SUPREME COURT OF INDIA

S. R. Ramaraj

Vs.

Special Court, Bombay

Crl.A.No.1491 of 1995

(S. Rajendra Babu, B. N. Srikrishna and G. P. Mathur, JJ.)

19.08.2003

JUDGEMENT

RAJENDRA BABU, J.:-

1. This appeal is filed under Section 10(1) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act'). A suit had been filed by the Standard Chartered Bank (SCB) against Canbank Mutual Fund (CMF) for refund of a sum of Rs. 72.25 crores claiming the same to be due under three SGL transfer forms in Government of India security transactions purported to have been undertaken between SCB and CMF in August/September 1991. In the course of the written statement CMF took the stand that the transactions were squared off on the basis of documents made available to the appellant before affirming the written statement and tendering evidence.

2. The Special Court held that taking up a false defence as pleaded in the written statement and repeating the same in the evidence-in-chief, amounts to contempt of Court and convicted the appellant to undergo simple imprisonment for a period of two weeks and pay fine of Rs. 2 thousand. The learned Judge in the course of the order held that perjury is contempt and there is a growing tendency amongst parties not to honour their commitments and pay up their dues and liabilities and

file any sort of defence irrespective of whether it is true or not, that, therefore, it is for Courts to actively curb such tendencies. The Special Court prima facie felt that the defendant and deponent of written statement were aware that the defence was false at the time when written statements were filed and knowing it to be false took the same and sought to persist with it at the trial. Two show cause notices were issued - one under Sections 182, 183, 191, 192, 193, 199, 200 and 209 of the Indian Penal Code and another for contempt of Court-, however, no action was taken pursuant to the notice issued for offences under the Indian Penal Code and these proceedings stood dropped.

3. At the very outset, on behalf of the appellant an unconditional apology was tendered. It was stated that in spite of fact that the appellant had a good answer to the show cause notice the apology was being tendered. However, the Special Court rejected the apology tendered by the appellant by observing that there is an increasing tendency to first commit the perjury or contempt and, when caught out, tender an unconditional apology and such an apology is not an expression of genuine remorse. In the course of the order, the learned Judge noticed as follows :-

"In evidence-in-chief an explanation was sought to be given as to why such averments were made in the written statements. Of course, as the explanations themselves showed that the averments in the written statements were based on hearsay evidence the Court did not allow the explanations to come on record. The fact remains that in evidence-in-chief the false statements were sought to be supported. Thereafter in cross-examination an attempt was first made to justify the false averments. Only when it was found that the falsehood could not be maintained that the truth was admitted."

4. Though several contentions had been raised before the Special Court, it is unnecessary to advert to the same. All that we need to examine in this case is whether the defence taken by the appellant would amount to contempt of Court.

5. In this case, the false statement alleged is as under:-

"5(e) On 27th May, 1991, the 1st defendant, in the course of their investment business, had purchased certain securities being 11.50% GOI 2008 securities of the aggregate face value of Rs. 58.39 crores from the Bank of Karad Ltd. Hiten Dalal had acted as a broker in this transaction. The said Bank of Karad Ltd. in order to effect transfer of the said securities to the first defendant issued its combined SGL transfer form authorising the Reserve Bank of India to operate its SGL account and transfer and assign the said securities to the SGL account of the 1st defendant. In consideration of the said securities purchased by the 1st defendant, the 1st defendant issued their cheque dated 27th May, 1991 bearing No. 160319 in favour of the said Bank of Karad Ltd. for the sum of Rs. 58,90,16,042.44 being the cost of the said securities of face value Rs. 58.39 crores and the amount of interest accrued thereon up to 27th May, 1991.

(f) On 29th May, 1991, the 1st defendant lodged the said SGL transfer forms for 11.50% GOI 2008 securities of face value of Rs. 58.39 crores issued by the Bank of Karad Ltd., with Reserve Bank of India, Public Debt Office, for clearance. On 29th May, 1991, the Reserve Bank of India returned the said SGL transfer form issued by the Bank of Karad Ltd. on account of insufficient balance. On 31st May, 1991, the said SGL transfer form was again presented to the Reserve Bank of India for clearance but was again returned for want of insufficient balance.

(g) The 1st defendant thereafter handed over the said SGL transfer form for 11.50% GOI 2008 securities of face value of Rs. 58.39 crores issued by the Bank of Karad Ltd. to the broker Hiten Dalal sometime in July 1991 for rectification and replacement by a fresh SGL transfer form of the said Bank of Karad Ltd.

(h) During the period 1991 August to December 1991, the 1st defendant in the course of their investment business, entered into three sale transactions whereunder the 1st defendant sold 11.5% GOI 2008 securities to the plaintiffs, particulars whereof are as follows:

(i) On 23rd August, 1991, the 1st defendant sold 11.50% GOI 2008 securities of the aggregate face value Rs. 10 crores.

(ii) On 26th August, 1991, the 1st defendant sold 11.50% GOI 2008 securities of the aggregate face value of Rs. 7 crores.

(iii) On 4th September, 1991, the 1st defendant sold 11.50% GOI 2008 securities of the aggregate face value of Rs. 43.00 crores.

In all the aforesaid three sale transactions Hiten Dalal had acted as a broker and he had approached the 1st defendant with a request to purchase the said securities on behalf of the plaintiffs. In all the aforesaid three sale transactions, Hiten Dalal and/or his representative had brought the plaintiffs cheque to the 1st defendant and had collected for the plaintiffs from the 1st defendant the cash memos, along with the transfer forms issued in favour of the plaintiffs.

(i) The 1st defendant say that the SGL transfer form issued by the Bank of Karad Ltd. for Rs. 58.39 crores for 11.50% GOI 2008 securities had remained outstanding till December 1991. The 1st defendant had made enquiries with Hiten Dalal in respect of the said SGL transfer forms issued by the Bank of Karad Ltd. and which had been returned to Hiten Dalal in July 1991 for rectification and replacement. On enquiry, Hiten Dalal informed the 1st defendant that since there were sale transactions outstanding for the same security between the plaintiffs and the 1st defendant in the sum of Rs.43 crores and Rs. 10 crores, the 1st defendant transactions with the plaintiffs to the extent

of Rs. 59.39 crores would be squared off and delivery of all the security would be directly transacted and adjusted between the Bank of Karad Ltd. and the plaintiffs. He advised the 1st defendant, he would directly deliver to the plaintiffs fresh SGL forms for that amount issued by the Bank of Karad Ltd. to the plaintiffs and would return to the 1st defendant, three transfer forms of Rs. 43 crores, Rs. 10 crores and Rs. 7 crores issued in favour of the plaintiffs and the 1st defendant transaction with the Bank of Karad Ltd. and the plaintiffs would stand squared off and 1st defendant would remain liable for securities of only the balance of Rs. 1.61 crores.

(j) Accordingly, on 19th December, 1991, Hiten Dalal brought form and on behalf of the plaintiffs the original SGL transfer form in respect of the 11.50% GOI 2008 securities sold to the plaintiffs on 26th August, 1991 (aggregate face value Rs. 7 crores) with a request to substitute the said SGL transfer forms with two SGL transfer forms, one dated 19th December, 1991 for Rs. 58.39 crores and another dated 18th December, 1991 for Rs. 1.61 crores. The said Hiten Dalal who had earlier in the day brought the said SGL transfer forms dated 26th August, 1991 for Rs. 7 crores from the plaintiffs, took the fresh 2 SGL transfer forms (one dated 19th December, 1991 for Rs. 1.61 crores) for the plaintiffs from the 1st defendant on the same day.

(k) On 20th December, 1991, the SGL transfer form for Rs. 1.61 crores was presented by the plaintiffs to the Reserve Bank of India and cleared by effecting transfer of securities of face value of Rs. 1.61 crores from the 1st defendant SGL account to the plaintiffs SGL account.

(i) In the aforesaid circumstances, the aforesaid transactions between the 1st defendant and Bank of Karad Ltd. and the 1st defendant and the plaintiffs were squared off by Hiten Dalal in or about December 1991 between the Bank of Karad Ltd. and the plaintiffs. On the 1st defendant transactions with the 2 Banks having been squared off, the 1st defendant obligations under the said three SGL transfer forms dated 4-9-1991 for Rs. 43 crores, dated 23-8-1991 for Rs. 10 crores and dated 19-12-1991 for Rs. 5.39 crores were discharged and there was no liability on part of the 1st defendant."

6. The appellant took the stand that he was working as Divisional Manager in Charge of Systems in the Employment of Canbank Mutual Fund, that at the relevant time he was not concerned with transactions of investment, that in June 1993 Canbank Investment Services Limited was incorporated to manage the affairs of the Canbank Mutual Fund and that his services were, therefore, transferred to this Company initially as a Divisional Manager and from December 1994 as an Assistant General Manager; that on receipt of the Standard Chartered Bank's letter dated 19th May, 1992 there appears to have been an internal inquiry by General Manager and the Chief Executive (Fund) and enquiries were also made by Mr. Acharya who was Assistant General Manager at that time and he submitted a note on 27th May, 1992. Further stand of the appellant was that he had been instructed to affirm the written statement on behalf of the trustees and he had no personal knowledge of the transactions and based on the records he verified the statement. The relevant records which the appellant read in order to verify the written statement were-

(a) Mr. Acharya's letter dated 16th June, 1992;

(a) Plaint in Suit No. 31 of 1994;

(c) Jankiraman's Committee Report;

(d) Charge-sheet filed by CBI in Case No. RC43(a)/92/ACB/BOM;

(e) A statement recorded by CBI from one Mr. Manoj Rane;

(f) Two affidavits of Mr. Hiten Dalal.

7. On the basis that the note of Mr. Narichania clearly indicated that the defence of squaring off was not correct, the Special Court concluded that "thus except for Canbank's own documents, there is not a single document which shows or supports case of 'squaring off'. On the contrary, all documents of independent parties show that there is no 'squaring off' as pleaded. The Special Court after adverting to various portions of the evidence further held that the appellant had committed contempt of Court. However, when the appellant tried to explain his position in regard to these matters, to which we have adverted to earlier, the same were not allowed to be brought on record on the basis that they are outcome of hearsay.

8. The learned Additional Solicitor General, who appears for the appellant, contended that the learned Judge of the Special Court had gone far beyond the scope of the contempt jurisdiction, particularly when the Court held that on the basis of the documents produced by the CMF the stand of the Bank had been throughout what had been stated in the written statement, though, with reference to other material, that stand may be falsified. He contended that in a case of this nature what is important is that the party verifying the statement or tendering evidence before Court should be doing so deliberately and to his knowledge the statement must be false. He drew our attention to the fact that the learned Judge had noticed that the stand of the appellant was in conformity with plaint filed in the connected suit by CMF and that suit was yet to be tried at that stage when the order under appeal was passed. Subsequently another learned Judge who tried the suit of CMF held that the claim in that suit, which is akin to the defence as raised in the present case, is true and correct even after making a reference to the decision in the case out of which the contempt proceeding arises. Therefore, in the circumstances of the case, he submitted that when two views are possible on the basis of pleadings raised in a case, the same would not amount to contempt of Court at all.

9. The written statement had been verified by the appellant that what is contained in written statement is based on the information received from the records of the defendant Nos. 2 to 11 and he believed the same to be true. The verification of facts adverted to in the written statement is not made on the basis of personal knowledge of the appellant and the defence set up by him is on the basis of the stand taken by CMF in the companion suit. When in a suit of the CMF the stand had been accepted, but in the suit against CMF such stand had been disbelieved, it becomes difficult to say that the appellant had deliberately stated falsehood to mislead the Court or to simply gain time to the disadvantage of the other party in this matter. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the Courts and thus produce mischievous consequences to the administration of civil and criminal justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law. In order to expose a person to the liability of a prosecution of making false statement there must be a false statement of fact and not a mere pleading made on the basis of facts which are themselves not false. Merely because an action or defence can be an abuse of process of the Court those responsible for its formulation cannot be regarded as committing contempt, but an attempt to deceive the Court by disguising the nature of a claim is contempt. If the facts leading to a claim or defence are set out, but an inference is drawn thereby stating that the stand of the plaintiff or defendant is one way or the other it will not amount to contempt unless it be that the facts as pleaded themselves are false. Further, when the appellant tried to explain his case in his evidence, the same was shut out on the basis that it is hearsay. An officer of Bank who had no personal knowledge of the transactions in question, and was deposing on the basis of material on record, his evidence cannot be from his knowledge and necessarily has to be hearsay. Hence, the learned Judge was not justified in shutting out that part of the evidence.

10. We, therefore, set aside the order made by the learned Judge of the Special Court initiating the proceedings for contempt and convicting the appellant for the same. The entire proceedings in relation to contempt of Court shall stand set aside. The appeal is allowed accordingly.

Appeal allowed.