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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th November, 2018

+ CRL.M.C. 491/2015

M/S SAPIENT CONSULTING PVT. LTD. Petitioner

Through: Mr. Akhil Anand, Adv. with
Mr. Aayush Malhotra, Adv.

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. K.S. Ahuja, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was concededly engaged by the petitioner company as managing director on 10.08.2000. It is an undisputed case of both sides that the petitioner company (“the employer”) had arranged for residential accommodation for the second respondent (“the employee”) by taking a premises described as Rama Farm, Mangla Puri, Mehrauli, Delhi (“the leased premises”) on rent from its owner (“the landlady”) by a lease agreement dated 05.12.2002, the lease being for a period of two years commencing from 15.01.2003. The employer company terminated the services of the second respondent w.e.f. 30.07.2003 by serving a notice to that effect upon him, the said communication also requiring him (“the

employee”) to “*forfeit and vacate in real or personal property*” which the employer had leased for his benefit. The second respondent did not vacate or handover the possession of the said leased premises. The employer, thus, issued fresh notice dated 07.08.2003, whereby the employee was called upon to “*return*” the property of the company (which included, besides the leased premises, certain other moveable properties) “*no later than 15.08.2003*”.

2. No compliance having been made, the petitioner company eventually instituted criminal proceedings in the court of Metropolitan Magistrate by criminal complaint (No.49/1/03) alleging offence under Section 630 of Companies Act, 1956 having been committed.

3. The criminal case in which the second respondent stood summoned as accused was put to trial, on the conclusion of which the Metropolitan Magistrate, by his judgment dated 16.12.2013, found the second respondent guilty for the offence under Section 630 of Companies Act, 1956 and convicted him accordingly. By order dated 08.01.2014, however, the second respondent was released after “*admonition*” the benefit of the benevolent provision under Section 3 of the Probation of Offenders Act, 1958 having been accorded to him.

4. The second respondent challenged the conviction and order on sentence in the court of sessions (by criminal revision No.60/2014). His petition was allowed by the sessions court by its judgment dated 09.12.2014, *inter alia*, holding that though the employer company had a right to recover the rent paid by it to the landlady after termination of the lease agreement, it had failed to prove the *mens rea* requisite for

holding the second respondent guilty for the offence under Section 630 of the Companies Act, 1956.

5. The above order of the revisional court was challenged by the complainant company through the petition at hand invoking the inherent power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

6. The petition has been resisted by the second respondent who argued through counsel in support of the view taken by the revisional court, submitting that there was no occasion for this court to interfere.

7. Aside from the above, certain other facts need to be taken note of. While it is not in dispute that the petitioner (the complainant) had terminated the services of the second respondent w.e.f. 30.07.2013, it is admitted that a petition questioning the legality of the said order of termination was filed which is still pending adjudication, though it was also stated fairly that there is no order in favour of the second respondent with any observations to the effect that the termination order was bad or liable to be suspended or stayed. It is also admitted that the second respondent had filed civil suit (No.1664/2003) in this court against the complainant company seeking a restraint order against his dispossession from the leased premises. By order dated 19.09.2003, the undertaking on behalf of the complainant company was recorded that it would not proceed against the second respondent in respect of the leased premises “*except in accordance with law*”.

8. It is also not disputed that the complainant company by the lease agreement dated 05.12.2002 had agreed (by clause no.11) that

the lease was “*for the residence*” of the second respondent and that in case he was “*transferred*” or “*left the company*”, the lease agreement would “*come to an end*”. In terms of the lease agreement, the complainant company was to pay rental of Rs.70,000/- per month. It had deposited with the landlady an amount of Rs.2,10,000/- as an interest free security deposit which was to be refunded by cheque at the time of “*peaceful vacation of the demised premises after deducting the dues, if any*”.

9. It is admitted that after his services had been terminated by the complainant company, the second respondent continued to be in use and occupation of the leased premises. It is also admitted that by a subsequent communication to the landlady the complainant company had determined the lease in June, 2004. Further, the second respondent continued to be in occupation after entering upon his own independent lease agreement with the landlady which came into effect from July 2004 onwards. It is admitted by him that after termination of his services by the complainant company *w.e.f.* 30th July, 2003 and till he had taken the leased premises on rent by his independent contract with the landlady in July 2004, he had not tendered, or paid, the rent for the interregnum either to the landlady or to the previous employer company, *i.e.*, the complainant.

10. It was not disputed at the hearing though that the lease agreement dated 05.12.2002 would stipulate the lease to have come to an end upon cessation of the employment of the second respondent with the complainant company, its liability to pay rent (or *mesne*

profits) would continue till the physical “*vacant possession*” had been restored to the landlady, the liability of the company under the lease agreement continuing for such purpose.

11. The penal clause contained in Section 630 of the Companies Act, 1956 reads thus:-

“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, to suffer imprisonment for a term which may extend to two years.”

12. The revisional court, in the opinion of this court, has correctly construed the expression “*wrongfully withhold*” as appearing in clause (b) of Section 630 (1) of the Companies Act, 1956 quoted above, to be indicative of the requirement of *mens rea*. But, it seems to have misapplied the provision to the facts of the present case so as to disturb the finding of guilt returned by the trial magistrate.

13. It may be that the premises were taken on rent, on the initiative of the second respondent, by the petitioner company (employer). But, the fact remains that the leased premises was taken over by the employer through the aforesaid lease agreement. Under the law, and the contractual arrangement entered upon, obligation to pay the rent and other charges for use of the lease premises was of the employer company. From this perspective, the leased premises was the “*property of the company*”. It was a property which had come in the hands of the second respondent, not directly taken from the landlady but indirectly through the employer with whom a formal lease agreement had been executed. The services of the second respondent having come to an end by the notice of termination dated 30.07.2003, it was his obligation to restore, to the employer company, its property.

14. It may be that it was not feasible for the employee (second respondent) to immediately vacate the premises. He could have sought time for such purposes. The petitioner company was, however, acting reasonably. It waited till 07.08.2003 and, by a communication issued on the said date, granted time till 15.08.2003. Concededly, the second respondent did not send any reply to such communication. Concededly, he continued to be in use and occupation of the leased premises at the cost of the employer company. This, without doubt was wrongfully withholding the property of the company inasmuch as it was entailing an immediate wrongful loss to the employer who was under contractual obligation to pay rent for the continued occupation of its erstwhile employee. The complainant company, thus, had duly proved both the *mens rea* and the *actus reus*.

15. The undertaking given before this court in the civil suit on behalf of the complainant company would not inhibit the prosecution of the criminal complaint under Section 630 of the Companies Act, 1956. After all, such prosecution was also a remedy available to it under the law.

16. In the above facts and circumstances, it is clear that the approach of the revisional court was wholly mis-directed. The judgment of the trial court was well reasoned and there was no occasion for the court of sessions, in the limited revisional jurisdiction, to interfere with the findings or result of such trial returned by the metropolitan magistrate.

17. Consequently, the impugned order dated 09.12.2014 of the revisional court is set aside. The judgment returning the finding of guilty against the second respondent as rendered by the metropolitan magistrate on 16.12.2013 is restored and revived.

18. Given the facts that the premises was later taken on rent by the second respondent in his own independent rights, this court, however, refrains from interfering with the discretion exercised by the trial court in releasing him after admonition.

19. The petition stands disposed of with above observations.

R.K.GAUBA, J.

NOVEMBER 27, 2018

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