

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. M.C. 4153 of 2003

Reserved on: April 4, 2008
Date of judgment: July 4, 2008

SHILPI SHAKT

..... Petitioner

Through : Mr.R.K.Anand, Senior Advocate with
Mr. S.B. Sharma and Ms. Vishu Nidhi, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Mr. Pawan Behl, APP.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

JUDGMENT

- | | | |
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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

Dr. S. Muralidhar, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenges an order on charge and charge dated 5th February, 2000 and 7th February, 2000 respectively passed by the learned Metropolitan Magistrate ('MM'), New Delhi and a subsequent order dated 24th September, 2003 passed by the learned Additional Sessions Judge ('ASJ'), New Delhi dismissing the petitioner's Criminal Revision No. 4 of 2000.

2. A preliminary objection was raised to the maintainability of this petition under Section 482 CrPC by the respondent on the ground that once a revision petition against an order on charge has been disposed of, an accused person cannot further file a petition under Section 482 CrPC to this Court.

3. In support of this submission that such a petition was maintainable, Mr. R.K. Anand learned Senior counsel appearing for the petitioner relied upon the judgments of the Supreme Court in *Krishnan v. Krishnaveni* (1997) 4 SCC 241, *Jitender Kumar Jain v. State of Delhi* (1998) 8 SCC 770 and *Kailash Verma v. Punjab State Civil Supplies Corporation* 2005[1] JCC 209.

4. In *Krishnan v. Krishnaveni*, the Supreme Court held that the inherent power of the High Court to prevent miscarriage of justice could be exercised even where a revision petition has been disposed of by a Sessions Court. In *Kailash Verma v. Punjab State Civil Supplies Corporation* the Supreme Court reiterated that the powers under Section 482 CrPC can be exercised even where a revision petition has been rejected by the Sessions Court, “when there is serious miscarriage of justice and abuse of the process of the Court or when mandatory provisions of law were not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.” Therefore even to

decide the question of maintainability, this Court will have to examine if the impugned order dated 24th September, 2000 passed by the revisional court suffers from a mistake that requires correction by this Court in exercise of its jurisdiction under Section 482 CrPC. This necessarily requires an examination of the merits of the case.

5.1 The facts leading to the filing of the present petition are that an FIR No. 100 of 1997 was registered in Police Station Greater Kailash-I on 8th March, 1997 by the Crime Branch under Section 420 and 406 IPC on the complaint of Poonam Saxena. On the completion of investigation a charge sheet was filed. The accused as shown in column No.4 included the petitioner Shilpi Shakt wife of Sunil Shakt. The other accused were Sunil Shakt, Naresh Tyagi and Harinder Singhal. At the time of filing of the charge sheet the petitioner was shown as being on bail or recognisance ('without arrest').

5.2 The narration of the complaint in the charge sheet is that in November 1996 the advertisements were inserted in the Hindustan Times, Delhi by Fintra Systems Limited ('FSL') having its registered office in Greater Kailash-II, New Delhi assuring high and safe returns on investments. FSL's marketing representatives assured the investors including the complainant both verbally and in writing that the returns on investment would be regular and on time and irrespective of the financial

position of the FSL. The complainant Poonam Saxena stated that she was induced to deposit Rs.1 lakh with FSL for a period of one year under the corporate investment scheme as evidenced by receipt dated 2nd June, 1996 and by an agreement executed on stamp paper on the same date.

5.3 The clauses appended to the standard format agreement executed by FSL under its investment management scheme read as under:

“INDENTURE

1. The Company, under the scheme, is given the irrevocable and full authorization by the investor to invest in different avenues such as Securities, Real Estate, Project work, etc. in manner it likes and to do all such incidental things as it deems fit.

2. The Company shall purchase any of the above assets/securities from the above ‘Invested amount’ in its own name and ownership of the said assets/securities/properties shall vest with the Company. The investor shall have no right or claim over any asset purchased by the Company for the “Invested Amount”.

3. (i) (a) The Investor shall get a guaranteed minimum profit of _per month, if the investment is made under the ‘Monthly Profit Scheme’.

(b) Whereas in the ‘Profit Investment Scheme’, he shall get the profit of 3% per month/9 % quarterly which shall be compounded on monthly/quarterly basis and shall be paid in lump sum after the completion period of

the Scheme.

(c) The investor shall get double amount after _ months, if the investment is made under the Equity Invest.

(ii) The Investor shall not be concerned with the profit and loss which the Company might accrue on investments against the invested amount, he shall only be entitled to a profit of 3%_ per month and is therefore safe from all worries of UP an DOWN of the market.”

5.4 The complainant stated that the Managing Director of FSL gave an undertaking that the investor would not be concerned with the profit and loss which might accrue in future. 12 post-dated cheques of the profit amount of Rs.3,500/- beginning June 1996 till 22nd May, 1997 and a post-dated cheque for the principal amount of Rs.1 lakh dated 22nd May 1997, all drawn on Bank of America, New Delhi were issued. The complainant further stated that with a view to cheating the investors, FSL closed its bank account with the Bank of America. Consequently the cheque dated 22nd September, 1997 deposited by the complainant was returned dishonoured with the endorsement “Account closed”. The complaint sought action against Sunil Shakt, Managing Director, FSL.

5.5 The charge sheet narrates that during the course of investigation, Sub Inspector Jaibir Singh Tyagi recorded the statements of witnesses. On 14th March, 1997 a supplementary statement of the complainant Poonam Saxena

was recorded and Section 409 IPC was added against accused Sunil Shakt who acted as a banker, broker and agent of FSL. Sunil Shakt was arrested on 14th March, 1997 and a search was conducted at his house No. S-230, Greater Kailash-I, New Delhi. Sale deeds of a flat at S-185 Greater Kailash-II, New Delhi for a sum of RS.1,40,000/- in his name and a sale deed in the sum of Rs.60,000/- in the name of his wife Shilpi Shakt (the petitioner herein) and another sale deed of Rs.1 lakh in the name of petitioner for the purchase of the terrace of the above flat were recovered. The Memorandum and Articles of Association of FSL, Fintra Agro Forestry Limited, Fintra Resorts Limited, Fintra Securities Limited, Fintra Financial Services Limited, Fintra Capital Services Limited and Shrishti International Private Limited and various other documents were seized by a seizure memo dated 14th March, 1997. The search also led to the discovery for large number of bank accounts in the name of the abovementioned companies as well as personal bank accounts of the accused Sunil Shakt and the petitioner. When during the further interrogation, the role of another director Shri Naresh Tyagi came to light under Section 120 B IPC was also added as an offence. The search of a house at 9-D, Masjid Moth Phase-I, Greater Kailash-II, New Delhi on 15th March, 1997 led to the discovery of share certificates pertaining to 1 lakh shares of Gurdarshan Leather Limited, share certificates pertaining to 76,100 shares of Fintra Capital Services Limited, party-wise ledgers etc.

5.6 It is stated in the charge sheet that the witnesses interrogated during investigation thereafter led to discovery of bank accounts in the name of Naresh Tyagi and the petitioner in various banks. A total of 30 investors were examined and their submissions were recorded. The total amount of investment collected including that of the complainant by the accused worked out to Rs.68.45 lakhs.

5.7 The charge sheet proceeded to narrate that at the stage of interim bail Sunil Shakt had assured that he would sell of the assets and satisfy the claims of the investors. Consequent thereto the sale of flat No. S-185, Greater Kailash-II, New Delhi was arranged for Rs.22 lakhs. However a winding up petition of FSL was filed by one Colonel M.R. Bakshi in this Court and by an order dated 23rd June, 1997 an order granting stay of disposal of assets of Sunil Shakt was passed. Thereafter Sunil Shakt began avoiding the summons issued to him and in cooperating in the investigation. Among other things, it was discovered that Sunil Shakt had been siphoning off the funds of FSL by way of sale and purchase of shares of his other company like Fintra Capital Services Limited (formerly KLP Finance Limited). During 1995 to 1996, Sunil Shakt had carried out share transactions of KLP Finance Limited to the tune of Rs.7,91,170/- involving 52,500 shares.

5.8 According to the charge sheet Sunil Shakt collected crores of rupees

from innocent investors assuring them safe returns but misappropriated the money so collected through his personal bank accounts as well as the personal account of the petitioner, his wife. He further floated fictitious non-functional firms which did not actually carry on any business but were incorporated only with a view to siphoning off the funds collected from the investors.

5.9 As far as the role of the petitioner Shilpi Shakt is concerned, the charge sheet contains the following narration:

“During the search of premises at S-230, Greater Kailash-I, New Delhi, a number of Bank Accounts and other incriminating documents belonging to Smt. Shilpi Shakt wife of accused Shri Sunil Shakt mentioned in Column 4, were recovered through which huge amounts of unaccounted cash transactions were carried out and/or effected, details of which are as follows. She is maintaining personal Bank Account no.34000, with the State Bank of India, Lajpat Nagar, New Delhi, where according to Bank Account opening form her occupation was shown as a ‘Housewife’, but the Statement of her Bank Account shows receipts amounting to Rs.11,94,252/- however large amounts have been gradually withdrawn and the Bank Account now has a remaining balance of Rs.9,557/- only. She was also maintaining a personal Bank Account no. 6140 with the State Bank of India, Masjid Moth-I, Greater Kailash-II, New Delhi, details of which are being ascertained. Besides above she was having a proprietorship firm in

the name and style of “AD-N. STYLE’, with its Account No. 10248, with the Federal Bank Limited, Greater Kailash-II, New Delhi. During the period 1995 to 1997, it has received from Fintra Systems Limited a sum of Rs.5,78,467/- in its Bank Account, which has been withdrawn and presently only Rs.4,566/- is left in this Bank Account. As per investigations and Documentary Evidence this firm had only one source of income i.e., Fintra Systems Limited, for which it was acting as an Advertising Agency, and was designing the misleading and inducing logos, slogans and catchy advertisements which published in the National Dailies for luring the Unsuspecting and Gullible Public at large and investors, by fraudulently assuring them of safe, regular and handsome returns. Accused Shri Sunil Shakt and his wife Smt. Shilpi Shakt also established a company in the name and style of ‘Shrishti International Pvt. Limited, on 24.7.1995, with both of them being its only Directors. This company did not carry out any of its stated business activities of export, etc. but its Bank Account No. 10329, with the Federal Bank Limited, was credited a sum of Rs.5,00,000/- on 17.2.1996.”

5.10. Referring to the response given by the petitioner to the questionnaire given to her, the charge sheet states:

“she was the Managing Director of the aforesaid company and was working as the agent and Sub-Broker for KLP Finance Limited, a company dealing in Financial Transactions, Sale and Purchase of Share. Documentary Evidence confirms that she arranged to

purchase 1 Lac shares of Gurdarshan Leather Limited at the rate of Rs.4.50 per share on behalf of KLP Finance Limited, a company belonging to her husband the accused Shri Sunil Shakt and obtained a commission of Rs.50,000/- for this transaction. Documentary Evidence also confirms that she made a payment of Rs.50,000/- to Shri Navraj Kwatra for the purchase of the terrace of flat no. S-185, Greater Kailash-II, New Delhi, through Banker's Cheque Number 572043 dated 20.2.1996 made by withdrawing above amount from the aforesaid Bank Account No. 10320 with the Federal Bank Limited, Greater Kailash-II, New Delhi, which is the account of Shrishti International Pvt. Limited. Whereas the property is registered in the name of Smt. Shilpi Shakt. Further Evidence indicates two more payments of Rs.50,000/- each made through pay orders dated 20.2.1996 and 25.3.1996 respectively. Another entry dated 20.3.1996 indicates payment of Rs.80,000/- to one Shri D.C. Pathak details of which are yet to be ascertained. It is abundantly clear and very evident from her bank statements that she is instrumental in siphoning off to large amounts from the Bank Accounts of Shrishti International Pvt. Limited. Due to the deep rooted conspiracy of Smt. Shilpi Shakt with the other accused at Column 3 and 4 in the entire process of misappropriation of funds, siphoning of cash and misusing her position as the Managing Director of Shrishti International Pvt. Limited as well as the proprietor of 'AN-N-STYLE' and being a Sub-Broker for KLP Finance Limited (now Fintra Capital Services Limited), she has played a Key Pivotal and Important Role in the fraudulent siphoning

off of the funds of Fintra Systems Limited. She also misused funds of Fintra Systems Limited given to Shrishti International Pvt. Limited by purchasing properties in her name and by not maintaining proper Books of Accounts of her financial dealings.”

5.11 The charge sheet concludes:

“According to the documentary circumstantial evidence, statement of witnesses and examination of various bank transactions conducted by accused persons mentioned at Column 3 and 4, it is evidently clear that a well planned conspiracy was hatched and executed by the aforesaid accused abinitio to defraud, cheat, dupe and mislead the innocent Investors to the tune of many crores of rupees. In pursuance of this conspiracy, they started operating in tandem to create non-functional/fictitious companies and firms and purchased shares of sick companies and gave them as securities to a number of Investors. They did not carry out any constructive business activity, but merely siphoned off funds for their personal benefits and enrichment. They further indulged in unethical practice of artificial trading and manipulation of share prices, with a purpose to cheat the public at large. No proper books of accounts of their companies were maintained, which facilitated them in siphoning off of funds with impunity for their personal enrichment and lavish lifestyle. Catchy and misleading advertisements were meticulously planned by Smt. Shilpi Shakt and inserted in national dailies regularly to attract the innocent investors. It is reiterated that it appears that accused Shri Harinder

Singhal and Smt. Shilpi Shakt mentioned at Column 4 were not Directors in the Fintra Systems Limited accordingly to the documents received from the Registrar of companies so far, however both of them were deeply involved in the entire conspiracy and the process of siphoning off large amounts of public money from Fintra Systems Limited through purchase and sale of shares etc. Both of them mentioned in Column 4 have been charge sheeted without arrest under Section 406,420, 120-B IPC.”

6. By an order dated 5th February, 2000 the learned MM came to the following conclusion:

“accused Sunil Shakt and Naresh Tyagi being Director of Fintra Systems Limited have prima facie committed an offence U/s 409/120-B IPC. The charge-sheet submitted by prosecution along with documents and statement of prosecution witnesses makes it abundantly clear that remaining accused namely Shilpi Shakt, Harinder Singhal and R.N. Jain shared criminal conspiracy with accused Shilpi Shakt and Naresh Tyagi to usurp the deposits of complainant. It is well settled law that for criminal conspiracy the prosecution need not to show directed evidence. It is sufficient if the circumstances establish that the accused persons had a meeting of minds to do illegal act. It is also not necessary that each accused should have taken active part for commission of offence at every stage. It was so held by Hon’ble Supreme Court in *Ajay Aggarwal V/s Union of India*, AIR 1993 SC 1637. Accordingly all three accused namely

Shilpi Shakt, Harinder Singhal and R.N. Jain have prima facie committed an offence U/s 120-B IPC r/w Sec. 409 IPC. Let the charge as stated above be framed against all accused person on 7.2.2000.”

7. Thereafter the learned MM framed the charges by an order dated 7th February, 2000 against all the accused including the petitioner and the said charge reads as under:

“That in between 1995-97 at 9D Masjid Moth, Greater Kailash-II, you all entered into agreement to do illegal act of mis-appropriating the funds of public deposited/entrusted with you and thereby committed an offence U/s 120-B IPC.

Secondly, during the aforesaid period & place you all having domain over the money of Mrs. Poonam Saxena and other investors entrusted with approximately 68 lacs 45 thousand and committed criminal breach of trust by siphoning the amount, so entrusted and thereby committed an offence U/s 409 IPC within my cognizance of this court.”

8. Aggrieved by the order on charge and the charges, the petitioner filed Criminal Revision Petition No. 4 of 2000 by the learned ASJ. By the impugned order dated 24th September, 2003 the learned ASJ held, after discussing some of the documents produced by the prosecution, that “these documents raises a strong suspicion in the mind of the court that the wife of Sunil Shakt was actively involved in the movement of funds from Fintra

System to other concerns with the intention of defrauding those who had deposited money with Fintra Systems.” The revision petition was accordingly dismissed.

9. Initially by an order dated 15th October, 2003 while directing notice to issue in the present petition, this Court exempted the petitioner from personal appearance before the trial court. Thereafter by an order dated 15th March, 2004 this Court formed an opinion that only Rs.2,47,117 was given by FSL to Ad-n-Style (a firm owned by the petitioner) and that the same amount had been paid to Unit 83 Advertising Inc. on account of advertising fees and that therefore there was no iota of evidence to justify framing of charge against the petitioner. Nevertheless, this Court required the prosecution to file an affidavit “to show what is the material to connect the petitioner with this case.” Pursuant to the said order an affidavit was filed on 16th March 2004 pointing out that a purchase of property for the sum of Rs.1,60,000 was made by the petitioner on 26th May, 1995. By an order dated 17th May, 2004 this Court held that there was nothing on record to show that there was any siphoning off funds from FSL to Ad-n-Style and therefore the petitioner could not be made an accused in the case. The proceedings vis-a-vis the petitioner were accordingly quashed.

10. Aggrieved by the aforementioned order the State filed SLP (Crl) No. 4075 of 2004 in the Supreme Court (which was later registered as Crl.

Appeal No. 598 of 2007). By an order dated 19th April, 2007 while setting aside the order dated 17th May 2004 passed by this Court, the Supreme Court remanded the case to this court for a fresh determination. The material portion of the order passed by the Supreme Court reads as under:

“Counsel for the respondent is unable to defend the impugned order and prays that the same be set aside and the case be remitted to the High Court for a fresh order in accordance with law leaving all contentions open to the parties.

In view of the statement made by the counsel for the respondent, the impugned order is set aside and the case is remitted to the High Court for a fresh decision in accordance with law. All contentions are left open.”

11. It is submitted by Mr. R.K. Anand, learned Senior counsel appearing for the petitioner that the only reason for arraying the petitioner as an accused in the present case is that she happens to be the wife of Sunil Shakt, the Managing Director of FSL. The petitioner was not a director of FSL and had nothing to do with FSL. There was no presumption that the wife of the Managing Director of an investment company would be automatically liable for the acts of the Company or its Managing Director. It is further submitted that the petitioner has been charged for the offence under Section 120 B IPC read with Section 409 IPC. In order to bring the case under Section 409 IPC there has to be a criminal breach of trust in respect of a property in the capacity of a public servant or in the course of business as a banker, manufacturer, broker or agent. The offence of criminal breach of trust was

defined under Section 405 IPC and the key element there was “entrustment”. As according to Mr. Anand there was no entrustment of any property with the petitioner as such and only with FSL. Even otherwise FSL was in the banking business and unless money was kept with the bank in securities i.e. in an identified tangible form, it could not be said to be an ‘entrustment.’ An investment in securities of monies deposited with it by a bank for generating returns does not amount to entrustment of the property for the purposes of Section 405 read with 409 IPC. He placed strong reliance upon the judgment of the Privy Council in *Attorney-General of Canada v. Attorney-General of the Province of Quebec AIR (34) 1947 Privy Council 44*. He also relied upon the judgments of the High Courts in *Gopesh Chandra Pal v. Nirmal Kumar Das Gupta AIR (37) 1950 Calcutta 57*, *State v. Tirath Das AIR 1954 Allahabad 583*, *Sat Narain v. State of Punjab 1974 Crl LJ 232*, *Miss Trilochan Banga v. S.K. Kataria 1986 (1) Crimes 11* and *R.P. Sablok, Manager, Syndicate Bank v. Kaushalya Devi 21 (1982) DLT 364*.

12. Mr. Anand further submitted that there was not an iota of evidence of conspiracy justifying the charging of the petitioner with the offence under Section 120 B IPC. The evidence produced by the prosecution had to be incompatible with the innocence of the accused. He relied on the judgment of the Supreme Court in *State of U.P. v. Dr. Sanjay Singh 1994 Supp (2) SCC 707*. Of the ten witnesses examined thus far not even one had spoken against the petitioner. In the first charge sheet her name did not figure and it

was only in the supplementary charge sheet that she has been shown in Column 4. It is submitted that when the trial court first took cognizance the petitioner was not summoned and it is only thereafter that the learned MM took cognizance of the case as far as the petitioner was concerned. Reference is made to the judgments in *India Carat Pvt. Ltd. v. State of Karnataka AIR 1989 SC 885* and *Lok Ram v. Nihal Singh (2006) 10 SCC 192*.

13. On behalf of the prosecution Mr. Pawan Behl, learned APP for the State submitted that there was sufficient evidence placed on record to justify the framing of charges against the petitioner. He made a reference to the detailed affidavit dated 23rd March, 2004 filed in the present proceedings, pursuant to the order dated 15th March, 2004 which gave the break-up of the various accounts operated by the petitioner and which was not confined to Ad-n-Style as earlier thought. He also pointed out that the summoning order of the learned MM was not challenged and therefore the petitioner could not now be permitted to question the said order on merits. He sought to place reliance on the judgment of the Supreme Court in *Shivanarayan Laxminarayan Joshi v. State of Maharashtra AIR 1980 SC 439* and *Dharampal v. Ramshri AIR 1993 SC 1361* to contend that the scope of interference by this Court in proceedings under Section 482 with an order passed by the Sessions Court in a revision petition is extremely limited.

14. The question that requires to be considered is whether there was sufficient material to proceed against the petitioner for the offences under Section 120B read with 409 IPC. A perusal of the agreement entered into with each of the investors by FSL shows that FSL described itself as an investment company; the investor was given an assurance in the agreement that “the Company is conducting the investment management scheme with the intention of giving a fixed return on the investments made by the Investor and pursuing the policy of wise economy.” The other assurance held out was that “the Company shall purchase any of the above assets/securities from the above ‘Invested amount’ **in its own name and ownership of the said assets/securities/properties shall vest with the Company.** The investor shall have no right or claim over any asset purchased by the Company for the “Invested Amount”.

15. The case of the prosecution is that the amounts invested with FSL by utilizing for buying assets in the personal name of Sunil Shakt and his wife Shilpi Shakt. There is a reference to the particular manner in which the funds have been utilized. One instance was the purchase of the property at Greater Kailash-I for a sum of Rs.1.6 lakhs. The affidavit dated 23rd March, 2004 filed by the prosecution in these proceedings gives details of the accounts maintained by the petitioner on behalf of various firms and companies of which she was part either jointly or together with the other accused. There is therefore, prima facie, sufficient material therefore to

justify the prosecution of Section 120 B IPC even in respect of the petitioner.

16. Section 405 IPC contemplates two elements that require to be satisfied to bring home the offence of criminal breach of trust. The first is that there should be an 'entrustment' and the second that there must be a 'misappropriation' or conversion of the properties which were so entrusted either by a dishonest use or by a disposal in violation of "any legal contract expressed or implied which he has made had to be discharged of such trust".

17. Illustrations (c) and (d) under Section 405 IPC which are indicative of the transactions that could attract the offence read as under:

“(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.”

18. In illustration (c) there is a specific direction to invest the sums in the shares of the ‘Company’ identified by the investor. This direction is disobeyed and the moneys are invested in the “own business” of the person accepting the sums. The offence is stated to be attracted. The distinction in Illustration (d) is that an investment is made not in the shares of the Company specified by the investor but in some other shares bonafide believing that better returns would yield. In such event, no offence is stated to be made out. The facts of the present case are akin to Illustration (c). FSL bound itself in clause 2 of the agreement that it would purchase assets/securities from the invested amount “in its own name and ownership”. According to the prosecution there was a violation of this express term of the contract and the evidence collected points to the sums having been invested in buying properties, not in FSL’s name but in the names of Sunil and Shilpi Shakt either jointly or individually. The ingredients of criminal breach of trust as contemplated in Section 409 read with section 405 IPC is prima facie made out. This Court is therefore of the view that there is sufficient material to proceed against the petitioner for the offences under Section 120 B read with 409 IPC.

19. The decisions relied upon by the petitioner are distinguishable on facts. The decision in *Attorney-General of Canada* concerned the deposit of moneys with a bank. This is clearly a distinguishing feature since FSL describes itself not as a bank but as an investment company. The

aforementioned decision turned on the relationship between a banker and a customer and it was in that context it was held that “the receipt of deposits and the repayment of the sums deposited through investors is an essential part of the business of banking.” Further it was in that context it was held that money deposited with bank is not trust money which the trustee must preserve and not use; on the contrary it is lent for use and the bank is not a trustee but a debtor to the depositor. As already noticed hereinabove, as far as the present case is concerned, FSL cannot be stated to be undertaking a banking business. Moreover the contractual obligation of FSL as an investment company has to be construed in terms of the agreement entered into by it with the investor. That would in turn determine whether the offence under Section 409 IPC is attracted. The judgments in ***Gopesh Chandra Pal*** also follow the line of reasoning of the Privy Council and both deal with investment by a bank of the moneys deposited with it without any pre-condition, as in the present case, that the investment should be made in a particular manner. Therefore the said two judgments are distinguishable on facts.

20. As far as the decision in ***State v. Tirath Das*** is concerned it was again a case of placing moneys in a deposit with a promise to repay the said money with interest. In ***Sat Narain*** money was deposited under a chit fund scheme where again the promise was only for repayment of the money with interest. No notice was taken in these decisions of the illustrations under

Section 405 IPC which bring out the distinction between an investment made by an investment company in accordance with the terms of its contract with an investor and an investment of monies entrusted with it generally by a bank for the purposes of returns together with interest. The decision in *Miss Trilochan Banga* also concerns the business of a banker and as such is not applicable to the facts of the present case.

21. This Court finds no infirmity in the learned MM not proceeding against the petitioner after the filing of the first charge sheet and proceeding against her for the offence under Section 120 B read with 409 IPC on the basis of the supplementary charge sheet. The decisions in *Shivanarayan Laxminarayan Joshi* and *Lok Ram* do not support the case of the petitioner at all.

22. Consequently no ground is made out for interference with the order dated 24th September, 2003 passed by the learned ASJ dismissing the revision petition.

23. The petition is accordingly dismissed. The pending applications are also dismissed. The proceedings before the trial court will go on uninfluenced by any observations on merits in the present judgment.

Crl. M. No. 6675 of 2008

This is an application by one Rajiv Kumar Gupta, who claims to be an investor, seeking to place on record certain additional facts and documents. In view of the judgment dismissing the Crl. M.C. No. 4153 of 2003, this Court does not consider it necessary to entertain this application and it is dismissed as such.

S. MURALIDHAR, J

JULY 4, 2008
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