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PALLAV SHETH

v.

CANARA BANK

(Criminal Appeal No. 1664 of 2005)

B

APRIL 13, 2016

**[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]**

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*Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992: s.10 – Dishonest intention of misappropriation of shares – Special Court convicted appellant u/s.409 IPC and ordered fine of Rs.1 lac – As per original chart, Rs.58.10 lacs was the principal decreed against the appellant passed by Special Court in civil suit – Interest was allowed @ 18% p.a. – After adjusting Rs.20 lacs paid by appellant in 2003 by way of part settlement, balance amount with same rate of interest resulted into an amount of Rs.286 lacs payable by appellant to the Bank – In the course of hearing, this Court noticed that there were good chances of settlement between the parties if a substantial amount could be paid to the bank by appellant so as to virtually meet the entire decretal liability within reasonable period of time – Hence in the special facts and circumstances of the case, appeal disposed of in the following terms – Appellant shall pay the decretal amount with interest calculated @ 12% per annum (in place of 18% per annum) from 20<sup>th</sup> June, 1992 with adjustment of Rs.20 lacs 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 would stand reduced to the period already undergone along with fine of Rs.1 lacs – The decree of the Special Court in Civil Suit would be treated to have been satisfied by the appellant on his making the payment of the settlement amount – In case the settlement amount is not paid by the appellant in the manner and to the extent indicated then after six months this order shall stand recalled and the appellant would 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.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1664 of 2005

From the Judgment and Order dated 17.10.2005 of the Special Judge, Bombay in Special Case No. 1 of 2002

Rajiv Dutta, Sr. Adv., Gopal Singh, Advs., for the Appellant.

Ms. Radhika Gautam, E.C. Agrawala, Ms. Purnima Bhat, Advs., for the Respondent.

The Judgment of the Court was delivered by

**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 2<sup>nd</sup> 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

- A (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.

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The Appeal is disposed of accordingly.

Devika Gujral

Appeal disposed of.