J.K. (BOMBAY) LTD. A

v.

BHARTI MATHA MISHRA AND ORS.

JANUARY 18, 2001

[K.T. THOMAS AND R.P. SETHI, JJ.] B

Company Law:

Companies Act, 1956:

C

Section 630—Wrongful withholding of property—Ex-employee did not vacate company property allotted to him during the course of his employment—Prosecution initiated against his wife and father—Validity of—Held: Prosecution cannot be initiated against family members of an "ex-employee" or "officer" of a company who is alive—Hence, High Court rightly recalled the order of process against wife and father of ex-employee. D

The appellant-company employed M as a Trainee Supervision in its plant and allotted a flat to him for his residence during the course of his employment. Subsequently, M resigned and he was asked to vacate the flat in question. However, M refused to vacate the flat and a complaint under E **Section 630 of the Companies Act, 1956 was filed by the appellant against M, respondent No. 1 and respondent No. 2 who were the wife and father of M. The Judicial Magistrate rejected the applications filed by respondent No. 1 and No. 2 to recall the order of process against them. The revision petition filed by them was also dismissed. However, the High Court allowed their writ petition. Hence this appeal.** F

On behalf of the appellant it was contended that as legal heirs of the erstwhile employee can be prosecuted, the other family members of such employee, living with him cannot escape their liability of prosecution.

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The following question of law arose before this Court :-

Whether the family members of an employee or an ex-employee of a company can be proceeded with in a criminal court, convicted and sentenced for the commission of offence under section 630 of the Companies Act, 1956? H

A Dismissing the appeal, the Court

HELD: 1.2. Penal law cannot be interpreted in a manner to cover within its ambit such persons who are left out by the legislature. The position of the legal heirs of the deceased employee cannot be equated with the family members of an erstwhile employee against whom, admittedly, the criminal B **prosecution is launched and pending. In criminal cases the law which *initials* conviction and sentence, liberal construction, with the aid of assumption, presumption and implications cannot be resorted to for the purpose of roping in the criminal prosecution, such persons who are otherwise not intended to be prosecuted or dealt with by criminal court. Accepting the contention** C **of the appellant would amount to violation of fundamental right of personal liberty as enshrined under Article 21 of the Constitution, which declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The paramount object of Article 21 is to prevent the encroachment of the right of a person with respect to his life and liberty, save in accordance with the procedure** D **established by law and in conformity with the provisions thereof. Personal liberty envisaged under this Article means freedom from physical restraint of a person by incarceration or otherwise. Agreeing with the plea of the appellant would also be against public policy, inasmuch as under similar circumstances the companies would be authorised to resort to harassment** E **tactics by having recourse of arraigning minors and old members of the family of its officer or employee in office or even past. [445-F-H]**

Baldev Krishna Sahi **v.** *Shipping Corporation of India,* **[1987] 4 SCC 361;** *Amritlal Chum* **v.** *Devoprasad Dutta Roy,* **[1988] 4 SCC 514 and** *Gokak Patel Vokart Ltd.* **v.** *Dundayya Gurushiddaiah Hiremath,* **[1991] 2 SCC 141,** F **relied on.**

Abhilash Vinod Kumar Jain (Smt.) **v.** *Cox & Kings (India) Ltd.,* **[1995] 3 SCC 732, held inapplicable.**

1.2. The family members of an alive 'officer' or 'employee' of a company G **cannot be proceeded with and prosecuted under Section 630 of the Act.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 87of 2001.

From the Judgment and Order dated 01.12.1998 in CRLWP 1523/98 of the H High Court of Bombay.

S. Ganesh, P. Venugopal, PS Sudheer, K.J. John, Pradeep Misra and S.V. Deshpande for the appearing parties. A

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

B

Whether the family members of an employee or an ex-employee of a company can be proceeded with in a criminal court, convicted and sentenced for the commission of offence under Section 630 of the Companies Act? (hereinafter referred to as "the Act") is the question of law to be determined by us in this appeal. Relying upon the judgment of this Court in *Abhilash Vinod Kumar Jain (Smt.)* v. *Cox & Kings (India) Ltd. & Ors.*, [1995] 3 SCC C 732, it has been argued on behalf of the company that the expression "officer or employee" appearing in Section 630 of the Act would include all his family members.

The admitted facts of the case are that one Mata Harsh Mishra, who is the husband of respondent No. 1 and father of respondent No. 2, joined D the employment of the appellant-company as Trainee Supervisor in its plant. He was allotted Flat No. 8 in Anil Co-operative Housing Society Ltd., and possession delivered to him for the purpose of his residence during the course of employment while he was in the service of the company. It was made clear to the said employee that he was to remain in possession of the E premises only during his employment with the company and had to vacate the flat as and when he ceased to be the employee of the company. The said Shri Mishra tendered his resignation on 31st March, 1994 which was accepted with effect from 4.4.1994 vide letter of the company dated 23.4.1994. He was directed to hand over the charge of his work to the Production Manager and vacate the flat in his possession given to him by virtue of his employment. F Despite notice, the erstwhile employee did not vacate the premises on the pretext that as he had not been paid his dues, he had a right to remain in occupation. On 16.5.1995, a complaint under Section 630 of the Act was filed by the appellant in the court of Judicial Magistrate, Thane, against said Shri Mishra, its ex-employee and the respondents 1 and 2 herein. The respondents G herein moved an application in the court of the Magistrate for recall of the order of process. Their application was rejected by the Court of the Judicial Magistrate, First Class, Thane on 12.4.1995. Revision petition filed by them was also dismissed by the Additional Sessions Judge, Thane which compelled the aforesaid respondents to file writ petition in the High Court of Bombay which has been allowed vide the order impugned herein. H

A Section 630 of the companies Act Reads:

"630. Penalty for wrongful withholding of property,—(1) If any officer or employee of a company—

(a) wrongfully obtains possession of any property of a company; or

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(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;

C 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 D Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, or suffer imprisonment, for a term which may extend to two years."

The divergence of opinion between various High Courts regarding E interpretation of the expression "an officer or employee of a company" appearing in Sub-section (1) of Section 630 of the Act was resolved by this Court in *Baldev Krishna Sahi* v. *Shipping Corporation of India,* [1987] 4 SCC 361 holding that the expression "officer or employee of a company" applies not only to existing officer or employee but also includes past officers or employees where such officer or employee; either (a) wrongfully obtains F possession of any property, or (b) wrongfully withholds the same after the termination of his employment. Explaining the position of law this Court held:

"The beneficient provision contained in Section .630 no doubt penal, has been purposely enacted by the legislature with the object of G providing a 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 H 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. A

Section 630 of the Act which makes the wrongful withholding of any property of a company by an officer or employee of the company a penal offence, is typical of the 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 clause (a), namely, where an officer or employee of a company wrongfully obtains 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 clause (a) and although it primarily refers to the existing officers and employees, it may also take in past officers and employees. In contrast, clause (b) contemplates a case where an officer or employee 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 clause (b). It would be noticed that clause (b) also makes it an offence in any officer or employee of a company having any property of the 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 Sub-section (1) of Section 630 of the Act. It is quite evident that clauses (a) and (b) are separated by the word 'or' and therefore are clearly disjunctive." B C D E F G

Again, this Court in *Amritlal Chum* v. *Devoprasad Dutta Roy,* [1988] 2 SCC 269; (Three Judge Bench), *Atul Mathur* v. *Atul Kalra,* [1989] 4 SCC 514 and *Gokak Patel Vokart Ltd.* v. *Dundayya Gurushiddaish Hiremath,* [1991] H

2 SCC 141, interpreted the position of law and approved the dictum of this Court in *Baldev Krishna Sahi's* case. In *Abhilash Vinod Kumar Jain's* case (supra) this Court was concerned with the prosecution of the legal representatives of the deceased employee and in that context, it held:

> "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:
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> (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 an officer of the company and includes a past officer or a past employee of the company;
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> (ii) Clause (b) is equally independent and distinct from clause (a) as regards penal consequences and its squarely applies to the cases 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 of 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.
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> 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 hand over the allotted property back to the company, where the property of the company is held back whether by the employee, past employee or anyone 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 interpretative 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 property of the company, would continue to enjoy the personality and status of the employee or the officer

only.

This Court further held that Section 630 of the Act is intended to provide speedy relief to the company where its property wrongfully obtained or wrongfully withheld by an "employee or a officer" or a past employee and officer" or "legal heirs or representative" deriving their colour and content from such an employee or officer, in so far as the occupation of the property belonging to the company, is concerned. The beneficial provision would be defeated if the legal heirs or family members who continue in possession of the allotted premises, are permitted to remain in possession despite the cessation of the relationship of deceased employee with the company. Answering the question referred to it, the Court held:

> "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 S.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."

Stretching further the verdict of the Court in Abhilash Vinod Kumar Jain's case, the learned counsel appearing for the appellant has submitted that as legal heirs of the erstwhile employee can be prosecuted, the other family members of such employee, living with him cannot escape their liability of prosecution. The argument, though attractive on the face of it, is devoid of any force when examined in depth in the light of the constitutional mandate and the legal provisions applicable in the case. The penal law cannot be interpreted in a manner to cover within its ambit such persons who are left out by the legislature. The position of the legal heirs of the deceased employee cannot be equated with the family members of an erstwhile employee against whom, admittedly, the criminal prosecution is launched and pending. In criminal cases the law which entails conviction and sentence, liberal construction, with the aid of assumption, presumption and implications cannot be resorted to for the purpose of roping in the criminal prosecution, such persons who are otherwise not intended to be prosecuted or dealt with by criminal court. Accepting the contention of the appellant would amount to the violation of fundamental right of personal liberty as enshrined under Article 21 of the Constitution which declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The paramount object of Article 21 is to prevent the encroachment of the right of a person with respect to his life and liberty, save in accordance with the procedure established by law and in conformity with the provisions thereof.

A Personal liberty envisaged under this Article means freedom from physical restraint of a person by incarceration or otherwise. Agreeing with the plea of the appellant would also be against the public policy, inasmuch as under similar circumstances the companies would be authorised to resort to harassment tactics by having recourse of arraigning minors and old members of the family of its officer or employee in office or even past.

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We are of the firm opinion that all the family members of an alive 'officer' or 'employee' of a company cannot be proceeded with and prosecuted under Section 630 of the Act. The order impugned does not suffer from any illegality, requiring our interference.

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There is no merit in this appeal, which is accordingly dismissed.

V.S.S. Appeal dismissed.