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

\+ CRL.REV.P. 562/2015

Date of Decision : March 28th, 2016

MANAN CHAND THROUGH LRS. MEERA DEVI ..... Petitioner

Through Mr.Prem Sagar Pal, Advocate with petitioner in person.

versus

STATE & ANR ..... Respondents

Through Mr.Hirein Sharma, Additional Public Prosecutor for the State.
Mr.Manish Srivastava, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for setting aside the order dated 22.08.2015 and order on sentence dated 11.03.2014 passed by the Trial Court and for releasing the petitioner from the custody.

2. The facts, in brief, are that the complainant/respondent no.2-herein filed a complaint under Section 630 of the Companies Act, 1956 against the accused Maman Chand (since deceased) alleging that he was an employee of erstwhile Delhi Vidyut Board which was divided into different distribution companies and the respondent no.2 took the over the same vide notification dated 13.11.2001. The respondent no.2 company came into existence on 01.07.2002 which

took over the assets, liabilities and employees of the erstwhile Delhi Vidyut Board. It was alleged that the deceased was allotted Flat No.H-105, Block-H. Type-I, Tripolia Colony, Delhi on the conditions that he would retain the same till he remained in the employment. The deceased was superannuated on 31.08.1989 but he failed to vacate the quarter within the stipulated period of four months from retirement and had been residing unauthorizedly since 01.01.1990. A legal notice was sent to the deceased for vacation of the quarter and to pay the licence fees/damages, but he failed to comply with the same.

3. Cognizance on the complaint was taken and the petitioner Manan Chand was summoned. In the summon report dated 22.03.2007, it was reported that Manan Chand had expired. Thereafter, on the application of the complainant for bringing the LRs of deceased on record, notice was isused to Smt. Kamla Devi which was received back with the report that she had also expired. Thereafter, on the application for bringing LR of deceased on record, Smt. Meera Devi was impleaded on behalf of late Sh. Manan Chand.

4. Notice under Section 251 Cr.P.C. was served upon Smt. Meera for the offence punishable under Section 630 of the Companies Act to which she pleaded not guilty and claimed trial. In order to prove its case, the complainant/respondent No.2 examined one witness. Statement of accused under Section 313 Cr.P.C. read with Section 281 Cr.P.C. was recorded. In her defence evidence, the accused examined two witnesses. After conclusion of trial, the petitioner was held guilty and convicted for the offence punishable under Section 630 of the Companies Act vide judgment dated 06.03.2014. Vide order on

sentence dated 11.03.2014, a fine of Rs.500/- per month was imposed upon the petitioner Smt.Meera Devi from January, 1990 to February, 2014 totaling to Rs.1,44,500/-. It was ordered that in case the convict vacates the quarter in dispute within two months, the fine would not be recovered. It was further ordered that if the convict failed to vacate the quarter and failed to deposit the fine, she shall undergo simple imprisonment for three months in default of payment of fine. The convict was directed to hand over the vacant and peaceful possession of the quarter in question to the complainant company within two months failing which, she shall undergo simple imprisonment for one year.`

5. Thereafter, the petitioner preferred a criminal appeal which was dismissed by the appellate Court vide judgment dated 16.05.2014. However, on the undertaking given by the petitioner, she was directed to vacate the premises in question by 31.12.2014. It was directed by the appellate Court that in case the appellant/petitioner-herein committed the breach of the undertaking or failed to vacate the premises by 31.12.2014, the order on sentence passed by the Trial Court shall be enforced. Since the petitioner failed to hand over the vacant and physical possession of the premises in question to the complainant company, the learned ACMM vide order dated 22.08.2015 sent the petitioner to judicial custody. However, it was recorded that the keys of the premises was handed over to the complainant on 22.08.2015 itself.

6. Arguments advanced from both the sides were heard.

7. Learned counsel for the petitioner has argued that the petitioner

was sent to the judicial custody despite handing over of the possession of flat to the respondent and only for non-payment of fine of Rs.1,44,500/-. The petitioner is a widow and poor lady. She is the only earning member in the family having three young children. Further argument advanced is that the petitioner was employed by Delhi Vidyut Board and as such there was no relationship of employer and employee between the petitioner and respondent no.2 company. Further, it has been argued that the complaint was filed beyond the period of three years and the same was time barred. It is further argued that Section 630 of the Companies Act provides for a maximum fine of Rs.10,000/- but the Trial Court wrongly imposed the fine of Rs.1,44,500/- upon the petitioner.

8. On the other hand, it has been argued that the petitioner unauthorizedly retained the premises which was given to the deceased being employee of the erstwhile Delhi Vidyut Board. After cessation of employment of the deceased, the petitioner did not vacate the same and only after issuance of NBW against her, she vacated the premises in question. It is further argued that there is no illegality in the impugned orders passed by the Courts below.

9. I have gone through the contentions of the parties and the material available on record.

10. It is not in dispute that late Sh. Manan Chand was the employee of the erstwhile Delhi Vidyut Board which was subsequently divided into different distribution companies and the BSES Yamuna Delhi Power Limited (respondent no.2-herein) took over the distribution company through Notification No.,F-11/99/2001-Power/PF-III 2828

dated 13.11.2001. The erstwhile Delhi Vidyut Board was unbundled on 30.06.2002 and the respondent no.2 company came into existence on 01.07.2002. It is also an admitted fact that the respondent no.2 company took over the assets, liabilities and also the employees of the erstwhile Delhi Vidyut Board. As such, there existed employer and employee relationship between the deceased and respondent no.2 company.

11. It is also an admitted fact that during the service tenure of the deceased, he was allotted the quarter on the conditions that he had to retain the same till he remains in services of the company. It is also an admitted fact that the deceased retired on 31.08.1989 on attaining the age of superannuation, but failed to vacate the premises within the stipulated period of four months. It was specifically alleged against him that the said quarter was unauthorizedly retained by him since 01.01.1990.

12. The complainant/respondent no.2 company adduced evidence in support of its case and the witness PW1 proved the Certificate of Incorporation as Ex.CW1/A. The notification dated 13.11.2001 was proved as Ex.PW1/2 vide which the assets and liabilities including the employees of the erstwhile Delhi Vidyut Board were taken over by the respondent no.2 company. The allotment letter of the flat was proved as Ex.PW1/1 and notice to the deceased to vacate the flat was proved as Ex.PW1/3.

13. There is enough evidence and material on record to show that the petitioner had been in unauthorized occupation of the flat in question since 01.01.1990.

14. So far as the contention regarding non-existence of employer and employee relation between the petitioner and respondent no.2 company is concerned, the Hon'ble Apex Court has clarified this position in the case of ***Lalita Jalan and Anr. v. Bombay Gas Co. Ltd. and Ors. AIR 2003 SC 3157***. In paras. 22 and 23, it was observed that:

> 22. The view expressed in J.K. (Bombay) Ltd. (supra) runs counter to the view expressed in Abhilash Vinodkumar Jain (supra) 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 employees or officer or anyone claiming the occupancy through such employee or officer. The view expressed in Abhilash Vinodkumar Jain (supra) 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 exercise 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. (supra), in our opinion is not correct and the view expressed in Abhilash Vinodkumar Jain (supra) 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.

15. Vide judgment datged 06.03.2014, the petitioner was held guilty and convicted for the offence punishable under Section 630 of the Companies Act, 1956 and order on sentence was passed on 11.03.2014. The order imposing fine of Rs.1,44,500/- was passed on the basis of judgment of Bombay High Court in the case of ***K.G.K. Nair v. Prakash Chander Juneja and another 1993 Crl.L.J. 2791***. The petitioner was directed to handover the possession of the quarter to the complainant company within two months, failing which she should further undergo simple imprisonment for one year. Thereafter, the petitioner preferred a criminal appeal which was dimissed. However, the petitioner was granted time uptil 31.12.2014 to vacte the premises. But despite the directions by the Courts below, the petitioner failed to vacate the premises and she also fialed to pay the amount of fine. Therefore, the Court below vide dated 22.08.2015 sent the petitioner in judicial custody.

16. As discussed above, there is no illegality or infirmity in the impugned orders. The same have been passed on the basis of material and law and this Court does not find any impropriety in the same.

17. Consequently, the present revision petition is hereby dismissed.

(P.S.TEJI)
JUDGE

MARCH 28, 2016
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