

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE UDAY KUMAR

CRR 2626 OF 2022

Mrs. Reba Kalyan Mitra

-Vs-

The Howrah Motor Company Private Limited

For the Petitioner	: Mr. Debasish Roy
	Mr. Avik Ghatak
	Mr. S. Nag
	Mr. Saibal Dasgupta

For the Opposite Party	: Mr. Anirudhya Dutta
	Mr. Sachit Talukdar

Hearing concluded on	: 04.11.2025
----------------------	--------------

Judgment on	: 19.12.2025
-------------	--------------

UDAY KUMAR, J.: –

1. This revisional application, preferred under Section 482 read with Sections 397 and 401 of the Code of Criminal Procedure, 1973, brings into sharp focus a delicate judicial dilemma: the intersection of rigorous corporate proprietary rights and the quintessential demands of humanitarian equity. The Petitioner, a 79-year-old bedridden lady, seeks the quashing of a judgment dated June 30, 2022, passed by the Learned Additional Sessions Judge, Bench II, City Sessions Court, Calcutta. By the said order, the Revisional Court overturned a procedural refusal by the Learned 17th Metropolitan Magistrate and issued a peremptory mandate directing the Petitioner to deliver vacant possession of two company-tenanted flats in Mumbai within thirty days. The central controversy pivots on whether the restorative powers under Section 630(2) of the Companies Act, 1956 (now Section 452 of the 2013 Act) can be invoked as an interim tool to bypass a stagnant trial, especially when such an order results in the immediate displacement of a vulnerable, ailing senior citizen.
2. The genesis of this protracted legal odyssey dates back to 1940, when the Petitioner's father, the late Gokuleswar Ghose, joined the Opposite Party Company, eventually ascending to the high office of Director. As a perquisite of his service, the Company provided him with rent-free residential accommodation in Flat Nos. 3 and 4, Laxmi Building, Mumbai. This occupation was strictly permissive and co-terminus with his tenure of service. Upon his demise in harness on January 7, 1984,

the legal substratum for such occupation effectively extinguished. However, the Petitioner continued her residence therein, an act the Company characterizes as "wrongful withholding" under the special penal provisions of the Companies Act.

3. The record reveals a multi-dimensional legal battle spanning nearly four decades. Seeking to fortify her possession, the Petitioner initiated a Rent Act Declaration Suit (RAD Suit No. 5 of 2003) in Mumbai to establish independent tenancy rights. The Company viewed this as a tactical maneuver to frustrate the retrieval of corporate property. In a reactive move, the Company instituted Complaint Case No. C-8660 of 2006 under Section 630 of the Companies Act, 1956, seeking both the penalization of the Petitioner and the restoration of the property. For over fifteen years, the criminal trial remained largely moribund, hampered by the Petitioner's deteriorating health—marked by paralysis, cardiac ailments, and brain hemorrhages—and various jurisdictional challenges that traversed the hierarchy of courts up to the Hon'ble Supreme Court.
4. On June 21, 2019, the Learned 17th Metropolitan Magistrate sought to resolve the procedural deadlock. While he refused the Petitioner's plea for representation *in absentia* under Section 205 Cr.P.C., he also rejected the Company's prayer for immediate possession of flats. The Magistrate held that in a summons case, no final or interim order under Section 630(2) could be passed until the accused was personally examined and her plea recorded under Section 251 Cr.P.C. Balancing these factors, the Magistrate directed the Commissioner of Police to execute an outstanding

arrest warrant, noting a medical report stating the Petitioner was "fit to travel with assistance."

5. This decision was challenged by the Company in Criminal Revision No. 215 of 2019 before the Learned Sessions Court on the ground that the Magistrate's approach was pedantic and mechanical, prioritizing formal procedure over the statutory mandate of Section 630, which is designed for speedy retrieval.
6. Ultimately, the Revisional Court, by its judgment dated June 30, 2022, set aside the Magistrate's order, ruling that Section 630(2) is an independent tool exercisable at any stage. Consequently, it directed the Petitioner to deliver vacant possession within 30 days, which ultimately resulted in the impugned order of immediate eviction, now under challenge before this Court.
7. Upon a holistic review of the pleadings and the statutory framework, the following questions emerge for conclusive determination:
 - I. *Whether the power of the Court to order the delivery of property under Section 630(2) of the Companies Act is contingent upon the formal recording of a plea under Section 251 Cr.P.C., or if it constitutes an independent, supplementary power exercisable at any stage?*
 - II. *Whether the Revisional Court, upon finding a legal error in the Magistrate's order, was justified in passing a conclusive eviction order without remanding the matter for a detailed assessment of the Petitioner's humanitarian and medical circumstances?*

III. What is the effect of parallel civil proceedings on the determination of "wrongful withholding" at an interim stage?

8. Mr. Debasish Roy, Ld. Senior Counsel for the Petitioner vehemently argued that an order of eviction prior to a conclusive finding of guilt under Section 630(1), is anathema to criminal jurisprudence and constitutes an abuse of process. It was contended that the Revisional Court acted with undue haste by ordering a paralyzed, 79-year-old woman to vacate her home within 30 days. Her immediate eviction would violate her Right to Life.
9. Furthermore, he relied on the principle of *Res Judicata*, noting that a similar interim application by the Company was rejected on March 19, 2018, which went unchallenged. Without a change in circumstances, the Revisional Court erred in passing the impugned order.
10. Lastly, Mr. Roy, argued that the recent judicial interpretations by the Apex Court passed in *Hooghly Mills Co. Ltd. vs. State of West Bengal* (2020) 18 SCC 568 should not be applied retroactively to fault the Magistrate's order passed on 17.10.2019, preceded the judgment of Hon'ble Supreme Court passed in *Hooghly Mills Co. Ltd. vs. State of West Bengal (supra)* and the Magistrate cannot be faulted for not following a later pronouncement. As such he prayed for the quashing of this proceeding.
11. Conversely, Mr. Sachit Talukdar, Learned Counsel for the Opposite Party/ Howrah Motor Company Ltd. defended the Revisional Court's order primarily on the basis of the special "beneficent and summary"

character of Section 630, which is designed for the speedy retrieval of company property.

12. Relying heavily on the landmark decision in *Hooghly Mills Co. Ltd. vs. State of West Bengal*, Mr. Talukdar argued that the power under Section 630(2) is distinct and supplementary, designed to prevent "fugitive" litigants from benefiting from their own defiance, and enabling the Court to order delivery at any stage upon *prima facie* satisfaction.
13. He argued that it is the settled position of law that the Magistrate was wrong in waiting for the S. 251 Cr.P.C. stage. He stressed on the contention that the Apex Court held that "*The power under sub-section (2) of Section 630 is distinct and supplementary to the power under sub-section (1) ... it can be exercised at any stage of the proceedings... once the Court is satisfied prima facie that the property is being wrongfully withheld.*"
14. He contended that the Petitioner's health, while regrettable, cannot be used as a perpetual shield to withhold corporate property for over four decades.
15. He also contended that the Petitioner's health, while regrettable, cannot be used as a perpetual shield to withhold corporate property for over 40 years.
16. Ld. Counsel countered the *Res Judicata* plea by citing Mathura Prasad Bajoo Jaiswal vs. Dossibai N.B. Jeejeebhoy, 1970 (1) SCC 613 (paras 5, 7, 9, 10, 11) asserting that the doctrine cannot override a question of law and that a plea of *res judicata* cannot be raised for the first time before this forum.

17. Regarding inapplicability of the ratio of *Hooghly Mills* judgment retroactively i.e., the "Ex Post Facto" argument, Mr. Talukdar cited *Lily Thomas* (2000) 6 SCC 224 (para 54), to argue that the Supreme Court merely declared the existing scope of the law. Other judgments cited in support of the established law included *State of Bihar vs. Ramnaresh Pandey*, 1957 SCR 279 (para 5), (2003) 6 SCC 107, (2011) 14 SCC 770, (2009) 3 SCC 342, (1999) 5 SCC 590, (1989) 4 SCC 514, and (1964) 5 SCR 946.
18. Therefore, he prayed for dismissal of this revision summarily as it lacks merit.
19. The primary legal bone of contention is the timing of the restorative order. Section 630(2) provides that "The Court trying the offence may also order... to deliver up." The law as declared in *Hooghly Mills (supra)* clarifies that the restorative power is independent of the final conviction. The Apex Court held that if a *prima facie* case of wrongful withholding is established, the Court can—and should—order the delivery of property at any stage to preserve the company's interests. Therefore, the Magistrate's insistence on the Section 251 Cr.P.C. stage was a legal fallacy.
20. The primary legal bone of contention is the timing of the restorative order. Section 630(2) provides that "The Court trying the offence may also order... to deliver up." The law as declared in ***Hooghly Mills Co. Ltd. vs. State of West Bengal (2020) 18 SCC 568*** clarifies that the restorative power is independent of the final conviction. The Apex Court held that if a *prima facie* case of wrongful withholding is established, the Court can order the delivery of property at any stage to preserve the company's

interests. Therefore, the Magistrate's insistence on awaiting the Section 251 Cr.P.C. stage was a legal fallacy.

21. Regarding the "Ex Post Facto" argument, this Court finds guidance in ***Lily Thomas vs. Union of India (2000) 6 SCC 224***. The Supreme Court does not create new law but interprets existing statutes. The *Hooghly Mills* decision merely illuminated the true legislative intent of Section 630(2) as it has existed since 1956. Similarly, following ***Mathura Prasad Bajoo Jaiswal vs. Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613***, the plea of *Res Judicata* cannot override a fundamental question of law or the jurisdiction of the Court to correct a statutory misinterpretation.
22. However, the pivot of this case shifts from statutory power to judicial discretion. While the Revisional Court possessed the power to order eviction, it failed the test of *judicious exercise*. The power under Section 630(2) is discretionary. The facts regarding the Petitioner's age and bedridden status are not mere footnotes; they are substantive humanitarian concerns. A court of law cannot be a court of "summary execution" that ignores the potential for irreparable physical harm to a vulnerable litigant. The summary and immediate direction for eviction without affording the Trial Court an opportunity to weigh the balance of convenience amounts to an insensitive application of law.
23. Furthermore, the existence of parallel civil suits, while not ousting criminal jurisdiction (***State of Bihar vs. Ramnaresh Pandey, 1957 SCR 279***), necessitates a nuanced assessment. When an accused claims a right to possession under a separate statute, the determination of "wrongful withholding" at the *prima facie* stage becomes a complex

factual inquiry. The Trial Court, in reconsidering the interim application, must evaluate the effect of the Petitioner's claimed rights on the Company's allegation without being unduly constrained by the civil injunction, yet maintaining a human-centric approach.

24. The conclusion of this Court is two-fold. Lawfully, the Revisional Court was correct: the power under Section 630(2) is independent and exercisable at the interim stage. Factually and equitably, however, the Revisional Court erred: it should not have passed a conclusive, immediate eviction order without conducting a detailed factual assessment on the balance of convenience and potential hardship.
25. The reasons for this conclusion are rooted in the inherent powers under Section 482 Cr.P.C., which must be invoked to prevent an abuse of process. The "abuse" here is not the law itself, but the insensitive manner of its application. To evict a bedridden senior citizen in 30 days without a trial court's reasoned assessment of her hardship is a violation of the spirit of judicial compassion.
26. Therefore, I arrive at a firm conclusion that while the restorative power under Section 630(2) is independent and exercisable at the interim stage upon *prima facie* satisfaction, the exercise of this power must be tempered by judicial sensitivity. The failure to remand the matter for a judicious assessment by the Trial Court—thereby disregarding the unique humanitarian considerations of an ailing petitioner—constitutes an injudicious application of law and an abuse of the court process.

27. In view of the comprehensive analysis, the ends of justice require setting aside the coercive direction while affirming the Magistrate's error of law, thereby providing a clear procedural path forward.
28. The Criminal Revision Application is PARTIALLY ALLOWED.
29. The order of the Learned 17th Metropolitan Magistrate, Calcutta, dated 21st June, 2019, is SET ASIDE.
30. The conclusive direction for the Petitioner to vacate the premises within one month, as contained in the judgment dated 30th June, 2022, is hereby STAYED.
31. The matter is REMANDED to the Learned 17th Metropolitan Magistrate, Calcutta, with a direction to reconsider the Company's application for interim relief under Section 630(2) on its own merits, ensuring:
 - a) A reasoned finding on the existence of a strong *prima facie* case of wrongful withholding.
 - b) A proportionate and balanced assessment of hardship, giving due weight to the Petitioner's advanced age and health in determining the necessity, time-frame, and modalities of any interim measure.
32. The Learned Magistrate shall dispose of the said application within a period of three months from the date of communication of this order.
33. This Court clarifies that it has expressed no opinion on the merits of the criminal complaint (No. 8660 of 2006), which shall proceed to trial in accordance with law.
34. A copy of this judgment shall be forwarded forthwith to the Courts of the Learned 17th Metropolitan Magistrate, Calcutta, and the Learned

Additional Sessions Judge Bench II, City Sessions Court, Calcutta, for necessary compliance.

35. Accordingly, this criminal revision is disposed of.
36. There is no order as to the cost.
37. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)