

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1571 OF 2019

[Arising out of SLP (Cri.) No. 9527 of 2017]

Hooghly Mills Company Ltd.

.....Appellant

Versus

The State of West Bengal and Anr.

.....Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. Leave granted.
2. This appeal by special leave arises out of judgement dated 24.8.2017 of the Calcutta High Court allowing the 2nd Respondent's Criminal Revision Petition against order dated 6.9.2010 of the Judicial Magistrate, Alipore and order dated 21.12.2012 of the Additional Sessions Judge, Alipore.
3. The facts giving rise to this appeal are as follows: The appellant is an 'existing' company within the meaning of the

Companies Act, 1956 (for short '1956 Act'), which entered into agreement for sale dated 26.4.2008 for purchase of a flat situated on the 3rd Floor, of Plot-D in Sreekunj, 13, Gurusaday Road, Police Station-Karaya, Kolkata-700019 (hereinafter 'disputed property') with the legal heirs of one late Mr. Arun Kumar Bajoria (hereinafter 'vendors'). Per the terms of the agreement, the vendors would execute and register the deed of conveyance in favour of the appellant upon payment of the entire sale consideration of Rs 2,02,26,000/-. However in the interim, under Clause 6 of the agreement, the appellant company would be put into possession of the property subject to payment of monthly rent of Rs 84,275/-. This agreement is not disputed.

The appellant's case is that the 2nd Respondent/accused Mr. Bal Binode Bajoria was a director of the appellant company from 1988 to 2008. He was allowed to use and occupy the disputed property on and from 1.5.2008 by virtue of holding the office of director. The 2nd Respondent was to retire by rotation from the Board of Directors in the Annual General Meeting of the appellant company held on 22.11.2008; however he offered himself for re-election. The members present in the meeting voted against him and thereafter the 2nd Respondent ceased to be a director of the

appellant company. Consequently he was required to return the disputed property to the company; however he failed to do so.

The appellant company on 20.4.2009 asked the 2nd Respondent to vacate and deliver physical possession of the disputed property. When he refused, the appellant sent a letter on 30.4.2009 to the 2nd Respondent requesting delivery of possession. When the 2nd Respondent still failed to comply with the appellant's request, criminal complaint was filed against him under Section 630(1) of the 1956 Act on 11.8.2009. During the pendency of this complaint, the appellant company filed an application on 29.4.2010 under Section 630(2) of the 1956 Act for dispossessing the 2nd Respondent from the disputed property. Section 630 reads as follows:

“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

(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.”

Contrary to the appellant’s allegations, the 2nd Respondent contends that he had a mutual understanding/oral agreement with the deceased Mr. Arun Kumar Bajoria, who was his cousin brother, under which the deceased had paid consideration of Rs 9,10,170/- for construction of the disputed property. It was agreed between the 2nd Respondent and Arun Kumar Bajoria that the latter would transfer the disputed property to the 2nd Respondent and his nominee upon payment of the purchase price, once the 2nd Respondent was in a position to pay such amount. In other words, according to the 2nd Respondent, he was permitted to purchase the disputed property based on his oral understanding with the deceased Arun Kumar Bajoria on and after the date on which he tendered sale consideration to Arun Kumar Bajoria.

However, after Arun Kumar Bajoria expired, relations between the 2nd Respondent and Arun Kumar Bajoria’s family became strained. Hence the vendors failed to execute a deed of conveyance as agreed upon between the 2nd Respondent and their predecessor-in-interest, and also wrongfully removed him from Directorship of the appellant company.

Thereafter the 2nd Respondent filed Suit No. 2126/2009 before the Civil Judge (Senior Division) at Alipore against the vendors, praying for specific performance and a permanent injunction restraining the vendors from disturbing his possession, based upon the supposed oral agreement/understanding of sale he had with Arun Kumar Bajoria. The Civil Judge (Senior Division) by order dated 6.7.2009 issued a temporary injunction directing the parties to maintain status quo in respect of possession of the disputed property. This suit is still pending adjudication.

4. The learned Judicial Magistrate at Alipore by order dated 6.9.2010 allowed the appellant's application under Section 630(2). The Magistrate relied upon this Court's decision in ***Atul Mathur v. Atul Kalra***, (1989) 4 SCC 514, and the Calcutta High Court's decision in ***Tata Tea Limited v. Fazlur Rahman***, (2001) 104 Comp Cas 718 Cal. to hold that the pendency of a civil suit would not bar the filing of a criminal complaint in respect of the disputed property under Section 630, and that an application under Section 630(2) could be allowed even before final disposal of the complaint under Section 630(1) of the 1956 Act.

The Magistrate further held that in view of this Court's decision in ***Baldev Krishna Sahi v. Shipping Corporation of***

India Limited, (1987) 4 SCC 361, and the Calcutta High Court's decision in **Metal Box India v. State of West Bengal**, (1997) 2 CHN 423, the term 'officer or employee' in Section 630 would include erstwhile officers of the company who have wrongfully retained possession of the company's property subsequent to cessation of their employment. Therefore the Magistrate, taking into account the fact that the accused/2nd Respondent had not denied that the disputed property belonged to the appellant company and that he was given possession of the flat by the company for his accommodation, directed the 2nd Respondent to vacate and hand over possession of the disputed property to the appellant company.

The learned Sessions Judge at Alipore by order dated 21.12.2012 dismissed the 2nd Respondent's revisional application under Section 397 read with Section 399 of the Criminal Procedure Code, 1973 ('Cr.P.C'), and affirmed the Magistrate's order, noting that since the appellant company was not a party to the civil Suit No. 2126/2009 between the 2nd Respondent and the vendors, the pendency of the suit would not bar criminal proceedings against him.

However the High Court in the impugned judgement allowed the 2nd Respondent's petition under Section 482, Cr.P.C and set aside the findings of the Magistrate and the Sessions Judge on the ground that there was no evidence to prove that the disputed property was given to the 2nd Respondent by the appellant company as a perquisite for his service as director, either at the time of his induction into the Board of Directors, or after execution of the agreement for sale dated 26.4.2008. Rather, the 2nd Respondent had been a director of the company since 1988, and the disputed property had been in his possession at least since 2001, long before the appellant company and the vendors entered into an agreement for sale. Hence the decisions in ***Baldev Krishna Sahi*** (supra), ***Metal Box India*** (supra) and ***Tata Tea Limited*** (supra) would not be applicable to the present case as in those decisions; property had been allotted by the company to the accused officers/employees as a perquisite of their service.

The High Court further held that since there was no evidence that any deed of conveyance was registered with respect to the agreement for sale dated 26.4.2008 (supra), and the company had not paid any consideration or advance rent at the time of the

agreement, it could not be said that the company had any title to the disputed property. Hence the High Court held that the lower court finding that the disputed property had been given to the 2nd Respondent by the company was patently incorrect, and that Section 630(2) of the 1956 Act would not apply to the present case; and consequently set aside the lower courts' orders.

5. Learned senior counsel for the appellant, Mr. Shyam Divan, emphatically argued that the High Court's finding was erroneous in as much as it found that the appellant company had no right to claim recovery of possession of the disputed property merely because no sale deed was executed. The 2nd Respondent himself has admitted in his counter-affidavit that he had delivered the original title documents of the disputed property to the appellant company by letter dated 9.6.2008.

Further, that in ***Atul Mathur*** (supra), this Court had granted relief to the complainant company even though the property was taken on a leave-and-license basis. In the present case, Clause 6 of the agreement for sale dated 26.4.2008 has created a monthly tenancy in favour of the appellant; hence the appellant has gained the right to possession of the property on that basis. To support this contention, he placed on record a certificate of LB Jha

& Co Chartered Accountants dated 16.1.2018 showing that the appellant company has paid rent of Rs 91,01,700/- in respect of the disputed property from 1.1.2009 to 31.12.2017; as well as TDS (Tax deducted at source) certificates showing that the appellant company had deducted tax on the rent income while making payments to the vendors.

He further argued that since the appellant company was not a party to the civil suit between the 2nd Respondent and the vendors, the order in the civil suit would not be binding on the appellant company; and that it was not required that the officer/employee accused under Section 630 should be in possession of the disputed property as a prerequisite of his service. Therefore the High Court had erred in exercising its powers under Section 482 of the Cr.P.C.

6. Per *contra*, learned senior counsel for the respondent Mr. S.B. Upadhyay contended that the complaint is nothing but a scheme of the appellant company, which is composed of the 2nd Respondent's own relatives, to oust him from possession of the disputed property. The company is owned and controlled by the vendors themselves, and the criminal complaint is nothing but an alternate mechanism to oust the 2nd Respondent from the

disputed property since the civil court had directed maintenance of status quo; that the 2nd Respondent was wrongfully made to believe by his relatives, i.e. the vendors, that the title documents of the disputed property were to be sent for updation of records, hence he had handed them over to the vendors' custody, and it was only later that he came to know that the documents had been wrongfully handed over to the appellant company.

That he has been in possession of the disputed property since 1994; and even the appellant has admitted that he has been in possession at least since 2001; whereas the appellant company entered into an agreement for sale with the vendors only in 2008, that too via an unregistered sale deed. Consequently it cannot be said that the appellant had any title to the disputed property, and that the company gave the 2nd Respondent possession of the property in his capacity as an officer of the company. Hence Section 630 is not attracted to the present case.

7. Therefore the following issues arise for consideration in the present appeal:

First, whether an application under Section 630(2) of the 1956 Act was maintainable, in spite of pendency of the civil suit

and issue of temporary injunction in respect of the disputed property?

Second, whether an order could be made under Section 630(2) prior to final disposal of the complaint under Section 630(1)?

Third, if the first and second issues are answered in the affirmative, whether the company is entitled to pray for dispossession of 2nd Respondent from the property?

Fourth, whether it is required that 2nd Respondent should have been in possession of the disputed property as a prerequisite of his service?

Finally, whether in light of the answers to the aforementioned issues, the High Court was justified in exercising its inherent powers under Section 482 of the Cr.P.C?

8. With respect to the first issue, it is undisputed that a company has a separate legal personality. Hence even if we accept the respondents' contention that the appellant company is owned and controlled by the vendors themselves, any orders issued in the civil suit between 2nd Respondent and the vendors would not be binding upon the appellant company as it is not a party to the suit. It is true that in some cases the Court may

pierce the 'corporate veil' and look at the reality behind the entity if it is found that the device of incorporation has been used to perpetrate some illegality or fraud (See ***Delhi Development Authority v. Skipper Construction Company (P) Ltd.***, (1996) 4 SCC 622). However no such illegality or fraud has been pleaded and proved in the present case.

In any case, it has been settled by this Court in ***Damodar Das Jain v. Krishna Charan Chakraborti***, (1989) 4 SCC 531, and ***Atul Mathur*** (supra) that the pendency of a civil suit in respect of a property, would not bar a complaint under Section 630 with respect to the same property, even if it is between the same parties, if there is no dispute or no bona fide dispute regarding the company's right over the property. The mere fact that the accused employee has refuted the company's claim to possession would not make the dispute bona fide.

In the present case, we find that there is no bona fide dispute in as much as the 2nd Respondent's entire claim to the disputed property is based on an oral agreement/'understanding', as to the terms of which no documentary evidence has been produced. Whereas the appellant company has at least been put into symbolic possession of the property by Clause 6 of the

agreement for sale dated 26.4.2008, which 2nd Respondent has not disputed.

The question is then whether the ratio in ***Atul Mathur*** (supra) allows for co-extensive criminal proceedings under Section 630 of the 1956 Act even where the civil court has directed maintenance of status quo with respect to the property. We are of the considered opinion that in a case such as the present complaint, where there was only an oral agreement in favour of the accused employee for purchase of the property, but the civil court has issued a temporary injunction directing status quo, the accused will nevertheless acquire the right to possess the disputed property lawfully only if he is successful in obtaining a decree in his favour in the civil suit.

The mere issuance of a temporary injunction by the civil court directing maintenance of status quo in respect of the disputed property does not make the dispute bona fide or bar the company's right to recover the disputed property from the accused employee under Section 630 of the 1956 Act. At best, such an injunction would only bar the company from creating any rights in favour of third parties pending disposal of the civil suit. This is because the cause of action in the civil suit is completely

different from the question of whether the employee is wrongfully withholding the company's property, which is the issue for consideration in the present criminal proceedings. If prima facie the trial court finds that the company has the right to possess the property, the issuance of a temporary injunction by the civil court cannot be used to defeat the company's lawful right of possession. This is also reflected in the following relevant clauses of Section 41 of the Specific Relief Act, 1963.

"41. Injunction when refused.—An injunction cannot be granted—

...(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;...

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter..."

(See ***Jolly Durga Prasad v. Goodricks Group Ltd.***, (1999)

97 Comp Cas 698 (Cal); ***S. Palaniswamy v. Sree Janardhana Mills Ltd.***, (1993) 76 Com Cases 323 (Mad).)

Based on the aforementioned discussion, it can be concluded that the principle laid down in ***Atul Mathur*** (supra) would also extend to cases under Section 630 where a civil court has, in spite of there being no bona fide dispute, issued an order of temporary injunction in respect of the disputed property. In such a case, the

pendency of the civil suit and any interim reliefs granted therein would not bar criminal prosecution under Section 630.

9. Similarly, with respect to the second issue, we are of the considered opinion that where the Magistrate has found that prima facie the company has a right to possession of the disputed property, he may grant interlocutory relief under Section 630(2) prior to conclusion of the trial under Section 630(1). Courts have time and again observed that Section 630 has to be given a liberal interpretation so as to facilitate expeditious recovery of the company's property. The following observations of this Court in ***Baldev Krishna Sahi*** (supra) are useful in this regard:

"7. The beneficent provision contained in Section 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 furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

(emphasis supplied)

Therefore this Court in ***Baldev Krishna Sahi*** held that the expression 'officer or employee' in Section 630, though it primarily applies to existing officers and employees, may also take in past officers and employees. We may also refer to the following relevant observations of the Bombay High Court in ***Kannankandi Gopal Krishna Nair v. Prakash Chunder Juneja***, (1994) 81 Comp Cas 104,:

"4. The courts have been flooded with prosecutions instituted by companies under section 630 of the Companies Act and it has been demonstrated that this provision of law has almost been rendered impotent by employees and ex-employees who hold on to company property by litigating for decades together. At the end of this long exercise, if the accused loses, the company is expected to consider itself fortunate if the premises are restored and the offence, if any, is to be treated as, to use a common parlance expression, "forgiven and forgotten". Another ploy that has been successfully employed in these cases is to take advantage of the desperation of the poor landlord who, in the midst of these legal skirmishes, genuinely feels that it is better to make the best of the bad bargain by selling out to the party in possession. The accused who, on the one hand, has frustrated the law as far as section 630 of the Companies Act is concerned thereafter contends that he cannot be ordered to restore possession of his own flat. In other words, through such a devious procedure, the accused is permitted to take advantage of his own wrong which is anathema to accepted canons of criminal jurisprudence. Such gymnastics, if permitted, will have the effect of nullifying the rule of law and the courts, with some clear thinking, will, therefore, have to adopt a no-nonsense policy in the event of such mischief."

(emphasis supplied)

Hence, given that the primary object of Section 630 is to provide a speedy mechanism for restoration of wrongfully withheld property to companies, we find that the provision should be construed as far as possible to facilitate a remedy in favour of the aggrieved company and to prevent the wrongful retention of the property for an unduly long period by the accused.

There is no stipulation in Section 630(2) that an order for delivery of wrongfully withheld property must be made only after the accused has been convicted under Section 630(1). Rather, it says the Court 'trying' the offence may direct the delivery of such property, which indicates that such an order may be passed at any stage by the trial court. This Court in ***Baldev Krishna Sahi*** (supra) upon finding that a case under Section 630(1) was *prima facie* made out directed the petitioner therein to vacate the disputed premises during pendency of the substantive complaint under Section 630(1). Therefore in the present case, the courts below have not committed any error in allowing the appellant company's application under Section 630(2) during pendency of substantive criminal proceedings.

10. With respect to the third and fourth issues, we find that the High Court has gone against the spirit of the provision, as enunciated by this Court in **Baldev Krishna Sahi** (supra), by strictly interpreting Section 630 to mean that the appellant company must have title by way of ownership to the disputed property and that the accused should have been in possession of the flat as a perquisite of his service.

Section 630 nowhere requires that the company should have title to the property. The emphasis is on whether the accused has obtained wrongful possession of the property which defeats the company's lawful right of exclusive possession, even though the property as such may not belong to the company but to a third-party landlord or licensor, as was the case in **Atul Mathur** (supra). The term 'property of the company' has to be construed widely having regard to the beneficial object of the Section (See **Kannankandi Gopal Krishna Nair** (supra); **PV George v. Jayems Engineering Co. (P) Ltd**, (1990) 2 Comp LJ 62 (Mad)).

The 2nd Respondent has admitted that after the death of Arun Kumar Bajoria, the disputed property was inherited by the vendors who subsequently transferred possession to the appellant company by the agreement dated 26.4.2008. The 2nd

Respondent also handed over the title deeds of the property to the appellant company. Therefore, till the time that the 2nd Respondent does not prove in the civil suit that the vendors were required to have sold the property to him, it is the company which has the exclusive right to possess the property at present.

Further, it is true that in the majority of cases falling under the ambit of Section 630, it has been that property possessed by the company was allotted to an employee for the purposes of residential accommodation, etc. as an incidence of his service, at the first instance itself. In the present case, the 2nd Respondent has been a director of the company since 1988, and claims to be in permissive possession of the disputed property as per the alleged understanding between him and his relative, the deceased Arun Kumar Bajoria, since 1994. However the company acquired the disputed property only in 2008. Be that as it may, the 2nd Respondent has failed to rebut the fact that as of 26.4.2008 it is the company which has acquired the exclusive right to possess the property, and the company handed over possession to him w.e.f 1.5.2008 only in his capacity as the director of the company. Whatever may have been the situation

prior to 26.4.2008, on and after that date the company became entitled to recover possession of the disputed property.

We find no substance in the 2nd Respondent's argument that he was misled into delivering the title documents of the disputed property by his sister-in-law on the ground that they were required for updation of records. The 2nd Respondent, being an office bearer in the company, could have got the records updated on his own or could have delivered it to the vendors, if it was on their insistence that he handed over the documents. However the letter dated 9.6.2008 shows that the title documents were delivered to a representative of the appellant company. This shows that the 2nd Respondent acknowledged that title was to be transferred to the company vide the agreement dated 26.4.2008.

Section 630 nowhere stipulates that the property should have been allotted by the company to the accused as a perquisite of service. There may be a number of purposes for which the accused may be given lawful possession of the company's property during the course of employment for example, for safe custody of the property or for maintenance thereof. The purpose for which and the time at which possession was given is irrelevant. What is sufficient is that the accused was put into

possession of the property in their capacity as an officer/employee of the company and continued to withhold such property without having any independent right, title or interest thereto even after cessation of his employment. As we have found in the discussion supra, mere oral agreement or understanding would not be sufficient to establish such an independent right.

11. Coming to the final issue, Section 397(2) of the Cr.P.C provides that the High Court's powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Whereas Section 482 of the Cr.P.C provides that nothing in the Cr.P.C will limit the High Court's inherent powers to prevent abuse of process or to secure the ends of justice. Hence the High Court may exercise its inherent powers under Section 482 to set aside an interlocutory order, notwithstanding the bar under Section 397(2). However it is settled law that this can only be done in exceptional cases. This is, for example, where a criminal proceeding has been initiated illegally, vexatiously or without jurisdiction (See ***Madhu Limaye v. State of Maharashtra***, (1977) 4 SCC 551).

In the present case, the order of the Magistrate under Section 630(2) was an interlocutory relief based on a *prima facie*

assessment of facts and did not conclusively decide the ongoing trial under Section 630(1). If the Magistrate finds that the appellant company has been unable to prove that the 2nd Respondent was wrongfully withholding possession of the property, such interlocutory relief shall stand vacated. In light of the above discussion, it is clear that there was no exceptional case of illegality or lack of jurisdiction in the interlocutory order of the lower court calling for the exercise of the inherent powers of the High Court under Section 482, Cr.P.C.

However we are in agreement with the High Court's direction that the trial under Section 630(1) ought to be completed as soon as possible. Further, it is needless to say that if the civil court passes a decree in favour of the 2nd Respondent in Suit No. 2126/2009, such decree must be honoured and possession of the disputed property may be restored to him accordingly.

12. Hence the appeal is allowed and the impugned judgement is set aside, in the above terms.

.....J.
(Mohan M. Shantanagoudar)

New Delhi;

.....J.

October 17, 2019.

(Ajay Rastogi)