

**SUPREME COURT OF INDIA**

Maghendra Pal Tyagi

Vs.

Jayant Davar

C.A.Nos.3034-3036 of 2005

(C.K.Thakker and Lokeshwar Singh Pantia JJ.)

01.05.2008

**JUDGMENT**

**Lokeshwar Singh Pantia, J.**

1. These appeals are directed against the judgment and order dated 10.10.2003 in Misc. Application No.186 of 2000 (impugned order-1); order dated 14.07.2004 in Misc. Application No.178 of 2004 in M. A. No. 186/2000 (impugned order-2) and order dated 18.08.2004 in Misc. Application No.263 of 2004 in M. A. No.186/2000 (impugned order-3) passed by the Special Court constituted under *The Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992* [hereinafter referred to as "the Act"] at Bombay.

2. The short facts leading to the present proceedings are as under:-

“The appellant herein held 200 shares of Hero Honda Company - fourth respondent-company herein. In and around September 2003, the appellant desired to dispose of the said 200 shares, but he allegedly lost the same. On 21.09.1993, the appellant got a police report registered in the Sihani Gate Police Station, Ghaziabad. On or about 22.09.1993, the appellant approached and requested the fourth respondent-company for issue of duplicate Certificates in lieu of his lost shares along with all supporting documents, indemnity bonds and affidavits, etc.”

3. On 05.01.1994, the fourth respondent-company got an Advertisement/Public Notice published in Newspapers calling upon to file objections, if any, against issue of duplicate Share Certificates to the appellant and also striking a note of caution to the public at large not to deal with the shares so specified in the advertisement. Having not received any objection from any one, the fourth respondent-company on 03.02.1994 issued duplicate Share Certificates to the appellant. The appellant transferred his shares in favour of Jayant Davar - the first respondent herein, which were registered in his name by the fourth respondent-company on 18.10.1994. The first respondent had been offered 50 Bonus Shares by the fourth respondent-company, which offer was profitably availed by him. The first respondent

sold/transferred 200 shares which he got from the appellant and 50 Bonus Shares consequently acquired by him, but the fourth respondent-company did not register the said transfer. This was done on the asking of the CBI, who was investigating the Share Transfer Scam, and advised the first respondent and the transferee to approach the Custodian - second respondent herein. The fourth respondent-company asked the appellant to enforce indemnity bond, but the appellant did not agree as the fourth respondent-company had not suffered any loss, etc. as a result of the transaction.

4. The case of the first respondent before the Special Court was that he purchased 800 shares of fourth respondent- company through its broker M/s. Jamnadas Morarjee & Co. during the months of July-August, 1994 and thereafter the said shares were sent for transfer to the Registrar and Share Transfer Agent of respondent No. 3, i.e. MCS Limited. The shares were finally transferred in his name on the basis of valid instruments of transfer and, accordingly, a ledger folio No. 141982 has been allotted to him. The second respondent filed Miscellaneous Application No. 186/2000 before the Special Court claiming 200 shares which were transferred in his name from the appellant and 50 bonus shares in the ratio of 1:4 as issued by third respondent against those 200 shares. The first respondent stated before the Special Court that he had sold 250 shares in the open market through his share broker M/s. TRC Securities Pvt. Ltd. in the month of May/June, 1997. Upon lodgment of the said 250 shares with MCS Limited, they, vide their letter dated 26.06.1997 refused to transfer/register the shares in the name of the lodger i.e. Morgan Stanley Assets Management Inc., A/c Morgan Stanley Institutional Fund Inc. Emerging Markets Portfolio. Subsequently, the 250 shares were returned to first respondent as 'Bad Delivery' under two different covering letters dated 26.06.1997 and 10.07.1998 respectively. MCS Limited received a letter bearing No. 5696/Cus/Mob/UR- CBI/96 (533B) dated 29.02.1996 from the second respondent-Custodian regarding stop transfer of the shares in favour of any person without permission of the Custodian. The MCS Limited also enclosed copy of transfer deeds, share certificates and Custodian's letter dated 29th February, 1996 along with their letter to the second respondent who on going through the same, came to know that 117335 shares of fourth respondent-company belonged to the Notified Persons of the group of Late Harshad S. Mehta which were seized by CBI and remained in their custody. The letter also revealed that Late Harshad S. Mehta and his group were notified by the Custodian on 8.6.92 under the provisions of the Act and all properties belonging to them stood attached simultaneously with the issue of the notification and the fourth respondent-company was informed not to deal with those shares in any manner including transfer, pledge, issue of duplicate etc. and all corporate benefits admissible on these shares may be held in abeyance till the orders passed by the learned Special Judge.

5. In view of the above stated circumstances, the first respondent requested the fourth respondent-company to transfer the shares in the name of the buyer who purchased the same in the open market. The fourth respondent- company vide their letter dated 8th October, 1997 informed the first respondent that one Mr. Mahendra Pal Tyagi - appellant herein was holding the said 200 shares under Ledger Folio No. 128027 bearing Share Certificate Nos. 58193, 46706, 179855 which he claimed having been lost and requested the fourth respondent-company to issue duplicate shares in lieu of the aforesaid original lost share

certificates. The appellant also submitted the Police Report, indemnity bond, affidavit along with the request letter to the fourth respondent-Company who issued duplicate shares to the appellant under Share Certificate Nos. 191549-191552. The duplicate shares subsequently were lodged by the first respondent for transfer in his name and, accordingly, the fourth respondent-company transferred the said shares on 18th October, 1994 in the name of the first respondent.

6. The fourth respondent-company thereafter received a letter dated 29th February, 1996 from the office of the second respondent-Custodian whereby the Custodian asked the fourth respondent-company to "stop transfer" of certain shares including the shares which are the subject matter of these proceedings and also held in abeyance all the benefits accruing on those shares as the said shares were seized by the CBI at the time of raid laid on the places of Late Harshad S. Mehta. The letter of 8th October, 1997 revealed that the list furnished by the second respondent-Custodian includes original shares of the appellant which he allegedly lost. The fourth respondent-company, therefore marked "stop transfer" against the duplicate shares which were transferred in the name of the first respondent and advised the first respondent to approach the stock exchange through whom the first respondent purchased those shares so that through proper channel, the introducing broker as well as the share holder, i.e. the appellant could be asked to replace the said shares with good shares. The first respondent admitted that he purchased 200 shares from the open market through their share broker and paid the consultation thereof and thereafter the shares were also registered in his name by the fourth respondent-company as per the provisions of the Companies Act, 1956 and he had absolutely no knowledge about the duplicate shares being issued in the name of the appellant by the fourth respondent-company. He claimed that in the facts and circumstances narrated in the application, first respondent is the real and only owner of these shares and, accordingly, all corporate benefits accrued thereon since the date of registration of the 250 shares in his name, be paid to him in the interest of justice. By reasons of the impugned order dated 10.10.2003, the learned Special Judge allowed Misc. Application 186 of 2000 filed by the first respondent. It was directed:-

"This application relates to 250 shares of respondent no.3 company. It appears that the respondent no.4 who was holding these shares had sold the shares on the Stock Exchange which were purchased by the notified party. Taking advantage of the fact that the notified party because of the notification could not apply for transfer of the shares, the respondent no.4 applied for duplicate shares by making a misrepresentation that he has lost the shares and received from the Company the duplicate shares. Those duplicate shares were again sold and they were now purchased by the applicant. The principal prayer in the application is for lifting of attachment on these 250 shares. It is obvious that these 250 duplicate shares have been issued by the Company because of misrepresentation made by the respondent no.4. By an order dated 16th July, 2003, the respondent no.4 was directed to deposit in this Court an amount of Rs.6,00,000/-. The respondent no.4 has not obeyed this order. In the affidavit filed by the respondent no.4, the explanation that has been given by him is incapable of being accepted. There are no documents produced in support of that explanation. It is thus clear that there is no question of attachment of

250 shares of the respondent no.3 company being lifted. The relief to which the applicant would be entitled is to recover from the respondent no.4 the value of the shares. It is clear from the report submitted by the Custodian, that these shares were purchased by the Applicant in the month of June 1994 and payment for it was made by cheque dated 6th July 1994 and the amount was Rs.2,94,400/-. The applicant therefore would be entitled to a decree against the respondent no.4 in this amount. The application therefore is disposed off in the following terms.

The respondent no.4 is directed to pay to the applicant an amount of Rs.2, 92,400/- with interest at the rate of 18% p.a. from 6th July 1994 till realization. Application is disposed off."

7. Being aggrieved, the appellant filed Review Application being Misc. Application No.178 of 2004 under clause (f) of sub-section (5) of Section 9-A of the Act before the learned Special Judge. The said application came to be rejected on 14.07.2004 vide order, which reads as under:-

"Called for hearing and Final Disposal None for the applicant Mr. Modi i/b Yogesh Thakur for Respondent No.1 Mr. J. Chandran i/b M/s P.M. & Mithi & Co. for the Custodian/Respondent No.2 Mr. V.M. Singh i/b Arun Mehta for Respondent No.4 Coram D.K. Deshmukh, J. Judge, Special Court Dated 14th July, 2004 P.C.

Matter called twice. None present for the applicant. Application rejected."

8. Again, the appellant preferred Misc. Application No.263 of 2004 for restoration of the Review Petition, which was dismissed and the following order came to be passed on 18.08.2004:-

"Even assuming that due to mistake of the lawyer, lawyer could not remain present and therefore, the review petition was rejected, after having heard the learned counsel appearing for the Applicant on the review application, I find that there is no reason to review the order dated 10th October, 2003. Applicant was Respondent No.4 in Misc. Application No.186 of 2000. By order dated 16th July, 2003, he was directed to deposit an amount of Rs.6 lakh in the court. He did not obey that order. Therefore, the Applicant is not entitled to any indulgence from this court.

Misc. Application disposed of."

9. Hence, the appellant has assailed the above-said three orders before this Court in these appeals preferred under Section 10 of the Act.

10. During the pendency of the appeals in this Court, the legal representatives of late Harshad Mehta are substituted as respondents Nos. 3(i), (ii) and (iii).

11. Mr. Abhishek Vikas Singh, learned counsel appearing on behalf of the appellant, in assailing the orders of the learned Special Judge, inter alia, contended that the learned Special Judge did not appreciate the fact that the original shares were not valid and legal and had come to the hands of the notified person (deceased Harshad Mehta) in illegal and wrongful manner and were never transferred and registered in his name in accordance with law and as such, the appellant could not have been penalized for the acts and deeds of a third person, who had acquired the shares in illegal and clandestine manner. He submitted that the action of the appellant being bona fide and reasonable, he had faced loss at last stage, even when the duplicate shares were already stood transferred in his name in due course after following all legal procedures and due application of law. The learned counsel then contended that the orders of the learned Special Judge impugned in these appeals have resulted in manifest error and miscarriage of justice to the appellant, which deserve to be set aside.

12. Mr. Rohit Aggarwal, learned counsel appearing on behalf of the first respondent, on the other hand, would inter alia submit that the learned Special Judge passed an order based upon the material on record which would reveal that the appellant had committed a fraud of selling 200 shares on the Stock Exchange and thereafter applying to the fourth respondent-company for duplicate shares on the plea that the said shares had been stolen. He also submitted that the learned Special Judge had not burdened the appellant with payment for the entire amount of 800 shares as alleged, but in fact has directed payment of Rs.2,92,400/- with interest thereon, which is the value of 250 shares only.

13. Mr. Subramaniam Prasad, learned counsel appearing on behalf of second respondent-Custodian, would contend that the appellant had sold the shares in question to late Harshad Mehta, a notified person under Section 3(2) of the Act and deceased Harshad Mehta could not apply for transfer of those shares, the appellant, on a misrepresentation that he had lost the shares, applied for and got duplicate shares from the fourth respondent-company, which were also sold by the appellant to first respondent. Learned counsel for the respondents, in nutshell, supported the orders of the learned Special Judge which, according to them, cannot be found faulty or invalid on any grounds whatsoever as alleged by the appellant.

14. We have given our thoughtful and anxious consideration to the respective contentions of the learned counsel for the parties and perused the material on record. The contentions of the learned counsel for the appellant at the first blush sound attractive, yet we are afraid to accept the same.

15. The undisputed facts are that the first respondent purchased 800 shares including 200 shares (the subject matter of the proceedings) of fourth respondent-company in open market in the months of July and August, 1994 through its share broker M/s. Jamnadas Morarjee & Co., C-4 Defence Colony, New Delhi-24. The fourth respondent-company allotted 50 bonus shares to him against the said 200 shares in the ratio of 1:4. In all, the dispute before the learned Special Judge was limited to 250 shares. Late Harshad S. Mehta, who was a party - third respondent herein, is represented through his legal representatives Nos. 3(i), (ii) and (iii) respectively. Indisputably, deceased Harshad Mehta was a notified person under sub-

Section (2) of Section 3 of the Act and the appellant transacted the said shares with the deceased Harshad S. Mehta entered after the first day of April, 1991 and on or before 1st June, 1992, the stipulated period covered under the Act. Claim submitted by the first respondent before the learned Special Judge would arise out of the transaction of the said 250 shares between Late Harshad S. Mehta and the appellant during the aforesaid period. The entire properties belonging to the notified party on the day of notification would stand attached in terms of Section 3(2) of the Act. The appellant knowing fully well that he has already sold the shares to late Hashad S.Mehta, he made a false representation to the fourth respondent-company that as the appellant had lost original shares, therefore, duplicate shares were allotted to him which stood in his name since late Harshad S. Mehta had not applied for change of the name. The whole exercise was done by the appellant on the basis of his misrepresentation. This Court in *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Limited & Anr.*<sup>1</sup>, held that Section 3(3) of the Act should be literally construed and all properties belonging to the notified party on the date of notification would stand attached.

16. In terms of the provisions of sub-section (3) of Section 3 of the Act, the properties belonging to deceased Harshad S. Mehta being a notified person stood attached. Such attachment being automatic, no finding was required to be arrived at that the same had been acquired during the notified period. In *Tejkumar Balakrishna Ruia v. A.K. Menon*<sup>2</sup>, this Court held that the terms of sub- section (3) Section 3 are clear that the property that belongs to a notified person stands attached simultaneously with the issue of notification that makes him a notified party. It is said that the words 'on or from the date of notification' indicate the point of time at which the attachment takes effect; this is reiterated by the words 'shall stand attached simultaneously with the issue of the notification'. Further that this also indicates that no special notification or order in regard to the attachment is necessary. In the latest judgment of this Court in *Ashwin S. Mehta & Ors. v. Union of India & Ors.*<sup>3</sup>, this Court reiterated that property, be it shares, dividends and bonus and rights shares that belongs to a notified person would also be attached property.

17. In this view of the matter, learned Judge of the Special Court has rightly concluded that 200 duplicate shares were obtained by the appellant by misrepresentation. The said 200 shares plus 50 Bonus shares were attached by the CBI in proceedings initiated against deceased Harshad S. Mehta; therefore, the attached shares of the fourth respondent- company could not be transferred to any party. The record of second respondent-Custodian would reveal that 250 shares were purchased by the appellant in the month of June, 1994 and payment of Rs.2, 92,400/- was made by cheque dated 6th July, 1994. In these circumstances, the learned Special Judge directed the appellant to pay to the first respondent an amount of Rs. 2, 92,400/- with interest at the rate of 18% per annum from 6th July, 1994 till the date of realization.

18. In the backdrop of the facts and circumstances and in the light of the provisions of law, in our view, the orders of the learned Special Judge impugned in these appeals do not suffer from any infirmity or illegality warranting interference in exercise of appellate power.

19. For the reasons aforementioned, we do not find any merit in these appeals which are dismissed, accordingly. Parties are left to bear their own costs.

<sup>1</sup>(2004) 11 SCC 456

<sup>2</sup>(1997) 9 SCC 123

<sup>3</sup>(2006) 2 SCC 385