LALITA JALAN AND ANR. A

v.

BOMBAY GAS CO. LTD. AND ORS.

APRIL 16,, 2003

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND G.P. MATHUR, JJ.] B

Companies Act, 1956—Section 630:

Wrongful withholding of property of company—Petition against family members of deceased employee—Maintainability of—Held: Such petition is C *maintainable and the accused are liable to be prosecuted under Section 630 since all those who come in possession of premises with express and implied consent of employee including his family members and do not vacate the premises would be withholding delivery of property to company—It would also include anyone inducted in possession of property by such persons and* D *who continue to withhold the property—Code of Criminal Procedure, 1973, Section 482.*

Object of—Discussed.

Interpretation of Statutes—Construction of—Object of Section 630 being to retrieve property of company thus not a penal provision as normal attributes E *of crime and punishment not present—Thus principle of strict construction relating to criminal statutes not applicable—Companies Act, 1956, Section 630.*

Constitution of India, 1950—Article 21—Protection of life and personal liberty—Wrongful withholding of property by employee or anyone claiming F *through him of such property—Penalty and prosecution under Section 630—Violation of Article 21—Held: Possession of properties by 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 not unreasonable or irrational or unfair to attract rigour of Article 21—Companies Act, 1956, Section 630.* G

Words and Phrases:

"Employee or anyone" claiming through him—Meaning of in the context of Section 630 of the Companies Act, 1956.

 H

A *"Withholding"—Meaning of.*

Respondent No. 1-company took a flat on lease. It allotted the flat to J in his capacity as director of the company. J died. The company purchased the flat and became an owner. However, the appellants and respondent no 2-The son, daughter in law and grandson of J did not vacate B the flat and hand over the possession to the company. Respondent no 1 filed criminal complaint under Section 630 of Companies Act, 1956 against appellants and process were issued against them. Appellants filed appeal for recall which was rejected. Appellants then filed petition under Section 482 Cr. P. C and Article 227 of the Constitution. High Court dismissed C the petition. Hence the present appeal.

Appellants contended that Section 630 of the Act can apply only to an officer or employee of the company; that the flat was given to J for his residence but he died when he was still functioning as the director of the company and the appellants are neither officers nor employees of the D company and, therefore, cannot be prosecuted under section 630 and the complaint filed against them is liable to be quashed; that in accordance with Hindu Succession Act, son of J would be his legal heir and not his daughter in law and grand son therefore, principle laid down in *Abhilash Vinod Kumar Jain's* case that petition against legal heirs of deceased employee for retrieval of company's property withheld would be E maintainable, would not be applicable to the instant case; that a Statute enacting an offence or imposing a penalty is to be strictly construed; and that section 630 refers to an officer or employee of a company and being a penal provision, it will be against all canons of interpretation of Statutes to include family members of a former or deceased employee within its F fold.

Respondent contended that the appellants are family members of J and it is they who are wrongfully withholding the property of the company, in these circumstances they are liable to be prosecuted under Section 630 and there is absolutely no ground for either quashing the complaint or G the process issued against them.

Dismissing the appeal, the Court

HELD: 1. The purpose of criminal justice is to award punishment. It is a method of protecting society by reducing the occurrence of criminal behaviour. It also acts as a deterrent. Where the punishment is disabling H or preventive, its aim is to prevent a repetition of the offence by rendering

the offender incapable of its commission. The Companies Act is entirely different from those statutes which basically deal with offences and punishment like Indian Penal Code, Terrorist and Disruptive Activities (Prevention) Act, etc. It makes provision for incorporation of the companies, its share capital and debentures, management and administration, allotment of shares and debentures, constitution of Board of Directors, prevention of oppression and mismanagement, winding up of the company, etc. A few provisions, namely Sections 628 to 631 have created offences and also prescribe penalty for the same. Having regard to the purpose for which Section 630 has been enacted viz., to retrieve the property of the company and the salient features of the statute (Companies Act), it is not possible to hold it as a penal provision as the normal attributes of crime and punishment are not present here. It cannot be said to be an offence against the society at large nor the object of awarding sentence is preventive or reformative. In such circumstances the principle of interpretation relating to criminal statutes that the same should be strictly construed will not be applicable. Such principle is not of universal application which must necessarily be observed in every case and the submission on strict interpretation of a section cannot be accepted. [602-F, H; 603-A, B, F]

Tolaram Relumal and Anr v. *State of Bombay,* [1955] 1 SCR 158; *Murlidhar Meghraj Loya* v. *State of Maharasthra,* AIR (1976) SC 1929; *Kisan Trimbak Kothula and Ors.* v. *State of Maharashtra,* AIR (1977) SC 435; *Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal* v. *Abani Maity,* AIR (1979) SC 1029 and *State of Maharashtra* v. *Natwarlal Damodardas Soni,* AIR (1980) SC 593, referred to.

Salmond on jurisprudence Twelfth Edition p 91, referred to.

2.1. The wrongful withholding of property of the company has been made an offence and is punishable with fine only. A substantive sentence or imprisonment can be awarded only where there is a non-compliance of the order of the Court regarding delivery or refund of the property. This order would be passed against a specific person or persons whether an employee, past employee or a legal heir or family member of such an employee and only if such named person does not comply with the order of the Court, he would be liable to be sentenced which may extend to imprisonment for two years. At this stage, namely, where the Court would award a substantive sentence of imprisonment for non-compliance of its order the question of enlarging or widening the language of the Section

A cannot arise as the order would be directed against a specifically named person. [603-G, H; 604-A]

2.2. The view expressed in J. K. (Bombay) Ltd. that prosecution of other family members of a former employee living with him would violate Article 21 of the Constitution runs counter to the view expressed in B *Abhilash Vinodkumar Jain's* case where 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 or anyone claiming the occupancy through such employee or officer. The view expressed in *Abhilash Vinodkumar Jain's* case clearly subserves the object of the Act which is to the effect of recovering the possession of the property belonging C 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 D 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 deemed or subsequent order of the Court, the possession of the property is not returned to the company, the question of imposing penalty will arise. The possession of the property E by an employee 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 F him' will not be unrelated to the object of the provision nor is it so far fetched as to become unconstitutional. Therefore, the view expressed in *J.K. (Bombay) Ltd.* case is not correct and the view expressed in *Abhilash Vinodkumar Jain's* case is justified and should be accepted in interpreting the provision of Section 630 of the Act. [605-D-G; 606-A-C]

G *Abhilash Vinodkumar Jain* v. *Cox and Kings (India) Ltd. and Ors.*, [1995] 3 SCC 732, relied on.

J.K. (Bombay) Ltd. v. *Bharti Matha Mishra and Ors.*, [2001] 2 SCC 700, overruled.

H 2.3. 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. [606-D-F]

Baldev Krishna Sahi **v.** *Shipping Corpn. of India Ltd. and Anr.,* **[1987] 4 SCC 361;** *Amrit Lal Chum* **v.** *Devoprasad Dutta Roy,* **[1988] 2 SCC 269;** *Atul Mathur* **v.** *Atul Kalra and Anr.,* **[1989] 4 SCC 514;** *Gokak Patel Volkart Ltd.* **v.** *Dundayya Gurushiddaiah Hiremath and Ors.,* **[1991] 2 SCC 141;** *Parbhani Transport Cooperative Society Ltd.* **v.** *Regional Transport Authority, Aurangabad and Ors.,* **[1960] 3 SCR 177 ;** *Naresh Shridhar Mirajkar and Ors.* **v.** *State of Maharashtra and Anr.,* **AIR (1967) SC 1 and** *Triveniben* **v.** *State of Gujarat,* **[1989] 1 SCC 678, referred to.**

3. The plea for recall of the process issued against them has no substance. The fact that appellant no. 2 was born subsequent to the death of J, would make no difference as his occupation of the flat in question clearly amounts to withholding of the property of the company. [606-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 574 of 2003.

From the Judgment and Order dated 18.1.2002 of the Mumbai High Court in Crl. W.P. No. 22 of 2002.

Ashok H. Desai, Pratik Jalan, Atul Dayal and K.R. Sasiprabhu for the Appellants.

Dr. Abhishek Manu Singhvi, Gaurab Banerjee, R.N. Karanjawala, Ms. Nandini Gore, Ms. Meghna Mishra, Mrs. Manik Karajawala, Arun Pednekar, S.S. Shinde and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

A **G.P. MATHUR, J.** Leave granted.

This appeal has been preferred against the judgment and order dated January 18, 2002 of High Court of Bombay by which the petition preferred by the appellants under Section 482 Cr.P.C. and Article 227 of the Constitution was dismissed. The matter has been referred to a three-Judge Bench in view B of the apparent conflict in the two decisions of this Court in *Abhilash Vinodkumar Jain* v. *Cox & Kings India Ltd. and Ors.*, [1995] 3 SCC 732 and *J.K. Bombay Ltd.* v. *Bharti Matha Mishra and Ors.*, [2001] 2 SCC 700.

Bombay Gas Co. Ltd. respondent no.1 had taken on lease a flat in a building known as "Hari Bhavan", 64 Pedder Road, Bombay. Shri N.K. C Jalan, in his capacity as Director of the Company, was allotted the said flat. Ashok Kumar Jalan (accused no. 1 and respondent no.2 in the present appeal) is son of Shri N.K. Jalan. Appellant no.1 Smt. Lalita Jalan (accused no. 2) is wife of Ashok Kumar Jalan and appellant no.2 Siddharth Jalan (accused no. 3) is his son. Shri N.K. Jalan died in 1967. The company purchased the flat and became owner thereof in April, 1991. It filed a criminal complaint D under Section 630 of the Companies Act, 1956 hereinafter referred to as 'the Act' against Ashok Kumar Jalan, Smt. Lalita Jalan and Siddharth Jalan on March 16, 1994. The proceedings of the complaint case were stayed in a company petition and finally sometime in the year 2001, the learned Magistrate issued process against the accused. The appellants moved an application for recall of the process issued against them and for their discharge, which was E rejected by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai by order dated December 1, 2001. Thereafter, the appellants preferred a petition under Section 482 Cr.P.C. and Article 227 of the Constitution in the High Court of Bombay, which was dismissed by the impugned order dated January 18, 2002.

F Shri Ashok Desai, learned senior counsel for the appellants, has submitted that in view of the plain language used in Section 630 of the Act, the said provision can apply only to an officer or employee of the company. The flat was given to Shri N.K. Jalan for his residence but he died when he was still functioning as Director of the company. The appellants, are neither officers nor employees of the company and, therefore, they cannot be G prosecuted under the aforesaid provision and the complaint filed against them is an abuse of the process of the Court which is liable to be quashed. Shri Abhishek Singhvi, learned senior counsel for the respondent, Bombay Gas Company Ltd., has submitted that the appellants are family members of Late Shri N.K. Jalan and it is they who are wrongfully withholding the property of the company. In these circumstances they are fully liable to be prosecuted H under Section 630 of the Act and there is absolutely no ground for either

quashing the complaint or the process issued against them. A

In order to examine the contentions raised by learned counsel for the parties, it will be convenient to set out the provisions of Section 630 of the Companies Act, 1956, which read as under:

> "630. Penalty for wrongful withholding of property—(1) If any officer or employee of a company— B
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> (a) wrongfully obtains possession of any property of a company; or
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> (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; C
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> 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.
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> (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 D or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years."

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 E 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 F 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 G 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 H

A longer an officer or employee of the company. In *Baldev Krishna Sahi* v. *Shipping Corpn. of India Ltd. and Anr.*, [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 B 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 C 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 D 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."

The Court went on to observe that it is only the present officers and E 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 F 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 G the employment, which is an offence under section 630(1)(b) of the Act.

Soon thereafter the same question came up for consideration before a three Judge Bench of this Court in *Amrit Lal 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 H 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 Sahi's* case (supra) is the only construction possible and there was no warrant to give a restrictive meaning to the term "officer or employee" appearing 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 Sahi's* case supra and *Amrit Lal Chum's* 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.

In *Gokak Patel Volkart Ltd.* v. *Dundayya Gurushiddaiah Hiremath and Ors.*, [1991] 2 SCC 141, the Court following *Baldev Krishna Sahi* (supra) and *Amrit Lal 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 offender's 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

A 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....."

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The four cases referred to above, considered the question whether a former or past employee or officer of the company could be prosecuted under Section 630 of the Act. In *Abhilash Vinodkumar Jain* v. *Cox & Kings India Ltd. and Ors.*, [1995] 3 SCC 732, the question which arose for consideration was whether the legal heirs and representatives of the employee or the officer C concerned continuing in occupation of the property of the company, after the death of the employee or the officer, could also be prosecuted under Section 630 of the Act. The complaint in the said case had been filed against the legal heirs of the employee-officer of the company, who died in harness while serving the company. After noticing the above cited four decisions and also the fact that the Court had consistently taken the view and repeatedly D emphasized that the provisions of Section 630 of the Act have to be given purposive and wider interpretation and not a restrictive interpretation, it was held as under in para 14 of the Report:

"Thus, inescapably it follows that the capacity, right to possession and the duration of occupation are all features which are integrally E 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 F property of the company actionable under Section 630 of the Act.....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 G representative 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

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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."

Shri Ashok Desai, learned senior counsel for the appellant has tried to distinguish *Abilash Vinodkumar Jain* (supra) on the ground that the same related to the case of heirs of a deceased employee. It is urged that in accordance with Hindu Succession Act, Shri Ashok Kumar Jalan, who is the son of late Shri N.K. Jalan would be his legal heir and not the appellants and, therefore, the principle laid down in *Abilash VinodKumar Jain* (supra) would not be applicable to the case in hand. In support of his submission, Shri Desai has placed strong reliance upon a decision of this Court rendered in *J.K. Bombay Ltd.* v. *Bharti Matha Mishra and Ors.*, [2001] 2 SCC 700 wherein it was observed that the possession of the legal heirs of the deceased employee cannot be equated with the family members of an erstwhile employee. In our opinion, this case is clearly distinguishable on facts and the principle laid down therein cannot be of any assistance to the appellants. One Mata Harsh Mishra was an employee of the company and he was given possession of a flat of the company for the purposes of his residence during the course of his employment which he had to vacate as and when he ceased to be the employee of the company. Mata Harsh Mishra tendered his resignation, which was accepted by the company and he was directed to hand over charge of his work to the Production Manager and to vacate the flat in his possession. Shri Mishra, however, did not vacate the premises on the pretext that he had not been paid his dues and, therefore, he had a right to remain in occupation of the flat. The company then filed the complaint under Section 630 of the Act against Mata Harsh Mishra, his wife and son (respondent nos. 1 and 2 in the appeal). The respondent nos.1 and 2, viz., wife and son, moved an application before the Judicial Magistrate for recall of the order of process, which was rejected and the revision preferred by them was also dismissed by the Sessions Judge. Thereafter, they filed a writ petition which was allowed by the Bombay High Court and the proceedings against them were quashed and the said decision was challenged by the company by filing an appeal in this Court. It was urged on behalf of the company that since in view of *Abiliash Viondkumar Jain* (supra) the legal heirs of the erstwhile employee can be prosecuted, the other family members of such employee living with him, cannot escape their liability of prosecution. It was in this context that the Bench observed that penal law cannot be interpreted in a manner to cover within its ambit such

A persons who are left out by the legislature and the position of the legal heirs of a deceased employee cannot be equated with the family members of an erstwhile employee against whom admittedly the criminal prosecution has been launched and is pending. After taking note of the earlier decisions of this Court, which we have referred to above, the Bench recorded its conclusion in the following manner:

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> "We are of the firm opinion that all the family members of an alive "officer" or "employee" of a company cannot be proceeded with and prosecuted under Section 630 of the Act. The order impugned does not suffer from any illegality, requiring our interference."

C The ratio of this case clearly is that the position of legal heirs of a deceased employee who are in possession of the property and are wrongfully withholding the same is different from that of family members of a former or past employee, who is alive and against whom prosecution has also been launched. The view taken is that if a former or erstwhile employee of the company is in possession of the property and is wrongfully withholding to D deliver the same to the company after cessation of his employment and a prosecution against him is lanuched under Section 630 of the Act, then his other family members cannot be prosecuted. This case, in our opinion is not an authority for the proposition that such family members of a deceased employee who are not his legal heirs in accordance with the personal law applicable to him, cannot be prosecuted under Section 630 of the Act for E wrongfully withholding the property.

In interpreting the provision of Section 630 of the Companies Act, 1956, this Court in *Abhilash Vinodkumar Jain* (supra) held that the object of the provisions of Section 630 of the Act is retrieval of the possession of the property of the company which was in occupation of an employee or an F officer and that such property can be recovered not only from a former employee or an officer but also his heirs or representatives in possession of the property who had acquired a right of such member or came to retain the possession of the property by tracing their possession to such employee or officer. This Court stated that they have no right independent of the employee but derive the same from the employee or officer who hold on to the property G of the company and they would also be covered by the provisions of Section 630 of the Act. In *J.K. Bombay Ltd.* (supra), this Court took the view that the decision in *Abilash Vinodkumar Jain* (supra) should be confined to the legal heirs of the employees and that other family members cannot be covered by the provision of Section 630 of the Act inasmuch as the provision is penal in nature and any expansive meaning attributed to the expression used in H Section 630 of the Act will attract the wrath of Article 21 of the Constitution

and this Court also stated that they are of the firm opinion that all the family members of an alive 'officer' or 'employee' of a company cannot be proceeded with and prosecuted under Section 630 of the Act.

Shri Desai has strenuously urged that a Statute enacting an offence or imposing a penalty is to be strictly construed and a clear language is required to create a crime. Strong reliance was placed upon a Constitution Bench decision of this Court in *Tolaram Relumal and Anr.* v. *State of Bombay*, [1955] 1 SCR 158, wherein it was held that it is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty and it is not competent for the Court to stretch out the meaning of expression used by the legislature in order to carry out the intention of the legislature. The contention is that Section 630 of the Act refers to an officer or employee of a company and being a penal provision, it will be against all canons of interpretation of Statutes to include family members of a former or deceased employee within its fold. Learned counsel has also submitted that the fact that an enactment is a penal provision is in itself reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear and the same should be construed strictly. In view of the contention raised it becomes necessary to examine whether Section 630 of the Act is really a penal provision.

Section 630 of the Act is in two parts. Clause (b) of sub-section (1) thereof lays down that if any officer or employee of a company having any property of the company in his possession wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by the Act, he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to Rs. 10,000. At this stage no substantive sentence can be awarded. Sub-section (2) thereof empowers the Court trying the offence to order such officer or employee to deliver up or refund within 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. Sub-Section (1), wherein wrongfully withholding the property of the company has been made an offence, is punishable with fine only and it does not provide for imposing any substantive sentence. It is only where the Court directs the officer or employee to deliver or refund the property within a fixed period and such order of the Court is not complied with and the property is not delivered or refunded that a sentence of two years can be awarded. Therefore, it is non-compliance or non-observance of

A the order of the Court regarding delivery or refund of the property which results in making the person so directed liable for being awarded a substantive sentence of imprisonment. In *Abhliash Vinodkumar Jain* (supra) this has been clearly elaborated in para 16 of the report and it has been held that it is in the event of the disobedience of the order of the Court that imprisonment for a term which may extend to two years has been prescribed. This provision
B makes the defaulter, whosoever he may be, who disobeys the order of the Court to hand back the property to the company within the prescribed time, liable for punishment.

In Salmond on Jurisprudence (Twelfth Edition page 91) the difference between civil wrongs and crimes has been explained as under:

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> "The distinction between crimes and civil wrongs is roughly that crimes are public wrongs and civil wrongs are private wrongs. As Blackstone says: "Wrongs are divisible into two sorts or species, private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals,
> D considered as individuals, and are thereupon frequently termed civil injuries; the latter are a breach and violation of public rights and duties which affect the whole community considered as a community; and are distinguished by the harsher appellation of crimes and misdemeanours". A crime then is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual.
> E Murder injuries primarily the particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family. Those who commit such acts are proceeded against by the State in order that, if convicted, they may be punished. Civil wrongs such as breach of contract or trespass to land are deemed only to infringe the rights of the individual wronged
> F and not to injure society in general and consequently the law leaves it to the victim to sue for compensation in the courts.
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> English law, however, has certain features which prevent us drawing a clear line between these two kinds of wrong. First, there are some wrongs to the state and therefore public wrongs, which are
> G nevertheless by law regarded as civil wrongs. A refusal to pay taxes is an offence against the state, and is dealt with at the suit of the state, but it is a civil wrong for all that, just as a refusal to repay the money lent by a private person is a civil wrong....."

The purpose of criminal justice is to award punishment. It is a method
H of protecting society by reducing the occurrence of criminal behaviour. It

also acts as a deterrent. Where the punishment is disabling or preventive, its aim is to prevent a repetition of the offence by rendering the offender incapable of its commission. The Companies Act is entirely different from those statutes which basically deal with offences and punishment like Indian Penal Code, Terrorist and Disruptive Activities (Prevention Act), etc. It makes provision for incorporation of the companies, its share capital and debentures, management and administration, allotment of shares and debentures, constitution of Board of Directors, prevention of oppression and mismanagement, winding-up of the company etc. The heading of part XIII of the Companies Act is "General" and a few provision therein, namely, Section 628 to 631 create offences and also prescribe penalty for the same. Having regard to the purpose for which Section 630 has been enacted viz. to retrieve the property of the company and the salient features of the statute (Companies Act) it is not possible to hold it as a penal provision as the normal attributes of crime and punishment are not present here. It cannot be said to be an offence against the society at large nor the object of awarding sentence is preventive or reformative. In such circumstances the principle of interpretation relating to criminal statutes that the same should be strictly construed will not be applicable.

We would like to mention here that the principle that a statute enacting an offence or imposing a penalty is strictly construed is not of universal application which must necessarily be observed in every case. In *Murlidhar Meghraj Loya* v. *State of Maharashtra*, AIR (1976) SC 1929, *Krishna Iyer*, J, held that any narrow and pedantic, literal and lexical construction of Food Laws is likely to leave loopholes for the offender to sneak out of the meshes of law and should be discouraged and criminal jurisprudence must depart from old canons defeating criminal statutes calculated to protect the public health and the nation's wealth. The same view was taken in another case under the Prevention of Food Adulteration Act in *Kisan Trimbak Kothula and Ors.*, v. *State of Maharashtra*, AIR (1977) SC 435. In *Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal* v. *Abani Maity*, AIR (1979) SC 1029, the words "may" occurring in Section 64 of Bengal Excise Act were interpreted to mean "must" and it was held that the Magistrate was bound to order confiscation of the conveyance used in commission of the offence. Similarly, in *State of Maharashtra* v. *Natwarlal Damodardas Soni*, AIR (1980) SC 593 with reference to Section 135 of the Customs Act and Rule 126-H(2)(d) of Defence of India Rules, the narrow construction given by the High Court was rejected on the ground that they will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. It was further held that the provisions have to be specially construed in a manner which will suppress the mischief and advance the object which

A the legislature had in view. The contention raised by learned counsel for the appellant on strict interpretation of the Section cannot therefore be accepted.

Even otherwise as shown earlier, the wrongful withholding of property of the company has been made punishable with fine only. A substantive sentence or imprisonment can be awarded only where there is a non-
B compliance of the order of the Court regarding delivery or refund of the property. Obviously, this order would be passed against a specific person or persons whether an employee, past employee or a legal heir or family member of such an employee and only if such named person does not comply with the order of the Court, he would be liable to be sentenced which may extend to imprisonment for two years. At this stage, namely, where the Court would
C award a substantive sentence of imprisonment for non-compliance of its order the question of enlarging or widening the language of the Section cannot arise as the order would be directed against a specifically named person.

With profound respects we are unable to agree with certain observations made in *J.K. Bombay Ltd.*, (supra) that prosecution of other family members
D of a former employee living with him would violate Article 21 of the Constitution. The award of sentence by the order of the Court cannot amount to violation of any of the fundamental rights guaranteed under the Constitution is now well settled by several authoritative pronouncements of this Court. A Constitution Bench in *Parbhani Transport Cooperative Society Ltd.* v. *Regional Transport Authority Aurangabad and Ors.*, [1960] 3 SCR 177 at
E 188 has held that no one can complain breach of Article 14 of the Constitution by a decision of a quasi judicial body and if it has made any mistake in its decision, there are appropriate remedies available to the aggrieved party for obtaining relief. In *Naresh Shridhar Mirajkar and Ors.* v. *State of Maharashtra and Anr.*, AIR (1967) SC 1, a decision by a bench of nine Hon'ble judges, Chief Justice Gajendragadkar speaking for the majority held as under:
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> "The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on
G which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a
H judicial decision pronounced by a Judge of competent jurisdiction in

or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1)."

In *Triveniben* v. *State of Gujarat* [1989] 1 SCC 678, a Constitution Bench while considering the validity of death sentence, held that it is well settled that a judgment of Court can never be challenged under Article 14 or 21 of the Constitution and, therefore, a judgment of the Court awarding the sentence of death is not open to challenge as violating Articles 14 and 21 of the Constitution and the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay, the condemned petitioner could approach the Court. The statement of law made in *J.K. (Bombay) Ltd.* (supra) to the effect that prosecution of the legal heirs and family members living with an erstwhile or former employee would violate Article 21 of the Constitution is therefore not correct.

The view expressed in *J.K. (Bombay) Ltd.* (supra) runs counter to the view expressed in *Abilash Vinodkumar Jain* (supra) 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 employees or officer or anyone claiming the occupancy through such employee or officer. The view expressed in *Abilash Vinodkumar Jain* (supra) 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 objections 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.* (supra) in our opinion is not correct and the view expressed in *Abilash Vinodkumar Jain* (supra) is justified and should be accepted in interpreting the provision of Section 630 of the Act.

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.

In view of the discussions made above, we are of the opinion that the plea taken by the appellants for recall of the process issued against them has no substance. The fact that the appellant no.2 Siddharth Jalan was born subsequent to the death of N.K. Jalan, would make no difference as his occupation of the flat in question clearly amounts to withholding of the property of the company. The appeal is accordingly dismissed.'

N.J. Appeal dismissed.