

PETITIONER:
V. M. SHAH

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & ANR.K. RAMASWAMY, B.L.HANSARIA

DATE OF JUDGMENT 25/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 339 1995 SCC (5) 767
JT 1995 (6) 433 1995 SCALE (5) 191

ACT:

HEADNOTE:

JUDGMENT:

ORDER

Leave granted.

This appeal by special leave arises from the judgment and order dated April 28, 1995 by the Bombay High Court in Criminal Application No.1222 of 1995. The appellant had joined the services of M/s. Rallis India Ltd. on March 10, 1965. He had occupied a residential flat at Morena No. 11, M.C. Dhanuka road, Bombay. He resigned on July 15, 1986. The Rallis India Ltd., the second respondent (the Company, hereinafter) initiated proceedings in January, 1987 against the appellant under s.408 IPC and s.630 of the Companies Act for the continued occupation of the appellant in the said flat. The Magistrate, by his order dated October 12, 1994, found the appellant guilty of offence under s.630 of the Companies Act and directed restitution of the flat. On appeal, the Session Judge partly allowed it by his judgement dated March 20, 1995, altering the sentence while confirming the conviction. The High Court confirmed the same by the impugned order.

The primary question in this case is whether the conviction under s.630 of the Companies Act sustainable? We have heard the counsel on both sides. Pending criminal proceedings, the company laid L.E. & C. Suit No. 104/126 of 1989 in Small Causes Court, Bombay for eviction of the appellant. The case set out in the plaint and evidence adduced in proof of the issues framed therein was that the Company had tenancy rights in the flat. Consequently upon joining the service, the appellant was inducted into possession. On his resignation and acceptance thereof, he ceased to be an employee of the Company. Consequently, the appellant is enjoined to deliver possession of the premises to the Company but he failed to do so.

The case set up by the appellant and evidence adduced in proof thereof was that there is no jural relationship between the appellant and the Company. He is not in

occupation of the premises in this capacity as an employee of the Company. He is a tenant under Mr. Badani and others on a monthly payment of rent to his landlord. The Company had surrendered the tenancy rights in the flat to the owners due to dilapidation of the building etc. Thereafter, the appellant occupied the flat and was in possession thereof as a direct tenant with the landlords.

The trial court after considering the entire evidence recorded the findings by its judgement and decree dated June 9, 1995 holding that the Company failed to prove that they are the tenant in respect of the suit premises. They had not given the premises to the appellant under leave and licence agreement, as pleaded by them in the plaint. The Company failed to prove that the appellant is a licensee of the suit premises. It also failed to prove that the premises were given to the appellant in lieu of his services. On the other hand, the appellant proved that he is a monthly tenant of the premises with the landlords Badani etc. Accordingly, the suit was dismissed. We are informed that an appeal has been filed before the bench of small Causes court and it is pending.

Sri Santosh Hegde, learned senior counsel for the appellant, contented that whatever may be the findings recorded by the criminal court and affirmed by the High Court on the liability of the appellant to deliver possession to the Company by operation of s.630(1) of the Companies Act, they are no longer tenable in view of the findings recorded by the Civil Court. Therefore, the orders passed under s.630(1) of the Companies Act is illegal and unsustainable. In view of the concurrent findings recorded by the criminal courts for offence under s.630(1) of the Companies Act, the order passed thereunder does not become illegal. Therefore, the appellant is liable to be ejected and needs no interference under Art.136 of the Constitution.

In *Baldev Krishana v. Shipping Corp. of India Ltd.* [Air 1987sc 2245] this court considered the scope of sub-s.(1) of s.630 of Companies Act and held that an officer or an employee of a Company who obtains possession of any property of the Company during the course of his employment to which he is not entitled but for employment, if he does not deliver possession of such property to the Company, he would be in wrongful possession of such property. Therefore, the existence of the relationship of an employee, if the company, having any property of the company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles of Company and authorised by the Companies Act, he will be liable for the punishment under s.630.

In *Atul Mthur v. Atul Kalra & Anr.* [1989]4scc 514 another bench of this Court, held that because of mere pendency of a suit in a civil court it cannot be said that the civil court is 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 s.630 of the Act. Such a view would lead to miscarriage of justice and render s.630 ineffective. Dispute regarding claim of property between Company and its employee depends upon facts in each case. Merely because Company's claims to possession was refuted by the employee, it would not amount to bona fide dispute. The criminal court, therefore, would be entitled and competent to proceed with the enquiry on the complaint filed on behalf of the Company and decide the matter according to law.

Gokak Patel Volkart Ltd. v. D.G. Hiremath & Ors. [J] 1991 (1) SC 376 is also relied on by Sri Maistry. Therein, the

question was whether the failure to deliver possession and the wrongful withholding of the property would be a continuing offence? This Court held that failure to deliver possession or wrongful withholding the property would be a continuing offence and period of limitation must be counted Accordingly.

M.S. Shariff v. State of Madras [AIR 1954 SC 3971 is also pressed into service. Therein this Court held that as between the civil Court and the criminal proceedings, The criminal matters should be given precedence. No hard and fast rule can be laid down but the possibility on conflicting decision in the civil and criminal Courts is not a relevant consideration. Law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant except for certain limited purposes, such as sentences or damages The only relevant consideration is the likelihood of embarrassment. Another relevant factor to be noted is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should await till everybody concerned has forgotten all about the crime. Public interest demands that criminal justice should be swift and it should ensure that the guilty is punished while the events are steel fresh in public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. this however, is not a hard and fast rule. Special consideration obtaining in any particular case may make some other course more expedient and just. Therefore each case has to be considered on its own facts.

As seen that the civil court after full dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore the decree for evictions was negatived. until that finding is duly considered by the appellate court after weighing the evidence afresh and if it so warranted reversed the findings bind the parties. The findings recorded by the criminal court, stand superseded by the findings recorded by the civil court get precedence over the findings recorded by the trial court. in particular, in summary trial for offences like s.630. the mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial court gets nor the decree becomes inoperative.

In these circumstances we are clearly of the opinion that it cannot be held that the appellant has been in wrongful possession of the property entailing his conviction and punishment under s.630 of the Companies Act and requiring handing over of the possession of the flat. The appeal is accordingly allowed no costs.