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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 58/2013 & CRL.M. (Bail) No. 239/2013

PUSHPA RANI (LR OF DECEASED AGYA RAM)

..... Petitioner

Through: Mr. Sanjeev Sahay, Advocate.

versus

TEXMACO LTD.

..... Respondent

Through: Ms. Megha Bansiwala, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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15.07.2013

Petitioner is the wife of late Sh. Agya Ram who was employee of M/s Birla Cotton Spinning & Weaving Mills Ltd. Respondent Company had acquired proprietary rights in respect of the said company and since late Agya Ram had ceased to be the employee of the aforesaid company so proceedings under Section 630 of the Companies Act were initiated against late Sh. Agya Ram as by virtue of his employment he was allotted quarter No. 45 B, Shivaji Lines, Shakti Nagar, Delhi and he had failed to vacate the subject quarter. Proceedings under Section 630 of the Companies Act concluded with direction by trial court to petitioner to vacate the subject quarter within one month failing which petitioner was to undergo simple imprisonment of one month and pay fine of ₹42,000/- and in default petitioner is to suffer simple imprisonment for two months. In appeal,

trial court order has been affirmed with modification that petitioner has to vacate subject quarter within a week's time failing which petitioner shall suffer simple imprisonment for a period of one year and to pay fine of ₹10,000/- only and in default thereof, to undergo simple imprisonment for 15 days.

Appellate court's order of 17th January, 2013 is impugned in this petition on various grounds but at the hearing, challenge to the impugned order by the petitioner's counsel is on the ground that under Section 313 of Cr.P.C. it has not been put to petitioner that husband of petitioner had ceased to be in employment in April, 1999 or May, 2001. Reliance is placed upon unreported decision of Gauhati High Court in Criminal Appeal (J) No. 92 of 2006 titled *Gopal Foraik Vs. The State of Assam* rendered on 17th March, 2011 to urge that question of prejudice does not arise and the incriminating evidence has to be put to the accused. That is to say, if not put, cannot be used against the accused. That is to say, if not put, cannot be used against the accused.

During the course of hearing, learned counsel for petitioner drew attention of this Court to paragraph No. 9 of the impugned judgment to point out that Sh. Agya Ram was in employment with M/s Birla Mills in May, 2001 and the finding returned in the impugned judgment is of petitioner ceasing to be in employment with M/s Birla Mills in 1996 which is inconsistent and contrary to the aforesaid admission made on behalf of the respondent. Thus, it was vehemently contended on behalf of petitioner that the mandate of the Apex Court decision in *M.C. Mehta Vs. Union of India* in W.P. (C)

No. 4677/1985 rendered on 4th December, 1998 has not been followed. The relevant extract of Apex Court decision in *M.C. Mehta* (Supra) relied upon is as under:-

"We further direct that the workmen who are occupying the residential quarters provided by the employer shall continue to occupy till the accommodation is provided or made available at the sites the industry is relocated."

Learned counsel for petitioner had strenuously argued that alternate accommodation was not provided to petitioner at the relocated place i.e. in *Baadi, Himachal Pradesh* and so Sh. Agya Ram was entitled to retain the subject quarter.

To highlight that petitioner was in employment of *M/s Birla Mills at Baadi District Solan, Himachan Pradesh*, petitioner's counsel has drawn attention to Agya Ram's Identity Card (*Annexure-A-5*) and it was pointed out that the date of issue of this Identity Card of Agya Ram was 13th April, 1999. It was also vehemently urged by petitioner's counsel that the complaint under Section 630 of the Companies Act 1956 (*Annexure-A-6*) deceptively projects that petitioner had ceased to be in employment of *M/s Birla Cotton Spinning & Weaving Mills* in the year 1996 and had joined *M/s Chambal Fertilizers & Chemicals Ltd. at Baddi (H.P.)* in the year 1999 whereas Sh. Agya Ram was infact relocated at Baddi and thus Agya Ram had not been paid his dues in terms of the decision of the Apex Court in the *M.C. Mehta (Supra)*.

Attention of this Court was drawn by petitioner's counsel to the cross-examination of respondent's witness-Sh. *R.S. Sharma* (PW-1) to point out that he had admitted that no letter terminating the

services of Agya Ram had been issued. What has been volunteered by this witness (PW-1) is that *M/s Birla Mills* had closed in the year 1998 by the orders of the Supreme Court and his services with the said company had ceased. It was pointedly urged by petitioner's counsel that the burden of proof is upon the respondent to prove that Agya Ram's services were terminated which respondent has failed to discharge and so the impugned eviction of petitioner deserves to be set aside.

Upon hearing petitioner's counsel at length and on perusal of the impugned judgment and the material on record, this court finds that petitioner's plea of not putting the date of cession of service in the year 2001 being not put to petitioner has been raised for the first time before this Court. Similarly, petitioner's plea of his not being provided residence in Baddi has been also raised before this Court for the first time. Impugned order is silent on the pleas urged before this Court. In this revision petition, it has not been averred that the pleas on which the impugned order is assailed were raised before the Appellate Court and have not been dealt with. In any case, the plea of petitioner of having not put the incriminating evidence regarding petitioner being ceasing in employment in May, 2001 is of no consequence as even after the year 2001 petitioner's retention on the subject quarter is unwarranted. In any case, had Agya Ram in employment up to the age of retirement, still Agya Ram or his family had no justification to retain the subject quarter thereafter. Relevantly, there is cross-examination of respondent's witness (PW-1) regarding being in employment with *M/s Birla Mills* till May,

2001 and regarding Sh. Agya Ram being not provided residential accommodation at the relocated place in Baddi (H.P.).

Otherwise, also cession of petitioner's employment with *M/s Birla Mills* in May, 2001 has not been challenged by petitioner before the appropriate forum, so on this count the impugned order cannot be faulted with. Pertinently petitioner had challenged the denial of six years closure bonus before the Labour Court and petitioner's claim petition had been dismissed by the Labour Court vide order of 22nd October, 2008 which has not been challenged. Thus, petitioner cannot make any grievance regarding non-compliance of directions of the Apex Court in *M.C. Mehta (Supra)* in these proceedings. In any case, if there is any remedy available to petitioner to seek any outstanding dues then nothing stops petitioner from pursuing the said remedy but the impugned order cannot be faulted on the ground of non-payment of gratuity etc.

In the considered opinion of this Court, impugned judgment does not suffer from any illegality or infirmity. Resultantly, this petition is dismissed while granting a week's time to petitioner to vacate the subject quarter, failing which petitioner be made to undergo the sentence as awarded by the Appellate Court.

This petition and the pending application are accordingly disposed of.

(SUNIL GAUR)
Judge

JULY 15, 2013
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