GOKAK PATEL VOLKART LTD.

v.

DUNDAYYA GURUSHIDDAIAH HIREMATH AND ORS.

FEBRUARY 14, 1991

[K.N. SAIKIA AND MADAN MOHAN PUNCHHI, JJ.]

Companies Act, 1956—Section 630—Continuing offence—Construction of—Court's duty—Legislative intention.

Companies Act, 1956—Section 630—"Officer" or "employee"—Includes past and present officer or employee.

Criminal Procedure Code, 1972—Section 472—"Continuing offence"—Construction and nature of—Limitation computation.

Companies Act, 1956—Section 630(1)(b)—Non-vacation of quarters even after retirement—Continuing offence for the purpose of limitation.

Appellant-Company filed criminal complaints under Section 630(1)(b), Companies Act and Section 406, IPC against its employees (the first respondent of each appeal) as they did not vacate the company quarters after about six months even after retirement. The Judicial Magistrate, First Class dismissed the complaints as the same were not filed within the period of limitation of six months from the date of retirement of the Respondents-employees.

The High Court, holding that the offence under Section 630(1) was not a continuing offence, dismissed the Company's revision petitions.

In the appeal to this Court on the question, whether the offence under Section 630(1)(b) of the Companies Act is a continuing offence for the purpose of limitation, allowing the Appeals of the Appellant-Company, this Court,

HELD: 1. The beneficent provision contained in s. 630, no doubt penal, has been purposely enacted by the legislature with the object of 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 broad and liberal construction on the provision in furtherence of the object and purpose of the legislation which would suppress the mischief and advance the remedy. [406B-E]

2. "Officer" or "employee" in s. 630 of the Companies Act includes both present and past officers and employees. [405B-C]

3. The concept of continuing offence does not wipe out the original guilt, but it keeps the contravention alive day by day. The courts when confronted with provisions which lay down a rule of limitation governing prosecutions should give due weight and consideration to the provisions of s. 473 of the Code which is in the nature of an overriding provision and according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code of Criminal Procedure any court may take cognizance of an offence after the expiration of a period of limitation, if, *inter alia*, it is satisfied that it is necessary to do so in the interest of justice. [409D-G]

4. The expression 'continuing offence' has not been defined in the Code. The question whether a particular offence is a 'continuing offence' or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence. [409F-H]

5. The offence under section 630 is not such as can be said to have consummated once for all. Wrongful withholding, or wrongfully obtaining possession and wrongful application of the company's property, that is, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, can not be said to be terminated by a single act or fact but would subsist for the period until the property in the offender's possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose of refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It is

not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e., with the delivering up or refund of the property. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly mis-applied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. [409H-410E]

6. The offence under section 630 of the Companies Act is not one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the complaints could not be said to have been barred by limitation. [410D-F]

W.M.I. Cranes Ltd. **v.** *G.G. Advani & Anr.*, **[1984] 1 Kar. Law Cronicle 462 overruled;** *Bhagirath Kanoria and Ors.* **v.** *State of Madhya Pradesh with Bahadur Singh* **v.** *Provident Fund Inspector and Ors.*, **A.I.R. 1984 S.C. 1688 referred;** *Baldev Krishna Sahi* **v.** *Shipping Corporation of India Ltd. and Anr.*, **[1987] 4 S.C.C. 361;** *Amrit Lal Chum* **v.** *Devoprasad Dutta Roy and Anr. etc.*, **[1988] 2 S.C.R. 783;** *State of Bihar* **v.** *Deokaran Nenshi*, **[1973] 1 S.C.R. 1004;** *Bhagirath Kanoria & Ors.* **v.** *State of Madhya Pradesh & Ors.*, **[1985] 1 S.C.R. 626 followed.**

Black's Law Dictionary, Eigth Edition, **(Special Deluxe);** *Salmond and Heuston on the Law of Torts,* **19th Edn. Page 50;** *Halsbury's Laws of England.* **4th Edn. Vol 45, Para 1389-referred to.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 97, 98, 99 100 & 101 of 1991.

From the Judgment and Order dated 2.12.1989 of the Karnataka High Court in Criminal R.P. No. 458, 459, 460, 461 and 462 of 1989.

A.S. Bobde, Attorney General, Vinod Bobde and S. Sukumaran for the Appellant.

G. Ramaswamy, K.N. Nobin Singh and Ms. Lalitha Kaushik for the Respondents. M. Veerappa for the State of Karnataka.

The Judgment of the Court was delivered by

K.N. SAIKIA, J. Special leaves granted.

These five appeals are from as many similar orders of the High Court of Karnataka at Bangalore dismissing the appellant company's criminal revision petitions impugning the respective orders passed by the Judicial Magistrate First Class, Gokak holding that the appellants' complaints against the respondents alleging offence under section 630(1)(b) of the Companies Act by not vacating the Company's quarters as required by it even more than six months after retirement of the respondents, were barred by limitation and the same could not be taken into consideration.

The first respondent in each of these criminal appeals was appointed on 1.8.1942, 11.6.1945, 24.11.1939, 1.5.1939 and 23.1.1937, respectively, in the service of the appellant company and they retired on 14.3.1984, 1.10.1983, 12.2.1984, 4.10.1983 and 27.1.1981, respectively, from the appellant company's service, whereafter each of them was required to vacate his company's quarter. Each having declined to vacate the company's quarter even more than six months after retirement, despite legal notice, the appellant company filed a private criminal complaint under s. 630(1)(b) of the Companies Act, 1956 and s. 406 I.P.C. against each of them, before the Judicial Magistrate First Class, Gokak and in each case, after inquiry framed charges for offences under s. 406 I.P.C. and s. 630(1)(b) of the Companies Act, 1956. The learned Judicial Magistrate, after prosecution had examined its witnesses, recorded the statements of all the accused under s. 313 of the Cr. P.C. and despite finding that the accused in each case was allotted a quarter by the company for his use and occupation and each had no authority to retain possession of the same after he retired, and that the cause of action in each case arose when the accused failed to deliver possession of the quarter to the company, held that the documents produced by the company did not disclose anything regarding the retirement of the accused from the service, but at the same time he recorded that during the course of evidence P.W. 1 had deposed that each of the accused retired from service and immediately after the retirement failed to redeliver possession of the company's quarter which attracted s. 630(1)(b) of the Companies Act and which was punishable only with fine and the complaint, therefore, ought to have been filed within six months from the date of retirement of the accused, and as the complaint was filed only during the year 1985 it was clearly barred by limitation, wherefore, the complaint could not be taken into consideration, and consequently, the accused was to be acquitted. The Company's revision petition therefrom was dismissed by the High Court holding that the view taken by the trial Magistrate was plausible and reasonable as the complaint was filed in each case

beyond six months from the date of the alleged offence and that the question of limitation was concluded by a decision of the same High Court in *W.M.I. Cranes Ltd.* v. *G.G. Advani & Anr.*, [1984] 1 Kar. Law Cronicle 462 wherein it was held that the offence under s. 30 (1) of the Companies Act was not a continuing offence and the decisions of this Court in *Bhagirath Kanoria and Ors.* v. *State of Madhya Pradesh* with *Bahadur Singh* v. *Provident Fund Inspector & Ors.* and *Raja Bahadur Singh* v. *Provident Fund Inspector and Ors.*, AIR 1984 SC 1688 would not be of any assistance to the petitioner.

Mr. A.S. Bobde, the learned counsel appearing for the appellant company, submits that the offence under s. 630(1)(b) of the Companies Act, 1956 is a continuing offence and the learned courts below erred in holding to the contrary and dismissing the company's complaints on the ground of limitation.

Mrs. Lalitha Kaushik, the learned counsel for each of the first respondent, submits that when the first respondent upon his retirement failed to vacate and deliver possession of the company's quarter to the company, the offence must be taken to have been complete, and thereafter right could accrue to the first respondent by adverse possession; and that if this state of affairs continued till completion of the period of limitation the company's right would be extinguished. The trial court as well as the High Court, according to counsel, rightly held that the offence was not a continuing one.

The only question to be decided in these appeals, therefore, is whether the offence under s. 630(1)(b) of the Companies Act is a continuing offence for the purpose of limitation.

What then is a continuing offence? According to the Blacks' Law Dictionary, Fifth Edition (Special Deluxe), 'Continuing' means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is committed over a span of time." As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse." So also a 'Continuous Crime' means "one consisting

of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act." A

The corresponding concept of continuity of a civil wrong is to be found in the Law of Torts. Trespass to land in the English Law of Torts (trespass *quare clausum fregit)* consists in the act of (1) entering upon land in the possession of the plaintiff, or (2) remaining upon such land, or (3) placing or projecting any object upon it—in each case without lawful Justification. B

Trespass by remaining on land, as we read in Salmond and Heuston on the Law of Torts, 19th Edn., page 50: "Even a person who has lawfully entered on land in the possession of another commits a trespass if he remains there after his right of entry has ceased. To refuse or omit to leave the plaintiff's land or vehicle is as much a trespass as to enter originally without right. Thus any person who is present by the leave and licence of the occupier may, as a general rule, when the licence has been properly terminated, be sued or ejected as a trespasser, if after request and after the lapse of a reasonable time he fails to leave the premises." C D

Trespass in Law of Torts may be a continuing one. The authors write: "That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions *de die in diem* so long as it lasts, is sufficiently obvious. It is well settled, however, that the same characteristic belongs in law even to those trespasses which consist in placing things upon the plaintiff's land. Such a trespass continues until it has been abated by the removal of the thing which is thus trespassing; successive actions will lie from day to day until it is so removed: and in each action damages (unless awarded in lieu of an injunction) are assessed only up to the date of the action. Whether this doctrine is either logical or convenient may be a question, but it has been repeatedly decided to be the law." E F G

Again if the entry was lawful but is subsequently abused and continued after the permission is determined the trespass may be *ab initio*. In 1610 six carpenters entered the Queen's Head Inn, Cripplegate, and consumed a quart of wine (7d.) and some bread (1d.), for which they refused to pay. The question for the court was whether H

their non-payment made the entry tortious, so as to enable them to be sued in trespass *quare clausum fregit.* The court held that: "When entry, authority or licence is given to any one by the law, and he doth abuse it, he shall be a trespasser *ab initio,*" but that the defendants were not liable as their non-payment did not constitute a trespass. The rule is that the authority, having been abused by doing a wrongful act under cover of it, is cancelled retrospectively so that the exercise of it becomes actionable as a trespass.

In *Halsbury's Laws of England,* 4th Edn. Vol. 45 para 1389 it is said:

> "If a person enters on the land of another under an authority given him by law, and, while there, abuses the authority by an act which amounts to a trespass, he becomes a trespasser *ab initio,* and may be sued as if his original entry were unlawful. Instances of any entry under the authority of the law are the entry of a customer into a common inn, of a reversioner to see if waste has been done, or of a commoner to see his cattle.
>
> To make a person a trespasser *ab initio* there must be a wrongful act committed; a mere nonfeasance is not enough."

Against the above background, we may now examine the relevant provision of law, keeping in mind that some of the Torts have counterparts in Criminal law in India.

Section 441 of the Indian Penal Code defines Criminal trespass as follows:

> "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'."

House trespass is punishable under section 448 of the Indian Penal Code. It is significant that when entry into or upon property in possession of another is lawful then unlawfully remaining upon such property

with the object of intimidating, insulting or annoying the person in possession of the property would be criminal trespass. The offence would be continuing so long as the trespass is not lifted or vacated and intimidation, insult or annoyance of the person legally in possession of the property is not stopped. The authors of the Code had the following words to say:

> "We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it be attended with aggravating circumstances.
>
> These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed. It may also be aggravated by the end for which it is committed."

Section 630 of the Companies Act reads as under:

> "*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
>
> (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

A obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two year."

Thus, both wrongfully obtaining and wrongfully withholding have been made offence punishable under sub-sec. (1). Under sub-sec. (2) knowB ingly misapplication has also been envisaged. The offence continues until the officer or employee delivers up or refunds any such property if ordered by the court to do so within a time fixed by the Court, and in default to suffer the prescribed imprisonment. The idea of a continuing offence is implied in sub-section (2).

C Section 468 of the Criminal Procedure Code says:

"Bar to taking cognizance after lapse of the period of limitation—

(1) Except as otherwise provided elsewhere in this Code, D no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

E (a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonF ment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is G punishable with the more severe punishment or, as the case may be, the most severe punishment."

The parties have not disputed that this case attracted s. 468(1) and (2)(a). Regarding the fact of the first respondent having retired from service though the trial Magistrate observed that the document H did not specifically state that the first respondent retired, when after

referring to oral evidence the cause of action under s. 630(1)(b) was held to have arisen on the first respondent's failure to vacate and deliver possession of the company's quarter and that the period of limitation ran therefrom tantamounted to finding that the first respondent did retire.

"Officer" or "employee" in s. 630 of the Companies Act includes both present and past officers and employees. In *Baldev Krishna Sahi* v. *Shipping Corporation of India Ltd. and Anr.*, [1987] 4 SCC 361 at paragraph 8 of the report this Court said:

> "Section 630 of the Companies 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-section (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 witholds 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 if 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

A 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

This Court also observed at paragraph 7 of the report that the beneficent provision contained in s. 630, no doubt penal, has been purposely enacted by the legislature with the object of 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 C 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 furtherence of the object and purpose of the legislation which would suppress the mischief and advance the D remedy. "It is the duty of the court to place a broad and liberal construction on the provision in furtherence of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

As was reiterated in *Amrit Lal Chum* v. *Devoprasad Dutta Roy* E *and Anr. etc.*, reported in [1988] 2 SCR 783 that "s. 630 of the Companies Act 1956 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 is the wrongful withholding of such property, meaning the property of the company after the termina- F tion of the employment, which is an offence under s. 630(1) of the Act." What then is the nature of this offence. The question then is whether it is a continuing offence. According to Black's Law Dictionary Revised Fourth Edition, continuing offence means a transaction or a series of acts set on foot by a single impulse, and operated by an unintermittent force, no matter how long a time it may occupy. In *State* G *of Bihar* v. *Deokaran Nenshi,* [1973] 1 SCR 1004, the question was whether the failure to furnish returns on the part of the owner of a stone quarry under regulation 3 of the Indian Metalliferrous Mines Regulations, 1926 even after warning from the Chief Inspector was a continuing offence. Section 79 of the Mines Act, 1952 which provided that no Court shall take cognizance of an offence under the Act unless H a complaint was made within six months from the date of the offence

and the explanation to the section provided that if the offence in question was a continuing offence, the period of limitation shall be computed wherefore to every part of the time during which the said offence continued. Shelat, J. for the court observed:

> "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

Their Lordships referred to English cases *Best* v. *Butler and Fitzgibbon,* [1932] 2 KB 108; *Verney* v. *Mark Fletcher and Sons Ltd.*, [1909] 1 KB-444; *Rex* v. *Yalore*, [1908] 2 KB-237 and *The London County Council* v. *Worley*, [1894] 2 QB 826. In *Best* v. *Butler and Fitzgibbon* (supra) in England, the Trade Union Act, 1871 by s. 12 provided that if any officer, member or other person being or representing himself to be a member of a trade union, by false representation or imposition obtained possession of any moneys, books etc. of such trade union, or, having the same in his possession wilfully withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was held to be a continuing offence, presumably because every day that the moneys were wilfully withheld an offence within the meaning of S. 12 was committed. In *Verney's* case (supra) Section 10(1) of the Factory and Workshop Act, 1901 *inter alia* provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Its sub-section (2) provided that a factory in which there was contravention of the section would be deemed not to be kept in conformity with the Act. Section 135 provided penalty for an occupier of a factory

or workshop if he failed to keep the factory or workshop in conformity with the Act. Section 146 provided that information for the offence under s. 135 shall be laid within three months after the date at which the offence came to the knowledge of the inspector for the district within which the offence was charged to have been committed. The contention was that in May 1905 and again in March 1908 the fly-wheel was kept unfenced to the knowledge of the Inspector and yet the information was not laid until July 22, 1908. The information, however, stated that the fly-wheel was unfenced on July 5, 1908, and that was the offence charged. It was held that the breach of s. 10 was a continuing breach on July 10, 1908, and therefore the information was in time. The offence under s. 135 read with s. 10 consisted in failing to keep the factory in conformity with the Act. Every day that the fly-wheel remained unfenced, the factory was kept not in conformity with the Act, and therefore, the failure continued to be an offence. Hence the offence defined in s. 10 was a continuing offence. In *London County Council* (supra) s. 85 of the Metropolis Management Amendment Act, 1852 prohibited the erection of a building on the side of a new street of less than fifty feet in width, which shall exceed in height his distance from the front of the building on the opposite side of the street without the consent of the London County Council and imposed, penalties for offences against the Act and a further penalty for every day during which such offence should continue after notice from the County Council. The Court construed s. 85 to have laid down two offences; (1) building to a prohibited height, and (2) continuing such a structure already built after receiving a notice from the County Council. The latter offence was a continuing offence applying to any one who was guilty of continuing the building at the prohibited height after notice from the County Council.

State of Bihar v. *Deokaran Nenshi,* (supra) was explained by this Court in *Bhagirath Kanoria & Ors.* v. *State of Madhya Pradesh & Ors.*, [1985] 1 SCR 626. Therein, the Provident Fund Inspector filed complaints against the Directors, the Factory Manager and the respondent company charging them with non-payment of employer's contribution under the Employees' Provident Fund and Family Pension Fund Act, 19 of 1952, from February 1970 to June 1971. At the trial the accused contended that since the limitation prescribed by s. 468 of the Code of Criminal Procedure, 1973 had expired before the filing of the complaints, the Court had no jurisdiction to take cognizance of the complaints. The Trial Court having held that the offences of which the accused were charged were continuing offences and, therefore, no question of limitation could arise, and that order having been upheld

by the High Court in revision, the Directors in appeal to this Court contended that the offence of non-payment of the employer's contribution could be committed once and for all on the expiry of 15 days after the close of every month and, therefore, prosecution for the offence should have been launched within the period of limitation provided in s. 468 of the Code. Rejecting the contention it was held by this Court that the offence of which the appellants were charged, namely, non-payment of the employer's contribution to the Provident Fund before the due date, was a 'continuing offence' and, therefore, the period of limitation prescribed by s. 468 of the Code could not have any application and it would be governed by s. 472 of the Code, according to which, a fresh period of limitation began to run at every moment of the time during which the offence continued. It was accordingly held that each day the accused failed to comply with the obligation to pay their contribution to the fund, they committed fresh offence. Section 472 of the Code of Criminal Procedure deals with continuing offence and says:

> "In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

The concept of continuing offence does not wipe out the original guilt, but it keeps the contravention alive day by day. It may also be observed that the courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature, should give due weight and consideration to the provisions of s. 473 of the Code which is in the nature of an overriding provision and according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code of Criminal Procedure any court may take cognizance of an offence after the expiration of a period of limitation if, *inter alia,* it is satisfied that it is necessary to do so in the interest of justice.

The expression 'continuing offence' has not been defined in the Code. The question whether a particular offence is a 'continuing offence' or not must, therefore, necessarily depend upon the language of the statute which creates that offence, the nature of the offence and the purpose intended to be achieved by constituting the particular act as an offence.

Applying the law enunciated above to the provisions of Section 630 of the Companies Act, we are of the view that the offence under

A this section is not such as can be said to have consummated once for all. Wrongful withholding, or wrongfully obtaining possession and wrongful application of the company's property, that is, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offender's possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose of refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It is not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e. with the delivering up or refund of the property. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put an end to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly mis-applied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. This, in our view, is sufficient ground for holding that the offence under section 630 of the Companies Act is not one time but a continuing offence and the period of limitation must be computed accordingly, and when so done, the instant complaints could not be said to have been barred by limitation. The submission that when the first respondent upon his retirement failed to vacate and deliver possession of the company's quarter to the company the offence must be taken to have been complete, has, therefore, to be rejected.

These appeals accordingly succeed. The impugned orders are set aside and the cases are remanded to the Trial Court for disposal in accordance with law in light of the observations made herein above.

V.P.R. Appeals allowed.