

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1219 OF 2018

Krishna Chandra Pandey	Applicant
versus	
The State of Maharashtra and another	Respondents

WITH
CONTEMPT PETITION NO.253 OF 2013

IFCI Limited	Petitioner
versus	
Krishna Chandra Pandey	Respondent

Applicant in person in APL.
Mr.Vinod Kothari i/by M/s.Apex Law Partners for petitioner in C.P
and for respondent no.1 in APL.
Mr.A.R.Patil, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st June 2022

PC :

1. Since both the matters are connected and being heard together, the matters are disposed off by common order. Both the proceedings were heard on 15th June 2022 and listed today for passing order. Applicant was present in person and made his submissions on 15th June 2022. He is absent today.

2. The applicant in Criminal Application No.1219 of 2018 was convicted for the offence under Section 630 of Companies Act vide judgment and order dated 26th September 2011 and sentenced to pay fine of Rs.1,000/- and in default to suffer simple imprisonment for one month. He was directed to vacate Flat No.304, Blue Diamond,

Juhu Tara road, Santacruz (W), Mumbai and to hand over possession of flat to complainant within two months from the order and in default to suffer imprisonment for one year. The judgment and order dated 26th September 2011 passed by learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai was challenged by applicant by preferring appeal before the Court of Sessions. The said appeal was dismissed vide judgment and order dated 13th December 2012. The applicant was directed to hand over possession of flat within a period of one month from the date of order.

3. The applicant then preferred Criminal Revision Application No.9 of 2013 before this Court vide order dated 14th March 2014. The said revision application was disposed of. The order indicate that submissions were made by counsel representing applicant that he is not desirous to challenge the order dated 13th December 2012 passed by Sessions Court in Criminal Appeal No.604 of 2011. He filed an undertaking after fully appreciating the consequences and legal repercussions. He had undertaken to the Court that he would vacate and hand over peaceful possession of the premises to respondent no.2 on or before 13th April 2013.. He had stated that barring himself and his family members, none other is residing in the premises. He will not induct anybody in possession nor alienate or transfer the premises in any manner. The undertaking dated 14th January 2013 was taken on record. The revision application was dismissed as not pressed. The order further observed that after the premises are handed over, respondent no.2 may consider the claim of the applicant insofar as his service benefits are concerned. All contentions of parties in that regard were kept open.

4. Since possession was not handed over as per undertaking, the respondent no.2 filed Contempt Petition No.253 of 2013.

5. The applicant preferred Criminal Application No.523 of 2013. The said application was disposed of vide order dated 20th February 2014. In the said order it is observed that on 14th January 2013 applicant had given an undertaking to this Court that he would vacate the premises on or before 13th April 2013 and hand over the possession to the complainant. He did not vacate the premises as per undertaking. Thereafter he vacated the premises on 19th May 2013. In the mean time, non-bailable warrant was issued by the concerned Court. There was delay in complying the undertaking given to this Court. Submission was made on behalf of applicant that since there is breach of undertaking, the applicant may be saddled with reasonable cost. The Court directed the applicant to deposit cost of Rs.25,000/- within four weeks. The cost was to be paid to the complainant within four weeks. The warrant issued against applicant was stayed.

6. The applicant has appeared in person. In this application the applicant has prayed for setting aside the order dated 14th March 2013, order dated 20th February 2014 passed by this Court, the order dated 13th December 2012 passed by Additional Sessions Court in Criminal Appeal No.604 of 2011 and order dated 26th September 2011 passed by Additional Chief Metropolitan Magistrate in Criminal Case No.3304/S/2003.

7. The applicant submitted that he was working with respondent no.2 since 1982. He was asked to reside in rented accommodation

during his employment. He was dismissed from service w.e.f.26th February 1997 and he was occupying the premises as a tenant Applicant had deposited cost of Rs.25,000/- with the registry of this Court. The High Court of Rajasthan in Writ Petition No.5834 of 1996 set aside the punishment of applicant inflicted by respondent no.2 in departmental inquiry. He was granted service benefits. He relied upon judgment of Rajasthan High Court dated 4th May 2017. The said judgment was challenged by complainant- respondent by preferring appeal and the Division Bench of Rajasthan High Court had upheld the order of learned Single Judge of the said Court. Reliance is placed on order dated 13th March 2018 of the Division Bench of Rajasthan High Court. Respondent no.2 made partial payment to the applicant after deducting amount including recovery of rent. In view of the decision of High Court Rajasthan, the conviction of applicant for the offence u/s630 of Companies Act be set aside.

8. Learned advocate for respondent no.2 submitted that submissions of applicant deserves to be rejected. Present application was preferred in 2018 after a period of about five years. The order passed by Rajasthan High Court was relating to departmental proceedings. The conviction which has been confirmed by the Appellate Court and this Court, cannot be set aside at this stage. The applicant had volunteered to deposit the cost due to delay caused in handing over possession and merely on account of orders passed by Rajasthan High Court, the orders passed by this Court cannot be set aside. It is not disputed that the applicant has handed over possession of subject flat. In view of handing over of possession of the flat and order passed by this Court recording that possession was

handed over and imposing cost of Rs.25,000/- vide order dated 20th February 2014, the contempt petition may be disposed of. The Special Leave to Appeal (Cri).No.3543 of 2013 preferred by the applicant challenging order of High Court filed before Supreme Court came to be dismissed.

9. I have perused the documents on record. On the basis of evidence adduced before Trial Court the applicant was convicted by learned Additional Chief Metropolitan Magistrate vide judgment and order dated 26th September 2011 whereby applicant was convicted u/s.630 of Companies Act. The judgment of Trial Court was confirmed by Sessions Court. The appeal preferred by applicant was dismissed and applicant was directed to hand over possession of the premises. Thereafter revision application was disposed of by this Court on undertaking filed by the applicant that he would hand over possession. There was delay in handing over possession and breach of undertaken given to this Court. The applicant preferred Criminal Application No.525 of 2019 before this Court that he has handed over possession on 19th May 2013. The applicant had submitted that there is delay of 35 days. The said application was disposed off by order dated 20th February 2014. In the said order it was observed that on 14th January 2013 the applicant had given an undertaking to the Court that he would vacate the premises on or before 13th April 2013 and he shall hand over possession to respondent no.1. He has not vacated the premises as per the undertaking. Applicant has vacated the premises on 19th May 2013. In the mean while respondent-complainant had filed an application for issuance of non-bailable warrant on 16th April 2013. The Metropolitan Magistrate issued the warrant on 8th May 2013. The advocate representing

applicant had submitted that there is delay of 35 days in complying with the undertaking. He has committed breach of undertaking and he may be saddled with reasonable cost. The applicant was directed to pay cost of Rs.25,000/- in this Court within four weeks. Cost was to be paid to respondent within four weeks. Warrant was stayed by this Court by order dated 14th June 2013. The said order was confirmed. I have perused the orders passed by Rajasthan High Court. The order dated 4th May 2017 was in respect to the departmental proceedings wherein it was held that orders passed by disciplinary authority and appellate authority are set aside and respondents were directed to reinstate the applicant without back wages. The directions to release pension and gratuity were also issued. In appeal preferred by complainant before Division Bench of Rajasthan High Court, vide order dated 13th March 2018 it was held that there is no reason to interfere in the order. While the order of punishment was set aside, the applicant would be entitled for continuity in service but not entitled for back wages as directed by learned Single Judge. He would be entitled for retiral benefits as permissible under law. In view of the aforesaid order the applicant contends that conviction which had attained finality be set aside. The submission is devoid of merits. This Court had disposed of Revision Application vide order dated 14th March 2013. Present application was preferred in 2018. The conviction was based on the evidence adduced before Trial Court. Hence relief prayed in this application cannot be granted. Since possession of the premises is already handed over and cost was imposed vide order dated 20th February 2014, it is not necessary to initiate any action in contempt petition.

10. Hence, I pass following order :

ORDER

- (i) Criminal Application No.1219 of 2018 is rejected and disposed of;
- (ii) Contempt Petition No.253 of 2013 stands disposed of.

(PRAKASH D. NAIK, J.)

MST