

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

Date of Decision: 14th July, 2016

+ CRL. A. 99/2012

**PURSHOTTAM IRON & STEEL INDUSTRIES
(PVT). LTD.**

..... Appellant

**Through Mr Rajesh Khanna, Adv.
versus**

RAJNEESH GUPTA

..... Respondent

Through Respondent in person

%

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to a judgment dated 21.04.2010 of learned Additional Chief Metropolitan Judge, Delhi in Case No. 136/3 arising out of complaint u/s 630 of the Companies Act, 1956, filed by the appellant against the respondent, by which respondent was acquitted.

2. The complainant case, as unfolded during trial is, that the complainant is a registered company dealing in iron and steel business. The present complaint u/s 630 of the Companies Act 1956 (hereinafter referred to as 'Act') is filed by Sh. Vinay Gupta, the AR of the company. The company had its offices at the following addresses viz.

(A) 459/60, Khari Baoli, Delhi;

(B) H-2/7, First Floor, Model Town, Delhi;

(C) Room no.524, "Giri Raj", Sant Tukaram Street, Carnac Bundar, Mumbai, (Maharashtra);

(D) Room No.31, Vithal Wadi, Panchi Bhai Trust Building, 108/116, Kalba Devi Road, Mumbai (Maharashtra);

(E) 1, Quinton Road, Lucknow (U.P.);

(F) 356, Jawahar Marg, Indore, (Madhya Pradesh);

(G) 28/29, Ministers Road, Secunderabad (Andhra Pradesh);

(H) Room No.225-77/79, N.S. Road, Kolkata (Regd. Office);

(I) 29, Stand Road, Calcutta (Regd. Office);

(J) Residential accommodation for Directors at Hyderabad at 8-2-686B/A, Road No. 12, Banjara Hills, Hyderabad (A.P.).

Besides the above mentioned properties, the complainant also had, Manufacturing unit/factory at A-3 & A-6, Co-operative Industrial Estate, Bala Nagar, Hyderabad, Andhra Pradesh. It is claimed by the complainant that the respondent was appointed as an Executive Director of the company, on 03.09.1983, in addition to Sh. Harish Chander Gupta (father of the accused), vide a resolution passed in that regard. On the appointment of the respondent as an Executive Director, he was allegedly provided with furnished residential accommodation at Hyderabad and the respondent was made custodian of all the properties of the company, to look after the affairs of the company, at the head office of the company and its branches and factories. It is also claimed that the accused had in his possession the company's statutory registers; share holder's registers; minute's book with regard to the board of Director's meeting; annual general meeting with attendance registers; all account books (since inception of the company); audited balance sheets; company seal; original license pertaining to the factories of the company at Hyderabad, Indore and Vishakhapatnam; certificate of incorporation and, all other papers and records, files, documents, pertaining to affairs of the company. It is claimed that the accused forcibly removed and usurped those records from the company's registered office at Calcutta, and the accused also forcibly and wrongfully took possession of the properties mentioned at SI. nos. 4, 5 & 6 in the complaint. It is also claimed that accused transferred the property no. A-6 at Co-operative Industrial Estate, Bala Nagar, Hyderabad, Andhra Pradesh, without any authority, and in connivance with his father H.C.Gupta, who was also one of the directors of the company, as he was acting against the interest of the company and, the accused in an affidavit dated 12.9.1991 filed before the Company Law Board (CLB in short), admitted that he was not a director after July 1988 and, therefore, the accused was bound to return the properties of the company as well as the records of the company.

3. The respondent was summoned on this complaint u/s 630 of the Companies Act. Thereafter, in terms of Section 251 Cr.P.C., a notice for the said offence was framed against the accused on 03.12.2001 for wrongful withholding of property nos: A-3 and A6, Co-operative Industrial Estate, Bala Nagar, Hyderabad including plant machinery and fixtures; premises nos.28 & 29, Ministers Road, Secunderabad; premises no.

459/60, Ground Floor, Khari Baoli, Delhi; premises no. H- 2/7, First Floor, Model Town, Delhi; Room No.31, Vithal wadi, Panchi Bhai Trust Building, 108/116, Kalba Devi Road, Mumbai, Room No, 524, Giriraj, Sant Tukaram Street, Carnac Bundar, Bombay and residential premises at 8-2-686B/A, Road No. 2, Banjara Hills; premises no.1 Quinton Road, Lucknow and also for the records and documents of the company. The respondent pleaded not guilty and claimed trial.

4. In support of its case, the complainant examined one witness i.e. PW1 the complainant himself, who deposed that he was authorised, vide resolution dated 25.4.1992 Ex. PW1/1, to file the present complaint and to prosecute the accused. He further deposed on the same line as was provided in the facts of the complaint and we are not reproducing the same for the sake of brevity.

5. At the conclusion of complainant evidence, all the incriminating evidence was put to the accused in his examination u/s 313 Cr.P.C., where he denied of having been custodian of the properties or records of the company, including plant and machinery or furniture, fixtures and fittings ever.

6. After appreciation of evidence and considering the submissions made by the counsel for the parties, the learned Trial Court, vide impugned judgment acquitted the respondent on the ground that the appellant had miserably failed to prove that the accused in any manner wrongfully withheld any of the property or books or records of the company. Feeling dissatisfied, present appeal has been preferred by him.

7. Learned counsel for the appellant Mr. Rajesh Khanna argued that the Learned Trial Court started with an erroneous approach that it being a criminal proceeding, burden is on prosecution to prove its case beyond reasonable doubt. The Trial Court overlooked the fact that S. 630 of the Companies Act is not penal in nature. The Trial Court failed to appreciate the mandate of S. 630 of the Companies Act and for that placed reliance upon *Smt. Abhilash vinod Kumar Jain vs Cox & Kings (India) Ltd. AIR 1995 SCC 1592; Baldev Krishna Sahi vs Shipping Corporation of India Ltd. And another AIR 1987 SC 2245; Shubh Shanti Services Ltd. Vs Manjula S. Agarwala & Ors. AIR 2005 SC 2506; Gopika Chandrabhushan Saran & anr vs XLO India Ltd. & anr IT (2009) SLT 615. Chaundru Sri Hari Rao vs Vijaya Engine Valves, 1999 Cr.L. J. 2319 and K.G.K. Nair v P.C. Juneja, 1993 CrL. L. J 2791.*

8. Learned counsel for the appellant also argued that the trial court has failed to appreciate that the burden of establishing any special issue raised by the accused rest

upon him. Section 106 Evidence Act says that the burden of proving facts which are especially within the knowledge of any person, lies upon him. For that he has placed reliance upon the authority ***Smith vs E. 43 IC 605: 19 Crl. L J 189*** wherein the court has held that-

“Under section 106 Evidence Act, burden of proving a fact would be upon the accused person if the subject of the averments, whether affirmative or negative, is peculiarly within his knowledge. An accused person is always entitled to hold his tongue, but where the only alternative theory to his guilt is a remote possibility, which, if correct, he is in a position to explain, it is for him to prove that alternative theory and if he does not do so, the omissions will be considered in determining whether the alternative theory should be disregarded or taken into account”.

9. The Learned counsel for the appellant further argued that the Learned Trial Court failed to appreciate that an adverse inference u/s 114 of the Evidence Act has to be drawn against the accused for not producing the best evidence available with him in form of witness or document. For that he placed reliance upon the decision of Hon’ble Delhi High Court ***Allora Electric and Cable Co. Vs M/s Shiv Charan & Bros. And Ors. 72 (1998) DLT 761*** wherein the court has held that-

“Even if the burden of proof does not lie on a party, the court may draw an adverse inference, if he withholds important documents in his possession which can throw light on the facts and issue. It is not, in our opinion a sound practice for those desiring to rely upon a certain state of facts to withhold them from the court, the best evidence which is in their possession which could throw light upon the issue in controversy and to rely upon the abstract doctrine of onus of proof”.

10. It has been submitted by the Learned Counsel for the appellant that the company is not disputing the ownership rights of the property in the present complaint as the question of ownership of all the properties held in the name of different family members is subjudice before this Court in a partition suit. However, the company is seeking restoration of the office premises held by the company in the said properties except the ownership of the factory premises at A – 6, Cooperative Industrial Estate, Balanagar, Hyderabad, Andhra Pradesh.

11. On the other hand, respondent in person supported the impugned judgment passed by the trial court and contended that respondent is innocent and has been falsely implicated in the present case as complainant failed to bring forward any

material on record to suggest any wrongful withholding of any of the property or books or records of the company.

12. I have bestowed my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

13. In order to examine the contentions raised by learned Counsel for the parties, it will be convenient to set out the provisions of Section 630 of the Companies Act, 1956, which read as under:

630. Penalty for wrongful withholding of property.--

"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 contributory 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, or suffer imprisonment for a term which may extend to two years."

14. The purpose behind the provision of section 630 has been explained by the Hon'ble Supreme Court in case of **Shubh Shanti Services Ltd.** (supra) wherein the Apex Court has held that-

"The main purpose to make action an offence under section 630 of the Act is to provide a speedy and summary procedure for retrieving the property of the company where the property has been lawfully obtained but unlawfully retained after termination of the employment of employee or the officer and to impose a fine on the officer or employee of the company if found in breach of the provision of section 630 of the Act and further to issue a direction if the court feels it just and appropriate for delivery of the possession of the property of the company and to impose a sentence of imprisonment when there is non compliance of the order of the court regarding delivery or refund of the property of the company".

15. Again in **Gopika Chandrabhushan Saran & anr** (supra), it was observed as under:

“13. The main purpose to make action an offence under Section 630 is to provide a speedy and summary procedure for retrieving the property of the company where it has been wrongly obtained by the employee or officer of the company or where the property has been lawfully obtained but unlawfully retained after termination of the employment of the employee or the officer. From the bare reading of the section, it is apparent that sub-section (1) is in two parts. Clauses (a) and (b) of sub-section (1) create two different and separate offences. Clause (a) contemplates a situation wherein an officer or employee of the company wrongfully obtains possession of any property of the company during the course of his employment to which he is not entitled whereas clause (b) contemplates a case where an officer or employee of 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 and authorised by the company. Under this provision, it may be that an officer or an employee may have lawfully obtained possession of any property during the course of his employment, still it is an offence if he wrongfully withholds it after the termination of his employment. Clause (b) also makes it an offence, if any officer or employee of the company having any property of the company in his possession knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act. In terms of sub-section (2) the court is empowered to impose a fine on the officer or employee of the company if found in breach of the provision of Section 630 of the Companies Act and further to issue direction if the court feels it just and appropriate for delivery of the possession of the property of the company and to impose a sentence of imprisonment when there is non-compliance with the order of the court regarding delivery or refund of the property of the company.

14. In Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd., (1995) 3 SCC 732 this Court had occasion to deal with scope and ambit of the provisions of Section 630 of the Act. This Court analyzed Section 630 and drew a logical deduction in para 13, which is as follows: "13. The logical deduction of the analysis of Section 630 of the Act in the light of the law laid down by this Court is that:

- (i) Clause (a) of the section is self-contained and independent of clause (b) with the capacity of creating penal liability embracing the case of an existing employee or an officer of the company and*

includes a past officer or a past employee of the company;

- (ii) Clause (b) is equally independent and distinct from clause (a) as regards penal consequences and it squarely applies to the cases of past employees or officers;*
- (iii) the entitlement of the officer or employee to the allotted property of the company is contingent upon the right and capacity of the officer or the employee by virtue of his employment to continue in possession of the property belonging to the company, under authority of the company and the duration of such right is coterminous with his/her employment. In para 14 this Court further laid down the Scope and ambit of Section 630:*

14. Thus, inescapably it follows that the capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment, and the capacity and the corresponding rights are extinguished with the cessation of employment and an obligation arises to hand over the allotted property back to the company. Where the property of the company is held back whether by the employee, past employee or anyone claiming under them, the retained possession would amount to wrongful withholding of the property of the company actionable under Section 630 of the Act. The argument of the learned counsel for the appellants that since the provisions of Section 630 of the Act are penal in nature the same must be strictly construed and, the parties which have not been expressly included by the legislature in Section 630(1) of the Act, cannot by any interpretative extension be included in the said provision, ignores the situation that by a deeming fiction, the legal representatives or heirs of a past employee or officer, in occupation of the property of the company, would continue to enjoy the personality and status of the employee or the officer only. An argument quite similar in nature was raised in Baldev Krishna Sahi case (1987) 4 SCC 361 also while resisting the extension of the provisions of Section 630 of the Act to the past employee or past officer and rejecting the same, this Court opined: (SCC pp. 365-66, para 6) "The first and foremost argument of learned counsel for the petitioner is that the provision contained in Section 630 of the Act is a penal provision and therefore must be subject to a strict construction and there is no room for intendment. It is submitted that on a true construction, the scope and effect of the section was limited to such property

of the company which was wrongfully obtained by an officer or employee of the company. Emphasis was placed upon the words 'any such property' in clause (b) of sub-section (1) for the contention that clause (b) does not stand by itself but is interconnected with clause (a) (sic) and therefore both clauses (a) and (b) must be read together. In essence, the submission is that sub-section (1) of Section 630 of the Act makes it an offence where any officer or employee of a company wrongfully withholds possession of such property of the company. Secondly, it is contended that the legislature never intended to include past officers and employees of a company within the ambit of Section 630 of the Act which provides for prosecution of an officer or employee of a company for wrongfully withholding the property of the company inasmuch as it has used different languages where it was so intended, namely, in Sections 538 and 545. The entire argument of the learned counsel is based upon the judgment of the High Court of Calcutta in Amritlal Chum case [(1987) 61 Comp Cas 211 (Cal)]. We are afraid, we find it difficult to subscribe to the narrow construction placed by the High Court of Calcutta on the provision contained in sub-section (1) of Section 630 of the Act which defeats the very purpose and object with which it had been introduced."

We are in respectful agreement with the above view and are of the opinion that the legal representatives or the heirs of the deceased employee or officer would squarely fall within the ambit of Section 630 of the Act. To exclude them by giving a restrictive interpretation to the provisions would defeat the very object of the provision which declares the wrongful withholding of the property of the company to be an offence. It is immaterial whether the wrongful withholding is done by the employee or the officer or the past employee or the past officer or the heirs of the deceased employee or the officer or anyone claiming their right of occupancy under such an employee or an officer. It cannot be ignored that the legal heirs or representatives in possession of the property had acquired the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the officer or the employee and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in

occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

15. *The ratio of Abhilash Vinodkumar Jain (supra) was reiterated by another larger bench in Lalita Jalan (supra), wherein it laid down the main ingredients of Section 630 in para 6 and 7, the same are extracted hereunder:*

"6. The question which requires consideration is whether the appellants, having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as director of the company, come within the ambit of Section 630 of the Act. The main ingredient of the section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the section is that the property of the company is preserved and is not used for purposes other than those expressed or directed in the articles of association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company. In Baldev Krishna Sahi v. Shipping Corpn. of India Ltd. (1987) 4 SCC 361 the Court was called upon to consider the question whether the words "officer or employee" existing in sub-section (1) of Section 630 should be interpreted to mean not only the present officers and employees of the company but also to include past officers and employees of the company. It was held that a narrow construction should not be placed upon sub-

section (1) of Section 630, which would defeat the very purpose and object with which it had been introduced but should be so construed so as to make it effective and operative. The Court held as under in para 7 of the Report: (SCC p. 366) "7. The beneficent provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company

(a) where an officer or employee of a company wrongfully obtains possession of property of the company, or

(b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

7. The Court went on to observe that it is only the present officers and employees who can secure possession of any property of a company and it is possible for such an officer or employee to wrongfully take away possession of any such property after termination of his employment.

Therefore, the function of clause (a) though it primarily refers to the existing officers and employees, is to take within its fold an officer or employee who may have wrongfully obtained possession of any such property during the course of his employment, but wrongfully withholds it after the termination of his employment. It was further held that Section 630 plainly makes it an offence if an officer or employee of the company who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment and that it is the wrongful withholding of the property of the company after the termination of the employment, which is an offence under Section 630(1)(b) of the Act".

This Court further laid down in paras 22 and 23 as follows:

"22. The view expressed in *J.K. (Bombay) Ltd. (2001) 2 SCC 700* runs counter to the view expressed in *Abhilash Vinodkumar Jain (1995) 3 SCC 732* wherein it has been clearly held that the object of Section 630 of the Act is to

retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employee or officer or anyone claiming the occupancy through such employee or officer.

The view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 clearly subserves the object of the Act which is to the effect of recovering the possession of the property belonging to the company. If it is held that other members of the family of the employee or officer or any person not connected with the family who came into possession through such employee would not be covered by Section 630 of the Act, such a view will defeat the quick and expeditious remedy provided therein. The basic objection to this view is that the aforesaid provision contained in Section 630 of the Act is penal in nature and must be strictly construed and therefore the actual words used should not be given any expansive meaning. A provision of this nature is for the purpose of recovery of the property and if, in spite of demand or subsequent order of the court, the possession of the property is not returned to the company, the question of imposing penalty will arise. Similar provisions are available even under the Code of Civil Procedure. In execution of a decree for recovery of money or enforcement of an injunction, the judgment-debtor can be committed to a prison. Such a provision by itself will not convert the civil proceeding into a criminal one. Even assuming that the said provision is criminal in nature, the penalty will be attracted in the event of not complying with the demand of the recovery of the possession or pursuant to an order made thereof. The possession of the property by an employee or anyone claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be stated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression "employee or anyone claiming through him" will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K. (Bombay) Ltd. (2001) 2 SCC 700 in our opinion is not correct and the view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 is justified and should be accepted in interpreting the provision of Section 630 of the Act.

23. *If an erstwhile or former employee is prosecuted under Section 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under Section 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non- delivery of the property of the company".*

16. *The capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.*

17. *The ratio laid down in the above said two cases makes it explicitly clear that Section 630 of the Act will cover within its ambit not only the employee or officer but also the past employee or the past officer or the heirs of the deceased employee or anyone claiming under them in possession of the property. The legal heirs or representatives in possession of the property acquire the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the employee or the officer and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company."*

16. This being the legal position, it is to be seen whether the respondent is in possession of the properties and the record which, according to the complainant he is wrongfully withholding. The entire oral evidence and documentary evidence in respect of each property and record was analyzed by the Trial Court carefully and for better appreciation it will be advantageous to reproduce the findings as under:

“19. The complainant claims that the complainant has proved that the company had its office/branch at House No.459/60, Khari Baoli, Delhi, which address is mentioned in the list of controlled stock holders Delhi, in the monthly bulletin issued by Iron & Steel Controller, Government of India, Ministry of Steel, Mines and Fuel, Department of Iron and Steel, dated May, 1961, and also in the similar monthly bulletin no.44 of October, 1963, which is proved as Ex. PW1/15. Complainant also claims that the complainant has proved through document Ex. PW1/38 to PW1/57 and PW1/60 & PW1/61, that the company had its branch office in this premises from 1964 to 1973. It is claimed by the complainant that this property was purchased in the name of Smt. Tara Devi on 05.6.1965 vide sale deed Ex. PW1/26 for a total sale consideration of Rs.49, 000/-. It is claimed that this consideration was paid by the complainant company in October, 1962. The accused in answer of question no.33 of his statement, admitted that the company had its office at this address, but he claimed that the office at this address existed only till January, 1976. The complainant has not proved the cheque or any other document to show that this property was belonging to the company and the consideration was paid by the company. No one from the bank has been examined, cheque is not proved and thus payment of consideration by the company is not proved. Accused denied that this property was purchased by the company in the name of Tara Devi. In proceedings u/s.630 of the Companies Act, 1956 this Court cannot be called upon to determine ownership of the property. Even if, the documents Ex. PW1/15, PW1/38 to PW1/57 and PW1/60 and PW1/61 are relied upon, still these do not show that the company had its branch office at this address in 1983, when the accused was appointed as a director, or any time thereafter. For proving a case u/s.630 of the Companies Act, 1956 it was required that the complainant proves that this office existed between September, 1983 till July, 1988, or that thereafter, the accused was wrongfully withholding it. The complainant has failed to prove it and possession/existence of this office between September, 1983 to July, 1988, with the company is not proved, nor is it proved that the accused thereafter was wrongfully withholding it. On the basis of a

suggestion given by the accused in the cross examination of CW1, that Smt. Tara Devi rented out this property to the company free of cost, and another suggestion that the company vacated the premises as it was unable to pay rent, the complainant wants this Court to believe that the accused admits the case of complainant. These two suggestions go to prove nothing, even if taken to be admitted. It is claimed that accused alongwith his mother Tara Devi are occupying this premises through their tenants since 1985. None of the tenants have been examined as to when, how and by whom the tenants were inducted or whether company existed at the address between 1983 till 1985. As mentioned above, admittedly the property is in the name of Tara Devi and if the company claims it to be owned by the company, the company had appropriate remedies available in law to obtain such a declaration, but the company cannot expect this Court to give a finding that company and not Tara Devi is the owner of this property and that this property is wrongfully withheld by the accused. Accordingly, the complainant has miserably failed to show that this property was wrongfully withheld by the accused upon cessation as a director.

20. Regarding the property i.e. first floor of House No. H-2/7, Model Town, Delhi, it is claimed by the complainant that this property was used by the company as a guest house since 1968 for visiting directors of the company. From the document Ex. PW1/34, which are proceedings u/s.107/150 Cr.P.C, initiated under DD no.7A, dated 26.10.1986 Police Station Kingsway Camp, the complainant wants this Court to believe that the company was existing and having its guest house in this property in 1986. Similarly, from the Local Commissioner's report Ex. PW1/36 dated 21.11.1986; the complainant wants this Court to believe existence of the company's guest house at this address. Ex. PW1/34 is merely a Kalandra (complaint) prepared by a police officer u/s.107/150 of Cr.P.C on the basis of which, preventive proceedings were initiated. This Kalandra is not per se admissible in law as to its contents. No witness has been examined by the complainant to prove the fact that the accused or its staff tried to forcibly take possession of this property. No eye witness of the incident has been examined. Admittedly, the incident did not take place in the presence of PW1, and, therefore, his version is nothing but hearsay. Similarly, the report of LC Ex. PW1/36 is not per se admissible as to its contents and as to on what basis the LC opined it to be in illegal occupation. Local Commissioner has not been examined. Therefore, the complainant company has failed to show anything on record that the complainant company was having

possession of this premises. Admittedly, this property is in the name of H.C. Gupta i.e. father of accused. Question of ownership of this property is admittedly pending in Hon'ble High Court vide Suit No.2365 of 1986 and which will be decided there. Admittedly, this is a residential property. The complainant claims that documents Ex. CW1/X2 and CW1/X3 filed by the accused claiming ownership of this property are manufactured. I have already mentioned above that the question of ownership is not to be gone into or determined by this Court. Ownership of property can't be gone into or decided by this Court. Therefore, the complainant fails to prove that any guest house of the company existed in this property at any point of time or that accused in any manner wrongfully withheld it.

21. Regarding property at No.1 Quinton Road, Lukhnow, UP, it is claimed by the complainant that the company had its office there, which was registered as stockist vide Ex. PW1/15, and as mentioned in a bulletin issued by Iron & Steel Controller. It is also claimed that the accused, in answer to question no.4 in his statement, admitted that the company had its branch at this office till March, 1985. It is claimed by the complainant that even this property, although was purchased in the name of Usha Rani w/o. Prahlad Chand Gupta, who was also one of the directors of the company and brother of Ghanshyam Dass, but it belongs to the company as the consideration for this property was also paid by the company. Even this matter is subject matter of a suit for partition before Hon'ble High Court. It is claimed that the accused is occupying this premises through Rahul Gupta, son of another director Prahlad Chand Gupta. Admittedly, Ex. PW1/15 is of October, 1963, and for the reasons mentioned above it does not go to show that this property was occupied by the company between 1983 to 1988 or thereafter by the accused, much less wrongfully. Although, the accused admitted in his statement that office of company existed in this premises till 1985, but admittedly at that time, accused was Executive Director of the company and if at that time, the company decided to vacate the premises, it is binding on the company and now the company cannot ask its Ex Director to return the same. Had the accused done this after July, 1988, then things might have been different. Nothing is proved on record to show that office of the company existed at this address from March, 1985 till 1988 or, thereafter. Admittedly this property is in the name of Usha Rani, wife of one of the director of the company namely Prahlad Chand Gupta. This Court cannot establish title that this property was purchased by the company in the

name of Usha Rani. Complainant has appropriate remedies in law seeking establishment of this right. Admittedly, a suit for partition is pending in the Hon'ble High Court and this Court cannot determine the ownership in favour of the company. Even otherwise, had the company's office been working at this working till the accused ceased to be a director and then had the accused vacated the property or wrongfully withheld it against the wishes of the company, the proceedings would have been maintainable, but not otherwise. But in absence of any proof that the company office existed at this address till cessation of services of accused as director, it can't be claimed by the company that the accused is wrongfully withholding it. Admittedly, one Rahul, who is son of another director namely Prahlad Chand Gupta, is occupying the premises and the premises is in the name of his mother. In such circumstances, it is beyond comprehension as to how the present accused can be held to be liable for wrongfully withholding the same.

22. Regarding property i.e. Room No.524, Giriraj (Sant Tukaram Road), Carnac Bandar, Mumbai, it is claimed by the complainant that the accused admitted in his statement that the company had its sales office at this address till March, 1976. It is claimed that the premises is still in occupation of the accused and he allowed another director Prakash Chand Gupta and Manju Devi Gupta to use this property and accused failed to produce Mr. P.C. Gupta as a witness and thus suppressed material witness. As mentioned above, in a criminal trial burden to prove its case is on the complainant and not on the accused. Even if the accused admitted that office existed at this address till March, 1976, the burden was on the complainant to show that the office existed at this address between September, 1983 till July, 1988 (when the accused was a director) or thereafter, or that the accused wrongfully withheld it. Company's possession of this property, from March, 1976 till 1988, is not proved, nor wrongful withholding is proved in any manner. Even present wrongful withholding of possession of the property is not proved. Even it is not proved that Prakash Chand Gupta or Manju Devi Gupta are using it under the directions of the accused. If the accused failed to call P.C. Gupta or anybody else as witness, the complainant could have called them, but it was not done. No adverse inference needs to be drawn against the accused on this count and the judgment relied upon by the complainant in 72(1998) DLT 761 – Allora Electronics & Cable Co. Vs. M/s. Shiv Charan & Bros. & ors., is not helpful to the complainant being distinguishable on facts. The complainant did not lead any evidence to prove

possession of the accused. This Court cannot proceed on assumption that the possession of this property is of accused through Prahlad Chand Gupta or somebody else. What if P.C. Gupta or somebody else is withholding it? P.C. Gupta was also a director of the company. What if, P.C. Gupta or his LRs are withholding the property being director? Such proceedings should have been initiated against P.C. Gupta or his LRs and merely on the assumption that accused is withholding it through Rahul or anybody else; this Court cannot hold the accused guilty.

23. Turning to the property no.31, Vithalwadi, 108/116, Kalba Devi Road, Mumbai, it is claimed by the complainant that the accused admitted in his statement that even at this place, the company had an accounts office till March, 1976. Complainant claims that the accused has failed to prove any documentary document as to how and under what circumstances, this account office was surrendered and it is claimed that this premises is still in occupation of accused, who has allowed Sunil Khandelwal s/o. Manohar Lal, who was one of the founding director of the company, to use it. It is again claimed that Sunil Khandelwal was named as a witness but was not examined by the accused and, therefore, adverse inference needs to be drawn against the accused. For the reasons mentioned above regarding property no. 524, Giriraj, Mumbai, even the present property is not proved to be in any manner wrongfully withheld by the accused. There is no proof that company had its office at this address after March, 1976, more particularly between September, 1983 till July, 1988 or, thereafter. No witness is examined to show possession. No date of surrender or parting possession of this property has been put forth, nor any witness examined to show who surrendered this office, when and how. Burden was on the complainant and not on the accused. This Court cannot proceed on presumption that Sunil Khandelwal was withholding this property on the instructions of accused. Accordingly, the complainant failed to show wrongfully withholding of even this property.

24. Turning to property no.356, Jawahar Marg, Indore, MP, it is claimed that the accused admitted in his statement that the company had an account office at this place till December, 1974 and the accused in the cross examination of complainant admitted this fact. It is also claimed that Punjab National Bank filed a suit for recovery against the company at this address. It is claimed that the stand of the accused that this premises was surrendered to the landlord is false and it was still withheld by the accused. It is also

claimed that Purushottam Dass, an Ex Director of the company is still in possession of the property and the accused did not examine him, although he was named as a witness, therefore, adverse inference needs to be drawn against the accused. Again, the complainant has failed to show that the company existed at this address at any time after December, 1974, more particularly, between September, 1983 till July, 1988 or thereafter. Burden was on the complainant and not on the accused. There is no admission by the accused in the cross examination of the complainant that the company existed at this address in 1986. No suit or other proceedings, pending before Ld. DRT, is proved to show that company's office existed at this address during the relevant period. Admittedly, Purushottam Dass, who is claimed to be in possession of this property was also a director of the company and what if Purushottam Dass is wrongfully withholding the property? The complainant wants this Court to proceed on mere presumption that accused is withholding this property through Purushottam Dass. The complainant could have examined Purushottam Dass, especially, when the burden was on the complainant, but it was not done. Therefore, the complainant failed to prove wrongful withholding of even this property.

25. Turning to the property no.225, 77/79, N.S. Road Calcutta, the complainant once again claims that accused in his statement admitted that registered office of the company existed at this address till December, 1991. It is claimed that accused failed to show as to how, when and under whose authority, this property was parted with after 1991. Complainant claims that accused is in possession of this property and is liable to restore it to the company. Except bare averment that this property was parted with by the accused in 1991, no evidence has been led by the complainant to show how and when this property was parted with and by whom. Even if, the accused admits that only registered office of the company existed at this address till December, 1991, still that admission nowhere suggests an inference to be drawn that the accused was wrongfully withholding it till December, 1991 or that it was the accused who parted with this property. No evidence has been led to show that accused was in possession of this property from September, 1983 till July, 1988 or thereafter. No evidence is led to show that after July, 1998 till December, 1991, the accused retained this property or parted with this property. No one has been examined from the premises or the office of company to show that it was the accused who handed over the possession to anybody or

retained the possession of the property. How can this Court presume that accused retained this property or parted with its possession? Admission of accused in his statement, at the most show, that till December, 1991 the office was functioning. Nothing much can be read in this admission, much less that it was in possession or control of accused in any manner. Accordingly, even this property is not proved to be wrongfully withheld by the accused.

26. Regarding property no. A-6, Cooperative Estate, Bala Nagar, Hyderabad, it is claimed that the accused transferred this property in the name of Southern Industrial Cooperation, which is a proprietorship concern of the accused himself. It is claimed that accused in his statement admitted that company had a factory in a rented portion of A-6, Cooperative Industrial Estate, Bala Nagar, Hyderabad, till June, 198 and the accused denied presence of the company at premises no. A-3, Cooperative Industrial Estate. Regarding property no.28/29, Minister Road, Secunderabad, the accused admitted that the company had its sales office at that place till March, 1986. Regarding property no.686A, Road No.10, Banjara Hills, Hyderabad, accused admitted that 1/3rd of this property was provided by the company for residential purposes to Late H.C. Gupta and him from January, 1985 to June, 1989. The complainant claims that vide Ex. PW1/30 dated 30.6.1973, which is an official communication by Regional Iron & Steel Controller, Hyderabad, to Iron & Steel Controller of India and vide Ex. PW1/4 written by Sh. Ghanshyam Dass, MD of the company on 02.6.1986, the complainant has proved that a factory with plant and machinery existed at premises no. A-6 & accused was called upon to hand over the management and assets, which he failed to do and refused vide Ex. PW1/6. Accused has not denied Ex. PW1/4 and PW1/6 in his statement, but it does not prove that plant and machinery were installed in this premises. Court cannot presume the existence of plant and machinery and it ought to have been proved by the complainant. Ex. PW1/30 also does not prove anything about plant and machinery or its value in the year 1986 or thereafter. A perusal of the records reveal that a document has been proved as Ex. CW1/D1 which are minutes of meetings of board of directors held on 11.8.1975, and in the said meeting it was resolved that because of recession in iron and steel and for avoiding heavy losses, the machinery, plant and buildings and lands were authorised to be disposed of. This resolution was passed way back in 1975 i.e. much prior to the accused becoming an Executive Director. If the property is disposed of in pursuance of this meeting, the

accused cannot be prosecuted u/s. 630 of the Companies Act, 1956. In such summary proceedings, this Court cannot determine that this resolution was passed deliberately or mala fide to cause losses. The transfer of property cannot be challenged now and if it is the case of complainant that this resolution was passed in conspiracy to dispose of machinery, plant, buildings and lands, the complainant had appropriate remedies to challenge it, but this Court cannot be called upon to call it mala fide at this stage in the present summary proceedings.

27. It is claimed by the complainant that sale of property no. A-6, by the company to accused was without any resolution of the board of directors or shareholders, to the effect that the company can sell it to the accused, is useless at this stage as the resolution is in favour of H.C. Gupta, to sell the same due to recession. If the complainant claims that a fraud has been committed vide this resolution dated 11.8.1975, the complainant had appropriate remedies available to it for criminal prosecution or forgery or getting it declared as a nullity, but this was never done and now this Court cannot be called upon to question the genuineness of resolution passed way back in 1975 i.e. much prior to the accused becoming a Managing Director. The genuineness of such resolution by the company cannot be questioned u/s. 630 of the Companies Act, 1956. The documents Ex. CW1/D1 to D6 are much prior to the accused becoming director and this Court has no reason to doubt its authenticity. Thus, the transfer of plant, machinery or building cannot be called as mala fide or fraudulent, nor it can be called as wrongfully withheld by the accused. The transfer of the property no. A-6, is not questioned by the complainant in any Civil Court or appropriate forum. As mentioned, title cannot be decided by this Court. Calling the accused to wrongfully withhold this property would virtually tantamount to deciding title of the property now. Therefore, the complainant fails to prove even this count. The document Ex. PW1/16, which is proved by none other than the complainant shows that there was a tripartite agreement between the Cooperative Industrial Estate Ltd., the complainant and the Southern Industrial Cooperation, regarding leasing out a portion of A-6, on a rent of Rs.800 per month for five years from July, 1977. It is claimed that the accused rented out the said premises to seven tenants and earned Rs.40,000/- per month. No evidence whatsoever has been led by the complainant to substantiate this allegation. This Court cannot decide that the transfer of this property was sham or bogus because of the above said reasons.

28. Regarding property no. A-3, Cooperative Industrial Estate, Hyderabad, the complainant claims that from the cross examination of complainant witness, the accused is deemed to have admitted that the company existed at this address. Perusal of the cross examination of complainant would reveal that regarding this property, there are no such suggestion of the accused to the witness, but regarding this property, it was the complainant, who took a stand that the property was in the name of somebody else and thereafter when the said owner took a loan from the company and failed to repay, the said owner opened a firm under the proprietorship of the company and property remained with the company. The complainant did not lead any evidence to prove this version. There is no admission of accused regarding this. It was for the company to have proved that this property is of company, especially when the accused categorically denied that company had anything to do in this property. In absence of any proof led by the complainant, the possession of company in this property, at any point of time, is not proved. Even otherwise, the complainant's claim is that this property was transferred by the father of the accused in the year 1981 in the name of M/s. Harrison Enterprises. Therefore, this transfer took place much prior to his becoming an Executive Director in 1981. Fraudulent transfer of a property if at all, before accused became Executive Director, cannot be now determined in favour of the complainant that the accused is wrongfully withholding the property. Again it would be tantamounting to deciding title of this property which this Court cannot do and complainant ought to have challenged it in Civil Court. If the complainant claims it to be a forgery, the complainant had appropriate remedies available in law. Therefore, the complainant has miserably failed to prove that this property was of company or that the accused wrongfully withheld the same. Similarly, there is no evidence led by the complainant to show that the property no.28/29, Secunderabad, or property no.686-A, Banjara Hills, Hyderabad, was in any manner, wrongfully withheld by the accused.

29. Similarly, turning to the allegations that the accused was wrongfully withholding the documents of the company, there is absolutely no proof or evidence led by the complainant to show that the accused was in any manner entrusted with the said things, and he was withholding it. This Court cannot presume that those things were entrusted to the accused or that he was withholding the same. In the

end, net result is that the complainant has miserably failed to prove that the accused in any manner wrongfully withheld any of the property or books or records of the company and, therefore, the complaint is dismissed and the accused is acquitted."

17. The aforesaid findings go to show that learned Trial Court extensively dealt with each property by analyzing the evidence available on record. That being so, there was no occasion to take recourse to S. 106 and 114 of the Evidence Act for raising an adverse inference against the respondent. In fact, the findings do not suffer from any infirmity which calls for interference.

18. Moreover, this is an appeal against an acquittal order and the law regarding appeal against acquittal is by now well settled. In ***Muralidhar@Gidda and Another v. State of Karnataka***, (2014) 5 SCC 730, Hon'ble Supreme Court referred to the earlier decisions in para 10,11,12, and 13 which are reproduced as under:-

10. Lord Russell in *Sheo Swarup v. King Emperor*, AIR 1934 PC 227], highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in *Surajpal Singh v. State*, AIR 1952 SC 52] while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Code of Criminal Procedure observed, ".....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu v. State*, AIR 1954 SC 1], *Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637], *Atley v. State of U.P.*, AIR 1955 SC 807], *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217], *Balbir Singh v. State of Punjab*, AIR 1957 SC 216], *M.G.*

Agarwal v. State of Maharashtra , AIR 1963 SC 200], *Noor Khan v. State of Rajasthan*, AIR 1964 SC 286], *Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450], *Shivaji Sahabrao Bobade v. State of Maharashtra* , (1973) 2 SCC 793], *Lekha Yadav v. State of Bihar* ,(1973) 2 SCC 424], *Khem Karan v. State of U.P.* , (1974) 4 SCC 603], *Bishan Singh v. State of Punjab* , (1974) 3 SCC 288], *Umedbhai Jadavbhai v. State of Gujarat* ,(1978) 1 SCC 228], *K. Gopal Reddy v. State of A.P.* ,(1979) 1 SCC 355], *Tota Singh v. State of Punjab* : (1987) 2 SCC 529], *Ram Kumar v. State of Haryana* , 1995 Supp (1) SCC 248], *Madan Lal v. State of J and K* , (1997) 7 SCC 677], *Sambasivan v. State of Kerala* , (1998) 5 SCC 412], *Bhagwan Singh v. State of M.P.* ,(2002) 4 SCC 85], *Harijana Thirupala v. Public Prosecutor, High Court of A.P.* , (2002) 6 SCC 470], *C. Antony v. K.G. Raghavan Nair* , (2003) 1 SCC 1], *State of Karnataka v. K. Gopalakrishna* , (2005) 9 SCC 291], *State of Goa v. Sanjay Thakran* , (2007) 3 SCC 755] and *Chandrappa v. State of Karnataka* , (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

13. In *Ghurey Lal v. State of U.P.* , (2008) 10 SCC 450], the Court has culled out the principles relating to the appeals from a judgment of acquittal which are in line with what we have observed above.”

19. Keeping in view the aforesaid settled law coupled with the discussion made above, there is no warrant for interference in the findings of the learned Trial Court. Accordingly, appeal is dismissed. Pending application, if any, also stands disposed of.

Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

JULY 14, 2016/rd