period commencing from April 2005 up to 09.01.2013. It was also argued that even if it is assumed for the sake of arguments that respondent was the employee only of appellant no. 2, the expression "property of a company" in Section 630 of the Companies Act lays emphasis on the aspect of possession of property by the company and not the aspect of title/ownership of property as held in Kannankandi Gopal Krishna Nair Vs Prakash Chunder Juneja and Another decided on 19.04.1993, thus Section 630 of the Companies Act is very

much attracted to the facts and circumstances of the present case.

6. I do not find any force in the argument of the learned counsel for the appellants as during the presuming evidence, except for making a bald statement Mukesh Sharma / CW1 who was the duly authorized representative of the appellant No.1 and appellant No.2 did not lead any evidence to prove that appellant no. 2 was the fully owned subsidiary company of appellant no. 1.

7. Further, it is the admitted case of the appellants that the respondent was in the employment of appellant no.1 from 10.08.1998 up to March Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 3/9 2005 and thereafter in the employment of appellant no. 2 from April 2005 upto 09.01.2013. The appellant no.1 became the sole and absolute owner of the flat in question by virtue of sale deed dated 31.08.2005 (Ex.CW1/5) and the respondent had sought permission to stay in the flat from appellant no.1 on 16.09.2005 (Mark A) i.e at the time when the respondent was not in the employment of the appellant no.1 but in the employment of appellant no.2. Since the respondent was residing in the flat in question not on the basis of the permission accorded by appellant no. 2, by no stretch of imagination, it can be inferred that the flat was provided by appellant no. 2. Therefore, the observation made by the Bombay High Court regarding the expression "property of a company" in Section 630 of the Companies Act in the judgment relied upon by the learned counsel for the appellants, titled as Kannankandi Gopal Krishna Nair Vs Prakash Chunder Juneja and Another decided on 19.04.1993 does not come to the rescue of the appellants.

8. It was also contended that in Baldev Krishna Sahi Vs Shipping Corporation of India reported as (1987)4 SCC 361, Section 630 of the Act is applicable to both present and past employees and therefore, even if it is concluded that respondent was an ex-employee of appellant no.1, Section 630 of the Companies Act will be squarely applicable.

9. There is no merit in this argument as well, as in the judgment of Baldev Krishana (supra) the expression " officer or employee " in Section 630 of the Act was extended only to that past officer or employee who after termination of his employment wrongfully takes away the possession of such a property. In the instant case, the respondent came into possession of the flat in question with the permission of appellant no.1, only after termination of his employment Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 4/9 with appellant no.1. Meaning thereby, the respondent was entrusted with the property in question by appellant no.1 only after he became an ex employee of appellant no. 1.

10. Hence, for the reasons discussed above, I am of the view that the ingredient of Section of 630 of the Companies Act are not satisfied in the present case. Regarding Section 408 IPC since the respondent was not in the employment of appellant no. 1 when the flat in question was entrusted to him and the flat was not entrusted by appellant no. 2, Section 408 IPC is also not attracted. So far as Sections 441 and 447 IPC are concerned, the same are not made out as it is not the case of the appellants that the respondent had trespassed in the flat in question.

11. The other significant question which needs to be decided is the question whether the Delhi Courts have the jurisdiction to decide the present matter. It was contended by the learned counsel for the appellants that the registered office of both the appellants are situated at Delhi therefore, by virtue of Section 10 of The Companies Act and the fact that the respondent resides and joined the services of appellants at Delhi, the Delhi Courts have the jurisdiction.

12. This argument too, deserves to be outrightly rejected as the subject matter of the present dispute is a flat which is situated at Hyderabad and not at Delhi. In a matter before High Court of Bombay titled as Dr. Hirak Ghosh Vs Tata Iron and Steel Company Limited reported as (1991) 70 Comp. Cas 324 (Bombay) It was observed that the essence of the offence both u/s 630 (1) (b) of the Companies Act and u/s 406 of the IPC is the wrongful withholding or retention of the property. The offence is complete when such retention takes place . It is at Jamshedpur where the retention has taken place and it is but Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 5/9 natural that the case be filed at Jamshedpur.

13. It was similarly observed in Ramesh G Bhatia Vs J.M.Malik reported as 1994 (79) Company Case 44 Delhi decided on 16.05.1991 (relied upon by learned counsel for the respondent) as follows:-

"From perusal of the provisions of the Companies Act (hereinafter called "the Act"), referred to above it is clear that the High Court has jurisdiction except to the extent to which jurisdiction has been conferred on any district court subordinate to the High Court for dealing with the matters under the Act. No procedure has, thus, been provided under the Companies Act for trial of an offence by a criminal court. In these circumstances, the provisions of the Code of Criminal procedure have to govern the matters relating to the place of trial for an offence under Section 630 of the Act. Thus the place of jurisdiction for an offence under Section 630 of the Act shall be decided with reference to the provisions contained in Chapter 13 of the Code of Criminal Procedure. The basic principle as contained in Section 177 of the Code of Criminal Procedure is that "every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. In Ramesh G.Bhatia Vs J.M. Malik, the complaint filed by respondent no. 2 against the petitioner in the Court of the Additional Chief Metropolitan Magistrate, Delhi does not disclose any material to the effect that any act was committed by the petitioner within its jurisdiction and the mere fact of the head office being situated within its jurisdiction does not give jurisdiction to the said court to proceed further with the complaint. The return of the property was not an ingredient of the offence under Section 630 of the Companies Act. Jurisdiction about the return of the property vests with the High Courts as provided under Section 10 of the Companies Act"

14. The learned counsel for the applleants also relied upon T.S. Satyanath Vs J.Thomas and Company reported as (1985) 57 Comp. Cas 648 (Cal) decided on 02.06.1983 and contended that as held in aforesaid case (supra), even though the flat in question is situated in Hyderabad , the respondent can be directed to hand over the keys of the flat in question in Delhi. However, I am of the view that in the wake of the judgment delivered in Dr. Hirak Ghosh (supra), the submission of

the learned counsel for the appellant does Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 6/9 not hold any water. In the judgment of Dr. Hirak Ghosh, the judgment of T.S.Satyanath (supra) was discussed in detail and it was observed :-

"The initial inspiration for the draftsman of the complaint must have come from judgment of a single judge of the Calcutta High Court in the case of T.S.Satyanath V. J. Thomas and Co. (1985) 57 Comp cas 648. In that case, in a similar situation, while the premises were in Cochin, a case under section 630 (1) (b) of the Companies Act, was filed in Calcutta. When the accused filed a petition under Section 482, Criminal Procedure Code, for quashing the proceedings on the ground of want of territorial jurisdiction, as also on another ground, it was argued across the Bar, on behalf of the Complainant Company that the accused could have delivered possession by sending a note posted at Calcutta or that he could have delivered possession by sending a note posted at Calcutta or that he could perhaps send the key of the property to the head office at Calcutta. The learned judge, however, does not decide any of these questions, but he leaves this question open , granting liberty to the petitioner to re- agitate these points after evidence has been adduced at the trial. Therefore, this case is no authority for determining the question of jurisdiction within the meaning of Section 181 (4), Criminal Procedure code."

15. Further, in Vijai Kapoor Vs Guest Keen Williams Ltd reported as (1995) 83 Comp Cas 338 Cal, 97 CWN 701 while discussing the judgments of Dr. Hirak Ghosh by Bombay High Court and T.S.Satyanath by Calcutta High Court , it was held :-

"I also fully agree with the above view of the Bombay High Court and hold that the decision in Satyanath (T.S.) Vs. J.Thomas and Company does not lay down nor does it purport to lay down any principle of law intended to play the role of an authoritative pronouncement on the question of territorial jurisdiction of a court to try a case in similar circumstances."

"The Calcutta High Court further observed that:-

"Such an act of delivering the immovable property to another person can be affected only at the place where the property is situated. It need not be stated that the delivery of an immovable property can not be effected at any place other than the place where the property is situated for the simple reason that the same can not be physically moved or carried to a different place. The person entitled to receive delivery of Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 7/9 possession of an immovable property has to come or to send or to authorize some one to take possession of an immovable property has to come or to send or to authorize some one to take possession of the property at the place where the property is situated. Any suggestion that the delivery of an immovable property can be affected at a different place by sending the key of the house is not at all free from certain positive practical difficulties. It is an unworkable proposition, for all practical

purposes, to say that a person occupying residential premises at Delhi can deliver possession of the same to some one at Calcutta by sending the key of the house to Calcutta. Even if the key is sent from Delhi to Calcutta, how is it possible for the person receiving the key at Calcutta to be sure that the property at Delhi has really been vacated and it would be a matter of easy access for him to go to the premises at Delhi and open the lock of the premises with that key. If the mere sending of the key is good enough for delivery of possession it is quite possible that a person even without vacating the premises may send a key for making a faked show of delivery of possession. It may so happen that the occupant has inducted some stranger in that house and has sent a key for merely giving the colour of delivery of possession. It may also so happen that the person has vacated the premises and has locked the same with his own lock and key and has sent an altogether different key to dupe and to mislead the person to whom the key is sent. In view of all such possibilities the person receiving the key is not definitely expected to grant a valid discharge or acknowledgment of possession unless he has satisfied himself by making spot, inquiry at the locale either himself or through his own agency that the premises have been really vacated by the occupant and the key which has been sent to him will really work for giving him free and peaceful access to the premises for bringing back the same under his own occupation. Therefore, the mere sending of the key will not be of any practical avail in the matter, nor will it solve the problem. Delivery of possession at the locale in respect of immovable property is the crux of the matter and delivery can not be effective, nor can it be acceptable to the person entitled to receive possession thereof where such delivery is sought to be made only by sending a key or by sending a letter. Delivery of possession of immovable property, therefore, must take place at the locale where the property itself is situated and therefore the offence of wrongful withholding of any immovable property, must take place at the situs of the property and not elsewhere".

16. In view of the judgments (supra) discussed above, there is no doubt in my mind that the cause of action in such like cases arises at the place where the property has been retained. Therefore, any Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana 8/9 complaint u/s 630 of the Companies Act is required to be filed at a place where the cause of action has arisen which in the present case is Hyderabad and it can not be filed anywhere else.

17. In the light of the aforesaid discussion, I am of the opinion that there is no infirmity or illegality in the impugned judgment dated 11.02.2013 passed by the learned Trial Court. The same is accordingly upheld and the appeal is dismissed.

SIGNED AND ANNOUNCED IN
OPEN COURT ON :12.03.15

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ADDL. SESSIONS
JUDGE
05: CENTRE

Judgment in Criminal Appeal No.53/14 titled M/s ITE India Pvt Ltd. Vs C.V.Ramana

