

PETITIONER:
MINOO MEHTA

Vs.

RESPONDENT:
SHAVAK D. MEHTA

DATE OF JUDGMENT: 15/01/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RA.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar, J.
Leave granted.

We have heard learned counsel for the parties. The short questions involved in this appeal in as to whether the Special Court, functioning under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act'), has jurisdiction to entertain and try the criminal case filed by respondent complaint against the appellant-accused. The Special Court consisting of learned Single Judge of the High Court of Bombay has held that the proceedings are within its jurisdiction. The appellant-accused has challenged the said decision in the present appeal. A few introductory facts leading to these proceedings are required to be noted at the outset.

Background Facts

The respondent-complainant is the uncle and the appellant-accused is his nephew. It is the case of the respondent-complainant who is aged about 85 years that he is an architect by profession. That accused is the son of his brother, that is, his nephew. He filed a criminal complaint under Section 409 of the Indian Penal Code ('IPC for short). We will refer to the respondent as the complainant and the appellant as the accused in the latter part of this judgment. The complainant's case is that he and his daughter Ms. Feroza Parvez Driver held shares numbering 1200 of Great Eastern Shipping Company Limited. The complainant has no son and the accused being his nephew and close relative, he handed over the shares with transfer forms to the accused for arranging the sale thereof through reliable broker and to pay the sale proceeds to the complainant. This was done somewhere in the month of December 1991. It is the case of the complainant that he signed and executed various transfer forms, so also his said daughter Ms. Feroza to facilitate the transfer thereof in the name of prospective buyer.

The complainant further proceeds to state that he expected the accused to pay him the sale proceeds of the said shares in due course. However, for quite a long time there was no response from the accused. The complainant on

various occasions made enquiries with the accused about the sale of the said shares. However, the accused, according to the complainant, put off and shirked the matter saying that the time was not opportune for the sale of the shares. Thereafter, the accused began to avoid the complainant. The complainant, therefore, felt that something was a miss and enquired with M/s, Tata Consultancy Services who were Share Registrars of M/s . Great Eastern Shipping Co. Ltd. about the shares and on 02nd January 1993 the complainant was replied that the shares in question were already sold out. The complainant also came to know the name of the sub-broker through whom the said shares were sold, i.e., Mr. Paresh B. Patel who was originally named as accused no.2 in the complaint. The complainant then made enquiry with the said sub-broker and from him he came to know that the accused had already arranged the sale of the said shares. The complainant thereafter enquired with the accused and confronted him with the information which the complainant had gathered. The accused also executed certain writings admitting the receipt of the shares from the complainant, sale thereof, etc. He also promised to pay the sale proceeds to the complainant. However, he did not do so.

It is in these circumstances that the complainant has filed this complaint with a case that the accused had committed offence of criminal breach of trust and dishonest misappropriation of the securities. The compiling was filed by the complainant before the Special Court both against the appellant as well as accused no.2 Paresh B. Patel. However no charge is framed by the Special Court against accused no.2. Hence he is out of picture. The complaint, therefore, survives only against the present appellant, accused no.1 who is now the sole accused. It may be noted that the complaint was filed by the respondent-complainant on 13th April 1994 before the Special Court for the aforesaid alleged offence. The said case was registered as Special Case No.1 of 1995. The Special Court issued summons of the appellant and framed charge against the appellant as under :

"CHARGE

I, Justice M.S. Rane, Judge, Special Court, Mumbai, do hereby charge you Minoo Mehta, the accused herein, as under:

That in or about December. 1991 securities viz. distinctive number of 1200 shares of Great Eastern Shipping Co. Ltd., belonging to the complainant Shavak D. Mehta and his daughter Ms. Feroza P. Driver, as per particulars mentioned hereinbelow i.e.

Distinctive No.	No. of Shares
1 31202266 - 31202415	150
2 31202116 - 31202265	150
3 31202416 - 31202440	25
4 25752406 25752430	25
5 25752431 25752455	25
6 25752456 25752480	25
7 8699052 8699151	100
8 24690929 24691028	100
9 823796 823895	100
10 33201 33300	100
11 405952 406051	100
12 541991 542090	100
13 7720240 7720339	100
14 4715055 4715154	100

1200

were entrusted by him to you for selling the same on

his behalf and paying the proceeds of the sale of those shares to him which shares you did sell in January 1992 and did dishonestly misappropriate and convert the sale proceeds of the sale amounting to Rs. 1,10,00/- to your own use and you did thereby commit the offence of criminal branch of trust in deletion to the said transaction in the said securities punishable under Sec. 406 of I.P.C. and within my cognizance and I, therefore, direct that you be tried for the said offence."

The accused moved an application No.240 of 1997 in the said case before the Special Judge and contended that the Special Court had no jurisdiction to try the alleged offence against the appellant. The learned Special Judge after hearing the parties concerned held by his order dated 10th July 1997 that the complaint as filed by the complainant was maintainable before the Special Court and he had jurisdiction to try the appellant for the offence with which he was charged. It is this order of the Special Court which is brought on the anvil of scrutiny of this Court in the present appeal.

Statutory Scheme

In order to appreciate the grievance of the appellant accused it is necessary to note the statutory scheme of the Act under which the Special Court is functioning and has entertained the complaint of the respondent - complainant. The Act No. 27 of 1992 was assented to by the President of India on 18th August 1992. It was brought in force from 06th June 1992 with retrospective effect as an ordinance had preceded it from that earlier date. It was on 06th June 1992 that a custodian was appointed under Section 3 of the Act. The Act is to provide for establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto. The Statement of objects and Reasons of the said Act provides as under:

"Statement of Objects and Reasons.-

In the course of the investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

(2) To deal with the situation and in particular to ensure speedy recovery of the huge amount involved, to punish the quality and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relation to Transactions in Securities) Ordinance, 1992, was promulgated on the 6th June, 1992. The Ordinance previous for the establishment of a Special Court with a sitting Judge

of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders.

(3) The Bill seeks to replace the said Ordinance."

Section 2 is the definition section. Section 2(b) defines 'Custodian; to mean, 'the Custodian appointed under sub-section (1) of Section 3', while Section 2(c) defines 'securities' as under:

" "securities" includes,-

- (i) shares, scrips, stocks, bonds, debentures, debenture stocks stock, units of the Unit. Trust of India or any other mutual fund or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ii) Government securities; and
- (iii) rights or interests in securities;"

Section 2(d) defines 'Special Court' to mean, 'the Special Court established under sub-section (1) of Section 5'. Section 5 sub-section (1) empowers the Central Government, by notification in the Official Gazette, to establish a court to be called the Special Court. Sub-section (2) thereof lays down that 'the Special Court shall consist of a sitting Judge of the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India'. The learned Single Judge who has passed the impugned order is duly constituted as a Special Court as per Section 5 sub-section (2) of the Act. Section 3 of the Act refers to 'appointment and functions of the Custodian'. The said Section reads as under:

"3. Appointment and function of Custodian:-

(1) The Central Government may appoint one or more Custodian as it may deem fit for the purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April 1991 and on and before 6th June 1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously

with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and sec.4."

Section 4 of the act deals with contracts entered into fraudulently that may be cancelled and under what circumstances they can be cancelled. Sub-section (1) thereof empowers the Custodian on being satisfied, after such enquiry as he may think fit, to cancel any contract or agreement entered into at any time after 1st day of April 1991 and on and before the 6th June 1992 in relation to any property of the person notified under sub-section (2) of Section 3 that has been entered into fraudulently or to defeat the provision of the Act. Section 6 of the Act empowers the Special Court to have cognizance of and try such cases as may be instituted before it or transferred to it as thereafter provided. It is obvious, therefore, that the Special Court can take cognizance of and try both civil and criminal cases which may be instituted before it or may be transferred to it under the Act. Then comes Section 7 which deals with the jurisdiction of the Special Court and on the true construction of which the present controversy can be decided. It reads as under :

"7. Jurisdiction of Special Court.

- Notwithstanding anything contained in any other law, any prosecution in respect of any offence referred to in sub-section (2) of Sec. 3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court. "

Section 8 deals with the 'Jurisdiction of Special Court as to Joint trials' and lays down that the Special Court shall have jurisdiction to try any person concerned in the offence referred to in sub-section (2) of Section 3 either as a principal, conspirator or abettor and all other offences and accused persons as can be jointly tried therewith at one trial in accordance with the Code. Section 9 deals with 'Procedure and powers of Special Court' with which we are not concerned. However, Section 9-A which was brought on the Statute Book by Amending Act 24 of 1994 w.e.f. 25th January 1994 is required to be noted. Sub-section (1) thereof lays down that 'on and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, the Special Court shall exercise all such jurisdiction powers and authority as were exercisable, immediately before such commencement by any civil court in relation to any matter or claim (a) relating to any property standing attached under sub-section (3) of Section 3; (b) arising out of transactions in securities entered into after the 1st day of April 1991, and on or before the 6th day of June 1992, in which a person notified under sub-section (2) of Section 3 is involved as a party, broker, intermediary or in other manner'. Section 11 deals with 'Discharge of liabilities' and lays down by sub-section (1) thereof that 'Notwithstanding anything contained in the Code and any

other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment'. Sub-section (2) of Section 11 provides for paying or discharging in full, as far as may be in the order of priorities laid down by that sub-section. Amongst others, clause (b) of sub-section (2) of Section 11 provides for paying and discharging of all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund. Section 13 provides for overriding effect of the Act and lays down that the provisions of the Act shall have effect Notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than, this Act, or in any decree or order of any Court, tribunal or other authority. It is in the background of the aforesaid statutory scheme that the question posed for our consideration has to be resolved.

Consideration of the Question

It is no doubt true that the complaint is filed by a private party complainant uncle against his nephew, the present appellant-accused alleging that though he entrusted the accused with the task of selling off his shares during the relevant period of time the accused instead of returning the sale consideration arising out of the said transaction to the complainant had misappropriated the said amount. It is also true that neither the complainant nor the accused is a notified person as per Section 3 sub-section (2) of the Act. However on a conjoint reading of sub-section (2) of Section 3 and Section 7 of the Act the moot question arises whether an accused who is not a notified person can be proceeded against before the Special Court if it is alleged that - (i) he is involved in any transaction in securities: and (ii) and such involvement of the accused arises during the relevant period, i.e., from 1st April 1991 to 16th June 1992. So far as there two requirement for application of Section 7 read with sub-section (2) of Section 3 of the Act are concerned there is no dispute between the parties as in the complaint it is clearly alleged that the accused was entrusted with the work of selling off the complainant's shares in the company concerned and that the accused had allegedly carried out the said transaction during the relevant period and had realised the proceeds by the sale of these shares between December 1991 and January 1992. It is also not in dispute that shares would fall within the definition of 'securities' as mentioned in Section 2 clause (c). However the short grievance on behalf of the appellant is that as the appellant - accused is not a notified person as per Section 3 sub-section (2) of the Act the Special Court will have no jurisdiction to try him for the offence under Section 409 of IPC but it is the regular criminal court which can try such an offender.

Rival Contentions

Learned senior counsel, Shri Raju Ramachandran, for the appellant in this connection vehemently to deal with such properties in such manner as Special Court may direct as per sub-section (4) of Section 3 of the Act. On such notification of the person concerned the Custodian would also get jurisdiction and power to cancel contracts and agreements entered into by such notified person after following the procedure of Section 4 sub-section (1). It is also true that on end from the commencement of the Special Court (Trial Of Offences Relating to Transactions in Securities) (Amendment) Act, 1994 as laid down by Section 9-

A pending suits against such notified persons contemplated by the special provisions would also stand transferred for adjudication to the Special Court. Thus so far as civil suits are concerned the proceedings pending on the commencement of Amending Act of 1994 would stand transferred provided in the meantime after the main Act came into force in 1992 such defendants have got notified under Section 3 sub-section (2) of the Act. But there is a scheme pertaining to civil actions against notified persons. It has also to be kept in view that as Section 9-A was inserted with effect from 25th January 1994, it was possible to notify such defendants under Sections 3 sub-section (2) by the Custodian who would be appointed on and after 06th June 1992. If during this period such notifications are made civil causes pertaining to such notified persons would get converted by the sweep of Section 9-A. No such scheme is envisaged by Section 7. So far as the offences are concerned on a conjoint reading of Section 3 sub-section (2) read with Section 7 of the Act it cannot be said that unless a person is notified he cannot be tried for the offence contemplated by Section 3 sub-section (2) by the Special Court. The offence referred to in sub-section (2) of Section 3 which is within the sweep of Section 7 of the Act must be an offence committed by any person and must have the following two characteristics:

1. Such offence must relate to transactions in securities and
2. such offence should be alleged to have been committed between 01st April 1991 and on or before 06th June 1992.

These are the special classes of offences which are carved out by the Legislature for being dealt with only by the Special Court and not by ordinary court. Once these two requirements are satisfied the Special Court will get jurisdiction to try such offences and, therefore, constantly to try the accused concerned who are alleged to have committed such offences consumable by the Special Court. In this connection one additional aspect is worth noting. When the principal accused is the notified person even non-notified accused can be tried jointly with such principal accused as per Section 8 if they were jointly involved in such offences. But even that apart if the accused is the sole accused and he is not a notified person and if any criminal case is pending against such an accused in any court when the Act came into force then even such a criminal case provided two requirements of sub-section (2) of Section 3 qua such offence as seen earlier are satisfied will automatically stand transferred to the Special Court as laid down by the latter part of Section 7. It is obvious that after the Act came into force on 06th June 1992 the Custodians would get appointed as per Section 3 sub-section (1) but the offences contemplated by sub-section (2) of Section 3 fall within the larger period from 01st April 1991 which extends upto 06th June 1992. Therefore, it is possible to visualise that a criminal case may be pending against an accused involved in offence relating to transactions in securities even prior to 06th June 1992 when the Act came into force with retrospective effect. Therefore from 01st April 1991 till 05th June 1992 the accused who is said to be involved in such transactions would be a person who is not notified as there would arise no occasion to notify such a person by the Custodian as the latter could not have been appointed at any time prior to 06th June 1992. Therefore, such pending criminal cases against the accused involved in offence relating to transactions in securities between 01st

April 1991 and 06th June 1992 would necessarily refer to those accused of such offence who were non-notified persons and still by force of Section 7 second part such pending cases against non-notified accused if the offences in which they are said to have been involved satisfied the two requirements as laid down by Section 3 sub-section (2) would automatically stand transferred for trial to the Special Court. If learned senior counsel for the appellant is right an anomalous situation would arise regarding jurisdiction of the Special Court with effect from 06th June 1992. Criminal cases pending earlier wherein the accused are not notified persons could be tried by the Special Court under Section 7 as such pending cases would automatically stand transferred to the Special Court. But in cases registered after the appointment of the Custodian under Section 3 sub-section (1), only the notified persons could be tried by the Special Court for similar type of offences as contemplated by Section 3 sub-section (2). That would create a patently anomalous situation and would make the operation of Section 7 a truncated and lopsided one. If the Special Court can try transferred criminal cases which were filed prior to 06th June 1992 in regular courts wherein accused were not notified persons as such cases would stand transferred to it for trial automatically on coming into force of the Act, then of necessity it must be held that even if such criminal cases are filed after coming into force of the Act, against non-notified persons involved in similar type of offences they could be tried by the Special Court. Any other view would result in creation of two conflicting types of jurisdiction for the Special Court functioning as per the same Section 7.

Even apart from this aspect it is also necessary to note that under Section 3 sub-section (2) a Custodian may notify such person in Official Gazette. Take a case in which the Custodian, for reasons best known to him, might not have notified such a person and still such a person is alleged to be involved in an offence relating to transactions in securities during the relevant period from 01st April 1991 and 06th June 1992. Under these circumstances if learned senior counsel for the appellant is right such a person would get an immunity from being tried before the Special Court for such an offence only because the Custodian on account of his discretion or carelessness or otherwise has not thought it fit to exercise his powers under Section 3 sub-section (2) of notifying such a person in the Official Gazette. In such an eventuality jurisdiction of the Special Court will depend upon the volition of the Custodian under Section 3 sub-section (2) in connection with such an accused. If he notifies him, accused can be tried by the Special Court. If he does not notify him such an accused cannot be tried for the offence which may otherwise fulfil basic requirements of Section 3 sub-section (2). Jurisdiction of the Special Court as laid down by Section 7 cannot depend upon mere fancy and volition of the Custodian. On a conjoint reading of Section 3 and its relevant provisions, therefore, it must be held that once the Custodian notifies a person in the Official Gazette under sub-section (2) of Section 3 he gets the power and jurisdiction to deal with such person's properties and transactions as laid down under Section 3 sub-section (4) and Section 4 and in such a case even the civil suits of notified persons would stand transferred as per Section 9-A of the Act. But so far as criminal proceedings are concerned even if the accused is not notified still the Special Court will have jurisdiction under Section 7 to deal with the

offences alleged to have been committed by such an accused if the earlier mentioned two basic requirements of Section 3 sub-section 92) are satisfied. As the aforesaid two basic requirements of section 3 sub-section (2) read with Section 7 are allegedly satisfied in the present case and on which there cannot be any dispute it must be held that the Special Court at Bombay had jurisdiction to entertain and try the present criminal case against the appellant.

However one submission of learned senior counsel for the appellant in connection with second part of Section 7 of the Act is required to be noted. He submitted that this part of the Section can be reconciled with the first part on the basis that in pending criminal cases against non-notified persons and Special Court can have jurisdiction provided the Custodian notifies them under Section 3 sub-section (2). Till that time transferred cases will have to be kept pending. This contention cannot be countenanced on the express language of second part of Section 7 wherein it is laid down that there would be statutory and automatic transfer of such pending criminal cases on the date of coming into force of the Act, that is, 06th June 1992. On the contention of learned senior counsel for the appellant there would be a hiatus and interregnum during which before transferring such pending cases the accused concerned HS to be notified or that the Special Court could proceed with such transferred pending cases only after such notification. Such a course, on the express language of second part of Section 7 is contra-indicated.

Before parting with this case we may state that the learned senior counsel for the appellant also submitted that the offence alleged against the appellant was not relating to any transaction in securities during the relevant time but qua the sale consideration alleged to have been received by the appellant out of the said transaction and for which alleged offence under Section 409 prosecution is sought to be launched against the appellant. It is difficult to agree with this contention. A conjoint reading of the recitals i the complaint which obviously must be assumed to be true at this stage would show that the accused is alleged to have entered into transaction in securities, namely, the shares during the relevant period and out of the said transaction is alleged to have received sale proceeds which he has not handed over or transmitted to the complainant who claims to be entitled to the said amount. Thus the offence alleged is certainly relating to the transaction in securities as said to have been entered into by the accused during the relevant period.

Before parting with the present discussion we may refer to two judgments of this Court on which reliance was placed by learned senior counsel for the appellant. A three Judge Bench of this Court in the case of Canara Bank v. Nuclear Power Corporation of India Ltd. & Ors. [(1995) Sup (3) SCC 81) was concerned with the interpretation of Section 9-A of the Amending Act of 1994. In our view the said decision cannot be of any assistance to the appellant in the present case for the simple reason that, as noted earlier, Section 9-A provides for the trial of civil cases wherein the notified person is the defendant. Therefore, so far as the civil actions are concerned the statutory scheme reflected by Section 9-A would operate of its own and it is in this connection that the observations are made by this Court in paragraphs 27 and 33 of the Report dealing with notified persons and how they are to be proceeded against under the Act. The question with which we are concerned was not before this Court in the aforesaid decision. Our attention was also

invited to a judgment of two learned Judges of this Court in the case of Kudremukh Iron Ore Co. Ltd. v. Fairgrowth Financial Services Ltd. & Anr. [(1994) 4 SCC 246]. Even that case will have no application in the present proceedings for the simple reason that Venkatachaliah, CJ. speaking for the Court in that case interpreted Section 11 and Section 3 sub-section (2) of the Act.. Section 11 regarding discharge of liabilities directly deals with the powers of the Custodian for property under attachment. Section 3 sub-section (3) of the act deals with automatic attachment of the properties of notified person once he is so notified under sub-section (2) thereof and thereafter the Custodian becomes entitled to deal with such attached properties under sub-section (4) of Section 3 in such manner as the Special Court may direct. It in the light of this provision that Section 11 becomes relevant. Under Section 11 the Special Court may direct the Custodian to dispose of the property under attachment wherein all amounts due from the person so notified can be paid to any bank or financial institutional or mutual fund. Consequently a conjoint reading of Section 3 sub-section (4) and Section 11 represents a separate statutory scheme in which only notified person's attached properties can be dealt with for discharging the liabilities as provide in Section 11. So far as the criminal cases against accused involved in offences contemplate by Section 3 sub-section (2) are concern, the aforesaid statutory scheme can have no application. Consequently even the judgment of this Court in the case of Kudremukh Iron Ore Co. Ltd, (supra) cannot advance the case of the appellant any further.

In the result it must be held that the learned Single Judge of the High Court, as a Special Court, was quite justified in passing the impugned order in connection with the jurisdiction of the Court in entertaining and trying the criminal case against the appellant. Appeal is accordingly dismissed.