

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: September 27, 2010

Date of Order: 25th October, 2010

+ CrI.M.C.No. 2931/2009

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25.10.2010

Usha Rani Rustagi & Anr.

... Petitioners

Through: Ms. Deepti Kathpalia, Advocate
& Ms. Sima Gulati, Advocate

Versus

State NCT of Delhi & Anr.

... Respondent

Through: Mr. O.P.Saxena, APP for the State
Mr. Shashi Shankar, Advocate for R-2

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition, the petitioners have assailed order dated 19th May, 2009 whereby on an appeal filed by the respondent no.2, the order dated 4th February, 2008 passed by the learned ACMM discharging the petitioners was set aside.

2. Brief facts relevant for the purpose of deciding this petition are that the husband of petitioner no.1 was running a proprietorship firm in the name of M/s V.S.Rustogi & Co. This firm was dealing in buying/selling of securities and shares trading. The complainant/respondent no.2 had purchased shares of ZeeTele and Satyam Computers through M/s V.S.Rustogi & Co. These shares were still lying with the company when Mr. Suniti Kr. Rustogi (husband of petitioner no.1) died on 8th January, 2002.

After his death Mrs. Usha Rustagi and Mr. Sushil Ratan Rustagi wife and son of the deceased continued the same business in the name of M/s Usha Rani Rustagi & Co., which was a pre-existing proprietorship firm of the wife of the deceased. The allegations of the complainant/respondent against Mrs. Usha Rani Rustagi and Mr. Sushil Ratan Rustagi are that he (complainant) requested them to transfer his shares in his demat account but they did not transfer these shares and took the plea that they had applied for succession certificate of M/s V.S.Rustogi & Co. and would be able to transfer shares in his demat account after obtaining succession certificate. Complainant submitted that another company in the name of M/s Rustogi Securities Limited issued him two slips dated 29th July, 2004 and 11th August, 2004 indicating that it had sold his shares. He alleged that he had not given consent to sell his shares. He also had purchased 44 shares of Reliance Industries Ltd. and had a credit balance of ₹ 70,796/-. Neither the shares nor the money was paid to him in spite of repeated requests.

3. The respondent had also lodged another FIR No. 387/2004 PS Anand Vihar against the petitioners and thereafter a compromise had taken place between petitioners and respondent. A memorandum of settlement was prepared between the parties and in terms of this settlement the, respondent settled his accounts with the petitioners. After MoU FIR No. 387/2004 was compounded however, the complainant in this case appeared before the Court of MM and submitted that the compromise/memorandum of settlement was not voluntary and the accused/petitioners had not only misappropriated shares but did not pay the dividend and the interest. The learned MM observed that during investigation investigating officer had collected evidence

about sale of shares and it was revealed that 44 shares of Reliance Industries Ltd., 150 shares of Satyam Computers and 50 shares of ZeeTele were sold for a total sum of ₹ 73,935.70 after deducting brokerage charges and other charges. On 27th July, 2004 and on 10th August, 2004, 450 shares of ZeeTele were sold for a sum of ₹ 59,500/- after deducting the brokerage charges. The debit and credit balance of the firm/company in respect of respondent was collected and it showed that after settlement of account a cheque of ₹ 64,590.20 was handed over to the complainant and the complainant was also informed that shares of HUL would be deposited in his demat account after shares were transferred in the name of M/s Usha Rustagi & Co. on obtaining succession certificate. The statement of account dated 4th May, 2002 showed a credit balance of ₹ 22,77,835.27 in the account of complainant and contained details of HUL shares worth ₹ 24,50,000/-. After adding the two credit balance of ₹ 70796.23 and ₹ 22,77,835.27 and debit sum of ₹ 24,50,000/- (in respect of HUL shares of ₹ 24,50,000/-), the final figure came out to ₹ 1,01,819/- as debit balance.

4. The correspondence between the petitioner and respondent showed that the petitioner had been maintaining proper accounts and had been accounting for sale/purchase of the shares on behalf of the respondent. In view of this evidence, the learned trial Court had come to the conclusion that no case under Section 409 IPC was made out and therefore discharged the accused. The learned ASJ observed that the shares were entrusted to deceased Mr. Suniti Kr. Rustogi proprietor of M/s V.S.Rustogi & Co. but after his death his firm was taken over by his successors and the name of the firm was changed from M/s V.S.Rustogi & Co. to M/s Rustogi Securities Ltd. and

without obtaining consent of the appellant the new firm sold his shares, thus the act of petitioner attracted not only the criminal liability under IPC but also under provisions of Securities Exchange Board of India Act, 1992 and Information of Technology Act, 2000. He therefore set aside the order of learned ACMM.

5. A perusal of order of learned ASJ would show that learned ASJ had not applied its mind to the facts of the case at all and had not dealt with the analysis of the facts done by learned ACMM. It is surprising that the learned Additional Sessions Judge had come to the conclusion that provisions of SEBI Act and provisions of Information of Technology Act would also be attracted but the order is conspicuously silent as to how these provisions are attracted and which provisions of SEBI Act and Information of Technology Act were attracted.

6. If it is presumed that the respondent had entrusted shares to deceased Mr. Suniti Kumar Rustagi, it is clear that the respondent was buying and selling shares through the firm of the deceased. It is his own case that shares of HUL were bought by him, the firm of the deceased was only liable to maintain account of purchase and sale of shares on behalf of respondent. No doubt a firm dealing with the securities has to act on the advice of the client. Merely because the respondent alleged that his shares were sold without his directions cannot be a ground for invoking Section 409 IPC more so when the respondent had entered into a compromise and had received the balance amount lying in his account. Plea taken by the respondent that compromise was not voluntary could not have been entertained because on the basis of same compromise the respondent had compounded another FIR of similar

allegation. I, therefore consider that the learned ACMM had rightly come to the conclusion that no charge under Section 409 IPC was made out and it was a case of civil nature and in case there was any amount still due against dividend and interest, the complainant was free to recover the same through civil proceedings. No commission of the alleged offence was made out.

7. I, therefore allow this petition. The order dated 19th May, 2009 of learned ASJ is hereby set aside. The order dated 4th February, 2008 of learned ACMM is restored.

October 25, 2010
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SHIV NARAYAN DHINGRA, J.