

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1664 OF 2005

Pallav Sheth

.....Appellant

Versus

Canara Bank

.....Respondent

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. This is an appeal under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, directed against the final judgment and order dated 17.10.2005 of the Special Judge in Special Case No. 1 of 2002.

2. In view of nature of the order proposed to be passed in this appeal, it is not necessary to go into the details of the evidence. It would suffice to notice that there was no serious dispute raised on behalf of the appellant that he was liable to pay the agreed price of Rs.83,00,000/- for 20000 shares which were not returned to the respondent-bank. In fact the appellant had admitted the liability and issued cheques to meet it but the cheques were not honored. The defence of the appellant that such liability was only a civil liability

without any criminal intention was not accepted by the learned Special Court. After discussing the relevant materials it held that dishonest misappropriation of those shares on the part of the accused is writ large. While rejecting the defence of the accused that there was no criminal intention on his part in not paying the amount of Rs.83,00,000/-, the learned Judge, Special Court in paragraph 23 of the judgment under appeal has given lucid account of relevant facts for reaching at such conclusion. Para 23 runs as follows:

“23. In this view of the matter, I do not find merit in the submissions made on behalf of the accused. Dishonest intention is quite clear and it is since beginning of the transaction. It is on the representation of the accused that 20000 shares alongwith blank share transfer forms, duly signed by the Authorised Officer, were delivered to the representative of the accused, against post dated cheques, that was also as per the market practice. What is pertinent to be noted is that the cheque was post dated, the transaction took place on 2nd April, 1992. The delivery of the shares and blank share transfer forms against the post dated cheque was made on 5.6.1992, the cheque was post dated of 20.06.1992. Before the due date of the cheque, the accused had called the Complainant's witness Sriram-PW2 and requested them to present the cheque for encashment a little later. Accordingly, the cheque came to be presented on 29.6.1992. It was dishonoured. Again, the accused requested to present the cheque subsequently and on such subsequent presentation also the cheque was dishonoured. Then he happened to promise to issue Pay order, which he never issued. He then delivered two cheques, one for Rs. 50,00,000/- and another for Rs.33,00,000/-, both were dishonoured, not once but twice. This conduct of the accused shows a clear dishonest intention of misappropriation of the shares or its sell consideration.”

3. Since we were inclined to agree with the aforesaid view of the learned Special Court on the basis whereof the appellant has been convicted for offence under Section 409 of the Indian Penal Code and sentenced to suffer RI for six months and to pay fine of Rs.1,00,000/- only and in default to suffer RI for further three months, a suggestion was made by Mr. Rajiv Dutta, learned senior advocate for the appellant, on the basis of instructions received, that respondent bank should file a chart showing the amount payable by the appellant after deducting the amount that has already been paid and/or after taking into consideration the adjustment of shares already made. In the light of such pro settlement stand on behalf of the appellant, an order to that effect was passed on 24th February, 2016.

4. On the next and final date of hearing a chart showing the amount payable by the appellant to the bank was produced by Ms. Radhika Gautam, learned counsel for the respondent bank. As per the original chart Rs.58,10,000/- is the principal amount decreed against the appellant vide order dated 3.5.2007 passed by the Special Court, Mumbai in Civil Suit No. 6 of 2002. It further transpires that interest has also been allowed at the rate of 18% per annum from 20th June, 1992. After adjusting Rs.20,00,000/- paid by the appellant in 2003 by way of part settlement, the balance amount with same rate of interest till 29th February, 2016 has resulted into an amount of

Rs.2,86,17,424 payable by the appellant to the Bank as on 29th February, 2016.

5. On hearing counsel for both the parties, we found good chances of a settlement between the parties if a substantial amount could be paid to the bank by the appellant so as to virtually meet the entire decretal liability within a reasonable period of time. On behalf of the appellant a strong plea was made for working out such settlement but with a further plea that in the larger interest of justice and considering his precarious financial condition, the rate of interest may be reduced to a reasonable rate such as 12% per annum.

6. On our persuasion, learned counsel for the respondent-Bank obtained instructions and conveyed that the respondent-bank was willing for such a settlement. It was also made clear that a reasonable rate of interest as may be determined by this Court will be acceptable to the respondent-Bank.

7. On recalculation with rate of interest at 12% per annum and adjustment of Rs.20,00,000/- already made, according to learned counsel for the respondent-bank the total amount payable by the appellant as on 29.2.2016 would be Rs.2,03,10,400/- only. Learned senior counsel for the appellant has conveyed acceptance but pleaded that the appellant be given six months time to pay the decretal amount due to the Bank with modified rate of interest at the 12% per

annum. It was accepted on behalf of the appellant that the entire dues calculated at the rate of 12% per annum shall be paid in two installments, first one payable by end of three months and the final by end of six months from today.

8. In the aforesaid facts and circumstances, in the special facts and larger interest of justice this appeal is disposed of in the following terms:

- (i) Since the settlement indicated above have been accepted by the parties, the same is recorded as a part of this judgment and order.
- (ii) The appellant shall pay the decretal amount with interest calculated at the rate of 12% per annum (in place of 18% per annum) from 20th June, 1992 with adjustment of Rs.20,00,000/- already paid in 2003, in two installments payable in three months and six months time respectively. On such payment the sentence imposed upon the appellant shall stand reduced to the period already undergone along with fine of Rs.1,00,000/-.
- (iii) The decree of the Special Court, Mumbai in Civil Suit No. 6 of 2002 will be treated to have been satisfied by the appellant on his making the payment of the settlement amount indicated above.

- (iv) In case the settlement amount is not paid by the appellant in the manner and to the extent indicated above, then after six months this order shall stand recalled and the appellant shall surrender to serve out the remaining period of sentence of RI for six months as per the judgment under appeal which shall then stand confirmed by this Court.

The Appeal is disposed of accordingly.

.....J.
[DIPAK MISRA]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
April 13, 2016.

JUDGMENT