

PETITIONER:

ATUL MATHUR, DIVISIONAL SALES MANAGER OF JENSON AND NICHOLSON

Vs.

RESPONDENT:

ATUL KALRA AND ANR.

DATE OF JUDGMENT 08/08/1989

BENCH:

NATRAJAN, S. (J)

BENCH:

NATRAJAN, S. (J)

PANDIAN, S.R. (J)

CITATION:

1989 SCR (3) 750

1989 SCC (4) 514

JT 1989 (3) 350

1989 SCALE (2) 239

ACT:

Companies Act 1956--Section 630---Officer or employee of Company--Refusing to vacate flat after resignation from service-Prosecution on complaint--Whether maintainable.

HEADNOTE:

The appellant-Company took a flat No. 84, Mehr-Dad, Cuffe Parade, Bombay, from its owner Mehdi Mandil on leave and licence basis for the residence of its Officers'/Employees'. The first Respondent, Divisional Manager of the Company at Bombay, acted as power of attorney of the Company and executed the agreement with the land-lord for leave and licence initially for a period of 11 months renewable for a total period of 66 months. The agreement also provided for an advance payment of Compensation amounting to Rs. 16,500 monthly compensation of Rs. 1500 and a deposit of Rs.3,50,000 to be returned at the end of the licence period free of interest. The company complied with all the terms of the agreement.

On 1.11.80, the appellant Company allowed the first Respondent to occupy the flat as company's employee. Three years later i.e. on 23.3.84, the first Respondent filed a suit in the Court of Small Causes Bombay against the Company and the owner of the flat for a declaration that he was the actual licensee of the flat and for a permanent injunction to restrain the defendants from interfering with his possession of the flat. He based his claim as a licensee on the basis of two letters dated 25.1.84 and 1.2.84 written by the Manager of the Company, one Mr. Jain. Three days after filing the said suit, first Respondent resigned and his letter of resignation was accepted by the company on 27.3.84.

Since the first Respondent, ex-employee of the company did not vacate the flat, the company filed a complaint against him under Section 630 of the Companies Act before the Addl. Chief Metropolitan Magistrate, Bombay. The Complaint was filed by Mr. Atul Mathur, as attorney of the company, who by then had taken over the place vacated by the first respondent.

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The trial Magistrate found the first respondent guilty under Section 630 of the Company's Act and sentenced him to

pay a fine of Rs. 1,000 and directed to deliver vacant possession of the flat to the company. In lieu of payment of fine aforesaid, first respondent was directed to undergo simple imprisonment for 3 months.

The first respondent preferred an appeal to the Session Court against the order of the Trial Magistrate. By his order dated 22.10.86, the Addl. Sessions Judge, Greater Bombay dismissed the appeal. Thus both the trial court as also the first appellate Court concurrently found that the company was the real licensee.

Thereupon the first Respondent filed a Petition under Article 227 of the Constitution before the High Court, which later, he was permitted to convert as one under Sec. 482 of the code of criminal procedure. The first Respondent contended before the High Court:

(i) That the complaint was not properly filed inasmuch as the complainant was not duly authorised by the company which irregularity vitiated the proceedings; (ii) That the Addl. Chief Judl. Magistrate had no jurisdiction to adjudicate such a complicated matter in summary proceedings under Section 630 of the Companies Act, and (iii) The Addl. Sessions Judge had wrongly cast the burden of proof on the accused.

The High Court rejected the contentions (1) and (3) and came to the conclusion that the letters written by Mr. Jain afforded basis for the first respondent to bona fide dispute the company's claim for possession of the flat. The High Court also took the view that the first respondent having filed civil suit earlier in point of time, the Criminal Court ought to have stayed its hand and allowed the Civil Court to adjudicate upon the issue.

Damodar Das Jain v. Krishna Charan Chakraborti & Anr.,
[1985] 57 Com. Cases.

Aggrieved by the High Court's order allowing the first Respondent's Writ Petition, the company has filed this appeal by special leave and the question that falls for determination by the Court is whether the High Court was right in reversing the Judgments of the Courts below in a matter arising under Section 630 of the company's Act in exercise of its powers under section 482, Cr.P.C. Allowing the appeal and granting time to the first Respondent till

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30.9.89 to vacate the flat in question, this Court,

HELD: The term "Officer or Employee" in Section 630 of the Company's Act applies not only to existing officers or employees but also to past employees or officers if such officer or employee either wrongfully obtains possession of any property or having obtained the possession during his employment withholds the same after the termination of his employment. Sh. Baldev Krishna Sahi v. Shipping Corpn. of India Ltd., [1987] IV SCC 361 and Amrit Lal Chum v. Devo Prasad Dutta Roy, [1988] 2 SCC 269. [758C]

Merely because the first respondent had schemingly filed a suit before tendering his resignation, it can never be said that the Civil Court was in seisin of a bona fide dispute between the parties and as such the Criminal Court should have stayed its hands when the company filed a complaint under Section 630. If a view is mechanically taken that whenever a suit has been filed before a complaint is laid under Section 630, the Criminal Court should not proceed with the complaint, it would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630. [763E-F]

What has to be seen in a complaint under Section 630 is

whether there is "no dispute or no bona fide dispute" regarding a property claimed by the company between the company and its employee or ex-employees. It is needless to say that every dispute would not become a bona fide dispute merely because the company's claim to possession is refuted by an employee or ex-employee of the company. As to when a dispute would amount to a bona-fide dispute would depend upon the facts of each case. [764E]

The Court set aside the judgment of the High Court and restored those of the Additional Chief Metropolitan Magistrate and the Addl. Sessions Judge. [766C]

Damodardas v. Krishna Charan Chakraborti & Anr., [1988] 4 Judgment Today p. 714. and Ballavdas Agarwala v. Shri J.C. Chakravarty, [1960] 2 S.C.R. 739, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 549 of 1987.

From the Judgment and Order dated 23.2.87 of the Bombay High Court in Crl. W.P. No. 96 of 1986.
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Anil B. Divan, V.P. Vashi, Ms. Naina Kapur and K.J. John for the Appellant.

H.M. Jagtiani, S. Mullik, A.S. Bhasme, Ms. Kamini Jaiswal and A.M. Khanwilkar for the Respondents.

The Judgment of the Court was delivered by

NATARAJAN, J. What falls for consideration in this appeal by special leave is whether the High Court has erred in law in setting aside the judgments of the courts below in a matter arising under Section 630 of the Companies Act in exercise of its powers under Sec. 482, Cr.P.C.

The facts are as under:--Messers Jenson and Nicholson (India) Ltd. (appellant company), had secured a flat in Bombay (No. 84, Mehr-Dad, Cuffe Parade) belonging to one Mehdi Mandil, on leave and licence basis for the residential occupation of the flat by its officers/employees. The leave and licence agreement was entered into on behalf of the company by the Ist respondent who was then the Divisional Sales Manager of the company at Bombay, the registered office of the company being at Calcutta. It is common ground the Ist respondent acted on behalf of the company under a Power of Attorney executed in his favour by the company. The leave and licence was for an initial period of 11 months but subject to renewal for a total period of 66 months. The agreement provided for payment of advance compensation of Rs. 16,500 for 11 months and a monthly compensation of Rs. 1,500 and a deposit of Rs.3,50,000 free of interest to be returned at the end of the licence period. The company paid the deposit and the advance compensation and was paying the monthly compensation of Rs. 1,500 thereafter. On taking possession of the flat on 1.11.1980, the company allowed the 1st respondent to occupy it as an employee of the company. More than three years later, i.e. on 23.3.1984, the Ist respondent filed a suit (Suit No. 1360/84) in the Court of Small Causes, Bombay against the company and the owner of the flat for a declaration-that he is the actual licensee of the flat and for permanent injunction to restrain the defendants from interfering with his possession of the flat. The Ist respondent claimed to be the licensee of the flat on the basis of two letters dated 25.1.1984 and 1.2.1984 written to him by a junior employee of the company, viz. one Mr. Jain who was the Officer Manager of the company at Bombay and working under the Ist respondent. In those letters Mr.

Jain has made it appear that the Ist respondent was the tenant of the flat. Besides the reliefs-of declaration and injunction, certain other reliefs such as fixation of standard rent etc. were also asked for in the suit against the owner of the flat. Three days after the
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filing of the suit i.e. on 26.3.1984, the Ist respondent tendered a letter of resignation to the company and his resignation was accepted by the Management on 27.3.84. In accordance with his claim to be the licensee of the flat, the Ist respondent offered to reimburse the company the deposit amount of Rs.3,50,000 but the company declined the offer and asserted that it was the licensee of the flat and not the Ist respondent.

As the Ist respondent failed to vacate the flat after resigning his post, the company filed a complaint against him under Section 630 of the Companies Act in the Court of the Additional Chief Metropolitan Magistrate, Bombay. The complaint was filed on behalf of the company by its power of attorney Mr. Atul Mathur who had been appointed as Divisional Sales Manager, Bombay in place of the Ist respondent after his resignation. The Additional Chief Metropolitan Magistrate took the complaint on file and after trial found the Ist respondent guilty under Section 630 of the Companies Act and sentenced him to pay a fine of Rs. 1,000 and also directed him to deliver possession of the flat to the company on or before 15.6.87 in default to suffer S.I. for three months. Against the said judgment, the Ist respondent preferred an appeal to the Sessions Court but by judgment dated 22.10.1986, the Addl. Sessions Judge, Greater Bombay dismissed the appeal. The Trial Magistrate as well as the Appellate Court concurrently held that the company was the licensee of the flat, that the Ist respondent had acted only as the power of attorney of the company in entering into the agreement, that his occupation of the flat was only as an employee of the company and consequently the Ist respondent was in unlawful occupation of the flat after he ceased to be an employee of the company. The Ist respondent was therefore directed to deliver possession of the flat to the company.

Despite the concurring judgments rendered against him, the Ist respondent filed a petition before the High Court under Article 227 of the Constitution but at the time of arguments, he was permitted to convert the petition into one under Section 482, Code of Criminal Procedure. Three contentions as under were urged before the High Court to assail the judgments of the Courts below:

1. The complaint had been filed by a person without due authority to act on behalf of the company and this irregularity vitiated the entire proceedings,
2. The Additional Session Judge had wrongly cast the burden of proof on the accused and he wrong approach has vitiated the judgment of the First Appellate Court.

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3. Since complicated questions of title were involved, the Additional Chief Metropolitan Magistrate had no jurisdiction or competence to adjudicate the matter in summary proceedings under Section 630 of the Companies Act.

The first two contentions did not find favour with the High Court. On the first contention, the High Court held that though the power of attorney conferred only special powers on Mr. Atul Mathur to act on behalf of the company only in civil suits, sales tax proceedings and excise mat-

ters. Mr. Atul Mathur could still validly file the complaint as he was an officer of the company in the rank of Manager and could therefore validly act on behalf of the company. The High Court further held that even if Mr. Atul Mathur did not have the requisite competence to file the complaint, the irregularity was a curable one under Section 465 of the Code of Criminal Procedure. As regards the second contention, the High Court held that the Addl. Sessions Judge had nowhere cast the burden of proof on the accused in dealing with the appeal and hence the appellate judgment did not suffer from any perversity or illegality. The High Court, however, sustained the third contention of the 1st respondent and set aside the sentence of fine and the direction to the 1st respondent to deliver possession of the flat to the company. In giving its acceptance to the third contention, the High Court felt influenced by the two letters Exs. 3 & 4 written by Mr. Jain and felt that the letters afforded basis for the 1st respondent to bona fide dispute the company's claim for possession of the flat. The High Court was also of the view that since the 1st respondent had filed a suit even before the complaint was filed, the Civil Court was in seisin of the matter and therefore the Criminal Court "ought to have stayed its hand and allowed the Civil Court to adjudicate upon the issue." In support of its view, the High Court invoked the ratio in *Damodar Das Jain v. Krishna Charan Ckkraborti*, [1985] 57 Com. Cases 115.

The aggrieved company is now before us. Mr. Anil Divan, learned senior counsel appearing for the company argued that the High Court, after having held that there were no reasons to interfere with the concurrent findings of the Courts below, ought not to have gone back on its view and rendered a finding that a bona fide dispute was involved in the proceedings and the dispute could only be adjudicated upon by a civil court and not by a criminal court in summary proceedings under Section 630 of the Companies Act. Mr. Anil Divan referred to the acceptance of the findings of the first two Courts by the High Court in its judgment in the following terms....

"I do not think that there is any scope for re-appreciating
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or re-appraising the evidence. Two Courts below have come to concurrent findings of fact, and I see no reason for interfering with the conclusions arrived at by the Courts below. "

It was therefore urged by the counsel that once the concurrent findings of the Courts below found acceptance with the High Court, there was no justification for the High Court to set aside the judgments of the two Courts. The learned counsel further submitted that Section 630 of the Companies Act has been provided with an intent and purpose and its scope and ambit have been set out by this Court in reported decisions, but the High Court has failed to notice them and construed Section 630 in an unrealistic manner and this had led to mis-carriage of justice, Mr. Divan also invited our attention to the leave and licence agreement entered into by the company with the owner of the flat as well as an affidavit and letter given by the first respondent at the time of the agreement and submitted that in the face of these clinching documents, there was absolutely no room for the first respondent to contend that he was the licensee and not the company of the fiat in question. He also commented upon the conduct of the 1st respondent in getting two letters Ex. Nos. 3 and 4 written by a junior employee of the company

without the knowledge of the Directors of the company and filing a suit on the basis of those letters and resigning his post three days later and refusing to vacate the flat. It was finally urged by Mr. Divan that the High Court went wrong in applying the ratio in Damodar Das Jain (supra) because there was no bona fide dispute between the Ist respondent and the company regarding the flat occupied by the Ist respondent.

Mr. Jagtiani, learned counsel for the first respondent who had appeared for him before the High Court also contend on the other hand that the High Court has acted rightly in exercising its power under Section 482 Cr. P.C. and in setting aside the judgments of the lower courts and the High Court's judgment does not suffer from any error of law which needs correction by this Court. The arguments of Mr. Jagtiani may briefly be summarised as under:

1. Proceedings under Section 630 of the Companies Act are in the nature of criminal proceedings and consequently the burden of proof is upon the complainant. Besides, the accused is entitled to the benefit of doubt on all matters not proved beyond reasonable doubt. Moreover any weakness in the accused's case set up by way of defence cannot be relied upon to fill up the lacuna in the prosecution case. 757

2. The letters Exs. 3 and 4 written by Mr. Jain on behalf of the company have not been convincingly disproved by the company and as such a bona fide doubt exists as to who is the actual licensee of the flat and the said dispute can be resolved only by a Civil Court and not by a Criminal Court.

3. A civil suit had already been filed by the first respondent and it was pending in the Civil Court and as such the Criminal Court should not have adjudicated upon the rights of the parties but should have directed them to seek their remedies before the Civil Court.

4. The explanation offered by Mr. Jain that he had written the letters under duress and coercion has been falsified by his admissions in cross-examination and hence the Criminal Court should have accepted the first respondent's plea that a bona fide dispute existed between the parties regarding the licence rights over the flat and refrained from adjudicating upon the rights of the parties in the complaint filed under Section 630.

5. Damodar Das Jain's case sets out the correct ratio and the High Court was fully justified in applying the said ratio to this case.

Before we deal with the contentions of the parties, we may refer to Section 630 of the Companies Act and the decisions of this Court on the scope and ambit of the Section. Section 630 reads as under:

"S. 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 the 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

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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."

There was a divergence of opinion between the Bombay High Court and the Calcutta High Court regarding the interpretation of the words "any officer or employee of a company", the Bombay High Court giving a broader interpretation to the words and the Calcutta High Court giving a narrow interpretation. The controversy was set at rest by this Court in *Baldev Krishna Sahi v. Shipping Corpn. of India Ltd.*, [1987] (IV) SCC 361 by holding that the term "officer or employee" of a company applies not only to existing officers or employees but also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property, or (b) having obtained possession of such property during his employment, wrongfully withholds the same after the termination of his employment. It was pointed out that wrongful obtainment of possession would attract Section 630(1)(a) and wrongful withholding of possession of company's property would attract Section 630(1)(b) of the Act. It is therefore clear that the purpose of enacting Section 630 is to provide speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or ex-employee.

In a later case *Amritlal Chum v. Devo Prasad Dutta Roy*, [1988] 2 SCC 269 which arose directly from the decision of the Calcutta High Court in *Amritlal Chum v. Devi Ranjan Jha*, [1987] 61 Company Cases 211 the view taken in *Baldev Krishan Sahi* (supra) was affirmed and the High Court's judgment was reversed.

Coming now to the question whether the licence for occupation of the flat was obtained by the company or the first respondent, we may refer to three crucial documents. The first one is the leave and licence agreement dated 1.11. 1980. The deed specifically states that the licensee is Messrs Jenson and Nicholson (India) Ltd. having its registered office at Calcutta and Executive office at Bombay and that the company shall have the flat "for the use and occupation as residence by its bona fide employee/employees and/or his/their families" and shall not be transferred to anyone else (vide clauses 11 & 12). The agreement was entered into by the first respondent as the power of attorney agent of the company and he has contemporaneously executed an affidavit on 1.11. 1980 wherein he has affirmed as follows:

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"I say that for the purpose of securing a flat on leave and licence basis for providing residence for the employees of the company, I have entered into negotiations on behalf of the company, with Shri Mehdi Mandil the owner of flat No. 84 on the 8th floor of the building known as 'Mehr Dad' at Cuffe Parade, Bombay, to allow the company the use

and occupation of the said flat under a leave and licence to be executed between the said Mehdi Mandil and the said company."

(Emphasis supplied).

In para 3 of the affidavit, the first respondent has given an assurance that the flat "would be made use of for the purpose of residence only by the bona fide employees of the company and/or their/families." In para 4, the first respondent has affirmed "that neither the company nor any employee of the company who may be in occupation of the flat would claim any rights/title or interests or any rights of tenancy other than the right to use and occupy the said flat purely as a licensee under and in accordance with the terms and conditions of the leave and licence agreement." On 5.11.1980, the 1st respondent, acting for the company, has written a letter to the licensor Mr. Mehdi Mandil stating inter alia as under:

"The flat being given to the company, it would be occupied by only the bona fide official employee of the company."

"Yours faithfully,
Jenson & Nicholson

(India) Ltd.

Sd/-Atul Kalra
Divisional Sales Manag-

er, Bombay."

These documents clinch the issue and prove beyond a shadow of doubt that the flat was taken on leave and licence basis by the company only for providing accommodation to its employee or employees during their term of employment in the company. It was purely on that basis the first respondent who was the Divisional Sales Manager was allowed to occupy the flat and he was allowed to occupy the flat till he resigned his post on 26.3.1984. It is pertinent to mention here that it was the company which had given the deposit of Rs.3,50,000 to the licensor and had been paying the licence fees, advance and monthly, all through.

Notwithstanding this incontrovertible position, the first respon-

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dent developed ideas to cling to his possession of the flat even after ceasing to be an employee of the company. Consequently, he contrived to obtain two letters dated 25.1.1984 and 1.2.1984 from Mr. Jain who was only working as Office Manager at Bombay. In the first letter, Mr. Jain has formally written to say (though he and the 1st respondent were working in the same office) that the company has received a letter from the Municipal Corporation regarding the rateable value of the flat and that the first respondent may deal with the matter. Instead of stopping with that, Mr. Jain has gone on to say as follows:

"We are forwarding the said letter to you, to deal with the same as you are the tenant of the flat and you are in possession of the same. The flat was taken by you from the landlord, but the landlord had insisted to have the agreement in the name of the company merely.

The company will not be liable if the rateable value of the flat is increased and if there is any consequential increase in the property taxes. All the matters will be between you and the landlord. Please therefore deal with the letter as you deem fit."

(Emphasis

supplied).

Yours faithfully,

Jenson & Nichol-

son (India) Ltd.

Sd/-

(A.S

JAIN)

Office

Manager, Bombay.

On 30.1. 1984, the appellant has acknowledged the letter and agreed to deal with the corporation authorities and has in addition stated that he will also take steps for fixation of standard rent by the Court as the landlord was charging exorbitant rent. Digressing for a moment, it has to be noticed that the 1st respondent had come to realise the rent to be exorbitant only after 3 years and 2 months and just before he wanted to claim tenancy rights for himself. Reverting back to the correspondence, Mr. Jain has sent a reply on 1.2.1984 to state that the company will have no objection to legal proceedings being taken for fixation of standard rent of your flat at 84, Mehr Dad, Cuffe Parade, Bombay but however he (1st respondent) alone will have to bear the expenses including the court fees and advocate's fees and the company will not be liable to re-imbuse him. It is on the footing of these two

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letters the first respondent sought to build up a case that he was the actual licensee of the flat and not the company.

Before considering the explanation given by Mr. Jain as to his writing the letters, it will be worthwhile to notice certain factors. In the first place, Mr. Jain was only a junior employee of the company viz. Office Manager, Bombay and could not therefore have directed the 1st respondent to attend to the matter of furnishing information to the corporation authorities about the rateable value of the flat. Secondly, Mr. Jain and the first respondent were both working in the same office and as such it is inconceivable that Mr. Jain would have carried on a correspondence with the 1st respondent instead of merely placing the alleged letter of the corporation before the first respondent for suitable action by him. Thirdly, Mr. Jain joined the services of the company only in July 1983 i.e. long after the company had taken the flat on licence and as such he could not have known what were the terms of the leave and licence agreement and who was the actual licensee of the flat. Fourthly, even if Mr. Jain had purported to act on behalf of the company, he would have sent copies of the letters to the Head Office at Calcutta but he had not done any such thing and on the other hand he had suppressed information from the Head Office about the correspondence. The 1st respondent too had not brought the matter to the notice of the Head Office at Calcutta. The 1st respondent resigned his post on 26.3.84 and in order to forestall the company from seeking his eviction, he had filed a suit on 23.3.84 to seek the reliefs of declaration and injunction. All these factors lead to the unmistakable conclusion that the first respondent had somehow prevailed upon Mr. Jain to give the letters Exs. 3 & 4 with the ulterior motive of filing a suit and then tendering his resignation.

Now coming to the explanation offered by Mr. Jain for writing the two letters, he has sworn to an affidavit that he was "pressurised and threatened" by the 1st respondent to sign the letters without knowing the implications. He has also given evidence to the same effect in the trial of the

case before the Additional Chief Metropolitan Magistrate. Mr. Jagtiani strenuously contended that Mr. Jain's statement that he gave the letters under coercion has been disproved by the answers elicited from Mr. Jain in his cross-examination viz. that the 1st respondent did not actually threaten him but he construed the commanding manner in which he made the demand as containing a threat. Mr. Jagtiani's argument was that once Mr. Jain's explanation for giving the letters stood falsified, then the letters must be treated as genuine documents binding on the company and affording material to the 1st

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respondent to contend that he was the real licensee of the flat. We are unable to find any merit in this contention. Even assuming for arguments sake that Mr. Jain had not written the letters under threat, the 1st respondent's case will not stand advanced in any manner. A junior employee of the company cannot relinquish the rights of the company in favour of the 1st respondent especially when the 1st respondent himself had categorically stated in the leave and licence agreement as well as in his affidavit and letter that the company was the licensee of the flat and the employees are not entitled to claim any tenancy rights for themselves.

Fully realising, the weakness in his case, the 1st respondent has made an attempt to authenticate the letters Exs. 3 and 4 by contending that Mr. Roy, Director of the Company had instructed Mr. Jain from Calcutta to write the letters and hence the letters were fully binding upon the company. The story invented by the 1st respondent was rightly disbelieved by the Trial Court and the Appellate Court because it is inconceivable that Mr. Roy would have asked a junior officer like Mr. Jain to write the letters instead of asking some one from the Head Office itself to write the letters. No suggestion was put to Mr. Jain in the witness box that he wrote the letters under the instructions of Mr. Roy. There is also no mention in the letters that they were being written as per the instructions received from the Head Office. Another strange feature is that a copy of the letters has not been sent to the Head Office. Such would not have been the case if the letters had really been written by Mr. Jain under directions from the Head Office.

Mr. Jagtiani sought to discredit the affidavit and the evidence of Mr. Jain on the ground that Mr. Jain had given his affidavit after consulting the company's lawyer and secondly he had not been punished by the company for his misconduct. The arguments of the counsel in this behalf have no merit in them because Mr. Jain was duty bound to explain to the company the circumstances in which he had arrogated powers to himself and written the letters Exs. 3 and 4 to the 1st respondent. Naturally therefore he would have sought the guidance of the company's counsel as to how the affidavit is to be formally worded. As regards the company not awarding any punishment to Mr. Jain, it was open to the company to pardon him for the folly of his action when it came to know that he had been unwittingly made use of by the 1st respondent to write the letters in question.

All these factors have unfortunately escaped the notice of the

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High Court and the omission has led the High Court to accept the first respondent's contention that there was a bona fide dispute between him and the company as to who was the actual licensee of the flat. We have already referred to the relevant portions of the leave and licence agreement and the

affidavit and letter of the Ist respondent wherein he has categorically accepted that the company was the licensee of the flat. Secondly, the evidence projected by the Ist respondent to lay claim to licence rights over the flat is his own creation without the knowledge of the company. The two letters in question had been obtained from a junior employee who had joined the company long after the flat was taken on rent and who knew nothing of the agreement between the company and the owner of the flat. The author of the letters has himself confessed that he had signed the letters at the behest of the Ist respondent without knowing the implications of his act. Leaving aside these factors, even if we are to take that Mr. Jain had of his own accord written the letters, can it ever be said that the letters afford scope for the Ist respondent to contend that he is bona fide entitled to dispute the company's claim to possession of the flat. The sequence of events also go to show that the Ist respondent had formulated a plan for clinging to his possession of the flat even after resigning his post and in accordance with that plan he had obtained the letters Exs. 3 and 4 and then filed a suit in order to forestall the company from proceeding against him under Section 630 of the Companies Act. Merely because the Ist respondent had schemingly filed a suit before tendering his resignation, it can never be said that the Civil Court was in seisin of a bona fide dispute between the parties and as such the Criminal Court should have stayed its hands when the company filed a complaint under Sec. 630. If a view is mechanically taken that whenever a suit has been filed before a complaint is laid under Section 630, the Criminal Court should not proceed with the complaint, it would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630.

So much for the bona fides of the alleged dispute projected by the Ist respondent regarding the company's claim to possession of the flat. Coming now to the question of law, the High Court has invoked the ratio in *Damodar Das Jain*, (supra). The facts therein were very different and it was with reference to those facts, the High Court held that a bona fide dispute existed between the parties therein. This may be seen from the question posed for consideration by the High Court, viz. "whether on the facts and circumstances of the case, the Magistrate could himself, under Section 630, determine the dispute as to the title to the property." On the evidence before it, the High Court held

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and rightly so that there was a genuine dispute between the parties and the said dispute required adjudication by a Civil Court in the suit filed by the ex-employee. While rendering its judgment, the High Court had construed Section 630 properly and observed that "the magistrate's jurisdiction thereunder (under Section 630) would extend only to those cases where there was no dispute, or in any event no bona fide dispute, that the property involved was the property of the company." (emphasis supplied).

Mr. Jagtiani pointed out that the decision of the High Court in *Damodardas Jain* (supra) was affirmed by this Court in *Damodardas v. Krishna Charan Chakraborti & Anr.*, [1988] 4 Judgment Today page 7 14. He fails to notice that the acceptance of the High Court's view was with reference to the facts of the case. This may be seen from the following observation in the judgment of this Court. "The High Court felt that the disputes raised by the respondent herein were bona fide disputes. Before us it has not been disputed that this view of the High Court was correct as far as the ques-

tion whether the Company could be held to be a tenant of the flat is concerned."

Therefore what has to be seen in a complaint under Section 630 is whether there is "no dispute or no bona fide dispute" regarding a property claimed by the company between the company and its employee or ex-employee. It is needless to say that every dispute would not become a bona fide dispute merely because the company's claim to possession is refuted by an employee or ex-employee of the company. As to when a dispute would amount to a bona fide dispute would depend upon the facts of each case. In the present case the High Court has realised this position and observed that "while considering whether the plea of tenancy is a bona fide plea, it is always necessary to examine and consider the transaction on the basis of which the plea is based" (vide para 39). While stating the position correctly, the High Court went wrong in holding that the serf-serving documents produced by the 1st respondent gave a touch of bona fides to his defence. The High Court was therefore not right in thinking that the ratio in Damodar Das Jain (supra) was attracted to the case in as much as the defence put forward by the 1st respondent was patently an incredible story.

Another contention of the 1st respondent to thwart the proceedings under Section 630, which has been repelled by all the Courts including the High Court, is regarding the competence of PW-1 Mr. Atul Mathur, the present Divisional Sales Manager of the company, to

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file the complaint on behalf of the company. Belatedly, the 1st respondent has filed a memorandum of cross-objections against the finding of the High Court on this question. The appellant's counsel objected to the memorandum of cross-objections being entertained as it has been filed belatedly and furthermore, the appellant has not been given notice or furnished copies of the cross-objections. Leaving aside the technical pleas, we find the cross-objections to be worthless even on merit. The 1st respondent would say that the power of attorney in favour of Mr. Atul Mathur empowers him to act on behalf of the company only in civil suits, sales tax proceedings, and excise matters and does not empower him to file criminal complaints on behalf of the company. The 1st respondent's contentions suffer from a misconstruction of the terms of the power of attorney executed by the company. The power of attorney, read as a whole, is seen to confer general powers on Mr. Atul Mathur and not merely special powers. It has been engrossed on stamp papers of the value of Rs.50 and it is indicative of the nature of the deed. Though specific reference is made in the power of attorney only to the filing of suits and to matters relating to sales-tax and Central Excise, there is a general clause which reads as follows:

"AND THE COMPANY HEREBY agrees that all acts, deeds and things lawfully done by the Attorney shall be construed as acts, deeds and things done by it and the company undertakes to ratify & confirm all and whatsoever that its said Attorney shall do or cause to be done by virtue of Powers hereby given."

The power of attorney has been executed just before the complaint was filed and it is stated in the complaint that Mr. Atul Mathur was filing the complaint on behalf of the company and he was duly authorised to do so. The High Court was therefore, not right in construing the power of attorney as conferring only special powers and not general powers on

Mr. Atul Mathur. Be that as it may, the High Court has held, and very rightly, that as Mr. Atul Mathur was the Divisional Sales Manager of the company at Bombay, he was certainly competent to file the complaint on behalf of the company as per instructions given to him from the Head Officer of the Company- We do not therefore find any substance in the contention of the Ist respondent that the complaint suffered from a material irregularity not curable under Section 465 Cr.P.C. Incidentally, we may observe that in spite of contending that the complaint suffered from an irregularity, the Ist respondent has neither pleaded nor proved that a failure of justice has been occasioned on account of the alleged irregularity.

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Learned counsel for the Ist respondent relied upon Ballavdas Agarwala v. Shri J.C. Chakravarty, [1960] 2 SCR 739 in support of his contention that the company's complaint suffered from an irregularity not curable under Section 465 Cr.P.C. In the view we have taken of the matter viz. that Mr. Atul Mathur had the requisite authority to file the complaint on behalf of the company, the question does not survive for consideration. The cross-objections must therefore fail even if entertained.

For the aforesaid reasons, the judgment of the High Court is not sustainable. We therefore, allow the appeal, set aside the judgment of the High Court and restore the judgments of the Additional Chief Metropolitan Magistrate and the Additional Sessions Judge. However, the first respondent is given time till 30.9.89 to deliver possession of the flat to the company failing which the sentence of imprisonment awarded to him would be enforced.

Y.Lal
allowed.

Appeal

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