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THE SUPREME COURT CASES

(2008) 7 SCC

(2008) 7 Supreme Court Cases 1

(BEFORE K.G. BALAKRISHNAN, C.J. AND R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.)

S. MOHAN .. Appellant;

Versus

CENTRAL BUREAU OF INVESTIGATION .. Respondent.

Criminal Appeals No. 906 of 1998† with No. 910 of 1998, decided on May 16, 2008

Penal Code, 1860 — Ss. 405, 409, 411 and 120-B — Criminal breach of trust — Ingredients — Acting contrary to directions of person who had entrusted the property — Accused 4, a registered stockbroker, purchasing mutual fund securities in the name of a bank and later on selling them — Sale contrary to terms subject to which securities were issued but otherwise there was no violation of any statutory provision — Neither name lending bank nor issuing institution objecting to the sale — Held, Accused 4 being the real owner of securities, did not commit criminal breach of trust as the property sold was his own — For the same reason, charge under S. 411, of receiving/retaining stolen property, held, also not made out against him — Securities were purchased by another financial institution — Accused 3 was an officer in that institution — Accused 3 also acquitted of similar charges against him — Further held, Accused 3 could not also be convicted under the Prevention of Corruption Act, 1988 for the reason that purchase of securities of Rs 33 crores could not be made without authorisation from higher authorities and the transaction was legal — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Prevention of Corruption Act, 1988, Ss. 13(1)(c), 13(1)(d) and 13(2)

Accused 4, a registered stockbroker, purchased Canara Bank mutual fund units, CANCIGO, worth Rs 33 crores in the name of Andhra Bank and its subsidiary, Andhra Bank Financial Services Ltd. Interest on these units was

† From the Final Judgment and Order dated 6-8-1998, 7-8-1998, 13-8-1998 and 14-8-1998 of the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay in Special Case No. 7 of 1994 in Case No. RC.5/BSC/93/Bombay : **(1999) 2 Cur Crim R 275**

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credited to Accused 4's account. He sold these units before completing their lock-in period of one year to CANFINA, a subsidiary of Canara Bank. The sale was contrary to terms and conditions of mutual fund but otherwise there was no violation of any statutory provisions. CANFINA deducted amount of Rs 25 crores plus, which Accused 4 owed to them, and released rest of the amount to Accused 4.

It was also found that CANFINA purchased mutual fund from Accused 4 on the directions of Accused 3 who was an officer in CANFINA.

Accused 4 was charged of criminal breach of trust under Section 405 and for receiving/retaining stolen property under Section 411 of the Penal Code.

Accused 3 was also charged for criminal breach of trust under Sections 405 and 409 of the Penal Code, and also under Sections 13(1)(*c*), 13(1)(*d*) and 13(2) of the Prevention of Corruption Act, 1988.

Both the accused appealed to the Supreme Court against their conviction.

Main issue was whether Accused 4, who had purchased mutual fund units in the name of Andhra Bank and its subsidiary, had committed criminal breach of trust by selling the units to CANFINA. The Supreme Court while deciding this issue took note of the fact that the Supreme Court in an earlier case, *Canbank Financial Services Ltd. case*, (2004) 8 SCC 355, had held that Accused 4 had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary (Accused 4 was Respondent 2 in that case).

Allowing the appeals and acquitting both Accused 3 and 4, of the abovementioned charges, the Supreme Court

Held :

For all practical purposes, CANCIGO units worth Rs 33 crores were purchased by Accused 4, and he transferred these units to CANFINA. Canara Bank Mutual Fund, CBMF, did not raise any objection in respect of transfer of the CANCIGO units by Accused 4. If at all, it was for CBMF to raise any objection but they did not raise any objection to transfer of CANCIGO units. CANFINA had succeeded in getting the proceeds of these CANCIGO units. Therefore, no offence of criminal breach of trust is committed by Accused 4. He has not acted contrary to the direction of any person who had entrusted these units to him and it is proved that it was Accused 4 himself who was apparent owner of these units. (Paras 18 and 19)

Canbank Financial Services Ltd. v. *Custodian*, (2004) 8 SCC 355, *relied on*

So long as CANFINA has no grievance or complaint against Accused 4, that he acted contrary to their directions and accepted CANCIGO units and paid money to Accused 4, no offence is made out against Accused 3 either of criminal breach of trust or conspiracy. (Para 21)

In the circumstances, no ingredient of criminal breach of trust is made out against either of the appellants. (Para 23)

The prosecution also could not prove any conspiracy by these accused persons to commit any criminal acts. So long as there was no such evidence, the offence of conspiracy is not proved against these appellants. (Para 24)

So long as the prosecution admits that CANCIGO units worth Rs 33 crores were purchased by making use of money owned by Accused 4, they were not a stolen property in his hands. Neither Andhra Bank nor Andhra Bank Financial Services Limited has any case that these CANCIGO units were stolen by Accused

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4. As the offence of criminal breach of trust is not made, the conviction of Accused 4 under Section 411 is not sustainable and is liable to be quashed. So also, Accused 3 is not liable for the conspiracy to commit offence under Section 411 IPC. (Para 25)

CANCIGO units were worth Rs 33 crores and they were accepted with the proper authorisation by the higher authorities in CANFINA. It is highly improbable to believe that appellant-Accused 3 on his own decided to accept CANCIGO units worth Rs 33 crores without any instructions. CANFINA did not file any complaint alleging any unauthorised transaction carried out by him. It has already been held by the Supreme Court in *Canbank Financial Services Ltd.* that entire transaction was legal and CANFINA was entitled to the proceeds of these CANCIGO units and not the "Custodian" under the Act. Therefore, Accused 3 is also not guilty of offence punishable under Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. (Para 26)

K-M/A/37855/CR

Advocates who appeared in this case :

U.U. Lalit, Senior Advocate (Jatin Zaveri, Harish J. Jhaveri, Sunil S. Kale, Satyajit Saha, Prasenjit Keswani, Nitin Sangra and Ms V.D. Khanna, Advocates) for the Appellant;

A. Subba Rao (for P. Parameswaran) Advocate, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2004) 8 SCC 355, *Canbank Financial Services Ltd.* v. *Custodian* 6*d*, 6*f*, 7*h*, 9*a-b*

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, C.J.— These two statutory appeals under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short "the said Act") are filed by Accused 3 and 4 in Special Case No. 7 of 1994, being aggrieved by the judgment and order dated 6-8-1998/7-8-1998/13-8-1998/14-8-1998 convicting and sentencing them.

2. These two appellants were tried along with two other accused persons by the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay and by judgment dated 14-8-1998, these appellants were found guilty of various offences.

3. The appellant in Criminal Appeal No. 906 of 1998 (third accused, S. Mohan) was found guilty of offence punishable under Section 409 IPC and was sentenced to undergo rigorous imprisonment for seven years and a fine of Rs 1 lakh, and with default sentence for a period of one-and-half years. He was also found guilty of the offences punishable under Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act and for this offence he was sentenced to undergo rigorous imprisonment for a period of five years and a fine of Rs 50,000, in default of payment of fine, sentence for a period of one year. He was also found guilty of the offence punishable under Section 411 read with Section 120-B IPC and sentenced to undergo two years' RI and a fine of Rs 50,000 and in default sentence for six months.

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4. The appellant in Criminal Appeal No. 910 of 1998 (fourth accused, Hiten P. Dalal) was found guilty of offences punishable under Section 409 read with Section 120-B IPC and sentenced to undergo seven years' rigorous imprisonment and a fine of Rs 1 lakh and with default sentence for a period of one-and-half years. He was also found guilty of an offence punishable under Section 411 IPC and was sentenced to undergo imprisonment for a period of two years and a fine of Rs 50,000, and in default sentence for a period of six months. The sentences were to run concurrently. The Special Court acquitted Accused 1 and 2.

5. In the year 1992, certain irregularities were detected in various security transactions that had taken place between certain financial institutions. Reserve Bank of India constituted a committee known as "Janakiraman Committee" to look into the real nature of these transactions and to find out if any fraud or financial irregularities had taken place in these transactions. It appears that in the course of the enquiry by the Janakiraman Committee, it was found that large-scale irregularities and malpractices were noticed in transactions both in the government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. It was noticed that these irregularities and malpractices had led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. The Central Bureau of Investigation (CBI) made enquiries generally regarding all security transactions and it seems that CBI after investigation of the case filed a report against four accused before the Special Court alleging that these accused were responsible for causing loss of Rs 33 crores to Canara Bank and various other allegations were also made against these accused. Accused 1 was the Executive Vice-President and Chief Dealer, Accused 2 was the Asstt. Vice-President and Accused 3 was the Asstt. Vice-President and Dealer of Canbank Financial Services Ltd. at the relevant point of time. Accused 4 was a share and securities broker.

6. Andhra Bank is a nationalised bank and Andhra Bank Financial Services Limited is a company wholly owned by Andhra Bank. Canara Bank is also a nationalised bank and Canara Bank Mutual Fund (CBMF) is a trust created by Canara Bank. Canara Bank was the chief trustee of the trust CBMF. Canbank Financial Services Limited ("CANFINA", for short) is a subsidiary company of Canara Bank. The Chairman and the Managing Director of Canara Bank was also the Chairman of Canbank Financial Services Limited. The Managing Director of CANFINA was a person deputed by Canara Bank and the Executive Director also was appointed by Canara Bank.

7. The trust, namely, Canbank Mutual Fund under a scheme prepared by it issued units known by the name "CANCIGO" in the shape of credit sheets which provided a fixed rate of interest with a stipulation that these credit sheets may not be transferred for a period of one year. The CANCIGO units could be encashed only after the completion of this lock-in period of one year from the date of issue. The scheme was operated under the rules framed by Canbank Mutual Fund. One of the rules so framed imposed a restriction on

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the transfer of these units but it permitted transfer of units to the heirs in case of death of the holder and also in special circumstances.

8. On 28-8-1991, Accused 4 wrote to Andhra Bank enclosing an application form for CANCIGO units worth Rs 11 crores requesting the Bank to sign the application on his behalf. On 29-8-1991, Andhra Bank Ltd. applied to Canbank Mutual Fund, at the request of the appellant Hiten P. Dalal, for the purchase of CANCIGO units of the face value of Rs 11 crores. A cheque drawn by the appellant Hiten P. Dalal for the sum of Rs 11 crores was sent along with the application. The application was signed by one Dhankumar on behalf of Andhra Bank Ltd. Similarly, on 14-9-1991, the same appellant Hiten P. Dalal through Andhra Bank Financial Services Limited requested for purchase of CANCIGO units of the face value of Rs 22 crores along with the application and a cheque drawn by appellant Hiten P. Dalal for Rs 22 crores on his account with Andhra Bank. On the basis of these two applications, Canbank Mutual Fund issued two credit sheets of the units of CANCIGO, one in the name of Andhra Bank for Rs 11 crores and the other in the name of Andhra Bank Financial Services Limited for Rs 22 crores. Though these two credit sheets were issued on the basis of the cheques drawn by the appellant Hiten P. Dalal, the credit sheets were issued in the name of Andhra Bank and Andhra Bank Financial Services Limited, respectively as they had signed the application forms.

9. According to the prosecution, the appellant Hiten P. Dalal who was a stocks and securities broker was indebted to CANFINA in a sum of Rs 25,01,67,129. It appears that the appellant Hiten P. Dalal offered to sell the CANCIGO units of the face value of Rs 33 crores to CANFINA to square up his dues in the sum of Rs 25,01,67,129. According to the prosecution, Accused 1 to 3 entered into a transaction with the appellant Hiten P. Dalal who was the fourth accused, to purchase the CANCIGO units of the face value of Rs 33 crores standing in the name of Andhra Bank and Andhra Bank Financial Services Limited though there was no letter of authority or consent for such sale from either Andhra Bank or Andhra Bank Financial Services Limited. The prosecution alleged that these transactions were entered into by Accused 1 to 3 on behalf of CANFINA knowing fully well that these CANCIGO units were not transferable and the appellant Hiten P. Dalal was not competent to deal with them. The prosecution alleged that after adjusting the amount due from the appellant Hiten P. Dalal, a cheque was issued for the balance amount of Rs 7,98,32,871 drawn in the name of Andhra Bank with a letter to Andhra Bank to credit the proceeds of the cheque to the account of Hiten P. Dalal. The prosecution alleged that by this method the appellant Hiten P. Dalal thus got his debt to the tune of Rs 25,01,67,129 due to CANFINA wiped out and got a sum of Rs 7,98,32,871 from CANFINA, even though CANCIGO units were not transferable and could not be transferred to the name of CANFINA.

10. It is in this background all the four accused were charged with having entered into a criminal conspiracy for committing the offence of cheating and criminal breach of trust and falsification of accounts and the offences under

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Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act.

11. Under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Special Court was established for the speedy trial of cases relating to transactions in securities and disposal of properties attached. The Special Court declared accused Hiten P. Dalal as a "notified person" under this Act. Before the Special Court, the Custodian made an application that CANFINA be ordered to hand over to him, the CANCIGO units worth Rs 33 crores with accrued interest thereon. The Custodian contended that Accused 4 could not have transferred the CANCIGO units which were not standing in his name and the entire transaction was tainted with illegality. He contended that therefore, no title was transferred to CANFINA; and that as title remained with Accused 4, he was entitled to the said CANCIGO units.

12. Before the Special Court, the appellant Hiten P. Dalal and Andhra Bank and the Andhra Bank Financial Services Limited did not make any claim in regard to the CANCIGO units. The Canbank Financial Services Limited claimed before the Special Court that the CANCIGO units covered under the two certificates issued by CBMF were properties belonging to them. The Special Court by order dated 22-9-1993, allowed an application filed by the Custodian and that order was challenged before this Court. By the judgment of this Court in *Canbank Financial Services Ltd.* v. *Custodian*[1] it was finally held that CANFINA was entitled to succeed and the transfer of CANCIGO units of the value of Rs 33 crores in favour of CANFINA was legal and valid. It was also held that CBMF must be presumed to have issued the CANCIGO units in the names of Andhra Bank and Andhra Bank Financial Services with full knowledge that they would enure to the benefit of Hiten P. Dalal; and therefore, the transfer of CANCIGO units in favour of CANFINA was valid and legal as by reason of the transfer of possession of CANCIGO units in favour of CANFINA, a valid right has been created therein and the same could not be attached in terms of Section 3(3) of the said Act. The entire finding of the Special Court in this case is to be appreciated in the light of the decision rendered by this Court in *Canbank Financial Services Ltd. case*[1].

13. These two appellants were found guilty by the Special Court mainly on the ground that the CANCIGO units issued by CBMF of the face value of Rs 33 crores stood in the name of Andhra Bank and Andhra Bank Financial Services Limited and the appellant Hiten P. Dalal was not entitled to get transfer of these CANCIGO units and that the appellant S. Mohan (in Criminal Appeal No. 906 of 1998) was instrumental in such transaction and thus entered into a conspiracy with Accused 4. Both the appellants have been found guilty of offences punishable under Section 406 IPC, namely, criminal breach of trust. It is important to note that, in the instant case, there was no complaint either by Andhra Bank or the Andhra Bank Financial Services Limited that these appellants committed any criminal breach of trust.

1 (2004) 8 SCC 355

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14. "Criminal breach of trust" has been defined under Section 405, Penal Code, 1860 as under:

> "405. *Criminal breach of trust.*—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.
>
> * * *"

15. Section 409 IPC deals with criminal breach of trust by public servant, or by banker, merchant or agent.

16. Here, the CANCIGO units stood in the name of Andhra Bank and Andhra Bank Financial Services Limited. They apparently entrusted this property to Accused 4 and allowed him to encash the same. In fact, Accused 4 had paid the consideration for purchasing the CANCIGO units in the names of Andhra Bank and Andhra Bank Financial Services Ltd. It is true that if a person entrusted with property dishonestly misappropriates that property, such misappropriation in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made in regard to discharge of such trust, will be guilty of criminal breach of trust. According to the prosecution, both these appellants acted contrary to the express condition that these CANCIGO units were not liable to be transferred within a period of one year and in spite of this, Andhra Bank as well as Andhra Bank Financial Services Limited transferred the units in favour of the appellant Hiten P. Dalal and enabled him to encash the CANCIGO units with the connivance of appellant S. Mohan and that constituted the offence of criminal breach of trust.

17. It was alleged that Accused 3 while employed by CANFINA, obtained for Accused 4, a pecuniary advantage of Rs 33 crores by illegally purchasing CANCIGO units and committed criminal breach of trust in regard to the employer's funds of Rs 33 crores. It is important to note that these units were issued by CBMF. They had imposed restrictions regarding transfer of CANCIGO units. They have not filed any complaint alleging that transfer of these units by appellant Hiten P. Dalal was contrary to rules. There is no express law or statutory rules prohibiting the transfer of CANCIGO units except the terms of the scheme framed by CBMF. They are not statutory rules and purely contractual. It is also pertinent to note that neither Andhra Bank nor the Andhra Bank Financial Services Limited filed any complaint alleging that the appellant Hiten P. Dalal acted contrary to their directions. Nor did CANFINA complain that appellant S. Mohan had committed criminal breach of trust in regard to these transactions of CANCIGO units. This Court in *Canbank Financial Services Ltd. case*[1] held (at paras 38, 39, 40 and 41) as follows: (SCC pp. 373-74)

> "*38.* The rules and regulations framed by Canbank Mutual Fund in relation to the issuance of CANCIGO certificates do not have any statutory

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backing. The CANCIGOs had a lock-in period of one year which means that the holder thereof must not encash the securities within the aforementioned period. The question as regards the non-transferability of the units will have to be construed upon reading the Scheme in its entirety and in particular Condition 22 thereof, in terms whereof the trustees were not required to maintain any register of CANCIGO-holders. In terms of Condition 24, the person whose name is shown in a CANCIGO certificate would be the only person to be recognised by the trustees as the holder of such CANCIGO and as having any right, title or interest in or to such securities. No trust created was also to be recognised.

39. Condition 19 creating a bar on transfer has to be construed in the aforementioned context. The bar on transfer created was to have the effect that the same would not be binding on Canbank Mutual Fund as it was not bound to take any notice thereof and only the holder shall be recognised as having the right, title or interest on the CANCIGO.

40. ... CANCIGOs indisputably are valuable securities. They are otherwise capable of being transferred in terms of the established business practice, the Sale of Goods Act or the Transfer of Property Act. No legal bar has been created in transfer of the said securities. The Scheme, thus, does not and could not have created an absolute legal bar on transfer of the CANCIGOs so as to invalidate the same.

41. The rules and regulations framed by Canbank Mutual Fund and the notes appended to the CANCIGO credit sheet differ in material particulars. Rules and regulations explain as to why an embargo on transfer has been placed i.e. not to recognise Respondent 2 for the dividends or for other liabilities arising out of transfer. A transfer violating the rules and regulations would only have the effect of the same being not binding on Canbank Mutual Fund. No other legal consequence flows therefrom. We have also noticed that the brochure merely states that the transfer is not permitted but provisions exist for grant of such permission. The appellant Bank as well as Canbank Mutual Fund are the subsidiaries of Canara Bank. The appellant cannot be estopped from raising either a limited or absolute title in them keeping in view the fact that they had paid a sum of 33 crores of rupees by way of consideration for transfer of interest of Respondent 2 herein in the said CANCIGOs."

(Respondent 2 referred to as the present appellant Hiten P. Dalal.)

18. It is not disputed that CANCIGO units worth Rs 33 crores were purchased by Andhra Bank or Andhra Bank Financial Services Limited by making use of the money owned by the appellant Hiten P. Dalal. These two financial institutions impliedly agreed to lend their name and allowed the appellant Hiten P. Dalal to purchase CANCIGO units in their name. It is also important to note that interest due on the CANCIGO units worth Rs 33 crores received from CBMF by Andhra Bank and Andhra Bank Financial Services Ltd. were credited to the account of the appellant Hiten P. Dalal. Therefore, it is clear for all practical purposes that the CANCIGO units worth Rs 33 crores

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were purchased by the appellant Hiten P. Dalal and he transferred these units to CANFINA and CBMF did not raise any objection in respect of transfer of the CANCIGO units by the appellant Hiten P. Dalal. If at all, it was for CBMF to raise any objection but they did not raise any objection to the transfer of the CANCIGO units.

19. It has been held by this Court in *Canbank Financial Services Ltd.*[1] that the Custodian was not entitled to get the value of the CANCIGO units and that CANFINA had a just right to possess the CANCIGO units to the exclusion of Hiten P. Dalal. It is also not in dispute that CANFINA had succeeded in getting the proceeds of these CANCIGO units. Therefore, no offence of criminal breach of trust is committed by the appellant Hiten P. Dalal. He has not acted contrary to the direction of any person who has entrusted these units to him and it is proved that it was the appellant Hiten P. Dalal himself who was the apparent owner of these units.

20. As regards appellant S. Mohan who was one of the Asstt. Vice-Presidents of CANFINA, the prosecution case is that he had telephonically informed PW 6, Mr Vernekar to accept the CANCIGO units. PW 6 Vernekar is an officer of Canara Bank who had been authorised by the Board resolution to deal in securities/bonds and execute securities transactions on behalf of CANFINA. He deposed that he used to receive telephonic instructions from Bangalore and recorded these instructions in rough transaction sheets. He has proved the rough transaction sheets including the rough transaction sheet on which Ext. 51-A has been noted. PW 6 deposed that the entry pertaining to purchase of CANCIGO units of the face value of Rs 33 crores from Accused 4 was made on the basis of the instructions received from Accused 3, namely, appellant S. Mohan. He also deposed that the appellant S. Mohan sent an Inter-Branch Advice No. 32894 by which the funds were transferred from Bangalore to Bombay in order to facilitate the payment. He deposed that the date 6-2-1992 was written because CANFINA, Bangalore had purchased CANCIGO units of face value of Rs 33 crores on 6-2-1992. He also deposed that appellant S. Mohan had told him that a sum of Rs 25,01,67,129 was recoverable from Accused 4 against some transactions and that this amount was to be adjusted against the transaction of purchase of CANCIGO units of face value of Rs 33 crores. All these evidence would only show that the appellant S. Mohan was involved in the transaction. The prosecution could not prove that there was any illegality in these transactions. The only illegality pointed out by the learned counsel for CBI is that these CANCIGO units were not liable to be transferred and Andhra Bank and Andhra Bank Financial Services Limited could not have transferred it to the appellant Hiten P. Dalal.

21. So long as CANFINA has no grievance or complaint against the appellant S. Mohan that he acted contrary to their directions and accepted the CANCIGO units and paid the money to the appellant Hiten P. Dalal, no offence is made out against the appellant S. Mohan either of criminal breach of trust or conspiracy. In fact, PW 1 (Mr Kini, Executive Vice-President) has admitted that CANFINA used to regularly deal in CANCIGO units, that neither

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the Audit nor RBI made any remarks regarding transactions relating to CANCIGO units and all the transactions relating to CANCIGO units were in the ordinary course of business. Neither Canara Bank nor CANFINA had initiated any disciplinary proceedings against him. They have also not disputed the genuineness of the CANCIGO units which were got encashed by the appellant Hiten P. Dalal.

22. The Managing Director of CANFINA (K.N. Kamath) was examined as PW 16. He admitted that CANFINA did not file any complaint with CBI regarding purchase of CANCIGO units of Rs 33 crores; that according to CANFINA, the CANCIGO units were purchased for valuable consideration in the normal course of business; that CANFINA stood by the transactions of purchase of CANCIGO units of Rs 33 crores; that CANFINA was not induced to purchase the CANCIGO units of Rs 33 crores by any false representation.

23. In the circumstances, no ingredient of criminal breach of trust is made out against either of the appellants.

24. The prosecution also could not prove any conspiracy by these accused persons to commit any criminal acts. So long as there was no such evidence, the offence of conspiracy is not proved against these appellants.

25. The appellant Hiten P. Dalal has been found guilty for the offence punishable under Section 411 IPC alleging that he dishonestly received the stolen property or retained the same. No ingredients of this offence have been proved against him. So long as the prosecution admits that the CANCIGO units worth Rs 33 crores were purchased by making use of the money owned by him, they were not stolen property in the hands of the appellant Hiten P. Dalal. Neither Andhra Bank nor the Andhra Bank Financial Services Limited has any case that these CANCIGO units were stolen by the appellant Hiten P. Dalal. As the offence of criminal breach of trust is also not made, the conviction of the appellant under Section 411 is not sustainable and is liable to be quashed. So also, the appellant S. Mohan is not liable for the conspiracy to commit offence under Section 411 IPC.

26. The appellant S. Mohan has been found guilty of offence punishable under Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act. This appellant was one of the Asstt. Vice-Presidents of CANFINA dealing with CANCIGO units. There is no allegation that he committed any illegality. The allegation against him is to the extent that he accepted the CANCIGO units though they stood in the name of Andhra Bank and Andhra Bank Financial Services Limited. These CANCIGO units were worth Rs 33 crores and they were accepted with the proper authorisation by the higher authorities in CANFINA. It is highly improbable to believe that appellant S. Mohan on his own decided to accept CANCIGO units worth Rs 33 crores without any instructions. CANFINA did not file any complaint alleging any unauthorised transaction carried out by him. Now it has been held by this Court that the entire transaction was legal and CANFINA was entitled to the proceeds of these CANCIGO units and not the "Custodian" under the Act. Therefore, the appellant S. Mohan is not guilty of

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the offence punishable under Sections 13(1)(*c*) and 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act.

27. The appeals filed by both the appellants are allowed. The accused are not liable for any other offences and they are acquitted of all the offences charged against them. Their bail bonds stand cancelled.

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(BEFORE K.G. BALAKRISHNAN, C.J. AND J.M. PANCHAL, J.)

Writ Petition (C) No. 490 of 2007†

HEMANI MALHOTRA .. Petitioner;

Versus

HIGH COURT OF DELHI .. Respondent.

With

Writ Petition (C) No. 491 of 2007

VINEETA GOYAL .. Petitioner;

Versus

HIGH COURT OF DELHI .. Respondent.

Writ Petitions (C) No. 490 of 2007 with No. 491 of 2007,
decided on April 3, 2008

A. **Service Law — Recruitment process — Changing rules of the game during selection process or when it is over — Held, not permissible — Initially there was prescription of minimum marks for written test only and not for viva voce — However, minimum marks for viva voce prescribed after written test was over — Held, not permissible — Even otherwise, further held, such course of action for the purpose of appointment to Delhi Higher Judicial Service, was contrary to recommendations in Justice Shetty Commission Report, as approved with certain modifications in *All India Judges' Assn. case*, (2002) 4 SCC 247, for the reason that it was expressly provided therein that there should be no cut-off marks for viva voce — Constitution of India, Arts. 233(1) and 235**

Held :

The authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. There is no good ground for reconsideration of proposition of law laid down in this regard in *K. Manjusree case*, (2008) 3 SCC 512. Prescription of minimum marks by the respondent High Court for viva voce, after written test was over, was illegal.

(Paras 14 to 16)

K. Manjusree v. *State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841, *applied*

† Under Article 32 of the Constitution of India