

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment on: 17.02.2014.*
+ CRL.REV.P. 104/2014
SANGEETA

..... Petitioner
Through Mr. Saurabh Chauhan, Ms. Priya
Singh and Mr. Varun Jain, Advs.
Versus
TEXMACO INFRASTRUCTURE &
HOLDINGS LTD & ANR

..... Respondents
Through Mr. Kunal Cheema, Mr. Dhruv
Kapur and Mr. Vijajender Kumar,
Advs along with Mr. Rajesh
Dhalani, Law Officer

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR
INDERMEET KAUR, J.(Oral)

Crl. M.A. No.2736/2014 (Exemption)

- 1 Exemption is allowed subject to all just exceptions.
- 2 Application disposed off.

CRL.REV.P. 104/2014 & Crl. M.A. No.2735/2014 (Stay)

3 The petitioner is aggrieved by the impugned judgment dated 21.01.2014 which has endorsed the finding of the Sessions Judge dated 26.10.2013 wherein the petitioner had been held guilty under Section 630 of the Indian Companies Act, 1956 (hereinafter referred to as the 'said Act') and had been sentenced by the first Court to pay a fine of Rs.1,000/- per month w.e.f. October, 2004 to September, 2013 (total 108

months) totaling to Rs.1,08,000/- for the period of illegal occupation of the quarter; there was a further direction that in case the convict vacates the quarter on or before 30.11.2013, the fine amount will not be recovered; in default of payment of fine, the convict was to undergo SI for 6 months; there was a further direction that in case the convict fails to deliver the vacant and peaceful possession of the quarter to the complainant within time and she also fails to deposit the fine, she would undergo SI for a period of 1 year.

4 The impugned judgment on 21.01.2014 had extended the period for vacation of the quarter by a period of 30 days; the quarter had to be vacated by the petitioner on or before 20.02.2014.

5 The facts as emanating from the record shows that M/s Texmaco Limited (respondent No. 1) had instituted complaint No.1286/2003 under Section 630 of the Companies Act. The allegation was that on 01.11.1976, late Partap Giri, father of petitioner had joined service of M/s Birla Cotton Spinning and Weaving Mills Ltd. (hereinafter referred to as the 'Mill') and on 28.12.1978 had been allotted quarter No.47-A, Shivaji Lines, Shakti Nagar in his capacity as an employee of the Mill.

The Mill has since been closed w.e.f. 30.11.1996. There was an

application to handover the vacant and peaceful possession of the quarter but he failed to do so. After his death on 29.09.2004, the petitioner did not vacate the quarter; she wrongfully withheld the same.

6 On this complaint, after summoning, trial was held and evidence was led. The complainant Radhey Shyam was examined as PW-1. He had proved the resolution of the company (Ex.PW-1/1) and power of attorney (Ex.PW-1/2) authorizing him to file and institute the complaint. No cross-examination of these two documents had been effected by the respondent. Letter Ex.PW-1/5 dated 28.12.1978 substantiated the fact that the father of the petitioner had been allotted this quarter on a license basis on monthly charges of Rs.7/- apart from the electricity and water charges; para 5 of this letter specifically postulated that this quarter was to be vacated on cessation of his employment or any violation of terms and conditions of the license. This letter was signed by the father of the petitioner. It is an undisputed document. No argument has been addressed by the learned counsel for the petitioner on this score either. One DW had also been examined.

7 The admitted position being that the father of the petitioner had been allotted this quarter on 28.12.1978 while he was working with the

Mill which was since 01.11.1976.

8 Further facts reveal that M/s Texmaco Limited had acquired proprietary rights in respect of this Mill on 03.01.1983 in Company Petition No.59/1982 pursuant to a scheme of arrangement sanctioned by the Company Judge of the Delhi High Court which was a scheme of arrangement between the Mill and M/s Texmaco Limited; on the strength of this scheme of arrangement, M/s Texmaco Limited had filed the present complaint.

9 The Magistrate court had convicted the petitioner under Section 630 of the Companies Act. This fact finding was endorsed by the Sessions Judge.

10 The principal thrust of the argument of the learned counsel for the petitioner is that although M/s Texmaco Limited has alleged that there was a scheme of arrangement merging the Mill with M/s Texmaco Limited and although admittedly this scheme of arrangement has been sanctioned by the Delhi High Court on 03.01.1983 but this order specifically postulated that this arrangement would come into effect subject to the approval of the Kolkata High Court as one of the two companies i.e. M/s Texmaco Limited had its registered office at

Kolkata. Submission being that no such order has been placed on record and as such the complaint itself (filed by M/s Texmaco Limited) is void ab initio as M/s Texmaco Limited did not have the locus standi to file the complaint; the father of the petitioner was not an employee of M/s Texmaco Limited. The second submission of the learned counsel for the petitioner is that Crl. Appeal No.1214/2012 titled as “M/s Texmaco Limited Vs. Mahavir” is pending in which locus standi of M/s Texmaco Limited to institute complaints against ex-employees is under question and till that appeal is decided, this matter also cannot attain a finality.

11 Arguments have been refuted. Learned counsel for the respondent has placed on record the approval granted by the Kolkata High Court evidencing the fact that the scheme of arrangement dated 03.01.1983 passed by the Delhi High Court in Company Petition No.59/1982 merging the two companies i.e. the said Mill with M/s Texmaco Limited. The assets and liabilities of the said Mill had been taken over by M/s Texmaco Limited, the transferee company. Submission being that in this view of the matter, M/s Texmaco Limited was well within its right to file the present complaint as the petitioner having failed to vacate the property which in pursuance of this merger order had vested

with the transferee company, M/s Texmaco Limited had the authority to file the complaint. On the second submission, it has been pointed out that pursuant to this scheme of arrangement M/s Texmaco Limited had filed complaints against other employees which had been dismissed in default and a criminal leave petition had been filed against these orders of acquittal which criminal leave petition has been converted into an appeal i.e. CrI. Appeal No.1214/2012; submission being that that appeal would govern the facts of those cases alone.

12 Arguments have been heard and record has been perused.

13 This Court is sitting in revisional jurisdiction. There are two facts findings returned by the two fact finding courts below i.e. order of the Magistrate dated 26.10.2013 which has appreciated the facts after delving into the evidence which had been led by the respective parties. The order of the learned Magistrate convicting the petitioner under Section 630 of the Companies Act had been endorsed by the second fact finding Court which was the appellate Court of the Sessions Judge and which had again gone into the details of the facts which had been pleaded as also the legal submissions made by the respective parties; the order of the Magistrate had been reaffirmed.

14 This Court sitting in revisional jurisdiction can interfere with the findings of fact only if there is patent illegality or a glaring perversity pointed out by the learned counsel.

15 In 2004 Cri LJ 4254 State of Maharashtra v. Jagmohan Singh Kuldeep Singh Anand, the Supreme Court in this context had observed:

“ In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 Cr. PC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. Ram Briksh Singh v. Ambika Yadav. That was the case in which the High Court interfered in revision because material evidence was overlooked by the Courts below.”

16 It is on this touchstone that the arguments of the respective parties have to be appreciated.

17 Before delving into the submissions of the parties, the provisions of Section 630 of the said Act under which this conviction has followed are necessary to be examined.

Section 630 of the said Act reads as under:-

“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 contri- butory 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."

18 Section 630 of the said Act had been engrafted in the Legislature to provide speedy relief to a company where its property is wrongfully obtained or wrongfully withheld by an 'employee' or an 'officer' or a 'past employee or an officer' or 'legal heirs and representatives' deriving their colour and content from such an 'employee or officer' in so far as the occupation and possession of the property belonging to the company is concerned. The failure to deliver property back to the employer on the termination, resignation, superannuation or death of any employee, would amount to wrongful withholding that property giving rise to an actionable claim under Section 630 of the said Act. A broader, liberal as also a purposeful interpretation has to be given to Section 630 in furtherance of the object and purpose for which this legislation has been engrafted. The intent of this legislation has been noted by the Hon'ble Apex Court in 1995 RLR 232 (SC) Smt. Abhilasha

V.K. Jain Vs. Cox and Kings and Smt. Sunita Bhagat Vs. Voltas Ltd. and

the following observations are relevant:-

“If an employee or a past employee or anyone claiming the right of occupancy under them, were to continue to “hold” the property belonging to the company, after the right to be in occupation has ceased for one reason or the other, it would not only create difficulties for the company, which shall not be able to allot that property to its other employees but would also cause hardship for the employee awaiting allotment and defeat the intention of the legislature. The courts are therefore obliged to place a broader, liberal and purposeful construction on Sec. 630 of the Act in furtherance of the object and purpose of the legislation and construe it in a wider sense to effectuate the intendment of the provision. The “heirs and legal representatives” of the deceased employee have no independent capacity on the property, which stood allotted to the employee or the officer concerned or resist the return of the property to the employer, in the absence of any express agreement to the contrary entered with them by the employer.”

19 The first argument of the learned counsel for the petitioner has been answered by the respondents by placing on record the order of Kolkata High Court which clearly shows that this scheme of arrangement dated 03.01.1983 passed in Company Petition No.59/1982 has been approved by the Kolkata High Court on 20.12.1982.

20 This scheme of arrangement has been proved as Ex.PW-1/4. It clearly shows that M/s Texmaco Limited has become the owner of the

quarter in question as also the employer of the father of the petitioner; all rights and liabilities of the transferor company stood vested with the transferee company i.e. M/s Texmaco Limited.

21 Relevant extract of the said scheme is reproduced here as under:-

“Weaving Mills Textiles as well as quarter in question.

1. That all the property, rights, and powers of the said transferor company specified in the first, second and third parts of the Schedule II hereto and all the other property, rights and powers of the said transferor company be transferred without further act or deed to the said transferee company and accordingly the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and vest in the said transferee company for all the estate and interest of the said transferor company for all the estate and interest of the said transferor company therein but subject nevertheless to all charges now affecting the same, and

2. That all the liabilities and duties of the said transferor company by transferred without further act or deed to the said transferee company and accordingly the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of the said transferee company; and

3. That all proceedings now pending by or against the said transferor company be continued by or against the said transferee company; and

4. That all contracts, deeds, bonds, agreements and instruments of whatever kind or nature relating to the said units of M/s Birla Cottons shall continue to be in full force and effect against or in favour of Texmaco as the case may be and enforced as fully and effectively as if Texmaco instead of Birla Cotton had been a party thereto.”

22 Moreover in IR 2007 Delhi 147 Kamla Rani and Ors. Vs. M/s Texmaco Ltd. a Bench of this Court had relied upon the same scheme of arrangement dated 01.03.1983 to arrive at a fact finding that assets of the Mill stood merged with M/s Texmaco Limited which was the transferee company and the successor in interest of the said Mill. Thus the first argument of the learned counsel for the petitioner must necessarily fail. The complainant having stepped into the shoes of the said Mill by virtue of this scheme of arrangement which stood sanctioned not only by the Delhi High Court but also by the Kolkata High Court, M/s Texmaco Limited was well within its right to file the present complaint.

23 The second argument of the learned counsel for the petitioner must also fail. Crl. L.P. No.26/2011 titled as “M/s Texmaco Limited Vs. Nanam.” would only apply to the facts of that case. The orders passed in that appeal would have no bearing to the facts of the instant case. In fact vide orders dated 29.04.2011 in Crl. L.P. No.26/2011 a Bench of this Court while clarifying the order dated 19.01.2011 had noted that the order passed in that case will not extend a stay of trial of other complaints filed by M/s Texmaco Limited against other persons.

24 This Court has already returned a finding on the first issue i.e. M/s Texmaco Limited being the transferee company and having taken over all assets and liabilities of the said Mill which has been approved not only by the Delhi High Court but also by the Kolkata High Court, it was well within its right to file this complaint. Further a Bench of this Court in Nanani (supra) had on 29.04.2011 alleged that the orders passed in that Crl. L.P. will not extend to other complaints filed by M/s Texmaco Ltd (copy of this order is on record). It is thus clear that this second argument of the learned counsel for the petitioner is also without any merit.

25 At the outset, learned counsel for the petitioner was given a suggestion that time period could be extended for vacation of the quarter but he declined the offer and sought an order on merits stating that this revision petition be decided on its merits. As such further extension of time period has not even been prayed for.

26 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 17, 2014

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