

## Recovery of a Company's Property Through Process of Criminal Law

**Property of any company is its prized possession. When a company entrusts its employees with the use of such assets during their employment, recovery of such property through civil remedy becomes time consuming and tiresome. As such, the Companies Act 1956 gives a special remedy in the form of Section 630 whereby a company can retrieve its property from its employees, who wrongfully obtains or withholds the same through criminal prosecution of such employee. This article takes stock of the various facets of this provision of law and judicial activism in relation thereto.**

**A** company, though a juristic person — a creation of law, is like a natural person as far as its property is concerned. It can own property and transfer it in any manner it likes, subject to the provisions of law. Hence, when property of a company is in possession of another person, the company has legal remedies open against such person in order to take back the possession of the property. The ordinary and normal remedy in such a case is to file a suit for possession against the wrongdoer. But the modern companies provide residential accommodation to its employees and officers for several reasons.

The nature of the arrangement in such cases is that while a person is employed in a company he is allowed to use and occupy the residential premises of the company and after he ceases to be an employee of the company he is supposed to handover the possession back to the company. In the metros (Mumbai, Delhi, Kolkata, Chennai) where the real estate prices are astronomical, the property in possession of the employees of the company means much to the company and the company is keen on laying its hands upon the property once the employee ceases to be in the employment of the company. Such property is a part of the perquisites and is counted in designing the salary package of the

employees. After one employee ceases to be in the employment of the company, the company legitimately looks forward to entrusting the company's premises in his possession to the next incumbent. In order to save a company from the time, toils and troubles of the ordinary civil litigation for recovery of possession of property, the Companies Act, 1956 has provided a quasi criminal remedy in Section 630 of the Companies Act, 1956 which provides punishment for wrongful obtaining or withholding of property of a company. The company can file a criminal complaint against such employee and if the court holds the employee guilty, the employee is required to pay a fine. Further, the court can direct the employee to restore the possession of the property to the company. If the employee fails to comply with such order a further and substantial sentence of up to two years' imprisonment can be imposed on him by the court.

In *Govind Jagtiani V. Sirajuddin Kazi, 1984-(056)-COMPCAS -0329 -BOM*, while upholding the constitutional validity of this Section the Bombay High Court observed that the object of the Companies Act is to control the management and protect the property of a company and that the intent of Section 630 of the companies Act appears to be to control the administration and protect the property of the company.

The object of Section 630 is to provide a speedy relief to a company when its property is wrongfully obtained or withheld by its employee or ex-employee. Though the Section



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applies with equal force in the case of movable property as in the case of immovable property, the main intention behind the Section was to give protection to immovable property of a company.

The Section runs as under:

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 ten 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."

As the language of the Section makes it clear, the Section operates against those employees of a company who wrongfully obtain property of the company, or who after having obtained possession of property of a company lawfully, wrongfully withhold it or knowingly apply it to purposes other than those expressed or directed in the articles and authorised by the Companies Act. The Section virtually creates two offences. The basic or fundamental offence consists in wrongfully obtaining or withholding property of a company and is punishable with fine of Rs. 10,000. The second offence lies in not delivering or refunding such property despite the order of the Court passed under Section 630(1). Obviously, the company would be interested

in retrieving its property. Therefore, the second offence meets with higher punishment of up to two years' imprisonment.

### Company Need Not Own the Property in Question

The thrust of the Section is on legal possession of property in question, and not on ownership. Thus, even though the company does not own a particular property, it can initiate criminal proceedings for recovering such property from its employees. The employee cannot take a defence that the property, not being owned by the company, cannot be recovered under this Section. The company can utilise the remedy provided by this Section for recovery of property taken on lease or leave and licence basis also.

In *Kannankandi Gopal Krishna Nair V. Prakash Chunder Juneja*, 1994-(081)-COMPCAS -0104 -BOM the Court said: "What needs to be emphasised here is that this provision of the Companies Act does not concern the aspect of title, but it is exclusively confined to the aspect of possession. It is in these circumstances, therefore, that the courts have consistently applied section 630 of the Companies Act even in cases of residential accommodation which admittedly does not belong to the company, but in respect of which the company is in exclusive possession." In that case, the premises allotted to the employee were held on rental basis by the company. The wife of the employee subsequently purchased the premises in question and became the owner thereof whereas the company continued to be the tenant. The Court held that the real test would be of examining the situation whereby the wife of the accused purchased the flat from the landlady at a point of time when the accused had not wrongfully withheld it and, therefore, when possession was rightfully with the company, the company would have been entitled to continue in possession regardless of the change in ownership until the tenancy was validly terminated and the wife of the accused obtained possession through due process of law.

A contrary judgment of the Orissa High

Court in *Foseco India Ltd., V. Navneet Kumar Dwivedi, 2001-(107)-CRLJ -0284 –ORI*, does not appear to be correct. The Court, while deciding the matter in favour of the employee, has taken an erroneous view in holding that the house taken on lease by a company would not be the property of a company so as to invoke the provisions of Section 630 of the Act.

### **Withholding of Retirement Benefits is Not Permissible**

At the same time a frustrated company cannot withhold the retirement benefits like Provident Fund, gratuity or pension of an erstwhile employee who is in wrongful occupation of company's property. It would not be open to a company to confuse the issue of their claim to receive back the possession of the company's flat with the claim of the employee to receive retirement benefit. In case the erstwhile employee is unlawfully holding the possession of the company's flat, it is open to the company to resort to proceedings for taking back the possession. In case the employee is found guilty of committing offence he will be punished. Pending such proceedings it would not be open or just for the company to withhold the retirement benefits from its ex-employee. (*S. N. Ghosh V. Siemens India Ltd. 1992-(002)-LLJ -0122 –BOM*)

### **Section Applies to Movable As Well As Immovable Property**

In *Beguram V. Jaipur Udyog Limited, 1987-(061)-COMPCAS -0744 –RAJ*, it was held by Rajasthan High Court that the word "property" used in section 630 of the Companies Act includes within its purview both movable as well as immovable property and there are no words, express or implied, in this Section which can restrict the application of the word "property" to only movable property. The words "deliver up" very well apply to the delivering up of the possession of immovable property. These words are, on other hand, indicative of the fact that immovable properties are also covered in the scope of Section 630 of the Companies Act.

Thus, the company file a criminal complaint under this Section against its General Manager who refuses to hand back the Car or laptop given to him for his use by the company.

### **Why Only Company, Why Only Employees?**

The validity of this Section was challenged on the ground that it discriminates against other employers who are not companies. Rejecting the challenge, the court pointed out that a company, as a legal person, is different from other employers. Its property is very important to it and has to be preserved in order to protect its survival. When a company entrusts such property to its own employees it becomes the sublime obligation of the employees to return or refund the same as and when the company needs it. If an employee wrongfully withholds a property entrusted to him his conduct is tantamount to criminal breach of trust, which is an offence punishable u/s. 409 of the Indian Penal Code.

Still, the section is not strictly a penal provision. Its object is to preserve and protect the property of the company from its unscrupulous employees. Therefore, if an employee guilty under this sections returns or refunds the property in respectful abeyance of the court order, he has only to pay a fine. It is only when he disobeys the court order of returning the property that the substantial punishment befalls him.

### **Employees: Past or Present?**

There was divergence of opinion between the Bombay High Court and the Calcutta High Court regarding the interpretation of the words "any officer or employee of a company" with the Bombay High Court giving a broad interpretation to the words and the Calcutta High Court giving a narrow interpretation. The controversy was set at rest by the Supreme Court in *Baldev Krishna Sahi v. Shipping Corporation of India Ltd. [1987 4 SCC 361]* by holding that the term "officer or employee" of a company applies not only to existing officers or employees but

also to past officers or employees if such officer or employee either (a) wrongfully obtains possession of any property, or (b) having obtained possession of such property during his employment, wrongfully withholds the same after the termination of his employment.

Expansive meaning given to the expression “employee or anyone claiming through him”: Even legal heirs, family members or persons claiming through erstwhile employee can be prosecuted

The Supreme Court has put a wide and liberal interpretation on Section 630, so as to subserve the object of the Section. Sometimes it so happens that an employee who has retained possession of property of a company after his termination dies and the property comes to be occupied by his legal heirs. Whether the company can proceed against the legal heirs also under Section 630 was set at rest by the Supreme Court judgment in *Abhilash Vinodkumar Jain (Smt.) V. Cox And Kings (India) Ltd.* 1995-(084)-COMPCAS -0028 –SC. The Court observed: “Even though Section 630 of Companies Act provides for penal consequences for wrongful withholding of the property of the company, the provisions strictly speaking are not penal in the sense as understood under the penal law. The provisions are quasi-criminal. They have been enacted with the main object of providing speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or officer or an ex-employee or officer or anyone claiming under them. In our opinion, a proper construction of the section would be that the term “officer or employee” of a company in section 630 of the Act would, by a deeming fiction, include the legal heirs and representatives of the employee or the officer concerned continuing in occupation of the property of the company after the death of the employee or the officer.”

In another interesting case, [*M/s. J.K. (Bombay) Ltd., V. Mrs. Bharti Matha Mishra*, 2001-(107)-CRLJ -0961 –SC] the wife and son of a company employee were prosecuted along with the employee under Section 630. The question before the Court was whether the son and wife

of the ex-employee can be prosecuted under Section 630? The Court was of the opinion that all the family members of an ‘alive’ ‘officer’ or ‘employee’ of a company cannot be proceeded with and prosecuted under Section 630.

The above judgement of J.K. (Bombay) Ltd. was later overruled by a larger Bench of the Court in *Lalita Jalan V. Bombay Gas Co. Ltd.*, 2003-(109)-CRLJ -2514 –SC. The Court observed: “If an erstwhile or former employee is prosecuted under section 630 of the Act on account of the fact that he has not vacated the premises and continues to remain in occupation of the same even after termination of his employment, in

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normal circumstances it may not be very proper to prosecute his wife and dependent children also as they are bound to stay with him in the same premises. The position will be different where the erstwhile or former employee is himself not in occupation of the premises either on account of the fact that he is dead or he is living elsewhere. In such cases all those who have come in possession of the premises with the express or implied consent of the employee and have not vacated the premises would be withholding the delivery of the property to the company and, therefore, they are liable to be prosecuted under section 630 of the Act. This will include anyone else who has been inducted in possession of the property by such persons who continue to withhold the possession of the premises as such person is equally responsible for withholding and non-delivery of the property of the Company.”

## Wrongful Obtaining or Wrongful Possession: Meaning

The capacity in which possession of property of a company is held, right to possession and the duration of occupation are all features which are integrally blended with the employment, and the capacity and the corresponding rights are extinguished with the cessation of employment and an obligation arises to hand over the allotted property back to the company. Where the property of the company is held back whether by the employee, past employee or anyone claiming under them, the retained possession would amount to wrongful withholding of the property of the company actionable under Section 630 of the Act.

## Withholding of Property: A Continuing Offence

In *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath* [1991] 71 Comp Cas 403 (SC); [1991] 2 SCC 141, the Court reviewed its previous judgments and, relying upon the law laid down in Baldev Krishna Sahi's case and Amrit Lal Chum's case [1988] 63 Comp Case 839 (SC), held that the offence under section 630 of the Act is not such as can be said to have been consummated once for all and that the offence continues until the officer or employee delivers up or refunds the property of the company when ordered by the court to do so within a time fixed by the court and in default to suffer the term of imprisonment as may be imposed by the court. The Court observed that the offence under Section 630 is not an instantaneous offence and limitation begins with the cessation of the criminal act, i.e., with the delivering up or refund of the property.

## Other Side Of The Coin: Bonafide Disputes

There are also cases, though few and far between, wherein there is a dispute between the employee and the company over the property in question. Sometimes the employee knocks the doors of the civil court way before the company resorts to prosecution under

Section 630. In such cases a question arises whether the criminal court should stay the trial under section 630.

The Supreme Court has ruled that what has to be seen in a complaint under section 630 is whether there is "no dispute or no bona fide dispute" regarding the property claimed by the company between the company and its employee or ex-employee. It is needless to say that every dispute would not become a bona fide dispute merely because the company's claim to possession is refuted by an employee or ex-employee of the company. As to when a dispute would amount to a bona fide dispute would depend upon the facts of each case.

Sometimes the employee files a civil suit on purpose and by design to create hurdles in the proceedings, which may be started by the company under Section 630. Merely because

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the employee had schemingly filed a suit before tendering his resignation, it can never be said that the civil court was in seisin of a bona fide dispute between the parties and as such the criminal court should have stayed its hands when the company filed a complaint under section 630. If a view is mechanically taken than whenever a suit has been filed before a complaint is laid under section 630, the criminal court should not proceed with the complaint; it would not only lead to miscarriage of justice but also render ineffective the salutary provisions of section 630. [*Atul Mathur V. Atul Kalra, 1990-(068)-COMPCAS -0324 -SC.*]

In *J. K. Marattukalam, V. M/s. Maratt Rubber Ltd.*, 1997-(103)-CRLJ -4187 -KAR it was observed by

the Karnataka High Court that when a bona fide dispute between the parties is pending before the civil court the proceedings under Section 630 should not be entertained by the Court.

In *Maratt Rubber Ltd. v. J. K. Marattukalam* Reported in 2000 (4) JT 387 the Supreme Court observed that civil proceedings and criminal proceedings could continue without there being any contradiction in the case. The company can start simultaneous civil and criminal proceedings for recovery of its property from its employee. The Court has ruled that and the pendency of the suit for possession was inconsequential in so far as taking cognizance of the offence under Section 630 was concerned.

### Validity of Termination of Employee & Proceedings u/s 630

An employee of a company ceases to be so on account of many reasons, such as, retirement, death, resignation, simple termination, retrenchment, lay-off or punitive termination. Many a time the issue of validity of cessation of status of an employee is a subject of challenge before the labour court. When the company initiates action under Section 630 for recovering its residential premises, the accused ex-employee prays for stay or dismissal of the complaint of the company on the ground that he has raised an industrial dispute challenging his termination, etc.

It cannot be contended that as an industrial dispute relating to the termination of the employee is pending, the company cannot file a complaint under section 630 of the Companies Act. In *P. V. George v. Jayems Engineering Company Pvt. Ltd.* [1990 2 Comp. L.J. 62 (Mad)] the Madras High Court held that the proceedings initiated by the employee challenging his dismissal from service were altogether distinct and different from prosecution launched by the company under Section 630 of the Companies Act. It was observed that different considerations would prevail regarding the decision in respective cases and that pendency of proceed-

ings challenging the order of dismissal can, by no stretch of imagination, be construed as a bar against the institution of criminal proceedings under Section 630 of the Companies Act. This judgment was also relied upon by the Allahabad High Court in *R. Antony V. Renusagar Power Company Ltd* [1996-(002)-LLJ -0329 -ALL.] also relied on this judgment.

### Where to File the Complaint?

The complaint under section 630 has to be filed where the offence has been committed. The offence relates to property and the prosecution has to be launched at the place where the property has been wrongfully obtained or withheld or misapplied.

In *Dr. Hiral Ghosh V. Tata Iron And Steel Co. Ltd.*, 1991-(070)-COMPCAS -0324 -BOM the employee was given residential quarter in Jamshedpur by company. On termination of his services company wanted him to vacate the said premises but he refused. Thereupon, the Company filed eviction suit at Jamshedpur, and filed criminal complaint at Bombay, where the company had its registered office. The Court quashed the complaint for want of territorial jurisdiction since no offence was committed at Bombay. The Court ruled that the essence of the offence under s. 630(1)(b) of the Companies Act was the wrongful withholding or retention of the property. The withholding or retaining of the property itself is evidence of the offence. This has taken place at Jamshedpur. It is there where the property has been retained.

### Procedure for Trial of Offence

The Section is only a declaratory section specifying the ingredients constituting an offence under the Companies Act. The proceedings relating to the trial of such offences are not proceedings under the Companies Act but they are proceedings under the Criminal Procedure Code. *Hindustan Biologicals Ltd V. Jagat Narain Rohatgi*, 1953-(023)-COMPCAS - 0058 -ALL.

### **Additional Speedy Remedy Under Maharashtra Rent Control Act, 1999**

An additional efficacious remedy for protecting the property of a company from its employees is found in Section 22 of the Maharashtra Rent Control Act, 1999. The provision is general in nature, and any employer, not only the company, can take its advantage. Further the Section is applicable to tenancies of immovable property.

The pre-requirement is that there must exist a service tenancy agreement in writing between the employer and the employee. When the employee ceases to be in the employment, the employer can demand the possession of the tenanted property and if the employee fails to deliver the property, the employer can file an application for recovery of possession before the Competent Authority appointed under the

Maharashtra Rent Control Act. The Competent Authority, if satisfied by the application of the employer, can pass an order of eviction and place the employer in the vacant possession of the property.

However, if any dispute regarding termination of service of the employee concerned is pending before any court or authority, then the Competent Authority hearing the application for eviction shall not pass the order of eviction unless such termination is upheld by the Court or any authority.

Therefore, in case any dispute regarding termination of the service is pending before the Court, a Company can avail the additional remedy available under section 630 of the Companies Act for recovering its assets from the employee concerned.

Further, here it is worthwhile to note that in order to avail the remedy under section 22 of MRC Act the company should own the property and where the property is held by the company on licence or lease, the company cannot file an application for eviction under this section.

## Conclusion

Section 630 prescribes a weak punishment in the nature of fine of rupees ten thousand for the offence of wrongfully obtaining, withholding or misapplying the property of a company. The history of cases on this Section bears testimony to the fact that the Section has not satisfactorily fulfilled its designated function, namely speedy recovery of property of a company. The accused employees are by and large successful in dragging the litigation for years together enjoying the valuable asset of the company for all these long years and ultimately handing over possession. What the company gets in the end is possession and the fleabite punishment of fine to the accused employee, who has no regrets to pay the same in return for his long enjoying the property. The root cause for this appears to be that, as pointed out by the Supreme Court, the Section is not a penal provision. Only when despite the order of the Court under section 630(1) the accused fails to deliver possession of property that the deterrent punishment of two years' prison term comes into play. The result is, the accused simply enjoys the property through all the years of litigation, as ultimately even if he loses the battle, the costs are very low for him: a paltry fine.

Here we can profitably refer to the following observations of Justice M F Saldhana in Abhilash Jain's Case:

*"...Almost 40 years have elapsed since section 630 of the Companies Act was brought on the statute book. Obviously, when the penalties were originally prescribed, the type of property that is likely to be withheld, more importantly, the value of that property and, above all, the staggering loss caused to the company if the property were to be withheld over a long period of time, were aspects that had not been sufficiently highlighted. In the course of the last decade where real estate prices,*

*not to mention compensation, have risen out of all proportion, the penalty prescribed under section 630 of the Companies Act in cases relating to retention of flats or residential premises can only be likened to a flea bite. Having regard to these almost innocuous penalties that are provided for, employees are emboldened to commit these offences almost with a sense of defiance and impunity. On an equation of the nature of the offence and the ingredients thereof, one sees little difference between this charge and the one under section 409 of the Indian Penal Code. It is in these circumstances that, to my mind, it is very much in the public interest that section 630 of the Companies Act be amended and that the penalties prescribed be brought on par with those provided for under section 409 of the Indian Penal Code. This is very much in the public interest..."*

A concept paper on proposed revision of the Company Law deals with amendments to Section 630 also. It is proposed to amend the Section so as to enhance the amount of fine under Sub section (1) to Rupees One Lakh. In the authors' opinion the proposed enhancement is insufficient to check the commission of the offence, particularly, in view of the towering prices of real estates all over the country and the amount of time required to be spent on litigation for recovery of property.

In KGK Nair's case (supra) the Bombay High Court has laid down guidelines for speedy and effective disposal of complaints under Section 630. The gist of the guidelines is as under:

- The trial courts should take up and dispose of complaints on a priority basis,
- The trial courts should bear in mind that the scope of the enquiry is extremely restricted in law and, consequently, the parties be confined within those narrow ambits.
- That no frivolous applications for adjournment, stay of proceedings, etc., should be permitted by the trial courts
- That the appeal courts, in the first instance, must judiciously scrutinise and vigorously examine the revision applications and appeals before granting stay orders.
- The applications for discharge on frivolous and untenable pleas are required to be speedily and effectively disposed of. □