
2018 eGLR_HC 10006111

Before the Hon'ble MS. SONIA GOKANI, JUSTICE

**DHRANGADRA CHEMICAL WORKS LTD, THROUGH SANDEEP YASHVANTLAL LAKHANIA Vs.
HABIBBHAI JUMMABHAI JAM**

CRIMINAL APPEAL No: 1384 of 2017 , Decided On: 18/04/2018

(A) [Head Notes Incorporated when Published in GUJARAT LAW REPORTER]

Referred to:

1. HAKEEM KHAN AND OTHERS VS. STATE OF MADHYA PRADESH, 2017 (5) SCC 719
2. STATE OF GUJARAT VS. VALIBEN SIDDHIBHAI W/O. PALABHAI VADHERA AND OTHERS, 2018 (1) GLH 165
3. LALITA JALAN AND ANOTHER VS. BOMBAY GAS COMPANY LIMITED AND OTHERS, 2003 (6) SCC 107
4. Baldev Krishna Sahi v. Shipping Corpn. of India Ltd. and Anr., 1987 (4) SCC 361
5. Amrit Lai Chum v. Devoprasad Dutta Roy, 1988 (2) SCC 269
6. Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath and Ors., 1991 (2) SCC 141
7. ABHILASH VINODKUMAR JAIN VS. COX & KINGS (INDIA) LTD., 1995 (3) SCC 732
8. J.K. BOMBAY LTD. VS. BHARTI MATHA MISHRA AND OTHERS, 2001 (2) SCC 700
9. GOPIKA CHANDRABHUSHAN SARAN & ANOTHER VS. XLO INDIA LIMITED AND ANOTHER, (2009) 3 SCC 342
10. AVTAR SINGH AND OTHERS VS. STATE OF PUNJAB, AIR 2002 SC 3343
11. Baldev Krishna Sahi v. Shipping Corpn. of India Ltd., 1987 (4) SCC 361
12. STATE OF GUJARAT VS. VALIBEN SIDDIBHAI W/O. PALABHAI VADHERA AND OTHERS, 2018 (1) GLH 165
13. Atul Mathur v. Atul Kalra, 1989 (4) SCC 514
14. CHHATRASINGH NATHUSINGH VAGHELA VS. STATE OF GUJARAT & ANOTHER, 1998 (1) GLH 243

MR SHRIRAJ KHAMBETE, NANAVATI ASSOCIATES(1375) for the PETITIONER(s) No. 1 MR RASESH H PARIKH(3862) for the RESPONDENT(s) No. 1 MR.HEMANG H PARIKH(2628) for the RESPONDENT(s) No. 1 PUBLIC PROSECUTOR(2) for the RESPONDENT(s) No. 2

SONIA GOKANI, J. 1. Being aggrieved and dissatisfied with the judgment and order dated 15.02.2017, rendered by the learned 2nd Additional Sessions Judge, Dhrangadhra, in Criminal Appeal No. 14 of 2016 in the matter under Section 630 of the Indian Companies Act, 1956, the appellant has moved this Court under Section 378 of the Code of Criminal Procedure, 1973 (for short, the Code), whereby, the appellate Court quashed and set aside the judgment and order of the learned Additional Chief Judicial Magistrate, Dated: 07.04.2016, rendered in Criminal Case No. 903 of 2013.

Factual Matrix:

2. The facts in nutshell, which would be necessary for adjudicating the dispute between the parties, are as follows.

2.1 The father of Respondent No.1, namely Shri. Jummabhai Mamadbhai Jam, served as a driver in the appellant-Company. He being in employment of the Company was allotted a residential quarter bearing No. W-34 and he resided at the said quarter during the course of his employment. Father of Respondent No.1 passed away on 24.08.1979, while he was in the service of the appellant-Company, and therefore, Respondent No.1, who is son of the late Shri, Jummabhai, had been given the compassionate appointment in place of his father with effect from 09.12.1979.

2.2 The residential quarter No. W-34 allotted to father of Respondent No.1 was subsequently allotted officially to him, who continued to reside in the said quarter, since, then.

2.3 On 18.07.2007, the appellant-Company issued a letter to Respondent No.1 stating therein that the original License Deed qua which the quarter No. W-34 was first allotted is cancelled on 21.08.2007 and if, Respondent No.1 wish to continue in the very quarter, a fresh license deed would be required to be executed before 21.08.2007. Respondent No.1 showed his inclination to continue in the said quarter, and therefore, he was re-allotted the quarter No. W-34. Such re-allotment was done vide License Deed dated 30.07.2007. It was, thus, on account of his being in Companys employment that he had been given the quarter No. W-4.

2.4 The employment of the respondent No.1 came to an end on 17.08.2011, on his attaining the age of superannuation, and as per the conditions of the License Deed dated 30.07.2007, Respondent No.1 was bound to vacate the said quarter No. W-34 and to hand over the vacant and peaceful possession of the same to the appellant- Company. However, he chose not to do so and continued the possession of quarter No. W-34.

It is alleged that Respondent No.1 was fully aware that he was needed to hand over the vacant and peaceful possession of quarter No. W-34 to the appellant-company on his attaining superannuation and yet, he has not done the same till date.

2.5 Respondent No.1 since chose not to vacate the quarter No. W-34, a legal notice came to be issued by the appellant-Company on 27.05.2013, whereby, it directed Respondent No.1 to vacate the said quarter within 15 days. Eventually, when no heed was paid, the appellant- Company preferred the criminal complaint under Section 630 of the Companies Act before learned Chief Judicial Magistrate, Dhulegaon. The trial Court after following the detailed procedure and on

availing parties due opportunity, rendered judgment and order on 08.04.2016 and held Respondent No.1 guilty and directed him to vacate the quarter No. W-34 within a period of one month and to hand over the peaceful and vacant possession of the same to the appellant-Company.

2.6 It is the case of the appellant-Company that Respondent No.1 chose not to implement the order of the trial Court and on the contrary, he preferred appeal being Criminal Appeal No.14 of 2016 before the learned Sessions Judge, on the ground that the quarter No. W-34 was never in his possession and that his stepmother, the Second wife of his father and her son, namely Anwar Jumma Jam, resided at the quarter and his stepbrother had maintained the possession of the same. He also maintained that his step brother was residing with his father and then, with him from the beginning.

2.7 It was resisted by the appellant-Company on the ground that Respondent No.1 was misleading the Court with false details.

2.8 The appellate Court, after availing the opportunity to both the sides, found certain weaknesses in the case of the appellant-Company, and therefore, vide its judgment and order dated 15.02.2017, it allowed the appeal and quashed and set aside the judgment and order of the trial Court passed in Criminal Case No. 903 of 2013.

2.9 The appellant, therefore, before this Court urged that all the necessary ingredients, for the purpose of establishing the guilt of Respondent No.1 under Section 630 of the Companies Act, have been duly fulfilled, and therefore, the judgment and order of the appellate Court deserves to be quashed and set aside.

3. This Court on 26th December, 2017, passed the following order:

"1. Heard Shri Shriraj Khambete, learned counsel appearing on behalf of Nanavati Associates for the appellant; Shri Raturaj Nanavati, learned counsel appearing for the respondent No.2 and Shri K.P. Raval, learned Additional Public Prosecutor on behalf of the respondent State.

2. Let the appeal be ADMITTED. Let the matter appear for final hearing on January 22, 2018.

3. This Court notices that the appellate Court has quashed and set aside the judgment and order of conviction and sentence, however, there is no reference of handing over of the quarter, which had been the direction issued by the trial Court in Criminal Case No.903 of 2013 while pronouncing the judgment and order of conviction and sentence dated April 07, 2016.

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4. In view of aforesaid, let the quarter in question be handed over by the respondent No.1 before the returnable date to the concerned authority and an affidavit to that effect be filed before this Court before the returnable date.

Let the Record and Proceedings along with the paper book be called for, so as to reach this Court before the returnable date, without fail."

Defence of Respondent in affidavit-in-reply and rejoinder affidavit:

4. In response to the same, Respondent No.1 appeared and filed his affidavit stating therein inter alia that the quarter is occupied by his step-brother since 1985 and he, at no point of time, has enjoyed the possession of the said property. It is his say that during the entire carrier, he has not occupied the said property. It is, further, his say that his step-brother is residing in the said property and the documentary evidence in this regard are also sought to be produced before this Court and that even in future, he is not going to claim any right, title or interest in the said property. It is, further, urged that considering the oral as well as documentary evidences, this appeal does not deserve to be entertained.

4.1 Sr. Executive, Human Resources, of the appellant-Company has filed reply to the said affidavit, stating inter alia that non-compliance is made of this Courts order dated 26.12.2017. It is, further, his case that it is a wrong information provided, which is bereft of merits and baseless. It is only with a view to escape the liability to hand over the quarter that respondent No.1 continued to deny possession and such an affidavit is filed. It is also denied that step brother of Respondent No.1 has been in possession prior to the year 1985 and that respondent No.1, himself, at no point of time, enjoyed this property. It is insisted that he was in possession of the property from the inception of his employment and in the event of his retirement, when he chose not to vacate the property, the prosecution needed to be initiated against him. It was Respondent No.1, who was granted compassionate appointment, after passing away of his father. Therefore, the entire story, which has been fabricated is not to be believed. He also insisted that such official quarters, which are meant for the workers, employees and officers of the Company and they can keep the same, till they are in service and there is no reason, as to why the appellant-company would allow his step-brother to reside in the quarter for so many years, and even when he continued to stay with Respondent No.1 with his consent, that can hardly provide a ground for him to continue in the said property. It is also their say that, as per the best knowledge of the appellant- company, his step-brother was living with the respondent No.1, when the quarter was first allotted to him. However, he cannot be in a legal possession, when he never was in employment of the appellant-company.

4.2 It is also lamented that the appellant- company has been deprived of the property, despite the order of this Court dated 26.12.2017, where, the respondent No.1 failed to comply with the order of this Court to hand over the possession.

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4.3 It is, further, the say of the appellant-Company that his step-brother filed a Suit for declaration and permanent injunction, with regard to the property in question before the Court of the learned Principal Sr. Civil Judge, Dhrangadhra being Regular Civil Suit No. 4 of 2018.

4.4 Further, affidavit has also been filed by Respondent No.1, Dated: 11.04.2018, stating there in that neither his heirs nor Respondent No.1, himself, will claim any right, title or interest in the said property and he would not even create any hurdle, if, any legal proceedings are initiated against his step-brother in respect of quarter No. W-34. It is, further, his say that his permanent address is 11, Gujarat Housing Board, Nr. Railway Line, Old Kharvad Quarter, Dhrangadhra, and there is no reason for him to occupy the quarter at the stage, when he has already retired. He also tendered an apology.

Oral Submissions:

5. This Court has heard, at length, learned Advocate, Mr. Sriraj Khambete, with learned Advocate, Mr. Luv Virmani, learned Advocate, Mr. Rashesh Parikh, with learned Advocate, Mr. Hemang Parikh, for Respondent No.1 and learned APP, Mr. H.K. Patel.

5.1 Along the line of the pleading of the parties, both the sides have made fervent submissions.

5.2 According to the learned Advocate, appearing for the appellant, the initiation of the prosecution under Section 630 of the Companies Act was warranted as no heed was, at any point of time, paid by Respondent No.1 to the request of the companies made in his post retirement period.

A legal notice was also issued to him, but, no response could be elicited, and therefore, the initiation of the criminal prosecution was necessitated. It is urged by the learned advocate for the appellant that the trial Court has properly appreciated the evidence, oral as well as documentary, to hold that the quarter No. W-34 was allotted to Respondent No.1 during his employment and had chosen not to vacate the same after his retirement from the service. The story of possession of the property by his step brother is a completely concocted version. This has been put forth only with a view to mislead the Court. Even if, he has chosen to transfer the quarter to his step-brother in post 17.08.2011 period that would have no bearing. The license deed dated 30.07.2007 bears his signature. It is, further, his say that respondent No.1s step brother even if had applied for license, while he was residing at the residential quarter No. W-34 and if, the license has been issued to him of the said address that per se would not in any manner prove that he was in possession of the quarter legally. It is, further, urged that the Sessions Court, erred seriously in holding that the respondent No.1 was not in a possession of quarter No. W-34 and his PF slip also reflects a different address. It is urged that the office of the PF, which is supposed to correspond with

the employee after retirement and that would have nothing to do with the present case and the Company has not in any manner interfered with the working of the PF office.

5.3 It is, further, emphatically urged that the appellant-Company allotted the residential quarter No. W-34, which had been allotted to his father from the date he joined service on 09.12.1979. The said gesture has been misused by him by illegally withholding the possession of the quarter No. W-34, after once he retired. It is also, further, argued that step brother of Respondent No.1 has selectively preferred civil suit after the appellate Court had given the benefit of doubt to Respondent No.1. Incorporating the details of acquittal in the civil suit, he had approached the Court concerned. However, no relief is granted in his favour till date.

5.4 He, further, has urged that there is no requirement for initiating any prosecution, as he has been inducted through Respondent No.1. There should be stringent interpretation and once the respondent chose not to abide by the directions, the same aspect has to be construed stringently. It is, further, urged that it is an irony that on the one hand, respondent No.1 does not want to continue in the possession of quarter No. W-34 and on the other hand, he is contesting the litigation tooth and nail.

6. Learned Advocate, Mr. Parikh, appearing for the respondent has urged that at the appellate stage, the evidence needs to be evaluated and on the basis of which appreciation is to be made. There is also no reason to believe that the Company was unaware of the step brother having the possession. Taking into consideration the issue in matter, which is purely civil in nature, the Company could not have initiated the criminal action under Section 630 of the Companies Act. It is further his submission that Respondent No.1 has shown his bona fide by the affidavit by stating that he has nothing to do with the quarter No. W-34. The entire foundation of the appellant-Company is shockingly false. He also emphasized that, at no stage, of the trial the Court has not recorded the further statement, which is vital to the case and this Court can remand the matter for recording of the further statement. His residence is 11, Gujarat Housing Board, Nr. Railway Line, Old Kharvad Quarter, Dhrangadhra, and therefore, any prosecution against the present respondent No.1 without joining his step-brother is something, which does not require any entertainment. He, further, pointed out that in the purported allotment made to the respondent, his signature is missing on every page of the deed. There is no record that he had been handed over the quarter and that he continued to reside in the said quarter. Moreover, in the PF record, his communication address is 11, Gujarat Housing Board, Nr. Railway Line, Old Kharvad Quarter, Dhrangadhra, and also indicates of the fact that he does not reside at the address given in the cause-title. It is, further, urged by the learned advocate that, although, the Court below has made a mention of the recording of the further statement, the appellate Court could have asked to record the further statement, but, instead it has chosen to quash and set aside the judgment and order of the trial Court. It is further his say that in appeal, this Court should not interfere. He has sought to rely on the following decisions:

HAKEEM KHAN AND OTHERS VS. STATE OF MADHYA PRADESH, (2017) 5 SCC 719;

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STATE OF GUJARAT VS. VALIBEN SIDDHIBHAI W/O. PALABHAI VADHERA AND OTHERS, 2018 (1) GLH 165;

6.1 He also has taken this Court through the purpose of Section 313 of the Code and urged that it is a settled position of law that the Court has to insist recordance of the further statement under Section 313 of the Code. This is not an option given to the Court, but, all incriminating evidence shall have to be put up before the accused.

6.2 Learned APP has supported the case of the appellant-company and has chosen not to reiterate the details, which have been furnished.

7. Upon thus hearing both the sides and on careful consideration of the material placed on record, particularly, of the Criminal Case No. 903 of 2013 and record of the appellate Court being Criminal Appeal No. 14 of 2016 coupled with the other material, at the outset the provisions of Companies Act would need to be recorded. The original complainant is a public limited Company and is registered under the Companies Act. It has its registered office at Dhrangadhra, and thus, it is a judicial person.

Law on the subject:

8. It would be apt to reproduce Section 630 of the Companies Act, which read 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 10[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.

8.1 In order to mitigate the problems faced by the companies in recovering the property given to an employee, the Companies Act provides in terms of Section 630 that anyone, who wrongfully obtains the possession of the property of a company or wrongfully withholds the same or makes unauthorized use of such property, it provides for direction of delivery of property, imprisonment and levy of fine also.

8.2 The Apex Court in LALITA JALAN AND ANOTHER VS. BOMBAY GAS COMPANY LIMITED AND OTHERS, (2003) 6 SCC 107, was considering the question, whether the appellants having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as Director of the Company, come within the ambit of Section 630 of the Act. In that case, on death of Shri. N.K. Jalan, the company asked his heirs, i.e. his widow and his son, to return the property to the Company, which they failed to do so. Therefore, the company initiated the proceedings under Section 630 of the Companies Act. When the process came to be issued against the accused, they moved the Court for recalling of such process and also for their discharge, which was rejected. They, therefore, preferred a petition under Section 482 of the Code and under Article 227 of the Constitution of India for quashing of the same. However, the quashing petition was also dismissed by the High Court, and therefore, the accused approached the Apex Court, challenging the judgment and order of the High Court.

8.3 The Apex Court held that the main ingredient of the Section 630 is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The act of holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If an officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting this Section is that property of the company is preserved and is not used for the purposes other than those expressed or directed in the Articles of Association of the company or as authorised by the provisions of the Act. Apt would be to reproduce relevant findings and observations, which read thus:

"6. The question which requires consideration is whether the appellants having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as Director of the Company, come within the ambit of Section 630 of the Act. The main ingredient of the Section is wrongful withholding of the property of the company or knowingly applying it to purposes other than those expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not

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returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the Section is that property of the company is preserved and is not used for purposes other than those expressed or directed in the Articles of Association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company. In *Baldev Krishna Sahi v. Shipping Corpn. of India Ltd. and Anr.*, [1987] 4 SCC 3.61, the Court was called upon to consider the question whether the words "officer or employee" existing in sub-section (1) of Section 630 should be interpreted to mean not only the present officers and employees of the company but also to include past officers and employees of the company. It was held that a narrow construction should not be placed upon sub-section (1) of Section 630, which would defeat the very purpose and object with which it had been introduced but should be so construed so as to make it effective and operative. The Court held as under in para 7 of the report:

"7. The beneficent provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

7. The Court went on to observe that it is only the present officers and employees who can secure possession of any property of a company and it is possible for such an officer or employee to wrongfully take away possession of any such property after termination of his employment. Therefore, the function of Clause (a) though it primarily refers to the existing officers and employees, is to take within its fold an officer or employee who may have wrongfully obtained possession of any such property during the course of his employment but wrongfully withholds it after the termination of his employment. It was further held that Section 630 plainly makes it an offence if an officer or employee of the company, who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment and that it is the wrongful withholding of the property of the company after the termination of the employment, which is an offence under section 630(1)(b) of the Act.

8. Soon thereafter the same question came up for consideration before a three Judge Bench of this Court in *Amrit Lai Chum v. Devoprasad Dutta Roy*, [1988] 2 SCC 269, which reiterated that it is the wrongful withholding of such property, meaning the property of the company after termination of the employment, which is an offence under Section 630(1)(b) of the Act. It was further held that the construction placed upon the section in *Baldev Krishna Sahis* case (supra) is the only construction possible and there was no warrant to give a restrictive meaning to the term "officer or employee"

Repealing in sub-Section (1) of Section 630 of the Act as meaning only the existing officers and

employees and not those whose employment have been terminated. The matter was again considered in *Atul Mathur v. Atul Kalra and Anr.*, [1989] 4 SCC 514, and it was held that the purpose of enacting Section 630 is to provide speedy relief to a company when its property is wrongfully obtained or wrongfully withheld by an employee or an ex-employee and the view taken in *Baldev Krishna Sahis case supra* and *Amrit Lai Chums case (supra)* that the term "officer or employee of a company" applies not only to existing officers or employees but also to past officers and 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.

9. In *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath and Ors.*, [1991] 2 SCC 141, the Court following *Baldev Krishna Sahi (supra)* and *Amrit Lai Chum (supra)* held that Section 630 of the Companies Act embraced both present and past officers and employees within its fold and having regard to the words "wrongfully withholding the property" observed that the offence continues until the property so obtained or withheld is delivered or refunded to the company. It will be useful to reproduce here the relevant portion of para 26 of the report.

".....we are of the view that the offence under this Section is not such as can be said to have consummated once for all. Wrongful withholding or wrongful obtaining possession and wrongful application of the Company's property that is, for purposes other than those expressed or directed in the articles of the company and authorised by the Companies Act, cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offenders possession is delivered up or refunded. It is an offence committed over a span of time and the last act of the offence will control the commencement of the period of limitation and need be alleged. The offence consists of a course of conduct arising from a singleness of thought, purpose of refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous series of acts which endures after the period of consummation on refusal to deliver up or refund the property. It 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. It will be a recurring or continuing offence until the wrongful possession, wrongful withholding or wrongful application is vacated or put up an end to. The offence continues until the property wrongfully obtained or wrongfully withheld or knowingly misapplied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment."

8.4 The Apex Court, thus, relied on the decision rendered in *ABHILASH VINODKUMAR JAIN VS. COX & KINGS (INDIA) LTD.*, (1995) 3 SCC 732, to hold that the object of the act is the recovery of the property belonging to the Company. It, further, held that other members of the family of an employee or an officer of a company, not connected with the family, who came in possession through such an employee would not be covered by Section 630 of the Companies Act, such a view would defeat the quick arm made available under the law. It, further, held that the statement of law made in *J.K. BOMBAY LTD. VS. BHARTI MATHA MISHRA AND OTHERS*, [2001] 2 SCC 700, to the effect that the prosecution of the legal heirs and family members residing with an erstwhile or former employee would violate Article 14 or Article 19 of the Constitution. If, the object of provisions of Section 630 of the Companies Act is borne in mind the expansive meaning given to

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the expression employee or anyone claiming through him will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional.

8.5 Subsequently, the decision in LALITA JALAN AND ANOTHER VS. BOMBAY GAS COMPANY LIMITED AND OTHERS (Supra) is followed in the case of GOPIKA CHANDRABHUSHAN SARAN & ANOTHER VS. XLO INDIA LIMITED AND ANOTHER, (2009) 3 SCC 342, where, the Apex Court reiterated that Section 630 of the Companies Act covers within its ambit not only employees and officers of the Company, but, also its past employees or officers, heirs of the deceased employee or anyone claiming the right of occupancy in the property of the company under an employee or an officer, who are in possession of the property of the Company and who acquired right of occupancy in property of the company by virtue of being family members of that employee / officer during his employment in the company, and hence, possess no independent or personal right to hold on to property of the company.

8.6 In the case before the Apex Court, the company had allotted suit premises to its employee, namely Chandrabhushan, who was predecessor-in-interest of appellants, in his capacity as a Managing Director of the company. The appellants had no direct relationship with the company and the names of the appellant came in possession of the suit premises through the original allottee, i.e. Chandrabhushan, who had passed away. Under the circumstances, the Apex Court held and observed that the Company was entitled to invoke the provisions of Section 630 of the Companies Act so as to retrieve its property wrongfully withheld by the appellants. The relevant observations read thus:

"19. In para 14 this Court further laid down the Scope and ambit of Section 630: (Abhilash Vinodkumar Jain case, SCC pp.739-40, para14)

14. Thus, inescapably it follows that the capacity, 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. The argument of the learned counsel for the appellants that since the provisions of Section 630 of the Act are penal in nature the same must be strictly construed and, the parties which have not been expressly included by the legislature in Section 630(1) of the Act, cannot by any interpretative extension be included in the said provision, ignores the situation that by a deeming fiction, the legal representatives or heirs of a past employee or officer, in occupation of the property of the company, would continue to enjoy the personality and status of the employee or the officer only. An argument quite similar in nature was raised in Baldev Krishna Sahi case (1987) 4 SCC 361 also while resisting the extension of the provisions of Section 630 of the Act to the past employee or past officer and rejecting the same, this Court opined: (SCC pp. 365- 66)

"6 The first and foremost argument of learned counsel for the petitioner is that the provision contained in Section 630 of the Act is a penal provision and therefore must be subject to a strict construction and there is no room for intendment. It is submitted that on a true construction, the scope and effect of the section was limited to such property of the company which was wrongfully obtained by an officer or employee of the company. Emphasis was placed upon the words `any such property in clause (b) of sub- section (1) for the contention that clause (b) does not stand by itself but is interconnected with clause (b) (sic) and therefore both clauses (a) and (b) must be read together. In essence, the submission is that sub- section (1) of Section 630 of the Act makes it an offence where any officer or employee of a company wrongfully withholds possession of such property of the company. Secondly, it is contended that the legislature never intended to include past officers and employees of a company within the ambit of Section 630 of the Act which provides for prosecution of an officer or employee of a company for wrongfully withholding the property of the company inasmuch as it has used different languages where it was so intended, namely, in Sections 538 and 545. The entire argument of the learned counsel is based upon the judgment of the High Court of Calcutta in Amritlal Chum case [(1987) 61 Comp Cas 211 (Cal)]. We are afraid, we find it difficult to subscribe to the narrow construction placed by the High Court of Calcutta on the provision contained in sub- section (1) of Section 630 of the Act which defeats the very purpose and object with which it had been introduced."

We are in respectful agreement with the above view and are of the opinion that the legal representatives or the heirs of the deceased employee or officer would squarely fall within the ambit of Section 630 of the Act. To exclude them by giving a restrictive interpretation to the provisions would defeat the very object of the provision which declares the wrongful withholding of the property of the company to be an offence. It is immaterial whether the wrongful withholding is done by the employee or the officer or the past employee or the past officer or the heirs of the deceased employee or the officer or anyone claiming their right of occupancy under such an employee or an officer. It cannot be ignored that the legal heirs or representatives in possession of the property had acquired the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the officer or the employee and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

20. The ratio of Abhilash Vinodkumar Jain (supra) was reiterated by another larger bench in Lalita Jalan (supra), wherein it laid down the main ingredients of Section 630 in para 6 and 7, the same are extracted hereunder:

"6. The question which requires consideration is whether the appellants, having not vacated the flat after the death of Shri N.K. Jalan to whom it was allotted in his capacity as director of the company, come within the ambit of Section 630 of the Act. The main ingredient of the section is wrongful withholding of the property of the company, drawn wrongfully applying it to purposes other than those

expressed or directed in the articles and authorised by the Act. The dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. The object of enacting the section is that the property of the company is preserved and is not used for purposes other than those expressed or directed in the articles of association of the company or as authorised by the provisions of the Act. On a literal interpretation of Section 630 of the Act the wrongful withholding of the property of the company by a person who has ceased to be an officer or employee thereof may not come within the ambit of the provision as he is no longer an officer or employee of the company. In *Baldev Krishna Sahi v. Shipping Corpn. of India Ltd.* (1987) 4 SCC 361 the Court was called upon to consider the question whether the words "officer or employee" existing in sub-section (1) of Section 630 should be interpreted to mean not only the present officers and employees of the company but also to include past officers and employees of the company. It was held that a narrow construction should not be placed upon sub-section (1) of Section 630, which would defeat the very purpose and object with which it had been introduced but should be so construed so as to make it effective and operative. The Court held as under in para 7 of the Report: (SCC p. 366)

"7. The beneficent provision contained in Section 630 no doubt penal, has been purposely enacted by the legislature with the object of providing a summary procedure for retrieving the property of the company (a) where an officer or employee of a company wrongfully obtains possession of property of the company, or (b) where having been placed in possession of any such property during the course of his employment, wrongfully withholds possession of it after the termination of his employment. It is the duty of the court to place a broad and liberal construction on the provision in furtherance of the object and purpose of the legislation which would suppress the mischief and advance the remedy."

7. The Court went on to observe that it is only the present officers and employees who can secure possession of any property of a company and it is possible for such an officer or employee to wrongfully take away possession of any such property after termination of his employment. Therefore, the function of clause (a) though it primarily refers to the existing officers and employees, is to take within its fold an officer or employee who may have wrongfully obtained possession of any such property during the course of his employment, but wrongfully withholds it after the termination of his employment. It was further held that Section 630 plainly makes it an offence if an officer or employee of the company who was permitted to use any property of the company during his employment, wrongfully retains or occupies the same after the termination of his employment and that it is the wrongful withholding of the property of the company after the termination of the employment, which is an offence under Section 630(1)(b) of the Act".

21. This Court further laid down in paras 22 and 23 as follows:

"22. The view expressed in J.K. (Bombay) Ltd. (2001) 2 SCC 700 runs counter to the view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 wherein it has been clearly held that the object of Section 630 of the Act is to retrieve the property of the company where wrongful holding of the property is done by an employee, present or past, or heirs of the deceased employee or officer or anyone claiming the occupancy through such employee or officer.

The view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 clearly subserves the object of the Act which is to the effect of recovering the possession of the property belonging to the company. If it is held that other members of the family of the employee or officer or any person not connected with the family who came into possession through such employee would not be covered by Section 630 of the Act, such a view will defeat the quick and expeditious remedy provided therein. The basic objection to this view is that the aforesaid provision contained in Section 630 of the Act is penal in nature and must be strictly construed and therefore the actual words used should not be given any expansive meaning. A provision of this nature is for the purpose of recovery of the property and if, in spite of demand or subsequent order of the court, the possession of the property is not returned to the company, the question of imposing penalty will arise. Similar provisions are available even under the Code of Civil Procedure. In execution of a decree for recovery of money or enforcement of an injunction, the judgment-debtor can be committed to a prison. Such a provision by itself will not convert the civil proceeding into a criminal one. Even assuming that the said provision is criminal in nature, the penalty will be attracted in the event of not complying with the demand of the recovery of the possession or pursuant to an order made thereof. The possession of the property by an employee or anyone claiming through him of such property is unlawful and recovery of the same on the pain of being committed to a prison or payment of fine cannot be stated to be unreasonable or irrational or unfair so as to attract the rigour of Article 21 of the Constitution. If the object of the provision of Section 630 of the Act is borne in mind, the expansive meaning given to the expression "employee or anyone claiming through him" will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional. Therefore, with profound respects the view expressed in J.K. (Bombay) Ltd. (2001) 2 SCC 700 in our opinion is not correct and the view expressed in Abhilash Vinodkumar Jain (1995) 3 SCC 732 is justified and should be accepted in interpreting the provision of Section 630 of the Act.

23. 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 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".

22. "...The capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.

23. The ratio laid down in the above said two cases makes it explicitly clear that Section 630 of the Act will cover within its ambit not only the employee or officer but also the past employee or the past officer or the heirs of the deceased employee or anyone claiming under them in possession of the property.

The legal heirs or representatives in possession of the property acquire the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the employee or the officer and not on any independent account. They, therefore, derive their colour and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company.

24. The case in hand is the one which falls under the first part of clause (b) of sub-section (1) of Section 630. The suit premises was allotted to Mr. C. B. Saran, the predecessor-in-interest of the appellants, in his capacity as a Managing Director of the respondent company. The appellants herein had no direct relationship with the respondent company. Both of them came in possession of the suit premises through the original allottee of the said premises, namely, Mr. C. B. Saran, who has since died. The company has every right and jurisdiction to preserve its property and to see that the same is not used for purposes other than the one expressed or directed in the articles of association of the company.

25. On a careful reading of the ratio of the decisions in Abhilash Vinodkumar Jain (supra) and Lalita Jalan (supra), it is explicitly clear that they are squarely applicable to facts of the present case. When the legal representatives of the original allottee withhold the property wrongfully the company is entitled to invoke the provisions of Section 630 of the Act so as to retrieve the property being withheld wrongfully. The above quoted decisions have also laid down that

"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 as is done in the present case."

8.7 It can be noticed from the law discussed herein above that the object of the provisions of Section 630 of the Companies Act is retrieval of the property of the company, which is/was in

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occupation of the employee. The property if is not recovered from a former employee or an officer as also their heirs or representatives in possession of the such property, who acquired the right of residing therein or retain the possession through such an employee or officer and who have no independent right to continue, the prosecution under Section 630 of the Companies Act can be initiated qua them all.

Appreciation of Evidence:

9. In the instant case, for the alleged wrongful withholding of the property of the Company, the appellant has initiated the prosecution against Respondent No.1. As can be seen from the details given in the complaint itself, and as has remained undisputed that the father of Respondent No.1 served as a driver in the Company. He was allotted the residential quarter No. W-34 owing to his employment with the company.

9.1 Father of Respondent No.1 passed away on 24.08.1979, while he was in service, and therefore, Respondent No.1 was appointed on compassionate ground by the company on 09.12.1979, i.e. just within a period of four months from the date of death of his father.

9.2 It is the stand of the appellant-Company that the residential quarter No. W-34, which was allotted to Respondent No.1s father was re- allotted to him in his capacity as an employee of the Company and he continued to occupy the same till his retirement in the year 2011. Since, Respondent No.1 failed to handover the vacant and peaceful possession of the quarter to the appellant-Company and continued to occupy the same even after his retirement, a notice came to be issued to him by the Company on 27.05.2013, requesting him to return the quarter allotted to him while he was in employment of the Company. This has a reference of previous correspondence entered into by and between the parties and it has been emphasized that respondent No.1 was asked to return the quarter No. W-34 re-allotted on 30.07.2007 and which he continued to occupy till his retirement. A letter addressed to him on 06.04.2012, asks him to vacate the quarter by 15.04.2012. Since, the possession was not handed over by the stipulated date, he was again requested orally many a times to give back the possession of the quarter No. W-34. Since, no heed was paid to the notice issued by the appellant-Company, the Appellant Company initiated the prosecution under Section 630 of the Companies Act. It can be noticed that before the trial Court, after the complaint was lodged and the plea was recorded, the respondent No.1 did not plead guilty, and therefore, the complainant-Company examined Shri. Sunil Sharma, Dy. General Manager (HR), Dhrangadhara.

9.3 According to him, for getting the quarter, respondent No.1 had made an application in the year 2007, and therefore, a License Deed was executed on 30.07.2007 by and between the appellant-company and Respondent No.1. On attaining the age of superannuation on 17.08.2011 and despite the repeated directions, he chose not to vacate the said quarter. A legal notice, therefore, came to be issued on 27.05.2013. However, no reply was filed to the same.

9.4 In his cross-examination, this witness agreed that he did not know Respondent No.1 in person. There are about 120 quarters for employees and about 69 quarters for officers so also 10 executive bungalows. It is important to note here that the line of cross-examination adopted by the learned Advocate for Respondent No.1 before the trial Court is that there were many houses situated even when Dhrangadhra was a princely state. This witness denied of having any knowledge of history of construction. He was also not aware of the survey number on which these quarters were constructed. However, he had shown the willingness to substantiate the ownership of the quarter of the Company. The line of defence taken by Respondent No.1 is that he continued to reside at the said quarter for past several years, even while he was not in the employment of the Company. The entire story of allotment of quarter to him is baseless and is having no merit. This witness insisted that for allotment of quarters and houses, registers are being maintained by the Company. The record is also available with regard to the ownership and allotment of the said quarter. Of course, no tax receipts were produced by him. he denied the suggestion that, though, the quarter does not belong to the Company, a false complaint is lodged.

9.5 It can be, thus, seen from the line of cross-examination that Respondent No.1 had insisted on the quarter No. W-34 belonging to his family or to himself. He has denied emphatically, the allotment of the quarter No. W-34 and has also questioned the ownership of the Company over the same. There is not a whisper in the cross-examination, which is generally a way of putting forth the specific defence by the accused-Respondent No.1 in respect of his step- brother continuing to reside in the quarter right from the time his father was in the employment of the Company. It is also not his case that he never occupied the quarter even while he was in employment and that the same was continued to be occupied by his step-brother, who was inducted through his father.

9.6 It would also be worthwhile to regard the License Deed produced by the appellant- Company, where licensor is the DCW, i.e. the appellant-Company, and the licensee is Respondent No.1. This came to be executed on 30.07.2007 and the quarter No. W-34 came to be re-allotted to Respondent No.1. This has been signed, for and on behalf of the appellant-Company by General Manager (HR) and by the Respondent No.1 himself as the second party. The contents of the License Deed clearly mention that it is owned by the licensor-Company and the same has been given to the licensee, i.e. Respondent No.1. It is also mentioned therein that Respondent No.1 being an employee of the Company, on the terms and conditions stipulated in the said License Deed and as agreed by Respondent No.1, he is allotted the quarter No. W-34. This also does not create any right in favour of Respondent No.1. It, further, goes that any illegal use of the same will entitle the licensor to cancel such allotment. It is also one of the terms that once the licensee resigns from the service or for some reasons, his employment is terminated, this License Deed would automatically get cancelled and there will be no need for giving a separate notice in that regard and the possession of the property shall have to be handed over to the company, immediately.

9.7 The only other witness examined by the Company was Sr. Executive (HR), who also reiterated the details which have been given by the first witness. He also emphatically said in his examination-in-chief that the quarter No. W-34 was allotted to Respondent No.1, in his capacity as an employee of the company, and after he retired, though, repeated requests were made to him to vacate the same, he chose not to do so.

9.8 In his cross-examination, this witness had pleaded as to on which date Respondent No.1 had joined services. He also had no knowledge as to what was the contract with the Company, at the time, when Respondent No.1 joined service. He was not further cross-examined at his end.

Discussion on further statement (section 313 of Code):

9.9 It is vital, at this stage, to note that the appellant-Company chose to close its evidence after examining these two witnesses. The trial Court, therefore, kept this matter for recording of further statement of Respondent No.1 under Section 313 of the Code, which provides for the accused to explain the circumstances appearing in evidence against him. This provision gives him an opportunity to furnish the explanation in his statement, regarding any incriminating evidence produced against him.

9.10 The Apex Court in PHULA SINGH VS. STATE OF HIMACHAL PRADESH, AIR 2014 SC 1256, has held that if the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 of the Code is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

9.11 Apt would be, here, to reproduce Section 313 of the Code:

"313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary ; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case : Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b). (2) No oath shall be administered to the accused when he is examined under sub-section (1). (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

9.12 There are two stages for the accused to explain circumstances appearing in evidence against him and the Court may at any stage, without previous warning to the accused, put such questions to him as the Court considers necessary and (b) shall, after the witnesses for the prosecution have

been examined and before he is called on for his defence, question him generally on the case, provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b). The accused, if, refuses to answer such questions or gives false answers, this provisions says that it shall not render him liable to punishment for such a refusal to answer questions or for false answers. However, the answers given by him may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed. The Court may also permit written- statement of the accused as sufficient compliance of Section 313 of the Code. As can be noted from the Rojnama of Criminal Case No. 903 of 2013 dated 14.03.2016, the trial Court has recorded that the accused-Respondent No.1 has refused to given further statement and has tendered the pursis (Exhibit-45).

9.13 The pursis (Exhibit-45) says that the quarter No. W-34 was given by the Company to his father Jummabhai Jam, where he resided with his wife (his stepmother) and family. Respondent No.1 has nothing to do with the said quarter and he never resided in the said quarter. This for the first time he declares by way of this pursis. He, of course, in his pursis has not explicitly denied of giving any further statement, but, as provided under Section 313 (5) of the Code gave this pursis since the Court may permit him the filing of the written statement as sufficient compliance of this Section. It is also to be noted that Rojnama is not challenged by the other side. Criminal manual provides for Proceedings Sheet, i.e. Rojnama, in Form No. 41 to be kept in English or in Gujarati language in Sessions Case Or in special cases in Court of Sessions and in Gujarati language in Courts and inquiries and trials and other proceedings. It is meant only as a guide and not meant to be explanatory. The object of Rojnama is to show and reflect the proceedings that takes place in each case. It is virtually the history of the case and correct list of description of the facts of the case and at the same time, it should be so drawn- up as to show all the details of the case and yet, to be as concised as possible. It is to be maintained on day-to-day basis, as an original document and it may be written by a clerk, but, it must have initial or signature of the learned Magistrate at the end of the proceedings everyday. Rojnama, itself, thus being a full and complete history of the proceedings of each case, where, the trial Court having specifically recorded of Respondent No. 1 having refused to give his further statement and instead gave his written-statement in the form of Exhibit-45, there is no reason to disbelieve these proceedings. It would also not be out of the context to mention that, when challenge was made to the judgment and order of the trial Court by Respondent No.1 by way of Criminal Appeal No. 14 of 2016, the challenge was not made on the ground of non-recording of further statement, i.e. no such ground was raised by him in appeal. Even in the written submissions filed before the appellate Court also, no such ground was taken. Thus, it can be seen that only at the time of final arguments in this appeal that the challenge has been made with regard to the same. It is, thus, nothing but clearly an afterthought that such an argument is advanced before this Court and a request is made by relying on the decision in AVTAR SINGH AND OTHERS VS. STATE OF PUNJAB, AIR 2002 SC 3343, wherein the Apex Court held that the object of Section 313 of the Code is to afford an opportunity to the accused to explain the circumstances appearing in evidence against him and if, no question is asked about any vital aspect, which has a bearing on the subject and any failure to elicit answer on such a crucial aspect, it would not be appropriate to raise a presumption under Section 114 of the Indian Evidence Act, 1872, nor would it be safe to conclude that the prosecution established beyond reasonable doubt the act in issue.

9.14 This Court notices that, as mentioned herein above, not only such a stand has been taken at a

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berated stage, but, there also appears to be recourse taken to sub-Section (5) of Section 313 of the

Code by giving written- statement instead of orally stating anything. As the right of silence is also permissible to the accused, this decision of the Avtar Singh and another vs. State of Punjab(supra) will have no bearing on facts of present case. In that matter before the Apex Court, trial was under the Narcotics Drugs and Psychotropic Substances Act, 1985, where in further statement under Section 313 of the Code, the trial Court had missed asking of the vital questions in relation to possession of the contraband articles. Had there been a question of the trial Court missing this vital stage and even if that legal issue would have been raised at any stage, this Court is bound to regard and adjudicate such contention, however, in wake of details provided above, plea of remand is not found acceptable.

9.15 In that view of the matter, it is to be noted that the trial Court has chosen to hold that the License Deed is a clear proof of allotment of the quarter No. W-34 to Respondent No.1, and therefore, it directed the quarter to be handed over to the Company within a period of one month and in default, directed the respondent No.1 to undergo simple imprisonment for six months. This has been upturned by the Appellate Court by setting aside the judgment and order of the trial Court.

9.16 The question, which requires consideration at this stage is; Whether, the interpretation, which has been made by the appellate Court, before whom the respondent challenged his conviction, was in any manner erroneous, which would deserve any interference and corollary to the same is whether, this Court in this appeal requires to interfere, or the view taken by the appellate Court is also a possible view, permissible on the strength of the evidence, documentary as well as oral, which has come on record?

9.17 This Court is conscious of the decision of the Apex Court in HAKEEM KHAN AND OTHERS VS. STATE OF MADHYA PRADESH (Supra), where, the Apex Court has held that if there is a possible view of trial Court with which the appellate court may very well disagree with, but, which cannot be interdicted. It needs to distinguish possible view from incorrect view of trial court and incorrect view must be interdicted by appellate court. It, further, held that so long as view of the trial Court can be reasonably sustained, regardless of whether High Court agrees with the same or not, verdict of trial Court cannot be interfered with and view of the High Court cannot be supplanted, over and above of the view of the trial court.

9.18 This Court in (THE) STATE OF GUJARAT VS. VALIBEN SIDDIBHAI W/O. PALABHAI VADHERA AND OTHERS, 2018 (1) GLH 165, held that when two views are possible, the High Court should not reverse the judgment and order of Sessions Court, merely because the other view is possible.

9.19 If one looks at the judgment of the appellate Court, the reasoning starts from Paragraph-9. Essentially and predominantly on the three aspects, it has upturned the judgment and order of the trial Court. It is to be noted firstly that the appellate forum also was bound by the catena of ~~decisions on the subject, which specified as to when it is supposed to interfere and interdict the~~
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decision of the trial Court. If, one looks at the decision of the appellate Court, it has interfered on the ground of (1) non-production of any application for allotment of Quarter No. W-34, (2) for non-recordance of the further statement by the trial Court and (3) on the basis of the evidence produced at appellate stage of the stepbrother of licensee and by the respondent No.1 himself. All these weighed with the appellate Court in arriving at the decision of quashing and setting aside the judgment and order of the trial Court.

9.20 Taking the first major ground of interference being non production of any application seeking allocation of quarter in question, in the opinion of this Court, it could not be given so much of importance in wake of the proof of License Deed, established and exhibited through the witness of company.

9.21 So far as the ground of non-recordance of the statement under Section 313 of the Code is concerned, this Court has already elaborately appreciated that aspect herein above, and therefore, that issue does not require any further elaboration. This Court is not convinced that the same in the particular set of facts discussed above, could be the ground on which the judgment and order of the trial Court could have been quashed and set aside and the matter could have been sent back for recordance of the further statement under Section 313 of the Code on the ground that it had breached the right of Respondent No.1.

9.22 The third vital reason which led to interference is that the appellate Court has taken into consideration photocopies of the documents, which have been produced by Respondent No.1 on 18.10.2016, with a request that additional evidence be permitted on record. This Court does not find any endorsement of the appellant-Company having been supplied the copies of those documents nor has there been any order of the appellate Court, except, of recording recorded. One wonders, as to how the additional evidence, that too, photocopies, could have been permitted to be brought on record and could be regarded at the appellate stage without following required proceduralities. The additional evidence can be permitted by the appellate Court, however, there is a proper procedure prescribed under the law, which needs to be essentially and invariably followed. The appellate Court, itself, ought to have recorded the evidence or it could have sent it to the trial Court for recordance of the evidence and then to take into account such evidence, at the time of adjudication. Moreover, the originals of those documents have to be brought on record for the same to be accepted, in the manner provided under the Indian Evidence Act, 1872. The secondary copy is permissible to be taken on record, only under the circumstances provided under the law.

Thus, the photocopies of the documents, which have been brought on record were without following any procedure and the appellate Court has regarded the same, taking those documents on record. However, those documents have not been exhibited nor has the Court followed provision of the Evidence Act to read them into evidence at Appellate stage, and therefore, the appellate forum could not have relied on it. This Court also took into account the license of the step- brother of Respondent No.1, which has address of quarter No. W-34 and the PF documents of respondent No.1 which bear the address of the place, which he claims to be his place, where he resides, i.e.

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reliance on those documents by the appellate forum, itself, is impermissible under the law unless they are proved and exhibited and therefore, the view taken by the appellate Court, based on those documents is not a possible view, which is permissible under the law. Therefore, this Court would require to interfere with the decision of the appellate Court.

9.23 This brings this Court to the repeatative version brought before this Court by way of the affidavit of Respondent No.1, wherein, he has stated that he does not have anything to do with quarter No. W-34 and his step-mother and step- brother only continued to reside there through his father.

10. It is simply unpalatable to accept such a version, when, way back in the year 2007, Respondent No.1, himself, had signed License Deed, by which, he was re-allotted quarter No. W-34. All the terms and conditions incorporated in the said License Deed are eloquent, which allows the parties to know the terms, which govern their contract.

11. Furthermore, the absence of application of Respondent No.1 for allotment of quarter would have no bearing on the subject because the factum of his being in employment of the Company is not in dispute.

12. His line of defence, in cross-examination of both the witnesses of the appellant-Company before the trial Court, was that he was in occupation of the quarter No. W-34 even before any allotment is claimed by the Company. It is his particular defence that from the time of Dhrangadhra being Princely State that those quarters were in existence and he continued to enjoy occupation of such quarter right from that time. Neither in the reply to the notice issued to him by the appellant-Company, which was served upon him at his address at quarter No. W-34, the R.P.A.D. slip of which has been signed by his daughter, Bilkis Habib, for and on behalf of Respondent No.1 nor anywhere in his line of defence, he has stated that he was not in occupation of quarter No. W-34. For the first time, it has come on record in his written- statement, which was given in writing vide Exhibit-45 by way of a pursis. In absence of any document indicating this aspect or substantiating his stand, the trial Court was right in holding that he being an employee of the Company, who was allotted quarter No. W-34 by the appellant- Company by virtue of the License Deed executed by and between the parties, when he chose not to hand over the possession of the quarter back to the Company, the prosecution under Section 630 of the Companies Act would lie against him. Even if, his stepbrother continued to occupy quarter No. W-34 along with him, it was not through their father, but, it was through Respondent No.1, who was engaged by the company. It is very clear that his occupation is through the appellant-company and not otherwise. Of course, the prosecution qua his step brother and other relatives, who are occupying the said quarter, through the said employee would also lie under Section 630 of the Companies Act, as held by the Apex Court in the case of LALITA JALAN AND ANOTHER VS. BOMBAY GAS COMPANY LIMITED AND OTHERS (Supra) so also in the subsequent decision in GOPIKA CHANDRABHUSHAN SARAN & ANOTHER VS. XLO INDIA LIMITED AND ANOTHER (Supra). However, the fresh prosecution under section 630 of the Companies Act is not being directed nor is it required to be directed, in this case. Because this is a clear ploy to thwart the on going proceedings by repeatatively

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emphasizing on affidavit of his helping in handing over the possession of the quarter back to the Company and thereby, continue such possession till, in fact, the entire process is re-initiated. This will amount to frustrate the very object of permitting the prosecution under Section 630 of the Companies Act. This Court also cannot be a mute spectator to such a game, which is being played by Respondent No.1 in connivance with his family members. The Court cannot be oblivious of the fact that on the death of his father, he had been given the compassionate appointment within four months by the Company and the quarter, which was enjoyed by his late father and the same was permitted to be enjoyed by him during his tenure with the company. Without being appreciative of any of these gestures of the Company, he has chosen to ensure that not only he does not abide by the law, but, as mentioned herein above, all possible attempts have been made to frustrate the very object of the provisions of Section 630 of the Companies Act.

9.24 It is also not out of context to make a mention that civil proceedings initiated by his step-brother against the Company by way of Regular Civil Suit No. 4 of 2018, before the Court of the learned Sr. Civil Judge, Dhrangadhra, on 17.01.2018. It is not for no reason that such a reference is needed of the Suit which has been filed after Respondent No.1 succeeded before the appellate Court in getting the judgment and order of the trial Court quashed and set aside.

9.25 If, one looks at the plaint, it has a reference of Criminal Case No. 903 of 2013, which was quashed and set aside by the appellate Court vide its judgment and order dated 15.02.2017, rendered in Criminal Appeal No. 14 of 2016, against which the Company preferred the present appeal before this Court, which came to be admitted on 26.12.2017. While admitting the appeal, this Court fixed the matter for final hearing and also directed Respondent No.1 to hand over the peaceful and vacation possession of Quarter No. W-34 to the Company before the returnable date and also to file an affidavit to that effect. Noticing such a direction issued by this Court and also on realizing that the matter was fixed for final hearing on 22.01.2018, the step brother of Respondent No.1 had chosen to file Regular Civil Suit No. 4 of 2018 for declaration and permanent injunction and the cause of action for the same purportedly shown is of the Company guard having threatened on 06.01.2018 to vacate quarter No. W-34. He has also pleaded that from the time of Dhrangadhara was a Princely State, the property in question was enjoyed by his family since 1942. This also is a clear indication of the civil suit being a collusive one. It is again an attempt to defeat the proceedings initiated by the Company before this Court. In GOPIKA CHANDRABHUSHAN SARAN & ANOTHER VS. XLO INDIA LIMITED AND ANOTHER (Supra) also there was a civil suit, which was already filed and thereby, a request was made to the Court that proceedings under Section 630 of the Companies Act be stayed, as the suit was pending, the Apex Court, while referring to the decision in ATUL MATHUR VS. ATUL KALRA, (1989) 4 SCC 514 held and observed thus:

"26. We may also mention that the averment of the learned senior counsel appearing for the appellants that the proceedings under Section 630 should have been stayed as the civil suit was pending, is without any merit in the light of the decision of this Court in Atul Mathur v. Atul Kalra, reported in (1989) 4 SCC 514, wherein it was held that stay of proceedings by the criminal court under Section 630 of the Act, whenever a suit has been filed would not only lead to miscarriage of justice but also render ineffective the salutary provisions of Section 630. the said observations are

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"16....Merely because Respondent 1 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 that 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."

27. Considering the facts and circumstances of the present case, we hold that the respondent company was within its jurisdiction to get the suit premises vacated under the provisions of Section 630 of the Act. We also hold that the learned courts below were justified in arriving at a finding that the provisions of Section 630 of the Act are applicable to the facts and circumstances of the present case. Consequently the courts below also acted within their power and jurisdiction in directing for vacation of the suit premises by the appellants.

9.26 In CHHATRASINGH NATHUSINGH VAGHELA VS. STATE OF GUJARAT & ANOTHER, 1998 (1) GLH 243, where, the Suit had been decreed under Section 13(1)(f) of the Bombay Rent Act. The question before the Apex Court was that whether, the revisionist was in occupation of the premises as a tenant or on account of his employment with the Company that being a disputed question of fact, the Apex Court held that the benefit of doubt is required to be given to the employee.

9.27 In the case on hand, the alleged claim by the step-brother of Respondent No.1 in his Civil Suit with regard to quarter No. W-34 is in questionable circumstances, as mentioned herein above. He has not been given any interim relief in injunction application moved by him. His claim of his driving license having the same address, also could have no bearing at all nor would the provident fund documents decide the issue of ownership of the quarter No. W-34. So far as criminal prosecution is concerned for they being the documents not admitted in evidence as discussed above, the above decision of CHHATRASINGH NATHUSINGH VAGHELA (supra) in the opinion of this Court, is also not applicable to this case, in wake of this discussion.

9.28 This Court, thus has not found the version of Respondent No.1 accepted by the Appellate Court as a possible view sustainable under the law. As rightly held by the trial Court it is the respondent No.1 alone, who is in occupation of the premises W-34. His attempt to induct any one in a surreptitious manner or otherwise being his relative or anyone else, would not deserve any sympathy nor would it desire any fresh prosecution to frustrate the very object of speedy remedy under section 630 of the Companies Act. Any one inducted through him and in possession of Quarter No.W-34 shall need to be directed vacation of quarter and handing over of vacant and peaceful possession to the appellant Company whose other labourers presently working with it, are deprived of its enjoyment due to this illegal manner of occupation. His urge to cooperate on one hand if actions are initiated against his step-brother is also nothing but an eye-wash to gloss over his own

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design to continue occupation of the same till date by him through his family. Sustaining the order of Appellate Court would tantamount to overlooking such ill intent on the part of employee who enjoyed the benefit of quarter while in service and is not allowing others to enjoy such benefits.

10. Resultantly, this appeal succeeds and is allowed. The judgment and order passed by the learned 2nd Additional Sessions Judge, Dhrangadhra, Dated: 15.02.2017, in Criminal Appeal No. 14 of 2016 is QUASHED and set aside, while CONFIRMING the judgment and order, Dated: 07.04.2016, passed by the learned Additional Chief Judicial Magistrate, Dhrangadhra, in Criminal Case No. 903 of 2013.

10.1 It is, further, being directed that Respondent No.1 or any relative of his or anyone else inducted through him will HAND OVER the peaceful and vacant possession of Quarter No. W-34 within a period of ONE MONTH from today. His handing over of the possession shall be reported to this and such report shall form the part of this appeal. Respondent No.1 will also pay an amount of Rs.5,000/- towards fine. If, Respondent No.1 does not pay the same, it shall be recovered as revenue dues. In the event of Respondent No.1 failing to hand over the peaceful and vacant possession of Quarter No. W-34, he shall undergo simple imprisonment for SIX MONTHS. Direct service is permitted.

R&P, if any received, be sent back to the trial Court concerned, FORTHWITH.

Appeal allowed

