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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ CRIMINAL MISCELLANEOUS CASE 4153/2012 & CRL.
M.As. 19609/2012, 7789/2013 & CRL. M.A.10977/2014

Between:-

DR. D.K. MODI
S/O LATE SHRI K.N. MODI
R/O 15, FRIENDS COLONY (WEST)
NEW DELHI

.....PETITIONER

(Mr. Arunabh Chowdhury, Senior Advocate alongwith Mr. Nilesh Kumar, Advocate.)

AND

MODI RUBBER LIMITED
HAVING ITS REGISTERED OFFICE
AT 4-7C, DDA SHOPPING CENTRE,
NEW FRIENDS COLONY,
NEW DELHI-110025.

..... RESPONDENT NO. 1

STATE (GOVT. OF NOT OF DELHI)

.....RESPONDENT NO. 2

(Ms. Geeta Luthra, Senior Advocate alongwith Mr. Vijay Gupta, Advocate.)

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Pronounced on : 18.08.2022

JUDGMENT

**PURUSHAINDRA KUMAR KAURAV, J.**

1. This petition under Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.) seeks quashment of the order dated 19.10.2012 passed by the learned ACMM in complaint case No. 215/01/2011 and quashment of the complaint case itself for the alleged offence committed under Section 630 of the Companies Act, 1956 (hereinafter referred as 'Companies Act') pending before the Court of Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi.
2. The respondent/complainant *M/s Modi Rubber Limited* (hereinafter referred as 'complainant') filed a complaint on 02.08.2011 against *Shri D.K. Modi* (hereinafter referred as 'petitioner') for commission of an offence under Section 630 of the Companies Act and for prosecution/punishment of the petitioner for wrongfully withholding the companies' property.
3. The learned ACMM (Special Acts)/Central, after recording pre-summoning evidence of CW-1 (*S.K. Bajpai*), and having perused the record found that *prima-facie*, there was sufficient material to proceed against the petitioner for the offence under Section 630 of the Companies Act and accordingly, the petitioner has been summoned by the concerned Court *vide* impugned order dated 19.10.2012.
4. The brief facts of the case are that on 27.02.1971, the complainant was incorporated as a Public Limited Company and was registered in the records of Registrar of Companies, Kanpur. The father of the petitioner, namely, *Shri K.N. Modi*, was the Chairperson and one of the Managing Directors of the complainant company, with approximately 14,000



shareholders. On 04.02.1984 an Agreement to Sell for the purchase of property, bearing No. 15, Friends Colony (West), New Delhi-110065 admeasuring 2800 square yards, with an old structure built thereon (property in dispute) was entered into between the complainant and one *Arun Kumar Kapur*. As per the sale agreement dated 04.02.1984, a sale consideration of Rs.55,00,000/- was agreed. The property in dispute continued to be in possession of *Shri K.N. Modi*, the father of the petitioner. On 24.01.1989, due to differences amongst the family members of the *Modi* family, a Memorandum of Understanding (MoU) was executed between them, where two groups were created. Group 'A' comprised of *K.N. Modi* and sons, i.e., the petitioner and his father and Group 'B' comprised of *K.K. Modi* and brothers, which includes the complainant company. As per one of the terms and conditions of the MoU, *Shri K.N. Modi* (father of the petitioner) resigned from the complainant company as Chairperson. According to Clause-4 of the MoU, it was stated that the houses occupied by each Modi will continue with them. The terms and conditions of the concerned MoU have been upheld by the Hon'ble Supreme Court in the case of *K.K. Modi v. K.N. Modi*¹.

5. On 02.08.2001, a legal notice was issued by the advocate for the complainant to the petitioner, calling upon to vacate and hand over the possession of the property in dispute, which was duly replied. On 01.09.2001, it was stated on behalf of the petitioner that the property is the subject matter of the MoU dated 24.01.1989 and, therefore, the contents of the legal notice were disputed. The complainant made a

¹ (1998) 3 SCC 573



reference before the Board for Industrial and Financial Reconstruction (BIFR) in the year 2004 to declare itself as a sick industry. On 27.05.2005, the father of the petitioner expired and on 17.05.2006 the BIFR declared the complainant as a sick company. On 24.01.2007, the complainant company issued a letter to one of the family members of the vendor of the property, i.e., *Ritu Kapur* calling upon her to execute the sale deed in favour of the complainant company in terms of the Agreement to Sell dated 04.02.1984. On 23.05.2007, the petitioner filed a Civil Suit bearing CS (OS) No. 974 of 2007 before this Court, against *V.K. Modi*, the complainant company and others including the widow of the vendor, *Mrs. Ritu Kapur* seeking a declaration that the defendant Nos. 1 & 2 of the civil suit had no right, title, interest in the property. This Court while issuing summons in the civil suit directed the defendants, therein, to maintain a *status quo* in respect of title and possession of the property in dispute. On 08.04.2008, the BIFR sanctioned a rehabilitation scheme qua the complainant company. The sanctioned scheme stipulated that the complainant company is not in possession of the property in question.

6. In an appeal bearing No.174/2008, at the instance of the petitioner, the *Appellate Authority for Industrial and Financial Reconstruction* (AAIFR) on 25.08.2008, in view of the order passed by this Court in CS(OS) No. 974/2007, directed *status quo* with respect to the property in question. There is another suit bearing CS(OS) No. 991/2009 filed by the petitioner against the members of the *Modi* family including against the complainant company for permanent and mandatory injunction restraining them from acting contrary to the terms of the MoU and the decision of the Chairman, IFCI dated 18.02.1995. On 22.04.2010, the



AAIFR passed an order in the aforesaid appeal holding that since Civil suit No. 974/2007 is pending before this court, none of the parties should seek to pray either for deletion of the property or for implementation of Sanctioned Scheme, 2008 in relation to the said property till the disposal of the said civil suit and parties were directed to maintain *status quo* in respect of the said property. On 23.02.2010, the BIFR discharged the complainant company from the purview of SICA.

7. In the aforesaid factual background, challenging the issuance of summons by the learned ACMM, learned Senior Counsel Shri Arunab Chowdhary, assisted by Shri Nilesh Kumar, appearing on behalf of the petitioner submits that: -

(i) The offence under Section 630 of the Companies Act is not made out as the complainant is not the owner of the property and the ingredients of Section 630 of the Companies Act are not satisfied; (ii) the impugned order of summoning is passed without any legal or factual basis and, therefore, suffers from non-application of judicial mind; (iii) the dispute between the parties is with respect to ownership of the property in dispute and therefore, a civil dispute is being given colour of criminality; (iv) the legal position is well-settled with respect to exercise of power under Section 482 of Cr.P.C. and the High Court has to apply the test laid down in the case of *State Of Haryana and Ors v. Ch. Bhajan Lal And Ors*²

8. Learned Senior Counsel has placed reliance on various decisions in the matters of *“Damodar Dass Jain v. Krishna Charan*

² 1992 Suppl. 1 SCC 335



*Chakraborty*³, *Atul Mathur v. Atul Kalra & Anr*⁴, *Pepsi Foods Ltd. v. Special Judge Magistrate*⁵, *Chandra Pal Singh & Ors. v. Maharaj Singh & Anr*⁶, *Jagdish Chandra Nijhawan v. S.K. Saraf*⁷, *Gopika Chandrabhushan Saran and Anr. v. XLO India Ltd. and Anr.*⁸, *All Cargo Movers (India) Private Limited v. Dhanesh Badarmal Jain and Anr.*⁹, *Hooghly Mills Company Limited v. State of West Bengal and Anr.*¹⁰ and the decision of this Court in the matter of *Shivraj Gupta v. Hansraj Gupta and Co. P. Ltd.*¹¹, against which SLP (Crl.) No. 7036/2015 was dismissed by the Hon'ble Supreme Court *in limine*.

9. Learned Senior Counsel *Ms. Geeta Luthra* assisted by *Shri Vijay Gupta* appearing on behalf of the respondent/complainant has vehemently opposed the present petition and made the following submissions: -

(i) The petitioner does not have any locus to challenge the proceedings under Section 630 of the Companies Act, inasmuch as the complainant's company is the superior lessor to the petitioner. The father of the petitioner was given the charge of the property in dispute only on behalf of the company. Once he resigned from the company, the legal heirs of the erstwhile employee of the company cannot claim any perpetual right; (ii) provisions of Section 630 of the Companies Act, is a special remedy and the same is a complete Code in itself. Section 630 of the Companies Act can always be resorted to, notwithstanding, the

³(1989) 4 SCC 531

⁴(1989) 4 SCC 514

⁵(1998) 5 SCC 749, at Page 760 para 28

⁶(1982) 1 SCC 466

⁷(1999) 1 SCC 119

⁸(2009) 3 SCC 342

⁹(2007) 14 SCC 776

¹⁰(2020) 18 SCC 568

¹¹ 2015 SCC OnLine Del 9941: (2017) 200 Comp Cas 505



pendency of any civil dispute between the company with others; (iii) the learned court below has considered the facts of the case in the right perspective and has recorded its *prima facie* satisfaction, therefore, at the stage of issuing summons nothing more is required to be done; (iv) this Court, therefore, should stay its hands from scrutinizing the merits and demerits of the case, instead, should leave it to the concerned court to deal with, at an appropriate stage; (v) There is no suppression of facts by the complainant in its disclosure before the court below. The pendency of the civil dispute was very much disclosed. The right of the company to claim its property is independent of any other settlement rights and obligations of an individual. The company was not a party to MoU and, therefore, the company has a right to take appropriate recourse under Section 630 of the Companies Act for withholding of its property illegally by any individual and (vi) The High Court should not interfere with the summoning order, as pendency of a civil suit does not bar a complaint under Section 630 of the Companies Act. The offence under Section 630 of the Companies Act is a continuing offence for the purpose of limitation, and therefore, the complaint cannot be dismissed on the ground of limitation.

10. Learned Senior Counsel for the respondent/complainant has placed reliance on various decisions in the matters of *Smt. Abhilash Vinod Kumar Jain v. Cox and King (India) Ltd and Ors.*¹², *Maratt Rubber Ltd. v. J.K. Marattukalam*¹³, *Gopika Chandrabhushan Saran and Anr. v. XLO India Ltd. and Anr.*¹⁴, *Gokak Patel Volkart Ltd v. Dundayya*

¹² (1995) 3 SCC 732: (1995) AIR SC 1592

¹³ (2000) 9 SCC 547

¹⁴ (2009) AIR SC 2032: (2009) 3 SCC 342



*Gurushiddaiah Hiremath and Ors.*¹⁵, *M/s Taxmaco Ltd. Prop of Birla Textiles v. Ram Dayal and Anr.*¹⁶, *Ranbir Singh Kharab v. Smt. Santosh*¹⁷, *Nupur Talwar v. CBI & Ors.*¹⁸, *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*¹⁹ *Dr. J. Jacob and Ors. v. State*²⁰, *Atul Mathur v. Atul Kalra and Anr.*²¹, *Rathish Babu Unnikrishnan v. The State*²², *Maratt Rubber Ltd. v. J.K. Marattukalam*²³ and *K.K. Modi v. K.N. Modi and Ors.*²⁴

11. I have heard learned Senior Counsel for the parties and perused the record.

12. The Hon'ble Supreme Court in the matter of *Pepsi Foods Ltd.* (supra) while considering the scope of the High Court's power to quash criminal proceedings in exercise of power under Articles 226/227 of the Constitution of India or of Section 482 of Cr.P.C., has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary, in support thereof and consider if

¹⁵ (1991) 2 SCC 141

¹⁶ 1991 SCC OnLine Del 331; (1991) 44 DLT 641

¹⁷ (2007) 1 JCC (NI) 65

¹⁸ (2012) 2 SCC 188

¹⁹ (2010) 7 SCC 1

²⁰ 55 (1994) DLT 577; 1994 (30) DRJ 391

²¹ (1989) 4 SCC 514

²² 2022 SCC OnLine SC 513; CrI.A.694/695/2022

²³ (2000) 9 SCC 547

²⁴ (1998) 3 SCC 573



that be sufficient for the complainant to succeed in bringing home the charge against the accused. The Magistrate is not a silent spectator. The Magistrate may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused. It has also been held that the accused can approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him. It is also a settled law that if the High Court finds that invoking a criminal jurisdiction is an abuse of the process of law, the High Court should not hesitate to exercise its power under Section 482 of Cr.P.C. or 226 of the Constitution of India.

13. Section 630 of the Companies Act is reproduced as under: -

“Penalty for wrongful withholding of property - 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.



14. A perusal of the provisions of Section 630 of the Companies Act would show that the same is a summary procedure. The concerned criminal court cannot determine the dispute as to the title of the property under dispute. Obviously, such questions are to be decided by the competent civil court.

15. It is thus seen that Section 630 of the Companies Act can be invoked when there is no dispute or in any event, no *bonafide* dispute with respect to the property in question exists. If there is any dispute involving title to the property, the same would be adjudicated by the concerned civil court and not by Magistrate under Section 630 of the Companies Act.

16. The Hon'ble Supreme Court in the matter of ***All Cargo Movers (India) Private Limited (Supra)*** had an occasion to consider the scope of exercise of inherent power to serve the ends of justice. In that case, a criminal complaint was filed one year after filing of the civil suit alleging negligence and breach of contractual obligation. While placing reliance on an earlier decision of the Hon'ble Supreme Court in the case of ***G. Sagar Suri & Anr. v. State of U.P. & Ors.***²⁵ & in the case of ***Anil Mahajan v. Bhor Industries Ltd., & Another***²⁶, the order of the High Court of Gujarat was set aside, wherein, the petition filed by the accused therein was dismissed by the High Court against the order of summoning. The Hon'ble Supreme Court in the case of ***G. Sagar Suri (supra)*** has held that jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction, the High Court is not to examine the matter superficially. It is to be seen, if a matter, which is essentially of a civil nature, has been given a cloak of a criminal

²⁵ (2000) 2 SCC 636

²⁶ (2005) 10 SCC 228



offence. Criminal proceedings are not a shortcut to other remedies available in law. Before issuing a process, criminal court has to exercise a great deal of caution. For the accused, it is a serious matter.

17. In the matter of *Gopika Chandrabhushan Saran and Anr. (supra)*, the Hon'ble Supreme Court was considering the scope and ambit of the provisions of Section 630 of the Companies Act, as to whether the proceedings under the said provision would cover within its purview only the employee of the company or also the persons claiming a right through him or under him. The respondent in that case instituted a proceeding under Section 630 of the Companies Act against the appellant therein. The Additional Chief Metropolitan Magistrate found the appellant guilty under Section 630 of the Act and sentenced him for Rs.500/- with a default stipulation of simple imprisonment for 15 days. The appellant therein was also directed to vacate the suit premises within four months from the date of the said order. The appellant filed an appeal before the Court of Sessions which was dismissed. The matter was taken up in revision before the High Court of Bombay. The High Court dismissed the revision upholding the order of the courts below. The Hon'ble Supreme Court while placing reliance on an earlier decision in the case of *Abhilash Vinod Kumar Jain v. Cox & Kings (India) Ltd. Ors*²⁷, *Lalita Jalan and Anr. v. Bombay Gas Co. Ltd. And Ors*²⁸, held that a company is within its jurisdiction to get suit premises vacated even from the legal heirs of its employees. Both the parties placed reliance on a decision of the Hon'ble Supreme Court in the case of *Atul Mathur*

²⁷ (1995) 3 SCC 732

²⁸ (2003) 6 SCC 107



(*Supra*), **Rajiv Thapar & Ors vs Madan Lal Kapoor**²⁹ and **Hooghly Mills Company Limited** (*supra*). While referring to different paragraphs of the said decisions, the learned Senior Counsel appearing on behalf of the petitioner submitted that this court in the exercise of its inherent power should interfere in the impugned order of summoning and on the other hand, the learned Senior Counsel appearing for the complainant submitted that at this stage, it is premature to examine the sufficiency of material available before the Court concerned for passing the summoning order.

18. The Hon'ble Supreme Court in **Damodar Dass Jain** (*Supra*) considered the aforesaid aspect and while affirming the judgment of Bombay High Court has held that even a question of implied licence in favour of the company is also a question, which requires to be considered by the civil court and cannot be determined by a Magistrate in proceedings under Section 630 of the Companies Act. It is true that every dispute would not become a *bonafide* dispute because the company's claim is refuted by employees or ex-employees of the company. As to when a dispute would amount to the *bonafide* dispute, would depend upon the facts of each case as has been held in **Atul Mathur v. Atul Kalra and Anr.**³⁰

19. The Hon'ble Supreme Court in the matter of **Jagdish Chandra Nijhawan** (*supra*) had an occasion to consider a case where the Magistrate discharged the accused in a criminal case under Section 630 of the Companies Act. However, in revision, the order of the Magistrate

²⁹ (2013) 3 SCC 330

³⁰ (1989) 4 SCC 514



was reversed. Taking into consideration the fact of the pendency of a civil suit between the parties, it was held that the trial court was right in holding that the dispute between the parties was civil in nature. It was found that the appellant, in that case, could not be held responsible for wrongfully withholding the property in question.

20. In view of the aforesaid, so far as the legal position is concerned, it can be safely concluded that the mere pendency of a civil dispute with respect to the property in question would not be a bar to take recourse to Section 630 of the Companies Act if there is no *bonafide* dispute regarding the right of the company over the property in question.

21. In view of the aforesaid legal position, if the facts of the present case are analyzed, the same would demonstrate that on 24.01.1989, a MoU was executed between Group 'A' & Group 'B' consisting of family members of *Modi* family. As can be seen from the MoU, Modi Rubber Limited came into the share of Group 'B'. In terms of Clause-4 of the MoU, it is stated that the houses occupied by each Modi will continue with them. It is also stated in Clause-6 that *Shri K.N. Modi* (father of the petitioner) and his sons would resign from Chairman/Managing Director/Directorship of various companies including *Modi Rubber Limited*. It is in pursuance of Clause 4, the father of the petitioner resigned from Modi Rubber Limited. Clause-9 of the MoU specifically mentioned that implementation of the terms of the MoU would be done in consultation with the financial institutions. For all disputes, classification etc., the dispute would be referred to the Chairman, IFCI or his nominee whose decision would be final and binding on both the groups. The Hon'ble Supreme Court in *K.K. Modi (Supra)* has clearly held in para-No. 52 that the MoU is a complete



settlement, providing how assets are to be valued; how they are to be divided, and how a scheme for dividing some of the specified companies has to be prepared and who has to do this work. It has also been noted that in order to obviate any dispute, the parties had agreed that the entire working out of the agreement would be subject to such directions as the Chairman, IFCI may give pertaining to the implementation of the MoU. Such authority has also been empowered to give clarifications and decide any differences relating to the implementation of the MoU. It has been held that such a family settlement, which settled disputes within the family, should not be lightly interfered with, especially when the settlement has been already acted upon by some members of the family.

22. On 02.08.2001, when a legal notice was served on behalf of the complainant to the petitioner calling upon him to vacate the property in dispute within thirty days, the petitioner on 01.09.2001 replied that the house in question is the subject matter of MoU dated 24.01.1989. It is only thereafter on 24.01.2007, that the respondent/complainant issued notice to *Mrs. Ritu Kapur*, the vendor/party to the Agreement to Sell for the property in dispute calling upon her to execute the sale deed. It is also to be seen that in original Civil Suit No. 974/2007 instituted by the petitioner against the complainant company and the original vendor, there was an injunction granted by this Court on 25.05.2007 with respect to the property in dispute. After the said suit was dismissed, the injunction was continued in RFA No. 127/2013. When the property in dispute was sought to be included in the rehabilitation plan by the respondent/complainant before BIFR and was shown to be under the possession of others, the petitioner challenged such an action before the AAIFR and in terms of order dated 25.08.2008 there is an order of



maintenance of *status quo* in respect of the title and possession of the property in question. It is also seen from para-19 of the complaint, that the complainant has stated that notwithstanding the pendency of the dispute, the complainant company can still prefer a complaint for seeking prosecution and punishment of the accused/petitioner under the provisions of 630 of the Companies Act. Thus, the background of the pending litigation and the dispute was very much available before issuing the order of summons.

23. If the entire litigation history with respect to the property in dispute is briefly to be taken note of, the same would demonstrate that Civil Suit No. 991/2009 is pending against various members of the Modi family including the complainant for a decree of permanent and mandatory injunction against the defendants injuncting and restraining them from acting contrary to the terms of MoU. RFA No. 127/2013 is pending before this Court, where an order of *status quo* dated 04.10.2013 is operating. The FAO(OS) No. 2/2014 filed by respondent/complainant is pending before the Division Bench of this Court, wherein the order dated 24.09.2013 passed in CS(OS) No. 991/2009 dismissing the application for rejection of the plaint is under challenge. The CS(OS) No. 2809/2015 filed by the respondent/complainant against original vendor *Mrs. Ritu Kapur* seeking specific performance of the Agreement to Sell dated 04.02.1984 and for a mandatory injunction is also pending before the court of Additional District Judge, South-East District, Saket, New Delhi. Another Civil Suit No. 900/2013 filed by the respondent/complainant for eviction against the petitioner and for recovery of possession of the same property is pending before the learned Single Judge of this court and the matter is at the stage of



recording of the evidence. There is yet another W.P. (C) No. 19243/2006 filed by the petitioner against MCD and others wherein the original vendor *Mrs.Ritu Kapur* and the respondent/complainant is a party; and the sanction of the building permission with respect to the property in dispute is under challenge and this Court on 20.12.2006 directed for maintaining *status quo*.

24. A perusal of the overall facts of the case would clearly demonstrate that there are serious disputes pending between the parties with respect to the property in dispute. The said dispute goes to the very entitlement of the complainant as to whether the same would fall within its share or as to whether the petitioner would be entitled for title and ownership of the property in dispute.

25. This court is not oblivious of the fact that in various cases, criminal law is set into motion to settle the civil dispute. In the instant case, the MoU clearly stipulates which company would go to which group. The company itself, in the present case, falls into the share of the rival group of the present petitioner. The MoU was entered on 24.01.1989. Much before the MoU, the Agreement to Sell the property in dispute was entered into on 04.02.1984. There have been various cases between the parties on account of their differences. On 04.02.1998, the Hon'ble Supreme Court in the case of ***K.K. Modi (supra)*** held that the MoU has a binding effect. The complaint in question came to be filed only on 02.08.2001, i.e., almost after 22 years from the execution of the MoU. Before the filing of the complaint, even according to the complainant itself, there are various cases filed by them, particularly with respect to the property in dispute. In a nutshell, the present dispute relates



to a property, in respect of which, there are *bonafide* disputes between the parties.

26. On the basis of the aforesaid facts and circumstances of the case, this court finds that the learned Magistrate has committed a palpable error while summoning the petitioner for offence punishable under Section 630 of the Companies Act. A perusal of the impugned order dated 19.10.2012 does not reflect any application of mind with respect to the facts as stated in paragraph 19 of the complaint regarding the pendency of the civil suit between the parties. The impugned order simply refers to the fact that the complainant examined himself as (CW-1), who reiterated that *Shri K.N. Modi* was the Chairman and one of the Managing Directors of the company and who was allowed to occupy the property in question. Since *Shri Modi* ceased to be the CMD of the office w.e.f. 24.01.1989, by tendering the resignation letter on that date, therefore, the learned ACMM was of the view that with effect from the date of resignation, the occupation of the property in dispute has become unauthorized. There is no application of mind as to what would be the effect of the MoU and the pendency of the civil suit between the parties as mentioned in paragraph Nos. 19 & 20 of the complaint. The proceedings under Section 630 of the Companies Act are summary in nature and as has been held by the Hon'ble Supreme Court, the same cannot be resorted to, to bypass the other civil remedies. It is true that the criminal process, at a pre-trial stage, normally should not be scuttled. The same has a grave and irreparable consequence. Normally based on a *prima-facie* impression, an element of criminality cannot entirely be ruled out. However, if under the facts of a given case, the High Court finds that the criminal proceedings are absolutely an abuse of the process



of law, the High Court must exercise its power under Section 482 of Cr.P.C. As it can be seen from the facts that the fate of the property in dispute is not yet determined, the rival parties are claiming rights over the property in dispute on the basis of the MoU. Till date, neither the petitioner nor the respondent/complainant has the clear title or ownership over the subject property. There is no sale deed in their favour. The suit for specific performance of contract filed by them against original vendee is still pending. This court is, therefore, of the considered opinion that the order of summoning of the petitioner, at this stage, is illegal and the same deserves to be quashed.

27. Accordingly, the complaint case No.215/01/2011; order of summoning dated 19.10.2012 and all proceedings emanating therefrom are hereby quashed.

28. In view of the above, the petition is accordingly allowed and disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 18, 2022

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