

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1081 OF 2002

The Indian Smelting and Refining Co.Ltd.,
a Public Limited Company registered under
the Companies Act, 1956 and having their
office at 1st Pokhran Road, Thane- 400 606. ... Appellant.
V/s.

1. Mr.Suresh Ghorpade,
Wrongly residing at A 4/16, Indian
Smelting and Refining Company Quarters,
1st Pokhran Road, Thane- 400 606.

2. The State of Maharashtra. ... Respondents.

None for the appellant.

Dr.F.R.Shaikh, APP for the State.

CORAM : S.B. SHUKRE, J.

DATED : 15th October 2015.

JUDGMENT :

This appeal has been listed on final hearing board for quite some time. Today also it is on board for final hearing and in spite of sufficient opportunity having been given, nobody has appeared on behalf of the appellant. Considering the long pendency of the appeal and also the mandate of section 386 of Cr.PC., I have decided to take up this appeal for final hearing and disposal in accordance with law in the absence of the appellant. Accordingly, I have heard learned A.P.P. for respondent No.2-

State. None appears for respondent No.1- accused. I have also carefully gone through the entire record of the case including the impugned judgment and order.

2. It is seen from the record that respondent No.1, an employee of the appellant company, was prosecuted for an offence punishable under section 630 of the Companies Act, 1956. The learned Magistrate after considering the entire evidence available on record and also hearing both sides concluded that the complainant i.e. the appellant- Company failed to prove the necessary ingredients of section 630 of the Companies Act and, therefore, by a judgment and order dated 28th June 2002 passed in SCC No.3624/2001, learned Magistrate acquitted respondent No.1 of the charge of commission of offence punishable under section 360 of the Companies Act. Not being satisfied with the same, the appellant- Company is before this Court in the present appeal.

3. Upon careful consideration of the reasoning adopted in the impugned judgment and order and also the evidence available on record, I am of the view that the finding recorded by the learned Magistrate regarding failure of the appellant to prove the offence of wrongful possession of the property of the Company by respondent No.1 is perfectly right. The appellant- Company has failed to adduce any evidence to establish the fact that the possession of the flat in question held by respondent No.1 was illegal or wrongful. On the contrary, some material had been brought on record by respondent No.1 showing that the complaint had been filed by the General Manager of the Company with

some oblique motive. This conclusion reached by the learned Magistrate is further strengthened by the fact that there was no resolution passed by the Company authorizing the General Manager to file complaint against respondent No.1. It is to be noted that the offence that was charged against respondent No.1 was an offence against the Company and not against an individual and, therefore, if the complaint was to be lodged in respect of commission of such offence the complaint ought to have been supported by duly passed resolution by the Company. No evidence regarding passing of such resolution by the Company has been adduced by the appellant. Therefore, I am of the view that the appellant has not made out any case warranting interference with the impugned judgment and order by this Court. The appeal deserves to be dismissed.

4. The appeal stands dismissed.

(S.B. SHUKRE, J.)