Arun Kumar Das Vs. State and ors.

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Court : Kolkata

Decided On : Sep-28-1989

Reported in : (1990)1CALLT149(HC),1990(1)CHN81,[1990]68CompCas482(Cal)

Judge : A.K. Chatterjee, J.

Acts : Companies Act, 1956 - Section 630

Appeal No. : Criminal Revision No. 909 of 1989

Appellant : Arun Kumar Das

Respondent : State and ors.

Advocate for Def. : Monotosh Mookherjee, Adv. for respondent No. 2

Advocate for Pet/Ap. : Sushanta Banerjee, Adv.

Disposition : Application rejected

Judgement :

A.K. Chatterjee, J.

1. The short point raised in this revisional application is whether an offence punishable under Section 630 of the Companies Act, 1956, is a continuing one or not. Material facts which may be necessary for appreciation of the contention raised on behalf of the petitioner are that he was a Deputy Divisional Manager of

Bharat Petroleum Corporation Ltd., opposite party No. 2 herein, and he was allotted by the company a flat in the ground floor of premises No. 15, Rowland Road. The petitioner had retired from the service of the company on or about September 1, 1984, but as he did not vacate the flat allotted to him, the said company had filed a complaint before a competent Magistrate sometime in 1986 under Section 630 of the Companies Act. The petitioner contends that the offence, if any, was committed and completed on or about September 1, 1984, and, therefore, the learned Magistrate had committed an error by taking cognizance of the complaint filed in 1986, because the offence being punishable with fine only, the complaint should have been filed within six months from the date of its commission. This contention is sought to be repelled on the ground that the offence in question is a continuing one and, as such, there was no question of taking cognizance after expiry of the period of limitation.

2. In order to determine whether an offence punishable under Section 630 of the Companies Act is a continuing one or not, it is necessary to bear in mind the distinctive feature of such an offence which has been explained by the Supreme Court in Deokaran's case, : 1973 CriLJ347 , Shelat J. delivering judgment for the court had stated that a continuing offence was one which was susceptible of continuance and was distinguishable from one which was committed once and for all. It was further pointed out that the distinction between the two kinds of offences was between an act or omission which constituted an offence once and for all and an act or omission which continued and, therefore, constituted a fresh offence every time or occasion on which it continued. Therefore, in order to decide whether an offence punishable under Section 630 of the Companies Act is susceptible of continuance or not, it is imperative to look to the language of the section itself. The company wants to make out a case under Section 630(1)(b) of the Companies Act which provides that if any officer or employee of a company, having any property of the company in his possession wrongfully withholds it, etc., he shall, on the complaint of the company or any other person specified therein, be punishable with fine extending up to Rs. 1,000. Clearly, therefore, the offence consists of wrongfully withholding property of the company and, necessarily, the offence must continue so long as the property is so withheld. The same view has also been taken by the Rajasthan High Court in Beguram v. Jaipur Udyog Ltd.

[1987] 61 Comp Cas 744, though on a different consideration.

3. Learned advocate for the petitioner has pointed out that the offence of non-filing of the annual return or the copy of the balance-sheet, etc., with the Registrar under Section 159 and Section 220, respectively, of the Companies Act are non-continuing offences and certain Bench decisions of this court to that effect were cited. Learned advocate for the petitioner has argued that, for an analogous reason, the offence punishable under Section 630 of the Companies Act should also be held as a non-continuing offence. There is no merit in this contention as, clearly, the analogy does not apply. Both Sections 159 and 220 of the said Act provide, inter alia, that the annual return and copy of balance-sheet, etc., shall be filed within a prescribed date and thus the offence is committed and completed as soon as the same were not filed within the prescribed date. On the other hand, Section 630(1)(b) of the said Act, as already pointed out, makes wrongful withholding of the property of the company an offence, necessarily implying that the offence continues as long as the property is so withheld. Neither Section 159 nor Section 220 of the Companies Act provides that withholding the annual return or the copy of the balance-sheet constitutes an offence punishable under Section 162 of the same Act. It is because of this distinction in the language of the different sections pointed out above that analogy sought to be drawn by learned Advocate for the petitioner does not apply.

4. For the reasons stated above, it is held that the instant revisional application is without any merit and it is rejected. All interim orders are vacated and the learned Magistrate is directed to dispose of the proceeding with utmost expedition.