

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Cr. Revision Appln. NO. 38 OF 2014

Sadiya Shainu Shaikh

...Applicant

Versus

Development Corporation Of Konkan Ltd. And Anr ...Respondents

WITH

Cr. Application NO. 19 OF 2014

IN

Cr. Revision Appln. NO. 38 OF 2014

Sadiya Shainu Shaikh

...Applicant

Versus

Development Corporation Of Konkan Ltd. Anr ...Respondents

*Mr.Uday P. Warunjikar, for the Appellant.**Mrs.Lata Desai i/b. Mrs.Pallavi Divekar, for Respondent No.1.**Mrs.Rajshree V.Newton, APP for the State-Respondent No.2.*

CORAM : G.S. KULKARNI, J.

DATE : 7th July, 2016.

P.C.:

1. Heard Mr.Warunjikar, learned Counsel for the Applicant and Mrs.Desai, learned Counsel for Respondent No.1 and Mrs.R.V.Newton, learned A.P.P. for the State.

2. In this Revision Application, the Applicant is challenging the judgment and order dated 3rd December,2013 passed by the learned Additional Sessions Judge, Mumbai in Criminal Appeal No.330 of 2011, whereby the learned Sessions Judge has confirmed the order dated 10th March,2011 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, whereby the applicant stands convicted for the offence punishable under Section 630 of the Companies Act.

3. The applicant was admittedly an employee of Respondent No.1/complainant which is a Government Company from the year 1992. The Applicant had submitted an application to Respondent No.1 for voluntary retirement which came to be accepted by Respondent No.1 on 8th September,2006. During the course of employment that is from 1992 to 8th September,2006 the applicant was allotted a residential quarter bearing No.8-A2 at Veena Nagar Co-operative Housing Society, Mulund, Mumbai. After the employment of the applicant came to be severed on the applicant taking voluntary retirement, the obligation of the Applicant in terms of the letter of allotment of the service quarter, was to vacate and surrender the service quarter. However, the applicant did not vacate the service quarter and continued to withhold the same. Respondent No.1

issued a notice to the applicant to vacate the quarter and as the applicant refused to vacate the same, a complaint came to be filed by Respondent No.1 before the Court of learned Metropolitan Magistrate to prosecute the Applicant under Section 630 of the Companies Act.

4. The learned Trial Judge after taking into consideration the evidence which had come on record of the complaint and taking into consideration the defence as raised on behalf of the applicant, by an order dated 10th March,2011 convicted the applicant for the offence punishable under Section 630(1) of the Companies Act,1956 and sentenced the applicant to pay a fine of Rs.1000/- and in default to suffer simple imprisonment for one month, with a further direction to give vacant possession of the quarter within a period of three months from the date of the order and in default to suffer further simple imprisonment for six months.

5. The applicant approached the Court of Sessions in criminal Appeal No.330 of 2011. By an order dated 3rd December,2013, considering the facts of the case that the service quarter in question was admittedly occupied by the Applicant as an employee and was thus to be occupied only during the subsistence of the employment which was

continued to be withheld by the Applicant, and thus the ingredients of Section 630 of the Companies Act being clearly satisfied and proved, the learned Sessions Judge dismissed the appeal confirming the judgment of the trial Court, with a direction that the Applicant shall vacate the quarter within three months, failing which sentence as ordered would be effected.

6. The Applicant has accordingly approached this Court in the present Criminal Revision Application which came to be filed on 18th January, 2014. Mr. Warjunjekar, learned Counsel for the Applicant fairly states that there is no protection whatsoever which is granted by this Court from the date of filing of this application. He also submits that the applicant continues to withhold and occupy the quarter in question.

7. Mr. Warunjekar, learned Counsel for the Applicant in assailing the impugned order submits that the withholding of the quarter by the applicant was justified principally for two reasons, firstly Respondent No.1 had offered quarter in question to be sold to the applicant. Secondly it has come in the evidence that Respondent No.1 had accepted the rent paid upto May, 2010 from the applicant and therefore, the provisions of Section 630 of the Companies Act are not attracted. In supporting these submissions Mr. Warunjekar would urge that the learned Appellate Judge

has failed to appreciate the evidence which has come on record and more particularly the evidence of D.W.1 Joseph M.D'Souza. It is further submitted that P.W.1 Vijay S.Kulkarni in his examination in chief has stated that the Government has issued a direction that the flat which is occupied by the accused should not be sold below price of Rs.10,00,000/- It is his submission that this would clearly show that Respondent No.1 had intended to sell the premises to the applicant and on this ground the complaint ought to have failed.

8. Per contra Mrs.Desai, learned Counsel for Respondent No.1 submits that the concurrent findings of facts which are arrived at by the Courts below are on proper appreciation of the evidence. The findings of fact recorded against the applicant are that the applicant is in illegal occupation and withholding of the quarter in question on ceasing to be in employment of Respondent No.1 which clearly constitutes an offence under Section 630 of the Companies Act. Mrs.Desai refers to the allotment letter dated 18th February,1992 which records the terms of vacating of the quarter on the applicant ceasing to be in the employment of Respondent No.1. Mrs.Desai also refers to an undertaking-cum-declaration which was given by the applicant on 8th September,2006 on the date of her voluntary retirement. These documents are part of the

record before the Trial Court. It is submitted that these documents clearly show that the Applicant could not have continued to be in occupation of the quarter after the applicant ceased to be in the employment of Respondent No.1 and thus, an offence under Section 630 of the Companies Act as committed by the Applicant is clearly established. It is her submission that these concurrent findings need not therefore be interfered as there is no perversity and illegality of any nature for the Courts below to come to the conclusion as arrived at.

9. Having heard the learned Counsel for the parties and perusing the documents as placed on record of this application as also the impugned judgment of the Trial Court and the first Appellate Court, I am of the opinion that the Applicant has not made out any case so that this Court would exercise its revisionary jurisdiction under Section 397 of the Code of Criminal Procedure. Admittedly the applicant was an employee of Respondent No.1 who was allotted a service quarter by allotment letter dated 18th February,1992. The terms and conditions of the allotment letter were categorical as regards the obligation on the part of the applicant to vacate the quarter and hand over the possession to Respondent No.1 on her voluntary retirement. The applicant ceased to be in employment with effect from 8th September,2006. The applicant

admittedly submitted an undertaking-cum-declaration that she would vacate the quarter in question on or before 8th December,2006. Further the Applicant's declaration also recorded that Respondent No.1 will be free to take forcible possession of the quarter if the same is not vacated on or before 7th December,2006. The defence which has been raised by the Applicant that Respondent No.1 had in fact agreed to sell the quarter in question to the Applicant, has been negated by the Courts below for the reason that this defence had no foundation as there was no evidence to that effect which had come on record. The contention that Respondent No.1 had accepted rent also would not assist the applicant inasmuch as the applicant is not in a position to show any evidence in the nature of a permission which would show that the Applicant was permitted by Respondent No.1 to withhold the quarter even after the applicant ceased to be in the employment. Moreover the Applicant does not dispute the fact that Respondent No.1 had filed the complaint in question seeking conviction of the Applicant under Section 630 of the Companies Act and the complaint was pursued even during the said period when the rent is alleged to be taken. In fact as is being urged on behalf of the Applicant, the Applicant has also resorted to file a civil suit against Respondent No.1 on this count and is asserting legal rights to continue in occupation. However, this can be of no concern for the purposes of the present

proceedings. This in any case would not overcome the admitted position on record that the Applicant had ceased to be an employee of Respondent No.1 with effect from 8th September,2006, and on severance of the contract of employment, it was the obligation on the applicant to hand over possession of the quarter in question to Respondent No.1 which is a Government Company. The Applicant however continues to withhold the quarter in question even after the retirement and thus this applicant is clearly guilty of offence under Section 630 of the Companies Act as rightly held by the Courts below.

10. For the aforesaid reasons, the Revision Application is devoid of any merit and is accordingly, rejected.

11. As regards the directions in regard to vacating of the quarter by the Applicant, the learned Appellate Judge by the impugned order dated 3rd December,2013 granted the Applicant three months time to vacate the premises (that is by 3rd March,2014). As noted above, there is no stay which is granted by this Court to this direction. However, only as a matter of indulgence as the learned Counsel for the Applicant would insist, the applicant is directed to vacate the premises within a period of three months from today.

12. Accordingly confirming the conviction awarded to the Applicant by the learned Trial Judge, the Revision stands dismissed. No order as to costs.

13. As the Revision is disposed of, Criminal Application does not survive and same is accordingly disposed of.

(G.S.KULKARNI, J.)