

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.28131 of 2018

and

CRL.M.P.No.16359 of 2018

Raghu @ A.R.Raghuraj
S/o.Ramadoss (late)

... Petitioner

Vs.

M/s.Meridian Apparels Limited,
Re. by Power of Attorney
M.Saravanan Working as Manager
in the M/s.Meridian Apparels Ltd.,
its branch office
8/626, A.V.P.Layout,
Angeripalayam Road,
Tiruppur.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.M.P.No.2713 of 2018 in C.C.No.1 of 2016 on the file of the learned Judicial Magistrate No.I, Tiruppur and set aside the same.

For Petitioner : Mr.M.Saravanakumar

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the Judicial Magistrate No.I, Tiruppur, dated 30.05.2018, made in C.M.P.No.2713 of 2018, wherein the Judicial Magistrate had directed taking possession of the property with the help of police.

2. The petitioner was employed under the respondent and he was allotted a quarters. Thereafter, he was dismissed from service. The petitioner did not hand over the possession of the quarters. Therefore, a private complaint was filed under Section 630 of the Companies Act 1956. After full fledged trial, the learned Judicial Magistrate No.I, Tiruppur, by a

Judgment dated 14.12.2016, allowed the complaint and imposed the punishment of Rs.10,000/- as fine and also directed the petitioner to hand over the possession of the property, within a period of one month and in default to undergo six months rigorous imprisonment.

3. Aggrieved by the said Judgment, the petitioner filed an appeal in Crl.A.No.6 of 2017 before the I Additional District and Sessions Court, Tiruppur. After full fledged enquiry, the appeal was dismissed by Judgment dated 31.01.2018 and the Appellate Court confirmed the order passed by the Trial Court. Aggrieved by the same, the petitioner filed Crl.R.C.No.561 of 2018 before this Court and this Court by an order dated 04.07.2018, dismissed the Criminal Revision and confirmed the order of both the Courts below.

4. Even, subsequent to the passing of the order in the Criminal Revision, the petitioner did not hand over the possession of the property. Therefore, the respondent filed a petition in C.M.P.No.2713 of 2018 before the Court below seeking for taking possession of the property with the help of police assistance. The Court below by an order dated 30.05.2018 allowed the petition. The Court below took note of the fact that inspite of the petitioner having lost till the High Court, failed to hand over the possession of the property to the respondent. The petitioner had also been arrested and committed to prison, in view of non-compliance of the order. The family members of the petitioner are now in occupation of the premises. Therefore, the Court below by relying upon the Judgment of the Hon'ble Supreme Court in (2009) 3 SCC 342 [Gopika Chandrabhushan Saran and another Versus M/s.XLO India Ltd., and another, dated 13.02.2009], held that even if the legal representative of the original allottee withhold the property wrongfully, the company is entitled to invoke the provisions of the Companies Act, to retrieve the property that is being wrongfully withheld. The Court below also took note of the Section 634 of the old Act and Section 452(2) of the new Act and has come to a categorical conclusion that the Court has sufficient powers to order the delivery of possession of the property which has been wrongfully withheld.

5. The learned counsel for the petitioner would submit that the petitioner is now presently undergoing imprisonment for having failed to comply with the Judgment passed in C.C.No.1 of 2016. According to the learned counsel for the petitioner, since the petitioner is undergoing default sentence, there is no requirement for the petitioner to hand over the possession of the property.

6. The submissions of the learned counsel has to be straight away rejected by this Court. The default sentence is for non-compliance of the directions issued by the Court. Just because a person undergo the default sentence, it does not automatically efface the directions that has already been issued by the Court below. The consequence of non-compliance of the direction cannot undo the very direction itself. If such an interpretation has given, the very purpose of filing a complaint under Section 630 (Present Section 452 New Act) will get defeated. The Court below has rightly relied upon the Judgment of the Hon'ble Supreme Court and has held that the legal heirs are also bound by the Judgment passed against the employee of the Company.

7. It is also relevant to place reliance on the Judgment of the Hon'ble Supreme Court in (2009) 3 SCC 342 (Gopika Chandrabhushan Saran and another Versus XLO India Limited and another), wherein the Hon'ble Supreme Court has gone to the extent of holding that proceedings under Section 630 of the Companies Act will even cover persons claiming a right under the past employee. When the provisions has been interpreted to this extent, the plea raised by the learned counsel for the petitioner that the petitioner having undergone the default sentence, cannot be forced to hand over the possession of the property, has to be straight away rejected.

8. This Court does not find any illegality and infirmity in the order passed by the Court below. There are absolutely no grounds to interfere with the order passed by the Court below.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

lpp/vsa

To

1.The Judicial Magistrate, No.1,
Thiruppur.

+1cc to Mr.Saravanakumar, Advocate, S.R.No.84115

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GSP (26/12/2018)