

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 335 OF 2005

VINAYAK NARAYAN DEOSTHALI ... APPELLANT

VERSUS

CENTRAL BUREAU OF INVESTIGATION ... RESPONDENT

JUDGMENT

N.V. RAMANA, J.

This appeal is directed against the judgment dated 3rd December, 2004 of the Special Court (Trial of offences relating to transactions in Securities) at Bombay in Special Case No. 3 of 1995 whereby the Special Judge convicted and sentenced the appellant for the offences under Sections 409/120B, 403, 477-A/109, IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution story, briefly stated, is that during the year 1991, the appellant (accused No.1) while he was working as

Assistant Manager in the Securities Department of UCO Bank, Hamam Street Branch, Mumbai in connivance with a colleague of the Bank (accused No. 2) hatched a criminal conspiracy with the infamous share & stock broker of Bombay of those times, Harshad S. Mehta (accused No. 3) with the object of cheating the UCO Bank by causing wrongful loss to the Bank and effecting illegal gain to the accused No. 3 (Harshad Mehta). It is alleged that for achieving the object of conspiracy, the appellant despite being a public servant, committed criminal breach of trust and misappropriated the funds of Bank by manipulating the accounts to facilitate unlawful gains to Harshad S. Mehta (accused No. 3).

3. The background of the case as unfolded by the prosecution is that at the relevant time, UCO Bank had two Subsidiary General Ledger (SGL) accounts with the RBI. The SGL is a type of Securities Account floated by the Central Government. For making transactions in these Securities, Banks and financial institutions have to open the SGL account with the Public Debt Office of the Reserve Bank of India. UCO Bank has two such SGL accounts with the Reserve Bank of India. Out of the two SGL accounts owned by the UCO Bank, one account with the number 032 was meant for the Bank's Head Office's

own transactions and the other SGL account No. 065 was maintained for the transactions done by constituents/brokers. When the Bank itself purchased/sold a Government Security, the respective entry was to be made in account No. 032 and if the Security was purchased/sold by a broker client of the UCO Bank, the entry was to be made in SGL account No. 065. As far as the entry in the books of RBI was concerned, it was made in a particular account according to the instructions given by UCO Bank for every transaction, as both the accounts stood in the name of UCO Bank.

4. On 22nd March, 1991 UCO Bank sold Securities namely, Government of India 11.5% 2009, worth Rs.20 crores to Indian Bank (Ext. 250) from its SGL account No. 032 i.e. UCO Bank's own account. On the same day, UCO Bank purchased Securities namely, Government of India 11.5% 2006, worth Rs.20 crores from Indian Bank (Ext. 425).

5. On 5th April, 1991 UCO Bank re-purchased the earlier sold GOI 11.5% 2009 Securities from Indian Bank and sold GOI 11.5% 2006 Securities purchased earlier to Indian Bank. In other words, UCO Bank reversed the earlier transactions. With the effect of repurchase of Securities by the UCO Bank, RBI should have made the entry

crediting the worth of those securities in SGL Account No. 032 of the UCO Bank.

6. Whereas, due to a communication dated 13th April, 1991(Ext. 300) signed by the appellant accused in his position as Assistant Accountant and the co-accused (not a party in the present appeal) requesting the RBI to make entry in SGL Account No. DV SL 065, the SGL Account No. 065 which was meant for the broker clients of the UCO Bank and which had no balance on that date, showed the balance of Securities worth Rs.20 crores. At that point of time, the transactions of all other brokers stood squared off except in respect of accused No. 3 (Harshad Mehta). Taking this wrong entry to his advantage, accused No. 3—Harshad S. Mehta, being the broker/client of the UCO Bank, sold GOI Securities 11.5% 2009, worth Rs.15 crores (Ext. 413), which actually did not belong to him, and thereby wrongfully gained and the UCO Bank suffered the loss. It was none other but the appellant—accused No. 1, who passed the Debit & Credit vouchers pertaining to the transaction (Exts. 295, 296 & 297). When these misdeeds came to light, the accused took steps and made efforts to cover up the transactions.

7. When the Securities Scam broke out in the year 1992, a special cell was established by the CBI to deal with the cases arising out of the scam. Accordingly, an FIR was registered on 30th December, 1993 against the accused invoking Sections 120B read with Section 409, 420, 468, 471, 477-A, IPC and Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 and the case was committed to the Special Court. The appellant was arrested on 12th May, 1997. The Special Judge, after taking overall view of the matter, held the appellant guilty of the offences and sentenced him to undergo rigorous imprisonment for a period of one year and to pay an amount of Rs.25,000/- towards fine, in default thereof, to further undergo imprisonment for a period of three months. The special judge, however, let the accused appellant to be on bail for a period of 12 weeks to enable him to approach the appellate Court.

8. Aggrieved by the judgment of the Special Judge, the appellant filed this appeal under Section 10 of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992. That is how this appeal is before us.

9. Though there are three accused in this case, we are concerned with accused No. 1—appellant herein only. The other two accused

namely Makrand Vasant Shidhaye (accused No. 2) and Harshad S. Mehta (accused No. 3) are not parties in the present appeal. However, it is pertinent to mention that Makrand Vasant Shidhaye (accused No. 2) had also preferred an appeal before this Court against judgment of the Special Judge being Criminal Appeal No. 336 of 2005 which was listed before this Court on 11th November, 2014 when the following order was passed:

Criminal Appeal No. 336 of 2005

This appeal is listed against the common impugned judgment along with Criminal Appeal No. 335/2005.

The learned counsel appearing on behalf of the appellant is not present.

It is informed at Bar by the learned counsel for the appellant in Criminal Appeal No. 335/2005 that Makrand Vasant Shidhaye-appellant in Criminal Appeal No. 336/2005 died during the pendency of the appeal. In view of such fact brought to our notice, the appeal stands abated and disposed of.

So far as accused No. 3 (Harshad S. Mehta) is concerned, he had died on 31st December, 2001 during the pendency of trial.

10. On 21st February, 2005 while admitting the appeal, this Court granted interim relief to the appellant by suspending sentence of imprisonment during pendency of the appeal before this Court.

11. Learned counsel for the appellant—accused submitted that the learned Special Judge failed to appreciate the evidence correctly and erred in holding the accused guilty of the offences. The SGL information concerning the securities re-purchased by the UCO Bank on 5th April, 1991 was received on 12th April, 1991. Since there used to be a number of transactions by the clients/brokers and the re-purchased SGL information was received after a gap of about one week, a clerical and bona fide mistake was committed by the appellant—accused in getting the securities credited into the SGL account No. 065 instead of account No. 032 of the UCO Bank. There was no participation by the accused in any conspiracy to benefit accused No. 3, Harshad Mehta. It was purely a clerical error that occurred in a casual way without any bad intention. In a normal way, the accused signed the covering note dated 13th April, 1991 also signed by accused No. 2 enabling the RBI to credit the securities into SGL account No. 065. The accused—appellant had no *mala fide* or dishonest intention to commit any fraud or cause loss to the UCO Bank or to cheat it. The mistake happened mechanically without the conscious involvement of the appellant. It is also evident from the record that accused No. 2 himself admitted in his statement under

Section 313, Cr.P.C. that it was he who struck off account No. 032 and wrote account No. 065 in the covering note (Ext. 300). Thus, the appellant cannot be charged with a severe punishment for a reasonable clerical mistake.

12. Learned counsel also submitted that the appellant was not concerned with the routine work of the Hamam Street Branch of UCO Bank. He was specially entrusted the duties of redemption and reconciliation of securities. While discharging those duties, when the appellant noticed the mistake, he immediately facilitated transfer of Rs. 2 crores on 15th July, 1991 from the account No. 065 to account No. 032 to set right the record. Learned Special Judge, has failed to appreciate the fact in a true spirit that the SGL transfer forms (Ext. 235 and Ext. 240) concerning the securities sold by Harshad Mehta to the tune of Rs.15 crores from SGL account No. 065, were not signed by the appellant and the appellant has no role in that transaction. This fact itself clearly establishes that the appellant was not part of any conspiracy with accused No. 3 (Harshad Mehta). But the Special Judge took a different and wrong view and erred by holding that the appellant transferred securities worth Rs. 2 crores lying in the account No. 065 to account No. 032 to cover up the

transaction. There was no evidence on record to establish a link between the accused—appellant and the accused No. 3 (Harshad Mehta) forming a conspiracy between them and the prosecution has utterly failed to prove this aspect and therefore, the appellant is entitled for benefit of doubt.

13. Further contention of the learned counsel is that the appellant was only an Assistant Manager of the Bank and scrupulously implementing the decisions taken by his superiors. The appellant had only performed his duties obediently for which he cannot be made a scapegoat as if the appellant was solely responsible for the transactions. The important factor, ignored by the learned Special Judge while convicting the appellant, is that the appellant had not earned any pecuniary gains for himself. The learned trial Judge under a misconception went on believing the prosecution case. Only for the simple reason of irregularity or negligence in discharging duties, the appellant was given harsh punishment of sentence by the learned Special Judge even though factually no loss was caused to the UCO Bank. The view taken by the learned Special Judge that the acts of the appellant have exposed the UCO Bank to a grave financial loss is absolutely subtle and not based on the evidence. The prosecution

has also admitted that no loss was caused to the UCO Bank. By any stretch of imagination, the acts of the appellant cannot be construed to label against him 'criminal misconduct' within the ambit of Prevention of Corruption Act, 1988.

14. Disputing the quantum of sentence also, learned counsel for the appellant submitted that the learned Special Judge while sentencing the appellant ignored the element of proportionality in imposing the punishment. Learned Special Judge has miserably failed to appreciate the facts in their proper perspective and committed a grave error in convicting the appellant and hence the impugned judgment calls for interference by this Court.

15. On the other hand, learned Senior Counsel appearing for the C.B.I., while supporting the judgment of the learned Special Judge, submitted that the learned Special Judge passed the impugned judgment after undertaking a thorough trial procedure. He came to the conclusion only after having satisfied that the guilt of the accused has been proved beyond reasonable doubt. Hence the Trial Court committed no error in sentencing the accused.

16. She contended that the accused cannot plead innocence as he played an active role in the conspiracy in benefitting accused No. 3

(Harshad Mehta). In the process, he took the benefit of being an employee of the UCO Bank, fully acquainted with the SGL transactions, and committed the offence misusing his official position. The transfer of 11.5% CGL 2009 securities for a value for Rs.20 crores into the SGL account No. 065 in the Public Debt Office of RBI effected only with the maligned intention of the accused—appellant in pursuance of his illegal object of providing wrongful gain to accused No. 3 (Harshad Mehta). The conspiracy hatched by the accused deprived UCO Bank of the interest that would have accrued on the face value of securities amounting to Rs.20 crores. The illegal object and the role played by the accused with full knowledge and intention are established by a series of transactions which formed a continuous chain and link of circumstances leading to the culpability of the accused.

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17. Learned counsel has drawn our attention to a Telex message dated 23rd March, 1991 (Ext. 287) sent by the UCO Bank from its Head Office to Zonal Office instructing for effecting the switch transaction in favour of UCO Bank Head Office Account (SGL Account No. 032). In spite of those clear instructions, the accused—appellant with a view to benefit the accused No. 3, effected the

transfer of Securities into the UCO Bank Constituents/Brokers Account (Account No. 065). It is also evident from the record that at the relevant time, all brokers' transactions were squared off except that of accused No. 3 (Harshad Mehta) who sold those wrongfully transferred securities for his own benefit, causing loss to the UCO Bank.

18. In pursuance of achievement of illegal object to cause wrongful gain to accused No. 3, the appellant, being a public servant, abused his position to a great extent. When the UCO Bank Head Office was not informed about the development of the switch transaction with reference to their Telex message dated 23rd March, 1991 (Ext. 287), which transaction was admittedly being carried by the accused, the Head Office issued another Telex message dated 6th April, 1991 (Ext. 466) inquiring about the transaction. Despite this second Telex message from the Head Office, the accused did not respond to inform the Head Office immediately and it is only on 11th April, 1991 the accused sent a Telex message (Ext. 288) to the Head Office informing execution of the transaction, that too concealing the truth. Another link exhibiting the wrong intentions of the accused is that the Bank Receipt (Ext. 299) dated 5th April, 1991 issued by Indian Bank

was discharged by the appellant on 12th April, 1991 in favour of the UCO Bank Head Office by signing on the reverse of it.

19. Learned senior counsel further contended that it was only when the accused came to know that inquiries were being carried out by the UCO Bank Head Office for the loss occurred to it due to non-credit of the interest on the securities in question, the accused in connivance with each other in a planned manner tried to cover up the transactions and credited UCO Bank Head Office account through four transactions. These transactions are:

- (a) **15th July, 1991** Transferred GOI securities 11.5% 2009 worth Rs. 2 crores from UCO Bank's SGL A/C No. BYSL 065 (Brokers' account) to SGL A/C No. 032 (UCO Bank's own account) (Ext. 245)
- (b) **21st October, 1991** Transferred GOI securities 11.5% 2009 worth Rs.17 crores from the accused No. 3's account of State Bank of India to his State Bank of Saurashtra (Ext. 277) account.
- (c) **21st October, 1991** Again transferred GOI securities 11.5% 2009 worth Rs.17 crores from accused 3's State Bank of

Saurashtra account to UCO Bank's Account No. 065 (Ext. 272).

(d) **25th October, 1991** Finally these GOI securities 11.5% 2009 have been transferred from UCO Bank's Account No. 065 to its Account No. 032 (Ext. 282).

20. To further assert her argument that the accused in the process of effecting those cover up transactions indulged in illegal acts, learned senior counsel explained that even though there was no instruction from the UCO Bank Head Office, the accused—appellant directed the Reserve Bank to transfer securities worth Rs.2 crores from Account No. 065 to Account No. 032 (cover up transaction 'a' above) blatantly misusing his position as a public servant. To prove the chain of conspiracy, learned senior counsel took us through Ext. 277 which shows that Securities worth Rs.17 crores were transferred from State Bank of India from the account belonging to accused No. 3 (Harshad Mehta) on 21st October, 1991 to State Bank of Saurashtra (another account belonging to Harshad Mehta) and on the same day they were again transferred from State Bank of Saurashtra to UCO Bank SGL Account No. 065 (Ext. 272) and then to UCO Bank SGL Account No. 032 on 25th October, 1991 (Ext. 282) without any

instructions from the UCO Bank Head Office. In this way, the accused, in connivance with each other tried to cover up the UCO Bank Head Office Account.

21. Highlighting the crucial link of the conspiracy among the accused in misusing the funds of UCO Bank to the tune of Rs.20 crores, learned senior counsel submitted that on 1st July, 1991 accused No. 3 wrote a letter to the UCO Bank (Ext. 413) requesting to issue GOI 11.5% 2009 Securities worth Rs.15 crores to State Bank of Saurashtra and State Bank of Hyderabad, though these Securities in fact did not belong to him. Accordingly, Securities worth Rs.5 crores (Ext. 235) were transferred to the State Bank of Hyderabad from UCO Bank SGL Account No. 065, without any instruction from the UCO Bank. The Banker's cheque dated 1st July, 1991 (Ext. 678) received from State Bank of Hyderabad against those securities, in favour of UCO Bank for an amount of Rs.5,07,195,62.22 (including interest) was credited in the account of accused No. 3 (Harshad Mehta). Similarly, on the same day i.e. 1st July, 1991 Securities worth Rs.10 crores (Ext. 240) were transferred to the State Bank of Saurashtra from UCO Bank's SGL Account No. 065, without any instruction from UCO Bank.

22. The learned senior counsel finally submitted that the offences with which the appellant was charged have been proved beyond reasonable doubt and the Trial Court had not committed any error in convicting the accused. She, therefore, prayed that the impugned judgment does not deserve to be interfered with.

23. Heard the counsel on either side at length and gone through the voluminous record placed before us. The issue that falls for consideration is whether the learned Judge of the Special Court was right in convicting the accused for the offences he is charged with and whether the prosecution proved the guilt of the accused beyond reasonable doubt?

24. Basing on the argument of both the parties, it appears that it is the specific defence of the accused that absolutely there is no motive or intention on his part in the alleged transactions and if at all anything is done, it is purely a clerical *bona fide* mistake. Absolutely, he has no *mala fide* intention to commit any fraud or crime. Having noticed the irregularities that have taken place, he has taken steps to transfer an amount of Rs.2.00 crores to the account No.032 from the account No.065. He is not involved in any conspiracy or benefited by the transactions and the learned Judge has failed to appreciate the

evidence in its proper perspective and misguided himself in convicting the accused. Whereas, on behalf of the CBI, arguments were advanced supporting the judgment of the Special Court.

25. The CBI has adduced voluminous evidence to establish the guilt of the accused. The whole issue revolves around the fact whether the accused has got a role to play in the switch transactions account and whether he was discharging the duties as a prudent man and is it a *bona fide* mistake as he claims it to be.

26. It appears from the record and on a thorough examination of the events that took place between April 1991 and October 1991, we understand that on 22nd March, 1991 on which date UCO Bank's 11.5% 2009 securities with face value of Rs. 20 crores were sold to Indian Bank, UCO Bank has purchased similar value of securities from Indian Bank viz., 11.5% 2006 GOI Securities for its SGL Account No. 032. On 5th April, 1991 both the above transactions were reversed. Resultantly, UCO Bank's Account No. 032 should have got back the aforementioned securities, but the same was wrongfully transferred into UCO Bank's SGL Account No. 065, being operated by the Brokers. At that point of time, all brokers' transactions who were operating UCO Bank Account No. 065 got squared off except

that of accused No.3. Taking this to his advantage, out of the securities lying in the UCO Bank's Account No. 062, Securities worth Rs.15 crore, have been sold by the accused No. 3, though not belonging to him actually, to the State Bank of Saurashtra and State Bank of Hyderabad and the banker's cheque issued in discharge of those securities in favour of UCO Bank for an amount of Rs.5,07,195,62.22 (including interest) was credited in the account of accused No. 3 (Harshad Mehta).

27. The Telex messages dated 23.3.1991 (Ext. 287) and 6.4.1991 (Ext. 466) reveal that UCO Bank Head Office explicitly instructed for switch transaction for its own Account (032). The communication dated 13th April, 1991 (Ext. 300) sent by the accused Nos. 1 & 2 cannot be treated as a simple mistake considering the consequential events. We have given our anxious and thorough perusal to the said communication (Ext. 300) and found that the preparation of communication and also the entry relating to the Securities in question has been written by the accused No.1-appellant herein himself. The entry indicates to transfer the securities into the UCO Bank's Account No. 065 (Brokers' Account) together with two other entries relating to other securities which were actually meant for

transfer into the UCO Bank's Account No. 065. We, therefore, cannot accept the plea of appellant that it was merely a clerical mistake that the Account No. 032 was struck off and Account No. 065 was retained by accused No.2. The inclusion of securities in question in the said communication by the appellant in his own handwriting, establishes the fact that the appellant had willfully and with ulterior motive prepared the communication.

28. It was claimed by the accused that he has transferred an amount of Rs.2.00 crores from account No.065 to account No.032, without there being any transaction which clearly shows that to get away with enquiries of the Head Office, the accused has chosen to transfer the money without there being any transaction and exhibits the conduct of the accused. All the documents relating to switch transaction between the UCO Bank and Indian Bank were signed by the accused, being the responsible officer knowing pretty well that these securities are purchased by the Head Office of UCO Bank, which at any stretch of imagination cannot be termed as a mistake or oversight, and above all, the debit and credit vouchers for transaction in question were passed by the accused. On 12-4-1991, bank receipt of Indian Bank dt. 5-4-1991 (Ex.299) was discharged and A1 signed

on the reverse of bank receipt. Almost all the documents pertaining to switch transaction are signed by him.

29. We have also perused the depositions of prosecution witnesses. PW1—S. Nagrajan, the person who was working in RBI's Public Debt Office at the relevant time, in his deposition explained how the SGL accounts are maintained. PW2—Harsukhlal Chhotalal Parekh, the erstwhile Manager of UCO Bank's Hamam Street Branch asserted that when the transactions are taken place over SGL accounts, necessary instructions are received by the Securities Department of the Hamam Street Branch from concerned Broker. Admittedly, the procedure of dealing with SGL accounts as explained by PW1 and PW2 has not been followed in the case of securities in question. The material on record unequivocally establishes that the wrong entry in the account of UCO Bank SGL Account No. 065 effected to the advantage of Harshad Mehta (Accused No. 3) was not occurred as a result of an inadvertent error, but a planned misdeed done with mala fide intention.

30. Considering the whole scenario of the case, there is no doubt in our minds that the accused, who is well acquainted with the banking

activities and SGL transactions, created false documents and acted contrary to the provisions and committed illegal acts which are writ large on the face of record. It has been clearly recorded by the trial Court that accused No.1 has already been convicted in two cases and two more cases are pending. In one case, he has undergone imprisonment for a period of one year and in another case, imprisonment for a period of 9 months, which shows the conduct of the accused, though that is not the basis for our conclusion. We are, therefore, of the considered view that the appellant was part of the conspiracy in facilitating trading of SGL securities to the benefit of accused No. 3 (Harshad Mehta) and in the process, abused his official position and violated provisions of banking laws. The facts and circumstances of the case clearly show the participation of the appellant in the criminal acts and misuse of his official position. In our opinion, the prosecution has successfully proved the nexus between the accused. The ingredients of the offences for which the accused is charged has also been established beyond all reasonable doubt by the prosecution by adducing voluminous documentary evidence as well as oral evidence.

31. For the foregoing reasons, we do not find any merit in the appeal calling for our interference with the impugned judgment passed by the learned Special Judge. Consequently, the appeal fails and is dismissed accordingly. By this Court's order dated 21st February, 2005 the substantive sentence of imprisonment remained suspended during the pendency of appeal. The said order is hereby recalled. The appellant may be taken into custody forthwith to serve the period of imprisonment.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(N.V. RAMANA)

NEW DELHI
JANUARY 12, 2015

JUDGMENT