

SMT. JYOTI MEHTA WAS DISCHARGED EVEN BEFORE TRIAL IN THE ONLY CASE SHE WAS CITED AS AN ACCUSED

Special Case No 1/93.
MA 2/94
→ 52/94.

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) AT BOMBAY.

MISC.APPLICATION NO. 27 OF 1994

IN

Special Case No.1 Of 1993

EX 5
Prayadare
Court Shrestedar
Office of the Special Court,
Bombay.

C. B. I. .. Complainant

v/s

K.Margabanthu & Ors. .. Accused

Mr. Mahesh Jethmalani with Miss. Reshma Ruparel for Applicants.

Mr. P. R. Namjoshi with Mrs. Teja Katdare and Mr. D. U. Mirjarkar, Special P.P., for prosecution.

MISC.APPLICATION NO.52 OF 1994

In

Spl Case No. 1 of 1993

C.B.I. ..Complainant

V/s.

Jitendra R.Shroff .. Accused

Mr. K.M.Desai with Mr. Amit K. Desai i/b, Miss. Lubna Vohra for the Applicant.

MR. P.R.Namjoshi with Mrs. Teja Katdare and Mr. D.U.Mirajkar, Special P.P. , for the prosecution.

CORAM: S. N. VARIAVA. J.
JUDGE SPECIAL COURT

26th October, 1994.

ORAL ORDER

1. **In this case almost all the Accused have filed Discharge Applications. For reasons set out hereinafter, at this stage, the Court is dealing only with the Discharge Applications of the Accused No. 6 and 9.**

2. Before the Applications are dealt with, what has happened in the Court must be

mentioned. In this case by Misc. Application No. 322 of 1994, the C.B.I. had asked for permission under Section 173, Cr. P. C. for further investigation. That had been granted to them. No further report has been placed before the Court.

3. In the meantime on 5th October, Special Case No. 1 of 1993 appeared on Board of this Court. Dealing with a number of matters, both Civil and Criminal, the Court lost the sight of this fact. It would appear that C.B.I. had also lost sight of this fact. Special Case No. 1 of 1993 was opened by Mr. Namjoshi for purposes of framing charges. Proposed Drafts charges were handed over to the Court and to the Accused. At the initial stage itself the Court made it clear that it would be the Court which would be framing the charges and that the Draft charges submitted by the Prosecution should not be taken to be the charges which would be framed by Court.

4. As the record was voluminous and Bulky, Court heard the parties. Mr. Namjoshi proceeded on the basis of the Draft Charges framed by him. As arguments proceeded it became clear that an elements of the proposed Charge of cheating had not been fully investigated by the C. B. I. At that stage an adjournment was taken. Thus, on the ground that C. B. I. wanted to make^{an} Application for

further investigation It is only thereafter that it was realised that an Application has already been made and granted.

5. Accused No. 1 is the Ex. Chairman and Managing Director of UCO Bank, Calcutta; Accused No. 2 is the General Manager, UCO Bank, Calcutta; Accused Nos. 3, 4, 5, 6, and 9 are Share & Stock Brokers at Bombay, Accused No. 7 is the Chief Executive of M/s. Mazda Industries & Leasing Ltd; Accused No. 8 is Asst. Vice President of M/s. Mazda Industries & Leasing Ltd; Accused No. 10 is the Chief Offices, UCO Bank, Bhubaneswar; Accused No. 11 is the Asst. Vice President of M/s. Growmore Research & Assets Management Ltd.

6. Very briefly, the case of the prosecution is that there has been a Criminal conspiracy between the Bank Officials viz., Accused No. 1, 2 and 10 and Accused No. 3, 4, 5, 6, 7, 8, 9 and 11 to cheat UCO Bank by way of Bill Discounting Facility for approx Rs. 50/- Crores. This Bills Discounting Facility has been granted to two Companies M/s. Mazda Industries & Leasing Ltd hereinafter called "Mazda" and M/s. Growmore Research and Assets Management Ltd., hereinafter called "Growmore" for an alleged Contract of purchase of shares by one M/s. J. H. Mehta for and on behalf the said Mazda and Growmore. It is the

case of the prosecution that in fact there was no such purchase of shares. The Prosecution is also seeking to charge the Accused with falsification of accounts. The Bank Officials are also charged with criminal misconduct.

7. The alleged, Bills Discounting Facility has been granted on 14th March, 1992 by the Nariman Point Branch of UCO Bank. There has also been a rediscounting of Bills by the Syndicate Bank and State Bank of Patiala.

8. It is the case of the prosecution that on the due date i.e., on 24th April, 1992, bills were not repaid. It is the case of the prosecution that UCO Bank had to repay amounts to the Syndicate Bank and State of Bank of Patiala. It is the case of the prosecution that this resulted in a fund gap of Rs. 50/- Crores. It is the case of the prosecution that to cover up the fund gap UCO Bank had to borrow Call Money at high interest rates from other Banks for a period of 3 days. It is a case of the prosecution that to cover up this transaction, it was decided that UCO Bank purchase shares from Harshad Mehta for a sum of Rs.50/- crores This sum of Rs. 50/- crores was then used to repay the Bill amounts. In this transactions of purchase of shares Accused No. 9 acted as a broker.

9. As stated above the arguments on

behalf of the prosecution has been on the footing that the Bill Discounting Facility was granted in respect of contracts of purchase of shares when in fact there were no contracts for purchase of shares. It was only towards the end of the arguments, when Court expressed a prima facie view that the charge, if any, could be that UCO Bank has been cheated by making its Public Funds available, in the guise of ostensible Banking transactions to private parties for personal use that the prosecution has sought to change its arguments. However, time is being sought for further investigation into the aspect as to whether or not there were contracts for purchase of share.

10. This is not opposed by most of the Accused. Mr. Shah for the 1st Respondent however, state that there is absolute negligence on the part of C. B. I. He submits that there appears to be no seriousness on the part of C. B. I. He opposes grant of time. In my view the Order is already passed. Even otherwise, investigation should not be and cannot be curtailed. I see no substance in the opposition. I therefore, grant time as set out hereafter. The Application for discharge by Accused other than Accused No. 6 and 7 will have to be considered after seeing what fresh material or

evidence is produced by the prosecution.

11. However, it must be noted that this investigation is only for the purpose of finding out whether or not there is any actual purchase of shares. By now Court has seen most of the material on record. It has looked at the various statements of parties. In my view even if, the prosecution comes across new evidence or material to show that there was no purchase of shares, it would still disclose no grounds for proceeding further against Accused Nos. 6 and 9. This for reasons set out hereafter.

12. As set out hereinabove, Accused No. 6 is a Share & Stock Broker and proprietress of M/s. J. H. Mehta. Of course she also happens to be wife of Harshad Mehta, Accused No. 9 is the Proprietor of M/s. V. B. Desai & Co.

13. It is an admitted position that all that Accused No. 6 has done is to sign the Account opening form of M/s. J. M. Mehta. However, there is absolutely no material on record to show that the Account Opening Form has been signed with knowledge, of the alleged conspiracy or with the intention of cheating UCO Bank. It is also an admitted position that on 18th April, 1991, Accused No. 6 had given a General Power of Attorney to Accused No. 5. It is admitted that on the basis of

this General Power of Attorney Accused No.5 acted for and on behalf of Accused NO. 6 in these transactions. There is no evidence to show that he has so acted with knowledge of Accused No. 6. that UCO Bank was to be cheated. Under these circumstances, the mere fact that the Accused No. 6 has signed the Account Opening Form, is in my view, no ground to frame any charge against Accused No. 6.

14. As stated above Accused No. 9 is proprietor of M/s. V. B. Desai & Co. It is an admitted position that Accused No. 9 has played no part at all till 27th April, 1992. Accused No. 9 has only acted as broker in the transactions of purchase of shares by UCO Bank from Harshad Mehta. All that the prosecution has alleged against Accused No.9 is that he should not have acted as broker when he knew that Harshad Mehta was himself a broker. According to the prosecution the fact that he would acted as broker shows, that he offered his services in the salvage operation. It is also claimed that he did not effect full delivery of shares till 2nd May, 1992 though he was bound to make spot deliveries. The prosecution also rely on fact that Accused No. 9 has permitted UCO Bank to pay monies directly to the account of Harshad Mehta in ANZ Grindlays Bank.

15. On the other hand Mr. Desai has submitted, and in my view, rightly, that there is no evidence oral and documentary relating Accused No. 9 to the earlier conspiracy if any. Mr. Desai has submitted and in my view rightly that there is not evidence at all that the Accused No. 9 knew that the object of purchase of shares was merely to cover up an earlier conspiracy. He points out that Accused No. 9 is an approved Share Broker of the UCO Bank. Also it is an admitted position that UCO Bank had a portfolio management scheme.

16. Mr. Desai also submitted that Accused No. 9 has done everything openly. He point out that Accused No. 9 has prepared all documents which were required to be prepared in such transactions. He point out that the Prosecution has not been able to suggest any sinister motives to Accused No. 9. He points that prosecution has not suggested that there was any sinister motives in UCO Bank selecting the Accused No. 9 as the broker in this transaction. It is also relevant that brokerage has been received by Accused No, 9 from M/s. J. H. Mehta and not from UCO Bank. Also there is no allegation that the brokerage which is charged is more than usual and/or that it is not what is normally charged in such transactions. It must be noted that there is no evidence or

Special Case No 1/93.
Ex 5

9

Wrayshaw
Shankar

material to show that Accused No. 9 connived or conspired with Accused No. 1 or 2 or 10 or with Accused No. 3 or 4 or 5 or 6.

17. In my view there is no material on record to show involvement of Accused No. 9 in the alleged conspiracy to cheat. Accused No. 9 has acted on his capacity as the approved broker of the UCO Bank. He has done everything which is normally done in such transactions. He has not done anything which normally a broker would not do in such transactions. In my view, on the facts and material on record there is no ground for framing charge against Accused No. 9.

18. Under the circumstances I discharge Accused No. 6 and 9. The Bail Bonds of Accused No. 6 and 9 stands canceled.

19. Special Case 1 of 1993 is adjourned to 15th November, 1994.