

Bombay High Court

C B I vs K Dharampal (Abetted) And 10 Ors on 5 July, 2018

Bench: Dr. Shalini Phansalkar-Joshi

Dixit

Presented on : 12.10.1993

Decided on : 05.07.2018

Duration : 24 Y 8 M 23 Day

IN THE SPECIAL COURT AT BOMBAY

( Constituted under the Special Court [Trial of Offences Relating to  
Transactions in Securities] Act, 1992 )

(Presided Over By : Hon'ble Dr. Justice Shalini Phansalkar-Joshi)

SPECIAL CASE NO.6 OF 1993

Central Bureau of Investigation,  
Mumbai.

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] ... Complainant

Versus

1. K. Dharampal (Since Deceased) ,  
Managing Director,  
Fairgrowth Financial Services Ltd.,  
Bombay.

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2. R. Lakshminarayanan,  
Executive Director,  
Fairgrowth Financial Services Ltd.,  
Bangalore.

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3. S. Srinivasan  
Senior Vice President,  
Fairgrowth Financial Services Ltd.,  
Bombay.

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4. Fairgrowth Financial Services Ltd.,  
Bangalore. ]  
5. Tharian Chacko, ]  
Senior Vice President, ]  
Andhra Bank Financial Services Ltd., ]  
Bangalore. ]  
6. Abraham Zachariah (Since Deceased) ]  
Senior Programmer, ]

Fairgrowth Financial Services Ltd.,	]
Bangalore.	]
7. Y. Sundara Babu	]
Managing Director,	]
Andhra Bank Financial Services Ltd.,	]
Hyderabad.	]
8. R. Kalyana Raman,	]
Senior Vice President,	]
Andhra Bank Financial Services Ltd.,	]
Mumbai.	]
9. Gopal Shankar Iyer,	]
Assistant Vice President,	]
Fairgrowth Financial Services Ltd.,	]
Bombay.	]
10. Pallav Sheth,	]
Share Broker,	]
Bombay Stock Exchange, Bombay.	]
11. P. Chandrashekar,	]
Officer, Fairgrowth Financial Services Ltd]	]
Bangalore.	] ... Accused

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Mr. R.S. Mahamane, Special P.P., for the Complainant-C.B.I.  
Mr. B.C.S. Rao, i/by Mrs. Racheeta Dhuru, for Accused No.2.  
Mr. B.C.S. Rao, i/by Mr. Ashish Suryawanshi, for Accused No.3.  
Mr. Yogesh Patel, Representative, for Accused No.4-Company.  
Mr. B.C.S. Rao, i/by Ms. Amruta Athavale, for Accused No.5.  
Mr. B.C.S. Rao, i/by Ms. Savita Suryawanshi, for Accused No.7.  
Mr. Rajendra Dhuru, i/by Ms. Amruta Athavale, for Accused No.8.  
Mr. B.C.S. Rao, i/by Mr. Avinash Avhad, for Accused No.9 and 11.  
Mr. Vivek Sharma for Accused No.10.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.  
RESERVED ON : 20 TH APRIL, 2018.  
PRONOUNCED ON : 5 TH JULY, 2018.

JUDGMENT :

1. This Special Case is a fall out of the financial scam, that rocked the economy of the nation in the era of Harshad S. Mehta. This particular scam pertains to the securities transactions entered into between Andhra Bank Financial Services Limited and M/s. Fairgrowth Financial Services Limited during the period from July, 1991 to May, 1992. Accused Nos.5, 7 and 8 were, at the relevant time, working as Senior Officers in the Andhra Bank Financial Services Limited; whereas, Accused Nos.1, 2, 3, 6, 9 and 11 were their counter-parts in M/s. Fairgrowth Financial Services SPSC-6-1993.doc Limited, which itself is Accused No.4 in the case. Accused No.10 is the 'Share-Broker', who has assisted them in perpetuating this scam. The Prosecution has charged all these Accused-persons for the various offences punishable under Section 120-B of IPC, r/w. Sections 420, 467, 468, 471 and

477-A of IPC. Accused Nos.5, 7 and 8 are further prosecuted for the offences punishable r/w. Section 13(2), r/w. Section 13(1)(b), (c) and (d) of the Prevention of Corruption Act, 1988.

2. In order to better appreciate the Prosecution case and to be more precise, the positions, which Accused-persons were holding at the relevant time can be clarified as follows. As per the case of the Prosecution, at the relevant time, Accused No.1-K. Dharampal (Since Deceased) has been functioning as 'Managing Director' of M/s. Fairgrowth Financial Services Limited at Mumbai since November, 1990.

Accused No.2-R. Laxminarayanan has been working as 'Executive Director' of M/s. Fairgrowth Financial Services Limited at Bangalore since August, 1990.

SPSC-6-1993.doc Accused No.3-S. Srinivasan has been working as 'Senior Vice President' of M/s. Fairgrowth Financial Services Limited at Mumbai from 4 th March 1991.

Accused No.4-M/s. Fairgrowth Financial Services Limited, Bangalore, is a Company registered in July, 1990, under the Companies Act, 1956, with Registered Office at Bangalore and Mumbai among other places.

Accused No.5-Tharian Chacko was functioning as 'Senior Vice President' of M/s. Andhra Bank Financial Services Limited at Bangalore between the period from 18th July 1991 to 5th September 1992.

Accused No.6-Abraham Zachariah (Since Deceased) was working as 'Senior Programmer' of M/s. Fairgrowth Financial Services Limited at Bangalore from September, 1990 till March, 1993.

Accused No.7-Y. Sundara Babu was functioning as  
'Managing Director' of M/s. Andhra Bank

Financial Services Limited at Hyderabad from 14 th June, 1991 to 6th November, 1992 and during the period from October, 1990 to June, 1991, he was SPSC-6-1993.doc entrusted with the work of formation of "Andhra Bank Financial Services Limited".

Accused No.8-R. Kalyana Raman has been  
functioning as 'Senior Vice President' of

M/s. Andhra Bank Financial Services Limited at Mumbai since June, 1991.

Accused No.9-Gopal Shankar Iyer has been  
working as 'Assistant Vice President' of

M/s. Fairgrowth Financial Services Limited at Mumbai since 17th June 1991.

Accused No.10-Pallav Sheth was a 'Member' of the Bombay Stock Exchange from September, 1991 and prior to that, he was a 'Sub-Broker' of Mr. Shrenik Jhaveri.

Lastly, Accused No.11-P. Chandrashekar has been working as 'Secretary' in M/s. Fairgrowth Financial Services Limited at Bangalore since September, 1990.

Prosecution Case - As set out in the 'Charge-Sheet' :-

3. As per the case of the Prosecution, Accused No.4- M/s.Fairgrowth Financial Services Limited, (here-in-after referred SPSC-6-1993.doc to as "FGFSL/FFSL"), was a Company promoted by Late B. Ratnakar, former 'Chairman' of Canara Bank. This Company was incorporated in July, 1990 as a 'Public Limited Company'. It was engaged in 'Financial Services', which included Equipment Leasing, Hire Purchase, Consumer Durable Financing, Investment Management Services, Capital Market Operations and Corporate Advisory Services. Late B. Ratnakar had appointed Accused No.1-K. Dharampal (Since Deceased) and Accused No.2-R. Laxminarayanan, who were his former colleagues in Canara Bank and who were also his trusted lieutenants, as 'Managing Director' and 'Executive Director' of FGFSL, respectively, by offering them higher salary and other perks. Accused Nos.1 and 2 had, in turn, then appointed their own trusted men and former colleagues in Canara Bank Financial Services Ltd., (here-in-after referred to as "CANFINA"), namely, PW- 1 Ramaswami Ganesh, who has subsequently turned the 'Approver' as 'Group Executive', Bangalore; Accused No.3-S. Srinivasan as 'Senior Vice President', Bangalore, Accused No.9-Gopal Shankar Iyer as 'Assistant Vice President', Mumbai, Accused No.6-Abraham Zachariah (Since Deceased) as 'Senior Programmer', Bangalore, and Accused No.11-P. Chandrashekar as 'Secretary-II', Bangalore, in FGFSL Offices at various positions, as referred above. SPSC-6-1993.doc

4. According to the Prosecution, during the relevant period, the Andhra Bank has, following the model of CANFINA, also promoted a 'Financial Subsidiary', namely, 'Andhra Bank Financial Services Limited', (here-in-after referred to as, "ABFSL"), in February, 1991 by subscribing to it the capital of Rs.5 Crores. This Company has started its operations in July, 1991. The activities of the ABFSL were more or less similar to FGFSL, viz. Equipment Leasing, Hire Purchase Finance, Merchant Banking, Investment Services, Purchase and Sale of Securities etc.

5. Accused No.7-Y. Sundara Babu was appointed as 'Managing Director' of ABFSL. He was initially authorized by the Board of Directors to purchase and sell the securities to the extent of Rs.1 Crore, which authority was subsequently enhanced to an unlimited extent. It is the specific case of the Prosecution that, while permitting the Andhra Bank to set up a wholly owned 'Merchant Banking Subsidiary', the Reserve Bank of India, (here-in-after referred to as, "RBI"), had imposed condition that ABFSL should not undertake activities other than equipment leasing, hire purchase, merchant banking and activities incidental thereto. ABFSL was also not permitted to undertake the activities

such as financing of SPSC-6-1993.doc Companies or Concerns engaged in equipment leasing and hire purchase.

Allegations in respect of offence u/s. 120-B r/w. 420 IPC :-

6. According to the case of Prosecution, Accused No.1-K. Dharampal, Accused No.2-R. Laxminarayanan, Accused No.3-S. Srinivasan, Accused No.6-Abraham Zachariah, Accused No.9-Gopal Shankar Iyer and Accused No.11-P. Chandrashekar of FGFSL had entered into the criminal conspiracy during the period from February, 1991 upto June, 1992 with Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-R. Kalyana Raman of ABFSL, with the object of cheating ABFSL by making it as the front Bank for FGFSL and raising / deploying the funds against the instrument called 'Security Receipt', which was not backed-up by the physical securities and thereby committed the offences of criminal conspiracy and cheating, punishable under Section 120-B r/w. Section 420 of IPC.

7. It is further case of the Prosecution that, in furtherance of the said criminal conspiracy, Accused No.2-R. Lakshminarayanan addressed a letter to the Chairman of Andhra Bank on 4 th February SPSC-6-1993.doc 1991, highlighting the various fields in which Andhra Bank could have business association with FGFSL. The said letter was marked to Accused No.7-Y. Sundara Babu, wherein it was suggested that the Andhra Bank could act as the front-bank for FGFSL and that FGFSL proposed to mobilise surplus funds from public / private corporate sectors through the Bank, so as to overcome certain procedural difficulties and various restrictive covenants. Accused No.2-R. Lakshminarayanan also proposed various ways, by which ABFSL could help FGFSL and, in turn, obtain attractive remuneration. It is further case of the Prosecution that, these Accused used the business of 'Money Market' in reality as the 'Money Receipt Market', rather than a 'Physical Securities Market'. While a similar proposal made earlier in January, 1991 to Vijaya Bank was not accepted, Accused No.7-Y. Sundara Babu accepted the said proposal and accommodated FGFSL by making ABFSL act as the front-bank of FGFSL to carry out the money market operations of FGFSL. Accused No.7-Y. Sundara Babu recommended to the Board of ABFSL that ABFSL should approach FGFSL for obtaining start-up services and, accordingly, the officials of ABFSL, including Accused No.5-Tharian Chacko, were imparted training in 'Financial Services' by FGFSL. SPSC-6-1993.doc

8. It is further case of the Prosecution that, in furtherance of the said criminal conspiracy, Accused No.7-Y. Sundara Babu, as 'Managing Director' of ABFSL, unilaterally, took decision to deploy the funds to FGFSL, based on Securities Receipts. Though initially funds were deployed against physical delivery of shares-debentures in some transactions, the system of deployment of funds against the delivery of physical securities was given up and the accused officials of ABFSL started deploying the funds against Securities Receipts of FGFSL, not backed up by the physicals, in the guise of 'Ready-Forward Transactions'. Though the Security Receipt issued by FGFSL to ABFSL against money raised was not an accepted instrument of transactions recognized either by Reserve Bank of India or Indian Banks Association, the ABFSL officials, in conspiracy with the officials of the FGFSL, chalked out an ingenious design of using the Securities Receipts for falsely showing the purchase of securities, though they knew that the money market transactions executed by them were bogus in character and were also in violation of normal banking practice.

9. As per the case of the Prosecution, in furtherance of the said criminal conspiracy, FGFSL offered interest rates ranging from SPSC-6-1993.doc 18% to 40% and in some transactions, even more and never utilized the funds so raised for the purchase of the securities mentioned in the Securities Receipts, as the yield on these securities, even if procured out of these funds, would in any case have been much lower than the cost of borrowing.

10. According to the Prosecution, in furtherance of the said criminal conspiracy, Memorandums of Purchase and Sales were dishonestly and fraudulently prepared to make it appear as though the deployment of funds was for the purpose of purchase and sale of the securities; whereas, in reality, the said transactions were purely money lending transactions, as can be clearly seen from number of days for which funds were deployed and the agreed rate of return mentioned in the 'Daily Transactions Reports' and the 'Transaction Register' maintained in ABFSL, Bangalore, Mumbai and Hyderabad. The characteristics of these transactions were indicative of the criminal intentions, so as to cause wrongful loss to ABFSL and wrongful gain to FGFSL and that these transactions were of a manipulative nature, so as to hide the criminal object entertained by these Accused. Thus, the accused officials of FGFSL fraudulently and dishonestly and with a view to cheat ABFSL falsely represented that SPSC-6-1993.doc the Securities Receipts were genuine documents for the sale and purchase of securities and were backed-up by the physicals. But, for such false representations, funds of ABFSL would not have been made available to FGFSL for speculative purposes. According to the Prosecution case, both the parties never had any intention to deal in physical securities, though it was ostensibly made out to be sale and purchase of securities.

11. It is also the case of the Prosecution that, in furtherance of the said criminal conspiracy, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-R. Kalyana Raman of ABFSL, thus, deployed, between 1st July 1991 and 29th May 1992, an amount of Rs.913 Crores in '126' transactions with FGFSL, Bangalore, and Rs.799 Crores in '115' transactions with FGFSL, Mumbai, respectively. Out of these '241' transactions, Accused No.7- Y. Sundara Babu, through Accused No.5-Tharian Chacko and Accused No.8-R. Kalyana Raman, had deployed an amount of Rs.801 Crores with FGFSL, Bangalore, against Securities Receipts in 110 transactions and an amount of Rs.553 Crores with FGFSL, Mumbai, against the Securities Receipts in 93 transactions, commencing from 2nd August, 1991 to 13th May, 1992. Accused No.7-Y. Sundara SPSC-6-1993.doc Babu has then, through Accused No.5-Tharian Chacko at Bangalore, deployed an amount of Rs.7.10 Crores on 31st October, 1991 to FGFSL, Bangalore, without even taking any Securities Receipts and thereby made available to FGFSL, Bangalore, this amount as a 'clean advance'.

12. It is further case of the Prosecution that, in furtherance of the said criminal conspiracy, Accused No.7-Y. Sundara Babu, through Accused No.8-R. Kalyana Raman, at Mumbai deployed an amount of Rs.2 Crores on 16th April 1992, Rs.2.50 Crores on 7th May 1992 to FGFSL, Mumbai, without even accepting any Securities Receipts and thereby made available the said funds to FGFSL, Mumbai, as a 'clean advance'.

13. In all these transactions, FGFSL did not procure physical securities and deliver the same to ABFSL, nor did ABFSL insist for delivery of physical securities covered under the Securities Receipts.

14. Thus, according to the Prosecution, these Accused achieved the object of conspiracy of causing wrongful loss to ABFSL SPSC-6-1993.doc and wrongful gain to FGFSL and that the Accused dishonestly and fraudulently and with a view to cheat ABFSL intentionally misrepresented that the 'Money Market Transactions' were backed by actuals, though the Accused had reasons to believe that the actual securities were either not purchased or were not made available for the advances raised and duly reflected in the Books of Accounts.

Allegations in respect of submitting false statement to RBI by ABFSL Officers :-

15. According to the Prosecution, in the month of April-May 1992, the scam broke out and the RBI started investigations and called for the details of the transactions based on Securities Receipts/Bank Receipts from ABFSL. As a result, the Accused- persons got panicky. Accused No.7-Y. Sundara Babu submitted a false statement to RBI to the effect that all deployments of ABFSL with FGFSL were backed by physical securities and simultaneously started demanding delivery of physical securities from FGFSL with a view to cover up the earlier outstanding transactions and also for deploying fresh funds.

SPSC-6-1993.doc Allegations in respect of 'Forgery' :-

16. As the bulk of the borrowings from ABFSL were deployed by the FGFSL in the Share Market for speculative purposes and since there was a downward trend in the Share Market, the FGFSL was unable to liquidate their equity portfolio and raise sufficient funds for meeting repayment commitment towards ABFSL. Hence, during May and June, 1992, Accused No.1-Dharampal (Since Deceased), Accused No.2-Lakshminarayanan, Accused No.3- Srinivasan and Accused No.9-Iyer decided to forge the securities through PW-1 R. Ganesh and lodge them with ABFSL, Bangalore, in order to cover up the outstanding Securities Receipts transactions of FGFSL, Bangalore and Mumbai and also to raise fresh funds for FGFSL, Bangalore, and Mumbai. The purpose of such forgery was to make it appear that the transactions were actually based on genuine securities, when the Accused-persons knew or had reason to believe that no such genuine transactions ever came into existence, as the forged securities were absolutely not in consonance with the securities mentioned in the related Securities Receipts.

17. This forgery was committed in respect of 3 kinds of securities as follows :-

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(I) NPTC Allotment Letters :-

18. PW-1 R. Ganesh and Accused No.6-Abraham (Since Deceased), at the instance of Accused No.1-Dharampal, Accused No.2-Laxminarayanan, Accused No.3-Srinivasan, during April 1992, dishonestly forged (1) 9% NPTC Letter of Allotment No.3/91-92 for FV Rs.5 Crores; (2) 9% NPTC

Letter of Allotment No.5/91-92 for FV Rs.3 Crores; and (3) 9% NPTC Letter of Allotment No.6/91-92 for FV Rs.2 Crores and three other NPTC Bonds on the Letter-heads of NPTC. The aforesaid three forged NPTC Allotment Letters were lodged with ABFSL, Bangalore, on 12th May 1992 as genuine against the funds of Rs.10 Crores raised on 12th May 1992 at the instance of Accused No.1-Dharampal (Since Deceased), Accused No.2- Laxminarayanan and Accused No.3-Srinivasan.

(II) UTI Unit Certificates :-

19. PW-1 R. Ganesh, Accused No.6-Abraham (Since Deceased) and Accused No.11-Chandrashekar at the instance of Accused No.1- Dharampal, Accused No.2-Laxminarayanan and Accused No.3-Srinivasan, in order to avail funds to the extent of Rs.62.40 Crores and to use as cover for the outstanding to the extent of Rs.97.37 Crores used the original 4 Unit Certificates bearing numbers; SPSC-6-1993.doc (1) 339011306605 allotted in the joint name of C.V. Chandrashekar, S. Shetty and Narayanan for 1120 Units;

(2) 339011306623 allotted in the joint names of R.V. Ramamurthy and Smt. K. Rajamma for 1120 Units;

(3) 339011306626 allotted in the joint names of V.S. Balasubramaniam and Smt. Kalavathy for 1120 Units; and (4) another UTI Certificate for 1120 Units, the number and allottees, names of which could not be identified, which were purchased from M/s. L.K.S. Murthy and Co. in April, 1992 and possessed by Accused No.4-M/s. Fairgrowth Financial Services Limited, Bangalore, to forge the said Unit Certificates to higher values by changing the number of Units, Unit Certificate number and the names of the allottees.

20. PW-1 R. Ganesh, Accused No.6-Abraham (Since Deceased), Accused No.11-Chandrashekar at the instance of Accused No.1- Dharampal (Since Deceased), Accused No.2-Laxminarayanan and SPSC-6-1993.doc Accused No.3-Srinivasan dishonestly forged the original Unit Certificates to the following effect :-

Particulars of the Sr. Original UTI Forged UTI / Certificates No. Certificate No. Name of the Certificate No. No. of Units Allottee Rinki Industrial 1 339011306605 '000019114503885 1,14,84,500 Oils (India) Ltd.

National Housing 2 339011306623 '000019115036555240 7,50,00,000 Bank Rinki Industrial 3 339011306626 '000019114503884 1,10,15,500 Oils (India) Ltd.

Hindustan Dorr 4 Not Identified '000019114503883 1,10,15,500 Oliver Ltd.

21. The Unit Certificates mentioned at Sr. Nos.1 and 3 were lodged as genuine on 20th May 1992 and an amount of Rs.34 Crores was availed from ABFSL, Bangalore. The Unit Certificate mentioned Sr. No.4 was lodged on 21st May 1992 and an amount of Rs.4.75 Crores was availed from ABFSL, Bangalore, and an amount of Rs.8.65 Crores was availed from ABFSL, Mumbai. Thereafter, the Unit



Certificate was returned back by Accused No.5-Chacko to the officials of FGFSL, Bangalore, and the same has been subsequently destroyed by them. The Unit Certificate mentioned at Sr. No.2 was lodged on 28th May 1992 and an amount of Rs.15 Crores was availed on 29th May 1992 and the balance value of Rs.97.37 Crores was SPSC-6-1993.doc utilized to cover the outstanding Securities Receipts of FGFSL, Bangalore.

(III). Allotment Letters of 9% HUDCO Bonds :-

22. In order to avail funds of Rs.8.04 Crores and to use as back-up for the outstanding Securities Receipts of FGFSL, Mumbai, to the extent of about Rs.45 Crores, Accused No.3-Srinivasan, on 22nd May 1992, has faxed the Allotment Letter of 9% HUDCO Bonds to Accused No.2-Laxminarayanan and PW-1 R. Ganesh to forge two separate Letters of Allotment of HUDCO Bonds to the value of Rs.20 Crores and Rs.25 Crores and to lodge the same with ABFSL, Bangalore, as genuine. PW-1 R. Ganesh, with the assistance of PW-9 Lalitha Devi and PW-8 S. Subramanian, took computer print-outs of the two Allotment Letters of 9% HUDCO Bonds for a face-value of Rs.20 Crores and Rs.25 Crores, respectively, and forged the signatures of the authorized signatories. The forged Letter of Allotment of 9% HUDCO Bonds for the face-value of Rs.20 Crores was lodged by PW-1 R. Ganesh with ABFSL, Bangalore, on 26 th May 1992 and an amount of Rs.8.40 Crores was availed and the balance amount of Rs.11.60 Crores was used as back-up securities for the outstanding of FGFSL, Mumbai, with ABFSL, Mumbai. The forged Letter of Allotment of 9% HUDCO Bonds for the face-value of Rs.25 SPSC-6-1993.doc Crores was lodged by Accused No.2-Laxminarayanan with Accused No.5-Chacko on 2nd June 1992, for using the same as back-up securities for the outstanding of FGFSL, Mumbai with ABFSL, Mumbai.

23. According to Prosecution case, in furtherance of the aforesaid criminal conspiracy, Accused No.5-Chacko accepted forged securities, like, 3 Letters of Allotment of 9% NPTC Bonds for the face-value of Rs.10 Crores; 2 Letters of Allotment of 9% HUDCO Bonds for the face-value of Rs.45 Crores and 4 Unit Certificates for 10,85,15,500 Units, aggregating to Rs.163.57 Crores. Out of the 4 Unit Certificates, one Unit Certificate for 110,15,500 Units, aggregating to Rs.17.07 Crores, was returned back to FGFSL, Bangalore, on 18th June 1992, after retaining a photocopy, and the original has been destroyed by the officials of FGFSL, Bangalore. While accepting the above-mentioned forged securities Accused No.5-Chacko deliberately failed to notice and point out the discrepancies, which make any person to suspect the genuineness of the securities and further failed to take necessary steps to ascertain the genuineness of the same from the concerned authorities. The officials of FGFSL forged and lodged various securities from October, SPSC-6-1993.doc 1991 and from the conspicuous nature of the forgery in those securities, Accused No.5-Chacko could have known that they were forged ones. By continuously accepting such forged securities as genuine and deploying fresh funds based on these forged securities, Accused No.5-Chacko abetted the officials of FGFSL to commit further forgeries and committed offence punishable under Section 471 of IPC and Section 109 r/w. Section 468 of IPC. Allegations in respect of preparing bogus Contract Notes and falsification of Accounts by FGFSL on that basis :-

24. It is further case of the Prosecution that, as the Securities Receipts issued by FGFSL were not backed-up by the physical securities, because the funds raised on these Securities Receipts were

used for speculative transactions, the 'Scrip Register' of FGFSL, Mumbai showed an over-sold position of the securities. In order to adjust this over-sold position in the 'Books of Accounts' of FGFSL, Mumbai, and in order to convince the Auditors of FGFSL, Accused No.1-Dharampal (Since Deceased), Accused No.3-Srinivasan and Accused No.9-Iyer dishonestly obtained seventy-seven bogus Contract Notes, showing fictitious purchase and sale of various securities from Accused No.10-Pallav Sheth and on the strength of these bogus Contract Notes, the Books of Accounts of FGFSL, SPSC-6-1993.doc Mumbai, were dishonestly falsified by Accused No.3-Srinivasan and Accused No.9-Iyer.

25. As per the case of the Prosecution, by the above acts, Accused No.1-Dharampal (Since Deceased) and Accused No.10-Pallav Sheth committed the offence punishable under Section 109 r/w. Section 477-A of IPC and Accused No.3-Srinivasan and Accused No.9-Iyer committed the offence punishable under Section 477-A of IPC.

Allegations in respect of Offences u/s. 13(2) of Prevention of Corruption Act against ABFSL Officers :-

26. It is further case of the Prosecution that, Accused No.5- Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman, who were all officials of ABFSL, in their capacities as 'Public Servants', abused their official positions by indiscriminately lending funds to FGFSL, without any public interest involved in such transactions, to the tune of Rs.1,354 Crores in '203' transactions based on the Securities Receipts, not backed-up by the physicals, and thereby they have deliberately exposed ABFSL to the risk of huge unsecured deployment. Further the said Officials had neither SPSC-6-1993.doc made any efforts to find out the availability of securities, nor had they insisted for the delivery of physical securities.

27. As per the case of the Prosecution, while carrying out huge lending to the extent of Rs.1,354 Crores, about Rs.801 Crores with FGFSL, Bangalore, and Rs.553 Crores with FGFSL, Mumbai, Accused No.7-Sundara Babu, Accused No.5-Chacko and Accused No.8-Kalyana Raman did not, at any time, collect the relevant Board Resolution regarding the maximum borrowing powers of FGFSL. Further, the rates of securities quoted by FGFSL in their Securities Receipts were not having any relevance to the then prevailing market rates of those securities and in spite of that, Accused No.7- Sundara Babu, Accused No.5-Chacko and Accused No.8-Kalyana Raman deliberately never took any steps to ascertain the market rates.

28. It is case of the Prosecution that, these Accused-persons have also deployed about Rs.72 Crores on the basis of the forged securities, without making any efforts whatsoever to verify the genuineness of the forged securities lodged before deploying the funds.

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29. According to Prosecution, Accused No.5-Chacko and Accused No.8-Kalyana Raman deployed an amount of Rs.7 Crores and Rs.4.50 Crores (in three instances) at Bangalore and Mumbai, respectively, at the instance of and in collusion with Accused No.7- Sundara Babu, even without

obtaining so called Securities Receipts, which amounted to clean lending by abusing their official positions.

30. It is also the case of the Prosecution that, the forged Unit Certificates lodged by FGFSL on 21st May 1992, purportedly issued by the Unit Trust of India in the name of 'Hindustan Dorr Oliver Limited', were ear-marked by Accused No.5-Chacko to the extent of Rs.6 Crores in favour of 'AB Homes Ltd., Mumbai' and Rs.8 Crores in favour of ABFSL, Mumbai, for the funds availed by FGFSL, Mumbai. This fact was confirmed by him through the letters sent to ABFSL, Hyderabad. In spite of the fact that these amounts were outstanding on 18th June 1992, Accused No.7-Sundara Babu, in collusion with Accused No.5-Chacko, allowed release of the Unit Certificates to PW-1 R. Ganesh of FGFSL, Bangalore, and thereby not only made the lending of 'AB Homes Ltd.' and 'ABFSL, Mumbai' unsecured, but also facilitated 'FGFSL, Bangalore' to further misuse the said securities. SPSC-6-1993.doc

31. Accused No.7-Sundara Babu has then dishonestly submitted informatory notes on money market operations to the Board of ABFSL during the 6th Board Meeting held on 30th December, 1991, and the 7th Board Meeting held on 23rd March, 1992. In these notes, Accused No.7-Sundara Babu dishonestly structured the deployments and repayments of funds with FGFSL as purchase and sale of securities. The fact that these transactions with FGFSL were on Securities Receipts and not on physicals, was not brought to the notice of the Board. The outstanding amounts due from FGFSL were deliberately omitted from the notice of the Board.

32. During May, 1992, the Reserve Bank of India called for a statement of all the Bankers Receipts outstanding with ABFSL. Accused No.7-Sundara Babu submitted a statement to RBI, falsely stating that the ABFSL, out of its deployment in the money market, had 2 Bank Receipts outstanding from the Standard Chartered Bank, 3 Bank Receipts from City Bank, 1 Bank Receipt from American Express and 4 Bank Receipts from CANFINA; but, Accused No.7-Sundara Babu has deliberately suppressed the amounts outstanding from FGFSL, which were deployed against the Securities Receipts.

SPSC-6-1993.doc

33. Thus, knowing fully well that most of the transactions of ABFSL with FGFSL were against Securities Receipts only and not physical movement of securities, Accused No.7-Sundara Babu has deliberately asked Accused No.8- Kalyana Raman to forward a statement to the Chief Officer, Reserve Bank of India, on 6 th June 1992, by mentioning that the entire transactions with FGFSL were on physical delivery of securities only. Based on this, Accused No.8- Kalyana Raman misrepresented the officials of RBI accordingly. In the 'note' submitted to the Board of ABFSL on 16th June 1982, Accused No.7-Sundara Babu deliberately misled the Board of ABFSL on three counts;

(i) Accused No.7-Sundara Babu has stated that, the investments of ABFSL in securities is against Securities Receipts / Bankers Receipts, which would be converted to physicals within a few days.

According to the Prosecution, this information was false, because the Securities Receipts of FGFSL had not been converted into physicals.

SPSC-6-1993.doc

(ii) Accused No.7-Sundara Babu has enclosed a statement, giving the details of the money market transactions of ABFSL since 1st July, 1991, to 3rd June, 1992. As regards the deployments with FGFSL, it is mentioned that, right from 1st July, 1991, the deployments are only against the physical delivery of securities by FGFSL.

According to the Prosecution, this information was false, because ABFSL had lent about an amount of Rs.801 Crores to FGFSL, Bangalore, against '110' Securities Receipts and an amount of Rs.553 Crores to FGFSL, Mumbai, against '93' Securities Receipts, without receiving any physicals.

(iii) The statement further mentions that, the investments of ABFSL in the securities was against Securities Receipts / Bankers Receipts, which were converted to physicals within a few days.

SPSC-6-1993.doc According to the Prosecution, this information was also false, because the original and forged securities, which were delivered by FGFSL, Bangalore and Mumbai, as back-up for the outstanding Securities Receipts, were not in conformity with the securities mentioned in the Securities Receipts.

34. It is further case of the Prosecution that, Accused No.7- Sundara Babu took undue interest to implement the proposal put forward by Accused No.2-Laxminarayanan in his letter dated 4th February 1991, whereby ABFSL was to lend funds to FGFSL, without exchange of securities and also to act as the front-bank for FGFSL. Accused No.7-Sundara Babu has also deliberately misrepresented the Auditors, while giving a Certificate to the Auditors of ABFSL for the purpose of auditing the Accounts of ABFSL for the year ended 31st March, 1992, wherein he has certified that all the deployments of ABFSL with FGFSL and other outstanding dues as on 31st March, 1992, were backed by physical delivery of the securities. In fact, FGFSL had not delivered any physical securities to ABFSL for the amount outstanding on 31st March 1992.

SPSC-6-1993.doc

35. It is thus the case of the Prosecution that, by the aforesaid acts, Accused No.7-Sundara Babu, Accused No.5-Tharian Chacko and Accused No.8-Kalyana Raman, have committed the offence punishable under Section 13(2) r/w. Section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988.

36. Thus, according to the Prosecution, all the Accused- persons have, by their criminal acts, wrongfully made available the funds to the tune of Rs.1,437 Crores to FGFSL and in the said process, caused wrongful loss to ABFSL to the extent of about Rs.212 Crores, being outstanding dues to ABFSL, and wrongful gain to the said extent to FGFSL. These criminal acts of the Accused have also resulted in the loss of confidence of the general public in the Banking System of the country. Hence, they are all liable for prosecution.

37. The specific charges levelled by the Prosecution against the Accused are as follows :-

(i) For the offences U/s. 120-B of IPC, r/w. Sections 420, 467, 468, 471 and 477-A of IPC and Section SPSC-6-1993.doc 13(2), r/w. 13(1)(d)(iii), of the Prevention of Corruption Act, 1988, against Accused No.1-K. Dharampal (Since Deceased), Accused No.2-R. Laxminarayanan, Accused No.3-S. Srinivasan, Accused No.5-Tharian Chacko, Accused No.6- Abraham Zachariah (Since Deceased), Accused No.7-Y. Sundara Babu, Accused No.8-R. Kalyana Raman, Accused No.9-Gopal Shankar Iyer and Accused No.11-P. Chandrashekar.

(ii) Substantive offences u/s. 420 and 109, r/w.

Section 477-A, of IPC against Accused No.1-K. Dharampal (Since Deceased).

(iii) Substantive offences u/s. 420, 467, 468 and 471  
of IPC against Accused No.2-R.  
Laxminarayanan.

(iv) Substantive offences u/s. 420, 467, 468, 471  
and 477-A of IPC against Accused No.3-S.  
Srinivasan.

(v) Substantive offences u/s. 420, 471 and 109, r/w.

Section 468 of IPC and u/s. 13(2), r/w. 13(1)(d) SPSC-6-1993.doc

(iii), of the Prevention of Corruption Act, 1988, against Accused No.5-Tharian Chacko.

(vi) Substantive offences u/s. 467 and 468 of IPC against Accused No.6-Abraham Zachariah (Since Deceased).

(vii) Substantive offences u/s. 420 of IPC and Section 13(2), r/w. 13(1)(d)(iii), of the Prevention of Corruption Act, 1988, against Accused No.7-Y. Sundara Babu.

(viii) Substantive offences u/s. 420 of IPC and Section 13(2), r/w. Section 13(1)(d)(iii), of the Prevention of Corruption Act, 1988, against Accused No.8-R. Kalyana Raman.

(ix) Substantive offences u/s. 420 and 477-A of IPC against Accused No.9-Gopal Shankar Iyer.

(x) Substantive offences u/s. 109, r/w. Section 477-

A, of IPC against Accused No.10-Pallav Sheth.

(xi) Substantive offences u/s. 467 and 468 of IPC against Accused No.11-P. Chandrashekar.

SPSC-6-1993.doc

(xii) For the offences u/s. 120-B, r/w. 420, of IPC and substantive offences u/s. 420 of IPC against Accused No.4-FGFSL, through its Officers.

Investigation of the Case :-

38. As per Prosecution case, all these irregularities in the business of ABFSL and FGFSL came to the light after the scam broke out and the team of RBI Officers, consisting of PW-16 Ganapathi and PW-17 Khatib, visited the Office of FGFSL on 30 th June, 1992 and inspected the Accounts and the Securities and found several irregularities therein, like, physical securities being not available in all these transactions and in some transactions even Security Receipts were also not available. Before them, PW-1 Ganesh gave a disclosing statement in his own handwriting (Exhibit-209), admitting that most of the securities, which were handed over by FGFSL to ABFSL, were not genuine, but forged by him at the instance of Accused No.2-Laxminarayanan and Accused No.3- Srinivasan. A statement to that effect was given by Accused No.2- Laxminarayanan also, in his own handwriting vide 'Exhibit-211'. SPSC-6-1993.doc

39. When this fact came in the newspaper and in the media and finding that the entire blame was thrown upon him alone, PW-1 Ganesh got mentally disturbed and attempted to commit suicide by consuming sleeping pills, after writing a 'Suicide Note' (Exhibit-214) sitting in his car, parked in the compound of FGFSL Office. He was found unconscious in the car by his colleague and was admitted in the hospital for three days.

40. In the light of this confessional statement made before the RBI Officers and the suicide note written by PW-1 Ganesh, PW-71 B. Srinivasa Rao, who, at the relevant time, was working as 'General Manager' of Andhra Bank and in that capacity as 'Ex-Officio Director' of ABFSL, checked the record of ABFSL and being satisfied about the irregularities found therein, lodged complaint with C.B.I. vide 'Exhibit-785' on 18th July 1992.

41. On his complaint, C.B.I. has registered the offence bearing C.R. No.18(S)/92. The investigation of the case was conducted by not less than 21 Senior Ranking Officers of C.B.I. During the course of investigation, the statements of about 292 witnesses were recorded and thousands of documents were collected. The questioned documents, like the forged securities, were SPSC-6-1993.doc sent to the Government Handwriting Experts, namely, PW-69 Satyanarayan Gupta and PW-70 Suresh Mukhi.

42. On receipt of their reports and finding sufficient material against the Accused, the sanction for prosecution of Accused No.7- Sundara Babu was obtained vide 'Exhibit-746' from PW-66 V.P. Taneja, the 'Executive Director and Acting Chairman' of Andhra Bank; whereas, sanction for prosecution of Accused No.5-Chacko was obtained vide 'Exhibit-748' and of Accused No.8-Kalyana Raman vide 'Exhibit-749' from PW-67 Raja Rao, the 'General Manager' of Andhra Bank at Hyderabad.

43. In the course of investigation, PW-1 Ganesh gave confessional statement, which came to be recorded by the Metropolitan Magistrate, Mumbai, on 8th December, 1992 vide 'Exhibit-219', on his application seeking the pardon. He was granted pardon by this Court by order dated 4 th August, 1993 and he has thus turned the 'Approver' for Prosecution.

44. After completion of due investigation, Mr. D.B. Desai, the 'Deputy Superintendent of Police', C.B.I., Bangalore, has then filed SPSC-6-1993.doc 'Charge-Sheet' against the Accused in this Court on 12 th October 1993.

45. After filing of the 'Charge-Sheet' and during the pendency of the case, Accused No.1-K. Dharampal and Accused No.6- Abraham Zachariah had expired. As a result, the Prosecution case stands abated against both of them.

46. My learned predecessor [Coram : D.K. Deshmukh, J.] has framed 'Charge' against the remaining Accused as per 'Exhibit-2'. In addition to the charges levelled in the 'Charge-Sheet', my learned predecessor has also framed the charge for the offences punishable u/s. 409 of IPC, for criminal breach of trust and Sections 201, 202 and 203 r/w. Section 120-B of IPC for suppression of material information. Total 'Charge' thus consists of about '106' heads. It was read over and explained to the Accused. Accused pleaded not guilty and claimed to be tried, raising the defence of denial and false implication.

47. In order to prove it's case against the Accused, the Prosecution has examined in all seventy-one witnesses. Out of them, majority of the witnesses are the Officers from the FGFSL and SPSC-6-1993.doc most of them were previously working in CANFINA; whereas, rest of the witnesses are either Officers from ABFSL or RBI. The witnesses can be categorized as follows :-

' Officers from FGFSL' PW-1 Ramaswami Ganesh, the 'Approver'- 'Officer' in CANFINA from 1988 - 1990; 'Group Executive' in FGFSL at Bangalore from 1990.

PW-2 Shankar N., earlier working in Canara Bank from December, 1971 to April, 1990; in CANFINA from April, 1990 to November, 1990; and thereafter, as 'Assistant Vice President' in FGFSL till March, 1993.

PW-3 K. Rajgopalan, working in CANFINA from 1990 to 1992; and, at the relevant time, was working as 'Vice President' in FGFSL, Bangalore, from 1992 to 1997.

PW-4 N.S. Jagannath, working in CANFINA at Bangalore from June, 1990 to October, 1990 as 'Executive Vice President' under Accused No.2-R.

SPSC-6-1993.doc Laxminarayanan, who has offered him the job in FGFSL. Thereafter, worked as 'Group Executive' in FGFSL, Bangalore.

PW-5 A. Sunilkumar Shetty was an 'Officer' in Accounts Department of FGFSL, Bangalore.

PW-6 B.S. Shankar Narayan was earlier working as 'Law Officer' in Canara Bank and then joined FGFSL, Bangalore in 1992.

PW-8 S. Chandrashekhar R.S. Subramanian, worked as 'Secretary' in FGFSL, Bangalore, from February, 1992 to June, 1992.

PW-9 Lalitha Devi, joined as 'Secretary' in FGFSL, Bangalore, from April, 1990.

PW-10 Anwar Gundmi, earlier worked at Andhra Bank with Accused No.1-K. Dharampal and then joined FGFSL, Mumbai, as 'Chartered Accountant' in November, 1990; worked there till August, 1992.

SPSC-6-1993.doc PW-11 V. Laxman, previously working in Canara Bank from 1976 to 1991 and then joined FGFSL in 1991; worked there till middle of 1992 as 'Assistant Vice President'.

PW-12 A.K. Shetty, earlier working in Canara Bank since 1970 and then in 1990, joined M/s.Fairgrowth Home Finance Limited at Bangalore as 'Managing Director'.

48. The witnesses from Andhra Bank or ABFSL, can be classified as follows :-

The main 'star witness' in this respect is PW-7 Anand Madhbhushi, who was 'Managing Director' of ABFSL, Hyderabad from June, 1991, and was previously working with Andhra Bank from 1978 to 1991.

PW-30 Ramesh Shenoy was working with Andhra  
Bank from 1977 and then joined ABFSL,

Hyderabad, as 'Assistant Vice President' in 1991.

SPSC-6-1993.doc PW-31 Prasanna Panicker, working as 'Deputy Chief Officer' in Merchant Banking Division of Andhra Bank, Hyderabad, from 1989.



PW-32 S.S. Varadrajan, again an 'Officer' working in Andhra Bank since 1978 and then posted as 'Senior Vice President' of ABFSL since 1991.

PW-33 K. Ramchandra Nayak was earlier in Canara Bank from 1954 to 1986 and then joined Andhra Bank as 'Executive Director' and thereafter as 'Chairman and Managing Director' of Andhra Bank.

PW-34 Koteswar Rao K. was the 'Company Secretary' of Andhra Bank, Hyderabad, from 1985 and since July, 1991, he was working as 'Company Secretary' with ABFSL.

PW-35 T. Parthasarathy was, from 1985 to 1992, the 'Secretary and P.S.' to the Chairman of Andhra Bank, Hyderabad - Mr. K. Ramchandra Nayak (PW-33).

SPSC-6-1993.doc PW-36 K. Sanjeeva Shetty was the 'Regional Manager' in Andhra Bank, Hyderabad.

PW-37 Savitri Mahesh was working as 'Manager' at Bangalore Branch of the Andhra Bank since 1975.

PW-62 Ginana Vinayagam was working in the Andhra Bank, Mumbai and posted as 'Manager (Operations)' of the said Bank since 1990.

PW-63 Rajan Mishra was working with ABFSL at Delhi from August, 1991, after serving in Andhra Bank from 1977 till October, 1988.

PW-64 Eshwar Prasad Sitaraman was initially in Andhra Bank from 1977 and thereafter serving as 'Vice President' of ABFSL at Bangalore.

49. The other material witnesses examined by the Prosecution are the six Officers from RBI, namely, SPSC-6-1993.doc

(i) PW-16 K.P. Ganapathi, 'Chief Officer' in the Department of Financial Companies of RBI at Bangalore;

and

(ii) PW-17 A.A. Khatib, another 'Deputy General Manager' in the Department of Non-Banking Financial Companies, under PW-16 K.P.

Ganapathi of RBI.

Both of them had, after the scam broke out, carried out the inspection and inquiry in respect of the securities held by FGFSL.

50. PW-18 N.D. Parmeshwaran was the 'Chief Officer', working in the Department of Banking Operations in RBI, Mumbai.

51. PW-19 Sukhdeb Bandopathyay, the 'Additional Chief General Manager' in the Department of Financial Companies at Mumbai and has given directions for the inquiry in the transactions of ABFSL.

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52. PW-20 Bijoy Kumar Bhoi was the 'Assistant Chief Officer' in the Department of Banking Operations in RBI at Mumbai, who had visited the Office of the ABFSL at Mumbai and took custody of certain documents, after the scam broke out.

53. PW-21 L.K. Sastry was the 'Assistant General Manager' of RBI at Bangalore, who has visited the Bangalore Office of ABFSL, after the scam broke out and obtained photocopies of forged UTI Certificates.

54. In addition to these witnesses from FGFSL, ABFSL and RBI, the Prosecution has also relied upon the evidence of the two Sanctioning Authorities, namely,

(i) PW-66 V.P. Taneja, the 'Executive Director' of Andhra Bank, who has issued 'Sanction Order' (Exhibit-746) for prosecution of Accused No.7- Sundara Babu.

(ii) PW-67 Raja Rao, the 'General Manager' of Andhra Bank and in that capacity he had issued 'Sanction Orders' (Exhibits "748" and "749"), respectively, SPSC-6-1993.doc for prosecution of Accused No.5-Tharian Chacko and Accused No.8-Kalyana Raman.

55. The Prosecution has further placed reliance on the evidence of the two Handwriting Experts from Central Government Departments, namely,

(i) PW-69 Satyanarayan Gupta;

and

(ii) PW-70 Suresh Lal Mukhi Their 'expert opinions' are at Exhibits "768" and "770", with reasons at Exhibits "782" and "783".

56. The Prosecution has examined PW-60 Shrenik Jhaveri, the 'Share-Broker', with whom Accused No.10-Pallav Sheth was working as 'Sub-Broker' and FGFSL was the client of PW-60 Shrenik Jhaveri.

57. PW-71 B. Srinivasa Rao is the 'General Manager' of Andhra Bank and 'Director' of ABFSL thereafter, who has lodged the complaint (Exhibit-785) against the Accused. SPSC-6-1993.doc

58. Apart from the evidence of these material witnesses, the Prosecution has led the evidence of several other witnesses to prove the forgery and falsification of Accounts and the reference to them would be made at the appropriate places.

59. During the course of evidence, the Prosecution has also exhibited number of documents, which will be considered in the course of the Judgment.

60. At this stage, however, it may be stated that the Prosecution has failed to examine any of the Investigating Officer, out of 21 Officers, including Mr. D.B. Desai, D.S.P., CBI, who has carried out substantial part of investigation and filed 'Charge-Sheet' in the Court.

61. After the Prosecution has closed its case, the statements of Accused-persons were recorded u/s. 313 of Cr.P.C. In their statements, Accused have denied all the incriminating evidence brought on record by the Prosecution against them and to substantiate their defence of false implication, relied upon their own documentary evidence, which will be also considered and referred as and when required.

SPSC-6-1993.doc

62. At the end of this marathon trial, which was initiated with filing of 'Charge-Sheet' in 1993, commenced with framing of 'Charge' in 2004, proceeded with recording of evidence in 2005 and concluded in 2017, I have heard at length the oral submissions advanced by learned Special P.P. Mr. Mahamane and learned counsel Mr. B.C.S. Rao, who represented majority of the Accused., Advocate Mrs. Dhuru and Advocate Mr. Vivek Sharma. All of them, including learned Special P.P., have also placed on record their written submissions, which are in two volumes and in short and concise notes, respectively, prepared meticulously and rendering great assistance. They are proved to be quite useful for delivering this Judgment, considering the voluminous oral and documentary evidence relied upon by the Prosecution.

63. The arguments were concluded on 18th April, 2018, just before the Summer Vacation and, therefore, I could utilize entire Summer Vacation for study of the case and delivering this detailed Judgment.

64. On these facts of the case and the evidence on record, following points arise for my determination and I record my findings thereon for the reasons stated below :-

SPSC-6-1993.doc Sr.

Points Findings No.

1 Whether Prosecution proves that, the Accused-persons had hatched the criminal conspiracy to commit various illegal acts, like In affirmative falsification of Accounts, against Accused Nos.2 and 3 suppression of information, and Accused Nos.5, 7 and 8. forgery and cheating, and thereby committed the offence punishable u/s. 120-B of IPC ?

2 Whether Prosecution proves that, in furtherance of the said criminal conspiracy, Accused-persons had committed the offence of cheating ABFSL, by causing wrongful loss to ABFSL by wrongfully deploying In affirmative crores of the public money to against Accused No.2, Accused FGFSL against Securities Receipts, No.3, Accused No.4-FGFSL which were not backed by the physical securities and thus in the and 8.

nature of 'Ready Forward Transactions', which were prohibited by RBI and thereby committed the offence punishable u/s. 420 r/w. Section 120-B of IPC ?

SPSC-6-1993.doc Sr.

Points Findings No.

3 Whether Prosecution has proved that, in furtherance of the said criminal conspiracy, Accused Nos.5, 7 and 8 had committed the offence of criminal breach of trust by dishonestly using or disposing of the funds of ABFSL, having been In affirmative entrusted or having dominion over the same, in violation of the direction of the law prescribing the mode in which such trust was to be discharged and thereby committed the offence punishable under Section 409 r/w. 120-B of IPC ?

4 Whether Prosecution has proved that, in furtherance of the said criminal conspiracy, Accused-

persons had committed the offence of criminal breach of trust and cheating ABFSL, by causing wrongful loss to ABFSL by In negative.

wrongfully deploying crores of the public money to FGFSL as 'clean advance', without securities, and thereby committed the offence punishable u/s. 420, 409 r/w.

Section 120-B of IPC ?

SPSC-6-1993.doc Sr.

Points Findings No.

5 Whether Prosecution has proved that, in furtherance of the said criminal conspiracy, Accused No.5-

Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Rama misused their positions as 'public servants' by indiscriminately lending huge funds to FGFSL, without any public interest involved In affirmative in such transactions, based on Securities Receipts, without backed-

up by the physicals and thereby deliberately exposed ABFSL to the risk of huge unsecured deployment of funds, and thereby committed the offence punishable u/s. 13(2) r/w.

13(1)(d)(iii) of the P.C. Act ?

6 Whether Prosecution has proved In affirmative.

that, in furtherance of the said criminal conspiracy, at the instance of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan, the offence of forgery was committed in respect of the Allotment Letters of NPTC Bonds and these forged securities were used as genuine to raise the funds from ABFSL and as SPSC-6-1993.doc back-up securities for outstandings of FGFSL with ABFSL, Mumbai, and thereby committed the offence punishable u/s. 467, 468 and 471 r/w. 120-B of IPC ?

7 Whether Prosecution has proved that, in furtherance of the said criminal conspiracy, at the instance of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan and assisted by Accused No.11-P.

Chandrashekar, the offence of forgery was committed in respect of In affirmative the UTI Unit Certificates and the against Accused Nos.2 and 3. forged documents were utilized to raise the funds from ABFSL and also to cover the outstanding Securities Receipts of FGFSL and thereby committed the offence punishable u/s. 467, 468 and 471 r/w. 120-B of IPC ?

8 Whether Prosecution has proved In affirmative.

that, in furtherance of the said criminal conspiracy, the offence of forgery was committed in respect of Allotment Letters of 9% HUDCO Bonds at the instance of Accused No.3-Srinivasan and the forged SPSC-6-1993.doc Allotment Letters of 9% HUDCO Bonds were used by Accused No.2-

Laxminarayanan for raising the funds from ABFSL and also as back-

up securities for outstanding of FGFSL with ABFSL and thereby committed the offence punishable u/s. 467, 468, 471 r/w. 120-B of IPC ?

9 Whether Prosecution has proved that, in furtherance of the said criminal conspiracy, Accused No.5-

Chacko accepted these forged securities, knowing or having reason to believe them to be forged, and deployed crores of ABFSL funds and In negative. thereby abetted Accused No.2-

Laxminarayanan and Accused No.3-

Srinivasan in commission of forgery and thus committed the offence punishable u/s. 477-A r/w. Section 109 of IPC ?

10 Whether Prosecution has proved In negative that, in furtherance of the said criminal conspiracy, Accused No.3-

Srinivasan and Accused No.9-Iyer, dishonestly obtained 77 bogus 'Contract Notes' from Accused No.10-

Pallav Sheth and on the strength of SPSC-6-1993.doc those, falsified the Books of Accounts of FGFSL and thereby Accused Nos.3 and 9 committed the offence under Section 477-A of IPC and Accused No.10 committed the offence under Section 477 r/w. 109 of IPC.?

11 Whether the Prosecution proves that, in furtherance of the said criminal conspiracy, Accused No.7-

Sundara Babu intentionally and dishonestly suppressed the information from the Board of Directors of ABFSL during the 6th and 7th Board Meeting held on 30th In negative December 1991 and 23rd March 1992, respectively, in the 'Informatory Note' relating to the above-said offences in respect of ostensible securities and thereby committed the offence punishable under Section 202 r/w. Section 120-

B of IPC ?

12 Whether Prosecution has proved In negative that, in furtherance of the said criminal conspiracy, Accused Nos.2, 3 and 11 destroyed or caused to be destroyed the Unit Certificates of the value of Rs.17.7 Crores, which was SPSC-6-1993.doc returned by ABFSL, Bangalore, to FGFSL, Bangalore, knowing or having reason to believe that an offence punishable u/s. 467 and 471 of IPC had been committed in respect thereof and thereby committed the offence punishable u/s. 201 r/w. 120-

B of IPC?

13 What offence, if any, committed by As above any of the Accused ?

14 What order ? As per final order " Reasons"

65. The crux of the Prosecution case against the Accused can be summarized as follows :-

Accused-person entered into a criminal conspiracy to siphon off public funds, for their pecuniary benefits. Towards that end, Accused persons constituted ABFSL to be used as front-Bank of FGFSL, so as to overcome procedural difficulties and various restrictive Covenants in respect of raising of funds.

Accused Nos.5, 7 and 8 deployed huge funds of ABFSL to FGFSL based on the Securities Receipts, SPSC-6-1993.doc which, to their own knowledge, were not backed by the physical securities.

They did so, knowing fully well that the 'Security Receipt' was not an accepted instrument of transaction, recognized either by Reserve Bank of India or Indian Banks Association.

'Memorandums of Purchase and Sale' were prepared dishonestly and fraudulently to make it appear as though the deployment of funds was for the purchase and sale of the securities.

Accused Nos.2 and 3 of FGFSL, however, to the knowledge of Accused-persons never utilized the funds so raised from ABFSL for purchase of the securities.

These transactions were, thus, in the nature of 'Ready Forward Transactions', which were strictly forbidden by the Reserve Bank of India.

The Officials of, both, ABFSL and FGFSL had never intended to deal in physical securities, nor they SPSC-6-1993.doc ever dealt in physical securities, though ostensibly it was made out to be sale and purchase of the securities.

Total funds of ABFSL deployed by Accused No.5-

Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman were Rs.913 Crores in '126' transactions entered with FGFSL, Bangalore, and Rs.799 Crores in '115' transactions entered with FGFSL, Mumbai.

Out of these total (126 + 115 = 241) '241' transactions, in '110' transactions, the amount of Rs.801 Crores was deployed with FGFSL, Bangalore, against the Securities Receipts. In '93' transactions, the amount of Rs.553 Crores was deployed with FGFSL, Mumbai, against the Securities Receipts, which were not backed by the physicals.

Thus, the total amount deployed was of Rs.1,354 Crores (Rs.801/- + Rs.553/-) in '203' transactions SPSC-6-1993.doc against the Securities Receipts, without being backed by the physical securities.

The amount of Rs.7.10 Crores was deployed to FGFSL, Bangalore, without any Security Receipt, as 'clean advance';

And The amount of Rs.2 Crores on 16th April 1992 and the amount of Rs.2.5 Crores on 7 th May 1992, deployed to FGFSL, Mumbai, without any Security Receipt, as 'clean advance'.

After the scam broke out and RBI started investigation, Accused No.7-Sundara Babu submitted a false statement to RBI that deployment of ABFSL funds with FGFSL was backed by physical securities.

Accused No.7-Sundara Babu of ABFSL then started demanding physical securities from FGFSL to cover up the outstanding transactions.

FGFSL was unable to meet that demand.

Hence, in order to cover up the outstanding SPSC-6-1993.doc securities transactions, Accused No.1-Dharampal (Since Deceased), Accused No.2-Laxminarayanan, Accused No.3-Srinivasan and Accused No.9-Gopal Iyer of FGFSL decided to forge the securities. PW-1 R. Ganesh has forged the securities, like Allotment Letters of NPTC, Unit Certificates and Allotment Letters of HUDCO Bonds, at the instance of Accused No.2-R. Laxminarayanan and Accused No.3-S. Srinivasan, with the help of Accused No.11- P. Chandrashekar.

As the funds received from ABFSL were used by FGFSL not for purchasing securities but for speculative transactions, the Scrip Register of FGFSL showed an over-sold position of the securities.

In order to adjust this over-sold position in the 'Books of Accounts' of FGFSL and in order to convince the Auditors of FGFSL, Accused No.3-

Srinivasan and Accused No.9-Gopal Iyer dishonestly obtained seventy-seven bogus Contract SPSC-6-1993.doc Notes from Accused No.10-Pallav Sheth, showing fictitious transactions of purchase and sale. On the strength of these Contract Notes, 'Books of Accounts' of FGFSL were falsified by Accused No.3- Srinivasan and Accused No.9-Gopal Iyer.

66. These charges levelled against the Accused can be sub- divided into following categories :-

- (i) Entering into 'Ready Forward Transactions', thereby accepting the Securities Receipts, which were not backed by the physical securities;
- (ii) Creating false record of purchase and sale of the securities;
- (iii) Giving false statement to the RBI;
- (iv) Forgery of the securities; and
- (v) Creating bogus Contract Notes.

67. As stated above, Accused No.2-R. Laxminarayanan, Accused No.3-S. Srinivasan and Accused No.9-Gopal Iyer are the officials from FGFSL, who are involved in these transactions. SPSC-6-1993.doc

68. Whereas, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-R. Kalyana Raman are the officials from ABFSL, who are implicated in these transactions.

69. Accused No.11-P. Chandrashekar, the 'Officer' of FGFSL, is involved in assisting PW-1 Ganesh in making forged documents.



70. Whereas, Accused No.10-Pallav Sheth is the 'Broker', who has executed the bogus Contract Notes in favour of FGFSL, to adjust oversold position in the 'Accounts' of FGFSL. Point Nos.2 and 3 :- Charge of Cheating and Criminal Conspiracy.

Deployment of Funds against  
'Securities Receipts'.

71. Though, to prove it's case, the Prosecution has examined as many as seventy-one witnesses, the 'star-witness' for the Prosecution is PW-1 R. Ganesh, who has turned 'Approver' and was granted pardon by this Court. He is a 'Chartered Accountant' by qualification and was working at CANFINA as 'Management Trainee' since the year 1988; thereafter, he was promoted there as 'Officer' in SPSC-6-1993.doc the year 1989 and then in August,1990, after resigning from the services of CANFINA, he had joined M/s. Fairgrown Financial Services Limited, (in the Charge-Sheet, it is referred as "FGFSL" and in the Evidence, it is referred as "FFSL"), as the job offered was, according to him, affording him better prospects. He was knowing Accused No.2-Laxminarayanan, since when he was working in CANFINA with him and actually it is Accused No.2-Laxminarayanan, who had offered him this new job in FGFSL, as, by that time, Accused No.2-Laxminarayanan was the 'Executive Director' of FGFSL, having left CANFINA in June, 1990.

72. According to the evidence of PW-1 R. Ganesh, he has joined the services of FGFSL as 'Group Executive'. In his evidence, he has described the working of the FGFSL and has stated that, he was looking after the leasing transactions. Accused No.2- Laxminarayanan was the 'Head' of his Group. He himself was, in his own words, a middle management level officer. According to his evidence, FGFSL had operations in all parts of India and apart from the office at Bangalore, where he was serving, FGFSL had offices in almost all Metropolitan Cities. His evidence goes to show that, FGFSL was involved in leasing transactions, share market SPSC-6-1993.doc operations, merchant banking activities and hire purchase transactions. The hierarchy in FGFSL was that, one B. Ratnakar was the 'Chairman' thereof. Accused No.2-Laxminarayanan was next to B. Ratnakar. Accused No.2 was directly reporting to B. Ratnakar till B. Ratnakar died in February 1992. Accused No.2 had also subscribed to 'Memorandum of Association' of FGFSL along with Late B. Ratnakar.

73. According to the evidence of PW-1 R. Ganesh, after six to seven months from his joining of the services in FGFSL, Bangalore, money market transactions started and he was looking after those transactions. His evidence in that respect is, therefore, of importance. He has also given in detail as to how the money market transactions used to take place and his own understanding of money market transactions. According to him, 'money market transaction' means, the transaction by which money is borrowed from the market and lent to the players in the market.

74. It is the evidence of PW-1 Ganesh that, Accused No.3- Srinivasan, who was also previously working in CANFINA, has joined FGFSL as 'Vice President'. He was handling this entire money SPSC-6-1993.doc market operation on behalf of FGFSL in Mumbai, considering his experience in that work in CANFINA. Mumbai Office of FGFSL was headed by deceased Accused No.1-K. Dharampal as 'Managing Director'. According to PW-1 R. Ganesh, there used to be lot of interaction between FGFSL Office at Mumbai and its office at Bangalore in respect of these money market

transactions and hence, Accused No.2-Laxminarayanan had asked him to take instructions from Accused No.3-Srinivasan in relation to the money market transactions.

75. It is his categorical evidence that, in money market transactions, the money was borrowed mainly from the Banks and its Subsidiaries against the Securities Receipts, because it could not be borrowed in any other format in view of the restrictions laid down by the RBI in respect of payment of interest. Though he could not exactly remember the rate of interest, at which the money was borrowed by FGFSL, but he was sure that the rate of interest was much higher than the rate of interest which was permitted by RBI.

76. Then he has explained what the 'Security Receipt' means. According to him, it was actually in the format of Banker's Receipt. However, as FGFSL was not a Bank, it could not issue the SPSC-6-1993.doc Banker's Receipt and, therefore, FGFSL was issuing Securities Receipts. It is his further evidence that, in those days, Banker's Receipt was mainly and commonly used for borrowing monies by the Banks and as FGFSL was not the Bank, FGFSL was constrained to use the Securities Receipts for borrowing the money. It was on the instructions of Accused No.3-Srinivasan that, Accused No.2- Laxminarayanan has told him to issue the Securities Receipts, when money was to be borrowed from the Banks. The format of 'Security Receipt' showed that the borrower of the fund had actually entered into a transaction of sale of securities, which was mentioned in the receipt. In reality, however, according to him, there was no transaction of sale of any securities. In most of the cases, the securities, which were mentioned in the 'Securities Receipts' as the securities to be sold by FGFSL to the concerned Bank, were not actually purchased and held by FGFSL.

77. The Prosecution has relied upon this part of his evidence which, as rightly submitted by learned Special P.P., is very crucial to prove that the transactions in question with the ABFSL were not the sale and purchase transactions, but, to the knowledge of the Accused, they were actually the transactions of borrowing and lending of money.

SPSC-6-1993.doc

78. Further evidence of PW-1 Ganesh shows that, the funds, that were borrowed from the Banks against the Securities Receipts, were actually invested by FGFSL in the share market transactions. This part of his evidence is also rightly highlighted by learned Special P.P. to prove the Prosecution case that, it was a money lending transaction and not the sale-purchase transaction of securities.

79. This witness has further stated that, the money was borrowed minimum for a week and maximum for 180 days; this short duration clearly indicating that it was a money lending transaction. The Prosecution has laid much emphasis and in my considered opinion, rightly so, on the categorical admission given by this witness that, "The intention for entering into these transactions was to borrow money from the Banks and its Subsidiaries by FGFSL for carrying out transactions in the Share Market and after certain period, the amount borrowed from the Banks or its Subsidiaries was refunded to them along with the agreed rate of interest."

80. As submitted by Special P.P., this part of his evidence SPSC-6-1993.doc clearly proves the case of the Prosecution that, all these sale and purchase transactions were, in actuality and reality, the money lending transactions.

81. The Prosecution has also placed much reliance on his evidence that, as a 'Chartered Accountant', he can state that, "the 'Bank Receipt' is an authentic instrument; the 'Security Receipt', on the other hand, was not an authentic document, but it was issued according to the normal market practice". It is the submission of learned Special P.P. that, if 'Security Receipt' was not an authentic instrument like the 'Bank Receipt', then it proves the Prosecution's case that the Officers at FGFSL and ABFSL had indulged into the practices, which were not recognized and which were against the guidelines of RBI.

82. This witness has further deposed that, at the Bangalore Office, FGFSL was borrowing funds against the Securities Receipts, mainly from Vyasya Bank Leasing Limited and ABFSL. Majority of the transactions were, however, with ABFSL. According to his knowledge, from ABFSL, the funds in the range of Rs.400 Crores were borrowed yearly by FGFSL against the Securities Receipts. The SPSC-6-1993.doc money borrowed against the Securities Receipts was used for investment in the Share Market transactions, which were carried out at Mumbai. According to him, majority of the money, that was raised from the Securities Receipts in Bangalore Office, was transferred to Mumbai Office for being invested in the Share Market.

83. Further evidence of PW-1 R. Ganesh proves that, the details of money market transactions, namely, at what rate the money was to be borrowed, how much money was to be borrowed, all these things were decided by Accused No.2-Laxminarayanan, in consultation with ABFSL, and on the instructions received from Accused No.2-Laxminarayanan, he used to issue the Securities Receipts in relation to the borrowing of money from ABFSL. Accused No.2-Laxminarayanan was settling the deals with Accused No.7- Sundara Babu, who was working with Hyderabad Office of ABFSL as the 'Managing Director'.

84. Further part of the evidence of PW-1 R. Ganesh goes to prove that, whenever he was not able to attend his duties at FGFSL, in his absence, Accused No.2-Laxminarayanan was looking after his duties. He was also finalizing the deals with ABFSL on telephonic talk with Accused No.7-Sundara Babu. After the transaction was SPSC-6-1993.doc finalized, Accused No.2-Laxminarayanan used to give him details of the transaction. He was maintaining the 'Book' to that effect, in which he used to take down the details of the transactions. This 'Book' was a type of a 'Diary', in which the day-to-day entries were made by him. Those entries indicate the rate of interest of the Bank or Subsidiary, from whom the money was borrowed, and the amount of money, that was borrowed by FGFSL against the Securities Receipts. He used to make these entries, after the money was actually received. He has produced on record the two Diaries; one of the year 1991, from January till December (Exhibit-14), and the second Diary of the year 1992, from 1st January 1992 till 18th June 1992 (Exhibit-15).

85. This witness has then in his evidence running into pages from 1 to 362 given the details of all the transactions entered into by him during this relevant period and has proved on record the Memorandums of Sale, Purchase, Security Receipts and Cheques of these transactions. Through the

evidence of this witness- PW-1 R. Ganesh, the Prosecution has proved on record all these transactions of sale and purchase of securities with ABFSL against the Securities Receipts, which depict the rate of interest, the amount borrowed etc. vide 'Exhibit-16(i), (ii), (iii)' to 'Exhibit-124(i), (ii), SPSC-6-1993.doc

(iii)' viz. Memorandums of Sale, Purchase and Securities Receipts. According to his evidence, the name of the security was mentioned by him in the Security Receipt on his own, by finding out suitable security, considering the rate of interest and the duration for which the money was borrowed. It was done as per the instructions of Accused No.2-Laxminarayanan. All these Memorandums of Sale and Purchase and Securities Receipts are prepared by him and signed by him, which, according to him, were prepared and signed on the instructions of Accused No.2-Laxminarayanan. He has also proved on record the cheques, which were issued by ABFSL for the purpose of transfer of the funds from ABFSL to FGFSL in respect of these transactions. While proving each and every Memorandum of Sale and Purchase and Security Receipt of the relevant transaction, this witness has categorically stated that, though by issuing the Security Receipt, a promise was made to deliver the securities, actually there was no transaction of purchase and sale of securities, but it was clearly a transaction of borrowing the amount from ABFSL by FGFSL for the purpose of sending the same to FGFSL Office at Mumbai for investing the same into the Share Market business.

SPSC-6-1993.doc

86. In further part of his evidence, PW-1 R. Ganesh has re-affirmed that, the securities, which were mentioned in the Securities Receipts, for the purpose of borrowing the amount from ABFSL, were not actually owned or purchased by FGFSL. However, to mislead the Auditor and to show that these securities were owned by FGFSL, a 'Scrip Register' was maintained by FGFSL, wherein the entries were made, to show that these securities, in which FGFSL was shown to be dealing, were actually owned by FGFSL. The 'Scrip Register' was maintained on the instructions of Accused No.2-Laxminarayanan, who has also verified all the entries made in the Scrip Register, before it was shown to the Auditor, and in token of having verified the entries, Accused No.2-Laxminarayanan had put his initials on the Scrip Register. The said Scrip Register is at 'Exhibit-192'. It contains all the information about the scrips, which were ostensibly and not in reality, bought and sold by ABFSL and a mere record was prepared of such sale and purchase of securities.

87. This witness has also deposed that, for borrowing money from ABFSL, on few occasions, FGFSL had handed over genuine securities; whereas, on few occasions, handed over forged securities; but, most of the times, the amounts were borrowed from ABFSL, only on the basis of the Securities Receipts. SPSC-6-1993.doc

88. In his cross-examination, it is brought on record that FGFSL was a 'Public Limited Company', registered with 'Securities and Exchange Board of India', (SEBI), as a 'Merchant Banker'; however, it was not a Banking Company. Accused No.2- Laxminarayanan was 'Head' in all the Departments of FGFSL, which were being controlled from Bangalore, and the money market operations in Bangalore were managed by Accused No.2- Laxminarayanan himself. Further, in his

cross-examination, it is again brought on record that, Accused No.5-Tharian Chacko, who was working in the said office as 'Senior Vice President', and Accused No.2-Laxminarayanan were very close to each other. Whenever ABFSL used to deploy the funds, Accused No.5-Chacko was talking with Accused No.2-Laxminarayanan.

89. It is further brought out in his cross-examination that, during this period, large amount of money was borrowed from ABFSL. All that money could not be utilized in the activities of FGFSL, carried out at Bangalore, namely, leasing, hire purchase etc. and, therefore, the money was sent to Bombay Office of FGFSL for being deployed in the Share Market. It is further re-affirmed in his SPSC-6-1993.doc cross-examination that, the reason why ABFSL was offering funds was that FGFSL was giving them higher returns. It is his categorical and clinching evidence at page 284 that, "it was never the intention of FGFSL to deliver the actual securities and ABFSL has also never objected to FGFSL giving only the Securities Receipts". The inflow and outflow of the amount borrowed from ABFSL was intimated to the Board and Chairman of the FGFSL. They were also informed about the nature of the documents, which were issued for borrowing funds. In his cross-examination, it is also brought on record that he used to report all the events to Accused No.2-Laxminarayanan on daily basis. It is further confirmed from his cross-examination that, in all the above referred transactions with ABFSL, the rate of interest was negotiated by Accused No.2-Laxminarayanan and in the absence of Accused No.2-Laxminarayanan, it was negotiated by him in consultation with Accused No.3-Srinivasan. According to him, whatever he did in money market transactions was taught to him by Accused No.2-Laxminarayanan, who was his 'Mentor' and 'Guru', as deposed by him and he did it at that time because he thought that it was a time-gap arrangement.

90. In his cross-examination, at page 312, he has also SPSC-6-1993.doc admitted that, it was only ABFSL, which was willing to lend funds on the basis of Securities Receipts. Other Financial Firms were asking for physicals.

91. The evidence of this witness, who was very much working in the office of FGFSL since the day one and who was actually looking after the money market operations and whose evidence is fully supported and corroborated with Memorandums of Sale and Purchase, Securities Receipts (Exhibits "16(i)(ii)(iii)" to "124(i)(ii)(iii)"), the Diaries (Exhibits "14" and "15") and the Scrip Register (Exhibit-192), is, thus, more than sufficient to prove that the funds were deployed by ABFSL in favour of FGFSL for investing in Share Market, by entering into the various ostensibly sale-purchase transactions against the Securities Receipts, knowing or having reason to believe that the Securities Receipts were not backed-up by physicals and in that way, these transactions were in the nature of 'Ready Forward Transactions'.

92. The execution of none of these transactions, in respect of which this witness had deposed in detail, is challenged by the Defence. The deployment of funds by ABFSL, as mentioned in the SPSC-6-1993.doc said Securities Receipts to FGFSL, is also not challenged. It is also not challenged that the deployment of funds was against the Securities Receipts and actual securities were not transferred or were not meant to be transferred, as in reality these securities were not held by FGFSL and these transactions were, thus, 'Ready Forward Transactions'. The tenor of the cross-examination of this witness is clear to indicate that the Accused are not at all challenging his

evidence on any of these aspects. As a matter of fact, the very contention of the Defence is that, ABFSL and FGFSL were the Loan Companies and, therefore, since beginning, their object was only to borrow and lend the money. Hence, there was nothing illegal in it. Moreover, deployment of funds against the Securities Receipts was a "normal market practice", as deposed by this witness also. Hence, this cannot be a criminal offence in any way. I will discuss this aspect of the Defence subsequently.

93. For the present, reverting to Prosecution case, it needs to be stated that, the evidence of PW-1 R. Ganesh is fully corroborated by PW-3 K. Rajgopalan, who was also, at the relevant time, working in FGFSL, Bangalore, as a 'Group Head' of General Accounts and Leasing Appraisals and posted as 'Assistant Vice President' in that SPSC-6-1993.doc office. He was doing the work of consolidation of the Accounts on the basis of the vouchers, which were sent to his Department for the purpose of accounting. According to him, basic documents for accounting of purchase and sale of securities by FGFSL were the vouchers prepared by the Money Market Division, Security Receipt and Memorandum of Purchase and Memorandum of Sale. He has defined 'Security Receipt' as a document that acknowledges the receipt of the amount towards sale of the securities. This document used to be issued when FGFSL was selling securities; whereas, in case of purchase of securities by FGFSL, only two documents were prepared, namely, the Voucher and the Memorandum of Purchase. Out of these two documents, only Voucher was coming to his Department for the purpose of consolidation.

94. He has consolidated the Accounts of FGFSL from April, 1992 to June, 1992. He has identified various Vouchers received by him. According to him, when he was consolidating the Accounts, he did find that some of the transactions carried out in Money Market Division were not supported by the securities. According to him, the papers that were prepared for carrying out those transactions showed that the securities had changed hands, but physically no SPSC-6-1993.doc such securities were exchanged. According to him also, the real nature of the transactions was that the FGFSL has received advance towards sale of securities by ABFSL. In all these transactions, ABFSL was the counter-party. As the amount was advanced towards sale of securities by FGFSL to ABFSL and as the securities were never actually sold, the amount was lying with FGFSL and hence, these amounts were found as outstanding in the Account of FGFSL. He could find out twenty transactions of this nature at the Bangalore Office of FGFSL. In these transactions, the money was received as advance from ABFSL and it was so, because neither securities were handed over to ABFSL, nor money was handed over back to ABFSL. He came to understand that the securities were never handed over to ABFSL.

95. He has further deposed that, during the inquiry by the C.B.I., when he had occasion to go through the Scrip Register (Exhibit-192), he did not find that the securities were actually delivered in these transactions. According to him also, all these transactions were 'Ready Forward Transactions'. He has explained the nature of such 'Ready Forward Transactions' by deposing that, in the first leg of the transaction, the amount received from ABFSL SPSC-6-1993.doc is shown as 'advance' towards the sale of securities by FGFSL to ABFSL. In the second leg, the same securities, which were sold by FGFSL to ABFSL, were shown to have been purchased back by FGFSL from ABFSL and the amount is shown to have been paid to ABFSL. When the second transaction is

shown to have been carried out, the said transaction is not treated as outstanding. In the Voucher, the sale price and the purchase price of the securities involved were mentioned. The difference between the sale price and purchase price was nothing but the amount of interest for the intervening period.

96. Thus, as deposed by him, the real nature of all these transactions was that the money was borrowed by FGFSL from ABFSL. However, this real nature of the transaction was not disclosed in the 'Books of Accounts' and in the papers, which were maintained by FGFSL, Bangalore. According to him, a large number of transactions between ABFSL and FGFSL pertaining to money market were of this nature. The money borrowed in such transactions by FGFSL was sent to the Branch Office for investment in shares and securities, real estate purchase, leasing and hire purchase transactions. The money sent to Mumbai Branch Office was used for investment in the Share Market.

SPSC-6-1993.doc

97. He has further deposed that, the period between buying and selling of the securities in such transactions was always less than six months. In some of the transactions, like the one reflected in Exhibit-17(i), (ii) and (iii), he has deposed that, the period was only of one month, as the amount borrowed was refunded to ABFSL after one month. In the transactions reflected in Exhibit-111(i), (ii) and (iii), the funds borrowed were refunded with interest within a period of 42 days; whereas, in the transactions reflected in Exhibit- 113(i), (ii) and (iii), the funds borrowed were refunded with interest after a period of 35 days. In some of the other transactions, as deposed by him, the period was of 2 months or at the most 3 months.

98. Thus, his evidence goes to prove the case of the Prosecution about the short duration of the said transactions, thereby reflecting that those transactions were fund raising transactions of borrowing and lending nature and not of the sale and purchase of securities.

99. His evidence also reveals that, in respect of the transactions reflected in document at Exhibits "129", "130" and "131", the Memorandum of Sale and Memorandum of Purchase were SPSC-6-1993.doc prepared on the same day, thereby indicating that the transactions were done in the absence of delivery of physicals and thus, they were the funding transactions. Similarly, in respect of the transactions reflected in Exhibits "126", "127" and "128", he has categorically deposed that, these transactions were also funding transactions, as the entry in the 'Diary' shows that the transaction was of 15th February 1992; however, the amount was credited on 17th April 1992. In respect of the transactions reflected in Exhibits "137", "138" and "139", he has said that, those transactions are in respect of sale and purchase of securities by ABFSL, as the securities mentioned therein are found reflected in the stock of FGFSL. According to him, if the security was in stock of FGFSL on that day, then only it can be called that transaction was of sale and purchase of security. However, if the security is not found reflected in the stock of FGFSL on that date, then, obviously, it was a funding transaction, as there was no security with FGFSL, which could have been sold on that day. In majority of the transactions, according to him, the securities were not found reflected in the stock of FGFSL and, therefore, the inference is inevitable that those transactions were funding

transactions and not the transactions of sale and purchase of securities.

SPSC-6-1993.doc

100. In his cross-examination at page 397, he has further confirmed that the real nature of the transaction - borrowing and lending of money, was not disclosed in the Account Books and papers.

101. The evidence of PW-4 N.S. Jagannath, 'Group Executive' in FGFSL and working under Accused No.2-Laxminarayanan, then proves that, in the month of April - May, 1991-92, he has encircled the entries in the Scrip Register (Exhibit-192), as dictated by Accused No.2-Laxminarayanan.

102. The Prosecution has then also led the evidence of PW-5 A. Sunilkumar Shetty, who was working as the 'Officer' in 'Accounts Department' of FGFSL, Bangalore, and had prepared the vouchers of these transactions on the basis of the information given by PW-1 Ganesh.

103. PW-9 Lalitha Devi, who was working in FGFSL under PW- 1 R. Ganesh, has then further supported the case of the Prosecution by deposing that, Accused No.2-Laxminarayanan was the overall in- SPSC-6-1993.doc charge of the office and as per the instructions of Accused No.2-Laxminarayanan, PW-1 R. Ganesh used to do the work and give her further instructions for preparing the documents like the Memorandums of Sale and Purchase, the Vouchers etc. She also used to prepare 'Office Note', containing brief statement of the transactions entered into Money Market Division. According to her evidence, she used to write details from the Securities Receipts in the Register. However, she has not seen the physical securities delivered insofar as the transactions of which the documents were prepared by her, like Securities Receipts, Memorandums of Sale and Memorandums of Purchase. She has also deposed about the Scrip Register (Exhibit-192), which PW-1 Ganesh was maintaining.

104. Evidence of none of these two witnesses - PW-3 K. Rajgopalan and PW-9 Lalitha Devi is challenged in the cross- examination and like evidence of PW-1 Ganesh, their evidence as regards the real nature of these transactions has remained unshattered on record.

105. At this stage, it would be necessary to look into the evidence of PW-7 Anand Madhbbhushi, who, at the relevant time, was SPSC-6-1993.doc the counter-part of PW-1 R. Ganesh, as this witness was working in ABFSL at Hyderabad. He was posted there from his service in Andhra Bank in the month of June, 1991. According to him, ABFSL was incorporated in the year 1989-1990 and it was classified as 'Non-Banking Financial Company' by RBI. The principal business of ABFSL was merchant banking, leasing, hire purchase and money market transactions. The Registered Office of ABFSL was at Hyderabad and it had Branches in various cities, like Mumbai, Bangalore, Madras and New Delhi. The Chairman of the Andhra Bank was the Chairman of ABFSL. Some of the high Executives of Andhra Bank were also on the Board of Directors of ABFSL. The affairs of the Company were managed by the Managing Director of the Company, who used to report to the Board of Directors. Accused No.7-Sundara Babu was the 'Managing Director' of ABFSL. Accused No.8-Kalyana Raman was the 'Head' of Mumbai Branch Office of ABFSL. Accused No.5-Tharian Chacko was the 'Head' of Bangalore Branch Office of ABFSL.



106. According to him, money market operations is a vast area and it includes capital market transactions, such as purchase and sale of securities, call money market operations etc. The ABFSL, SPSC-6-1993.doc as a part of money market operations, was dealing in purchase and sale of securities. However, it was not operating in the call money market, as only Banks were permitted to do so. It is his evidence that, final decision in respect of all the operations of ABFSL, including the decision as to whether to undertake the transaction or not, including money market transactions, was taken by the Managing Director, namely, Accused No.7-Sundara Babu. It was Accused No.7-Sundara Babu, in his capacity as the 'Managing Director', who was instructing the Branches of ABFSL to enter into money market transactions and on the basis of his instructions, the transactions used to be put through by the Branches. At the end of the day, a 'Daily Transaction Report' used to be submitted by the Branches to the Head Office and the Managing Director-Sundara Babu.

107. According to him, the turnover of ABFSL in relation to purchase and sale of the securities ran into more than few hundred or few thousand crores and the said fund was received by ABFSL from its own capital, deposits from the public, inter-corporate deposits and the funds made available by the clients for entering into the transactions for purchase of the securities on behalf of the SPSC-6-1993.doc clients. Most of the purchases of securities by ABFSL were from the secondary market. One of the area in which ABFSL and FGFSL were dealing with each other was purchase and sale of securities. Out of the total volume of the business of ABFSL in this area, 40% to 50% of the business was transacted in that regard between ABFSL and FGFSL. These money market transactions were started from about July, 1991 and continued till April-May, 1992.

108. It is deposed by him that, on each day, he used to get by evening, from the Managing Director Accused No.7-Sundara Babu, the details of the funds accepted by ABFSL from outside, as also the securities purchased and the nature of deployment of funds, as to with whom and how much funds were deployed. He was noting this information in the 'Diary' that he was maintaining and the said information in the 'Diary' used to be counter-checked by him with the 'Daily Transaction Report', that used to be received at the Head Office from the Branches. After counter-checking the said information, he was preparing Vouchers in relation to the funds accepted, as also the funds deployed and also other transactions. His colleague PW-34 Koteswar Rao, who was qualified as 'Company Secretary' and 'Chartered Accountant', used to make entries about the same in the relevant 'Books of Accounts'. SPSC-6-1993.doc

109. It is his evidence that, the 'Daily Transaction Reports' received by the Head Office from the Branches used to contain full information about the funds received by the concerned Branch from the clients directly for deployment, as also the funds received by the concerned Branch from other Branches of ABFSL. 'Daily Transaction Report' contained full details as to the name and nature of the securities, which have been purchased; whether physical delivery of the securities purchased had been taken or Banker's Receipt or Security Receipt has been taken in lieu of the securities. He has also deposed that, a Security Receipt was in the format of Banker's Receipt and it was issued by the Institutions other than the Banks. ABFSL did not have SGL Account with RBI, as only Banks were permitted to have SGL Account with RBI. FGFSL was also a 'Non-Banking Financial Institution'. Security Receipt was issued by Non-Banking Entities, which sold securities, which it was holding,

but it was not in a position to deliver that security at that time. When a Security Receipt is given by a seller in lieu of physicals, the purchaser is entitled to demand the physicals at any time.

110. He has proved on record the entries in the 'Diary' SPSC-6-1993.doc (Exhibit-233) maintained by him while working during the said period in relation to the transactions from 1 st January 1992. The 'Diary' contains the details about the funds accepted by ABFSL on the left side and funds deployed by ABFSL on the right side.

111. According to him, the transactions between ABFSL and FGFSL were not undertaken at Hyderabad at all. Those transactions were undertaken at Bangalore, Mumbai and few transactions in New Delhi. He has also deposed that, the Branches at Mumbai and Bangalore were executing the decisions taken by the Managing Director, Accused No.7-Sundara Babu. Accused No.5-Chacko was assisted by PW-64 Mr. Eshwar Prasad and at Mumbai Branch Accused No.8-Kalyana Raman was assisted by PW-30 Mr. Ramesh Shenoy.

112. In his evidence, he has identified all the Memorandums of Sale and Purchase, including the Vouchers, which were proved through the evidence of PW-1 R. Ganesh. He has particularly deposed about the cheques issued by ABFSL for the various amounts in favour of FGFSL in respect of these ostensible sale and purchase transactions. He has proved on record several cheques from Exhibit Nos.234, 236, 237, 238, 239, 240, 242, 245, 250, 252 onwards, SPSC-6-1993.doc along with the letters accompanied therewith in the handwriting of Accused No.5-Chacko and signed by him. Issuance of these cheques and letters in respect of the transactions that took place in FGFSL Office, is not disputed by Accused No.5-Chacko also.

113. According to his evidence, these documents relate to 'Ready Forward Transactions' entered into between FGFSL and ABFSL about sale and purchase of securities between the two. All these documents were sent by Bangalore Office of ABFSL to the Head Office, where he was working, and hence he has made entry about the same in the 'Diary' maintained by him.

114. These entries, as deposed by him, are also cross-checked and verified. Majority of the cheques issued on behalf of ABFSL are signed by Accused No.5-Chaco. He has also deposed that, all these funds were deployed or invested against the Securities Receipts. These 'Cheques', 'Pay Orders', 'Daily Transaction Reports' and the entries marked therein are from Exhibits "234" to "570".

115. His evidence thus proves deployment of various funds by ABFSL to FGFSL as against the Securities Receipts, on the basis of the 'Memorandums of Sale and Purchase'. The entries made in his SPSC-6-1993.doc 'Diary' (Exhibit-233) being maintained day-to-day, they also carry a presumptive value, coupled with the 'Daily Transaction Reports'.

116. As a matter of fact, in his cross-examination, it is also brought on record that, on similar and several such documents, like Exhibit-528, the percentage of profit that ABFSL was expected to earn from the transactions was mentioned. It is also brought out in his cross-examination that, in respect of the 'Ready Forward Transaction' also, the accounting procedure in relation to the securities delivered and in relation to the securities not delivered will be the same. According to him, he

himself, Accused No.5-Chaco and other staff in ABFSL were discharging their duties as per the directions of their Managing Director, Accused No.7-Sundara Babu. The major activity of ABFSL was in securities transactions and the annual turnover of ABFSL was in several thousand crores. The Board of Directors of ABFSL had, by Resolution dated 27 th August 1991, given the Managing Director, Accused No.7-Sundara Babu, full powers to purchase Central, State and other securities, shares, bonds for deployment of short term funds. In fact, according to him, even ABFSL had, while dealing with the Financial Institutions, Brokers and other Companies, issued such Securities Receipts. SPSC-6-1993.doc

117. The evidence of PW-10 Anwar Gundmi, who was working as 'Chartered Accountant' and 'Vice President' with FGFSL, Mumbai, till August, 1992, goes to show that, at Mumbai Office of FGFSL, Accused No.3-Srinivasan used to handle the work of Securities Receipts. Accused No.1-Dharampal (Since Deceased) was the decision-maker. He was assisted by Accused No.3-Srinivasan and Accused No.9-Gopal Iyer. He has also affirmed that, Accused No.2- Laxminarayanan and Accused No.3-Srinivasan, both, were working earlier in CANFINA and hence were knowing each other very well.

118. In respect of the transactions of ABFSL at Mumbai, the relevant evidence in this respect is then that of PW-30 Ramesh Shenoy, who was deputed in ABFSL, Mumbai, as 'Assistant Vice President', with Accused No.8-Kalyana Raman, the 'Senior Vice President'. According to him, ABFSL was accepting 'Inter Corporate Deposits' from investments in securities for a fixed period and the decisions in relation thereto regarding deployment of funds of ABFSL used to be taken by the Managing Director, Accused No.7- Sundara Babu, and then those decisions were conveyed to him and others by PW-7 Anand Madhbbhushi. It is his evidence that, as in other cases, the decision to deploy the funds to FGFSL was also being taken at the Head Office by Accused No.7-Sundara Babu. Accused SPSC-6-1993.doc No.3-Srinivasan and Accused No.9-Iyer from FGFSL used to contact them telephonically. Some Peon from the office of the FGFSL used to bring the documents required for such transactions.

119. In his evidence, he has deposed about the transactions that took place between ABFSL, Mumbai and FGFSL and has proved on record the Register (Exhibit-639), which was maintained as a record of relevant transactions entered into during the said period in respect of the deployment of funds by ABFSL, Mumbai, to FGFSL. He has also identified the 'Daily Transaction Reports' sent to the Head Office by his office in Mumbai. Those reports are at 'Exhibit- 640' collectively. He has also proved on record the cheques issued towards these transactions viz. Exhibit Nos.445, 453, 455, 463, 471, 478, 481, 498, 499, 501, 505, 506, 512, 514, 516, 518, 521, 524, 526, 529, 531, 533, 538, 541, 542, 555, 557 and 567, which are in the handwriting of Accused No.8-Kalyana Raman and signed by Accused No.8-Kalyana Raman and the cheques viz. Exhibit Nos.442, 443, 447, 466, 474, 484, 486, 488, 491, 493, 494, 495, 508 (Colly), 509, 544, 546, 548, 550, 553, 564, 565 and 569, which are in his handwriting and signed by Accused No.8-Kalyana Raman. The issuance of these cheques is not disputed by Accused No.8-Kalyana Raman also.

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120. In respect of ABFSL transactions at Chennai, there is evidence of PW-32 S.S. Varadrajan, who was deputed to ABFSL, Chennai, as 'Senior Vice President'. According to him also, it was Accused No.7-Sundara Babu, the Managing Director, who used to take the decisions in respect of deployment of funds of the ABFSL and those decisions were communicated to them by PW-7 Anand Madhbbhushi. He has also deposed about sending 'Daily Transactions Reports' to Accused No.7-Sundara Babu at Hyderabad Office.

121. The Prosecution has then examined PW-33 K. Ramchandra Nayak, the 'Chairman' of the Andhra Bank and who was instrumental in forming ABFSL. According to him, it was 'Subsidiary' of Andhra Bank and it was the policy of the RBI to encourage the Banking Institutions to form 'Subsidiaries' for financial services and home loans. As per that policy, ABFSL was formed. The necessary permission to that effect was obtained from the RBI and Finance Ministry in the year 1991. He was the de-facto Chairman of the ABFSL, by virtue of being the Chairman of the Andhra Bank; whereas, Accused No.7-Sundara Babu was appointed as 'Managing Director' of ABFSL. Accused No.3-Srinivasan was SPSC-6-1993.doc directed to oversee the general working of the ABFSL. According to him, Andhra Bank did not have any financial control over ABFSL.

122. It is his evidence that, only after the scam broke out, he came to know that the funds were deployed by ABFSL against the Securities Receipts. According to him, he would not have allowed raising of such funds and deployment of funds, if he knew that such transactions were not backed by sufficient securities. He has categorically deposed that, no oral or written instructions regarding the transactions in securities were given by Andhra Bank to ABFSL. Conversely, he had always been telling Accused No.7-Sundara Babu and Accused No.3-Srinivasan to follow the RBI Guidelines and Finance Ministry's Guidelines in respect of such transactions. After the scam, during inspection, he came to know about the shortfall of securities from FGFSL.

123. The evidence of PW-1 R. Ganesh and PW-3 K. Rajgopalan of FGFSL and the evidence of PW-7 Anand Madhbbhushi, PW-30 Ramesh Shenoy and of PW-32 S.S. Varadrajan of ABFSL thus, in the first instance, goes to prove the various transactions entered into between ABFSL and FGFSL, which were ostensibly for sale and purchase of the securities; however, as deposed by these witnesses, SPSC-6-1993.doc neither FGFSL was having the securities on that day for being sold to ABFSL, nor there was any intention of entering into the transactions of sell or purchase of securities. The duration of the period, for which the money was deployed, further clearly indicates and proves that these transactions were of money lending and borrowing, with an object to achieve higher interest and profit margin. They were in that way 'Ready Forward Transactions'. The evidence of PW-33 K. Ramchandra Nayak, in the second instance, goes to prove that this deployment of funds without securities was not known to him and he would not have allowed the same.

124. On this point, the evidence of the Officers from RBI is also fully supporting and corroborating the Prosecution case. The material evidence is of PW-16 K.P. Ganapathi, who was working as 'Deputy Chief Officer' in the Department of Financial Companies of RBI at Bangalore. According to his evidence, on the directions received from the Central Office at Mumbai, instructing him to depute an Officer at the Head Office of FGFSL to scrutinize the investment transactions undertaken by that Company, on 11 th June 1992, he has deputed one of his Officers, PW-17 Khatib, to conduct

the scrutiny of the securities transactions entered into by FGFSL. SPSC-6-1993.doc Thereafter, on the instructions received from the Central Office that the services of Chartered Accountant can also be utilized for the work of scrutiny, he has appointed M/s. K.P. Rao and Company, the Chartered Accountant, to carry out audit of the securities transactions of the FGFSL.

125. It is his further evidence that, these Officers reported to him about several serious irregularities, which were noticed by them in the securities transactions of FGFSL and on the basis of the same, on 18th June 1992, he has submitted 'Report' (Exhibit-596) to the Central Office indicating therein that, it was found on scrutiny that, FGFSL was issuing Securities Receipts to the ABFSL, covering ostensible transactions of sale of Bonds of Public Sector Undertakings, UTI Units etc., but the securities were not actually handed over and they also found that those Securities Receipts were issued really to cover the money lending transactions. It is his evidence that, they also found that on the dates mentioned in the Securities Receipts, no actual securities were delivered and the rate at which the securities were sold and purchased has no relevance to the market rate of the securities, which were sold or purchased, and that the rates were such as to suite the rate of interest that was SPSC-6-1993.doc being charged on the money lent. It is his evidence that, according to RBI, Security Receipt was not a legally valid document. It is his further evidence that, the specimen of Securities Receipts issued by FGFSL to ABFSL were also sent vide 'Exhibit-597', along with his 'Note' at 'Exhibit-596'.

126. It is his further evidence that, the Chartered Accountant Firm, namely, M/s. K.P. Rao and Company, has also found that FGFSL was receiving Banker's Receipts from some of the Banks, like Standard Chartered Bank, Grindlays Bank etc.; whereas, according to the instructions of RBI, the Banks were not supposed to issue the Banker's Receipt to the Non-Banking Financial Institutions. It was further found that, the funds made available to FGFSL by ABFSL in the transactions in which the Securities Receipts were issued by FGFSL, were used by FGFSL for securing Banker's Receipts from those Banks. It was also found that, those Banks, which had issued the Banker's Receipts to FGFSL, did not deliver the securities mentioned in the Banker's Receipts on their due dates. On observing this, he has submitted a fresh 'Note' to the Central Office on 25 th June 1992 vide 'Exhibit-598' in relation to the Banker's Receipts with its specimen vide 'Exhibit-597'.

SPSC-6-1993.doc

127. According to his evidence, during the scrutiny, it was also found that, no proper record of the Securities Receipts was maintained in the FGFSL Office. No numbers were given to the Securities Receipts. They were all kept in one Bunch, irrespective of their dates. All Securities Receipts were signed by one Officer of FGFSL and as a result thereof, it was not possible to find out what was the exact over-sold position of the Company. He has, accordingly, sent a 'Note' (Exhibit-599) to the Central Office on 15 th July 1992, giving the details about utilization of the funds received from ABFSL against the Securities Receipts issued by FGFSL. It was found that, FGFSL was not utilizing the funds received by it from ABFSL for the purpose for which the funds were handed over, but the funds were being used for other purposes.

128. In his cross-examination, it is brought on record that, he has clearly stated in the 'Note' that, on the scrutiny of the securities transactions entered into by FGFSL with ABFSL, it was found that, though the transactions were reflected in the Accounts Books of the Company, actual securities were not available and this statement was made in the 'Note' at 'Exhibit-597' on the basis of the Accounts SPSC-6-1993.doc Books of the Company showing the transactions. In his cross-examination, it is also brought on record that, he has made enquiries about the running market rates of Securities Receipts on the due date of Security Receipt and verified it's particular rate mentioned in the Security Receipt and found that the rate mentioned in the Security Receipt has no relevance to the market rate of the Security Receipt prevailing on the date of the Security Receipt.

129. This oral evidence of PW-16 K.P. Ganapathi is thus fully supported with contemporaneous documents, like the 'Reports', Exhibit-596, Exhibit-597, Exhibit-598 and Exhibit-599, sent by him on the basis of his scrutiny and investigation by his Officer PW-17 Khatib and Chartered Accountant M/s. K.P. Rao and Company.

130. His evidence then also gets support and corroboration from the evidence of PW-17 Khatib, who has carried out this scrutiny in the Office of the FGFSL on 11 th and 12th June, 1992 and also PW-19 Sukdeb Bandopadhyay, the 'Additional Chief General Manager' from the Department of Financial Companies of RBI. According to the evidence of PW-19 Bandopadhyay, from his Department, Officers were deputed for inspecting the securities transactions of FGFSL, particularly the 'Ready Forward Transactions', and to find out SPSC-6-1993.doc whether the Company was actually holding the securities, in which it was dealing. On inspection, it was found that, in these transactions, FGFSL has merely promised to deliver the securities and ABFSL was holding only the Securities Receipts. It is his evidence that, two Firms of Chartered Accountants; for Mumbai Office of FGFSL, namely, M/s. Karnavat and Company, was appointed, and for Bangalore Office, M/s. K.P. Rao and Company was appointed, to scrutinize the Accounts of FGFSL and on the first day of inspection, i.e. 12th June 1992, it was found by them that the record of FGFSL was not properly maintained and, therefore, all the efforts made by these two Chartered Accountants to carry on the inspection failed. Hence, he asked FGFSL to prepare their Balance Sheet. Accordingly, by 22nd June 1992, FGFSL handed over the Balance Sheet. The Chartered Accountants, on going through the Balance Sheet, found that nothing was tallying in the sense that the records were not available to substantiate what was written in the Balance Sheet. The said Balance Sheet is also produced on record and identified by him as 'Exhibit-610'. It is his evidence that, till his retirement, i.e. upto August, 1995, FGFSL has not submitted proper Balance Sheet and Accounts.

SPSC-6-1993.doc

131. It is his evidence that, he was present in the two meetings; one held on 30th June 1992, in which Accused No.7- Sundara Babu has told that there were transactions of securities with FGFSL to the extent of about Rs.300 Crores and all these transactions were of Ready-Forward nature.

132. In my considered opinion, the evidence of all these Prosecution Witnesses, some from FGFSL, some from ABFSL and some from totally an independent source, like R.B.I., is more than sufficient to prove beyond reasonable doubt that ABFSL has deployed crores of funds to FGFSL on 'Securities

Receipts', which were, to their own knowledge, not backed by physical securities and it was done by the ostensible transactions of sale and purchase. Their evidence also proves that, money received by FGFSL from ABFSL in these transactions was diverted by FGFSL to Share Market investment and not for purchase of securities.

133. As stated above, the Accused themselves are not disputing that, though these transactions were ostensibly of sale and purchase, in reality, they were of money lending and borrowing. They are also not disputing that, in these transactions, money was SPSC-6-1993.doc deployed against Securities Receipts and physical securities were not delivered or even intended to be delivered. In that way, these transactions may even be called as 'Ready Forward Transactions'. However, their contention is that, transactions of this nature were not prohibited by any law. Conversely, the transactions of this nature were the "normal market practice" during that time.

134. The submission of learned counsel for the Accused Mr. B.C.S. Rao is that, there is not a single document, like the Notification or the Guidelines issued by the RBI or even any Rules and Regulations in the Banking Law or the Finance Act to show that such type of 'Money Market Transactions' against the 'Securities Receipts' or 'Ready Forward Transactions' or 'Loan Transactions' were prohibited or declared as illegal or unlawful.

135. It is submitted that, PW-1 Ganesh himself has admitted in his evidence that, it was the 'normal market practice' during those days to borrow the money against the Securities Receipts and he has not come across any provision of law, which prevented a Financial Company from issuing Banker's Receipt. According to him, even CANFINA, which was not a Bank, was also issuing Banker's Receipt. Bank of India Finance Ltd. was also issuing Banker's Receipt. Hence, SPSC-6-1993.doc when FGFSL started issuing Security Receipt, he was told that it was a practice in the market to issue such Receipt. That's why ABFSL also never objected to FGFSL for giving Security Receipt only.

136. It is submitted by learned counsel for the Accused Mr. Rao that, even PW-16 K.P. Ganapathi, who was working as 'Deputy General Manager' in RBI from 1958-1992, has also admitted in his cross-examination that, he is not aware of any general instructions issued by RBI in relation to the securities transactions to be carried out by the Non-Banking Financial Company. He also does not know, whether there was any prohibition on Non-Banking Financial Companies on dealing in securities. He is also not aware whether there are any instructions or prohibitory orders issued by RBI, prohibiting or restricting Non-Banking Financial Companies from issuing Securities Receipts. He has further admitted that, a Non-Banking Financial Company can enter into a transaction of sale of security, though not being in physical possession of that security, but on the due date of that security, that security must be delivered.

137. This witness has further admitted that, with his vast experience in the field, he is aware as to how the securities SPSC-6-1993.doc transactions take place. According to him, normal securities transactions take place on 'Ready Forward' basis. 'Ready Forward Transactions' means, keeping the physical securities, Bank Receipts or Securities Receipts for money and agreeing to buy-back them after certain period. In 'Ready Forward Transactions', most of the times, physical securities will not be handed over. They will be in the form of Bank Receipts or Securities Receipts.

138. In paragraph No.2, he has further stated that, "it is true that, in the 'Ready Forward Transactions', securities may not actually be delivered on the date of the sale and, therefore, they may not be actually delivered on the buy-back date".

139. It is submitted that, on this point, PW-7 Anand Madhbhushi has also admitted that, even Securities Receipts issued by other Non-Banking Financial Companies, like National Housing Bank, FFSL, BOI Finance etc., were also in the nature of an interim security, indicating that the security mentioned in the Securities Receipts will be delivered at a future date.

140. It is submitted that, as deposed by PW-7 Anand SPSC-6-1993.doc Madhbhushi, in 'Ready Forward Transactions', where the securities are not actually delivered, the accounting entry will be the same, as would be in the case where the security is delivered. In other words, the accounting procedure in relation to the securities delivered and in relation to the securities not delivered will be the same. In case Andhra Bank is lending money to a third party against any securities like Shares or Bonds, a 'Promissory Note' would be taken from the third party and delivery of securities would be taken. The issuance of such Shares or Bonds would be notified as Andhra Bank's lien on the security.

141. Learned counsel for the Accused has also relied on the evidence of PW-26 Sukumaran Nair, an 'Officer' working in RBI during the relevant period, who has also admitted that, 'Ready Forward Transactions' are entered into by Public Sector Banks, Public Financial Institutions and Public Limited Companies registered under the Companies Act. According to him, "for entering into 'Ready Forward Transaction', one need not hold the security in question on the date of entering into the contract".

142. It is submitted that, PW-19 Sukhdeb Bandopadhyaya, the 'Additional Chief General Manager' of RBI, has categorically SPSC-6-1993.doc admitted that, there was no circular or order prohibiting the Non- Banking Financial Companies from entering into Ready Forward Transactions.

143. Thus, it is submitted that, from the evidence of the Prosecution-Witnesses, it is clear that, neither the 'Ready Forward Transactions' were prohibited, nor there was any Notification or Circular issued by the RBI, prohibiting the transactions against the Securities Receipts. As a matter of fact, as deposed by these witnesses, it was a "normal market practice" during that period. Only after the scam broke out, one circular is issued, dated 13 th May, 1992, prescribing some standard format for the 'Security Receipt'. Nothing is produced on record to show that, till then, these transactions were considered as illegal, assuming them to be irregular at the most.

144. As regards this contention that, there was no rule, regulation of the law, notification or circular of RBI, prohibiting the Banks or the Non-Banking Financial Companies from entering into such Ready-Forward Transactions or Money Market Transactions against Securities Receipts, in my considered opinion, the evidence SPSC-6-1993.doc of PW-18 N.D. Parmeshwaran, who was working as 'Chief Officer' in the Department of Banking Operations and Development, sufficiently answers this contention. According to him, the Bank has to function according to the provisions of the Banking Regulation Act. It is his evidence that, his Department used to issue directions to the Banks on the basis of the Inspection Reports, that were received by the Department from time to time after



inspection of the working of the Banks. During that time, RBI found that the Banks were issuing Banker's Receipts on behalf of the Brokers, contrary to the guidelines and directions issued by the RBI that the Banker's Receipts can be issued in relation to the Inter-Bank Transactions and Inter-Bank Transactions should be only in Government Securities and, therefore, the Banker's Receipts can be issued only in such transactions. It was also the direction of the RBI that, the 'Ready Forward Transactions' should only be between the Banks; however, it was found that the Banks were carrying out transactions in other securities in violation of the directions. The RBI had, therefore, also issued a 'Circular' on 6 th May 1991, prohibiting the Banks from selling the securities, which they did not possess, as this results in over-sold position. The RBI had also issued direction prohibiting the Banks from issuing Banker's Receipts on behalf of SPSC-6-1993.doc the Brokers. The Indian Banks Association had also issued detailed instructions in relation to issue of Banker's Receipts to the Banks and RBI has endorsed those guidelines and directed the Banks to strictly follow those guidelines. In this respect, he has relied upon the 'Circular' issued by the Indian Banks Association on 6th May 1991, which, according to him, was endorsed by the RBI. The said 'Circular' is at 'Exhibit-604'. The said 'Circular' also contains the 'Banker's Receipt Rules' and it reads as follows :-

"(1) The Bank Receipt should be issued in the prescribed format only. Receipt issued in any other format will not be accepted.

(2) Normally no BR should be issued, where SGL facility is available. In all other cases, the scrips shall be delivered to the buyer as soon as possible, except for R/F transactions.

(3) A separate BR should be issued for each type of security.

(4) BR is non-transferable.

(5) Banks should issue BRs serially numbered on Security Paper.

(6) BR must be exchanged with actual scrips as early

as possible and in any case, within 90 days of issue. However, it would be open for Banks to issue fresh receipt in the event BRs are not SPSC-6-1993.doc discharged within 90 days and the reason for the same should be mentioned in the renewed BR.

(7) BR should be signed by two authorized signatories, whose signatures should be

registered with the buyer-bank to verify the signatures.

(8) BR can be accepted from any of the following Institutions :

(a) All member Banks of the IBA.

(b) Financial Institutions, like IDBI, IFCI,

- ICICI, NABARD, UTI, GIC, LIC.
- (c) Public Sector Undertakings.
- (d) Any other Institutions specified by the IBA/RBI."

145. The evidence of this witness PW-18 N.D. Parmeshwaran further reveals that, it was specifically provided that the 'Banker's Receipt' will be issued by the Banks only in relation to such transactions, where the SGL Forms were not immediately available in relation to the transactions in Government Securities. It was further directed that, normally, a 'Banker's Receipt' cannot be issued by the Bank, when the Bank does not actually hold the securities.

146. There was also the 'Circular' (Exhibit-605), issued by the RBI, which permitted 'Ready Forward Transactions' by the Banks SPSC-6-1993.doc only in Government Securities. Such transactions in other securities were prohibited. This 'Circular' is dated 26th July 1991. It was issued by the Deputy Governor of the RBI with the approval of the Governor, Reserve Bank of India. In this 'Circular' at 'Exhibit-605', the RBI has expressed its great concern and anxiety about certain Banks engaged in types of transactions in securities, which should not be undertaken. Those transactions were enumerated as;

"(i) 'Ready-Forward (Buy-Back) Deals' at rates, which have no relevance to the market rates, inter-alia, with a view to window dressing their Balance Sheet / compliance of SLR requirements.

(ii) 'Double Ready Forward Deals', with a view to covering their over-sold position in a specific security.

(iii) Sale transactions by issue of Banker's Receipts / SGL Forms, without actually holding the securities / without having sufficient balance in their SGL Accounts."

SPSC-6-1993.doc

147. These concerns were elaborated by RBI in paragraph Nos.2 and 3 of the said 'Circular' by stating that, RBI has permitted the Banks to enter into buy-back deals in Government Securities among themselves and not with their Non-Banking clients, with expectation that such deals will be undertaken by the selling Bank, only if it holds sufficient securities (either in the physical form or in SGL Account), at market related rates and such deals will be properly reflected in their Books of Account. However, it was observed that, certain Banks have been resorting to this type of transactions, without actually holding sufficient securities, either in physical form or in SGL Account, at the rates which have no relevance to the market rate, with a view to window dressing their profitability / maintenance of SLR requirement with the tacit understanding with the counter-party Banks.

148. It was further mentioned in paragraph No.3 of the said 'Circular' that, another disquieting feature observed was the extensive use of Banker's Receipts by the Banks. It was made clear that, it was the function of RBI to ensure that Banks do not undertake sale transactions in securities without actually holding them and do not issue Banker's Receipts, unless they are in a position to deliver the securities within a reasonable time. SPSC-6-1993.doc

149. The experience was, however, contrary to the expectation and hence, in paragraph No.4 of the said 'Circular', it was observed as follows :-

"4. It will be absolutely essential for your Bank to frame and implement a suitable investment policy to ensure that operations in securities are conducted in accordance with sound and acceptable business practices. While evolving the policy, you are requested to keep in view the following guidelines :

(i) Under no circumstances, the Bank should hold a oversold position in any security, that is to say that no sale transactions should be put through without actually holding the security in its investment account.

(ii) All the transactions put through by Bank, either on outright basis or ready forward basis and whether through the mechanism of SGL Account or Bank Receipt should be reflected on the same day in its investment account and, accordingly, for SLR purpose, wherever applicable.

(iii) Transactions between your Bank and another Bank should not be put through the Brokers' SPSC-6-1993.doc Accounts. The brokerage on the deal payable to the Broker, if any, (if the deal is put through with the help of a Broker) should be clearly indicated on the notes / memorandum put up to the top management seeking approval for putting through the transactions and separate account of brokerage paid, Broker-wise, should be maintained.

(iv) For issue of BRs, the Banks should adopt the format prescribed by the IBA and should strictly follow the guidelines prescribed by them in this regard. Subject to above, the Banks should issue BRs covering their own sale transactions only and should not issue BRs on behalf of their constituents, including Brokers.

(v) The Banks should be circumspect while acting as agents of their Broker clients for carrying out transactions in securities on behalf of Brokers.

(vi) Any instance of return of SGL Form from the Public Debt Office of the Reserve Bank for want of sufficient balance in the Account should be immediately brought to our notice with the details of the transactions."

[Emphasis Supplied] SPSC-6-1993.doc

150. To answer the question as to 'whether the 'Circular' issued by the RBI has any statutory force?' , the reference can be made to the provisions of Section 35-A of the Banking Regulation Act, 1949. Sub-section (i) of that provision is relevant. It reads as under :-

"35A(i). Where the Reserve Bank is satisfied that -

(a) in the (public interest); or (aa) in the interest of Banking Policy; or

(b) to prevent the affairs of any Banking Company being conducted in a manner detrimental to the interests of the Depositors or in a manner prejudicial to the interests of the Banking Company; or

(c) to secure the proper management of any Banking Company generally, it is necessary to issue directions to Banking Companies generally or to any Banking Company in particular, it may, from time to time, issue such directions as it deems fit, and the Banking Companies or the Banking Company, as the case may be, shall be bound to comply with such directions."

151. Perusal of sub-section (i) of Section 35A thus shows that the Reserve Bank of India has the power to issue direction to the SPSC-6-1993.doc Banks and the Banks are bound by the directions that have been issued by the Reserve Bank of India.

152. Section 21 of the Banking Regulation Act, 1949, also vests power in the Reserve Bank of India to issue direction to the Banking Companies in relation to the advances that can be made by them. Section 21 of the Banking Regulation Act reads as under :-

"Power of Reserve Bank to control advances by Banking Companies -

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest (or in the interests of Depositors) (or Banking Policy) so to do, it may determine the policy in relation to advances to be followed by Banking Companies generally or by any Banking Company in particular, and when the policy has been so determined, all Banking Companies or the Banking Company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-

section (i), the Reserve Bank may give directions to Banking Companies, either generally or to any Banking Company or group of Banking Companies in particular, as to -

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- (a) the purposes for which advances may or may not be made,
  - (b) the margins to be maintained in respect of secured advances.
  - (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a Banking Company and other relevant considerations, may be made by that Banking Company to any one Company, firm, association of persons or individual
  - (d) the maximum amount upto which, having regard to the considerations referred to in clause (c), guarantees may be given by a Banking Company on behalf of any one company, firm, association of persons or individual, and
  - (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.
- (3) Every Banking Company shall be bound to comply with any directions given to it under this section."

153. It is, thus, clear that the Reserve Bank of India has the power to issue directions to the Banks in relation to 'Money Market SPSC-6-1993.doc Transactions' and those directions issued by the Reserve Bank of India have statutory force and, therefore, they can be termed as a law in force on the subject of 'Money Marketing Operations'.

154. In my considered opinion, both these circulars and the guidelines issued by the RBI in the year 1991 itself, i.e. in January and July 1991, i.e. much prior to the securities transactions in this case took place, abundantly make it clear that RBI has issued the guidelines and the circulars prohibiting not only the transactions against the Banker's Receipts, except in respect of SGL securities, that too only for a limited period, but RBI has also prohibited the Banks from entering into the 'Ready Forward Transactions'. The evidence of PW-18 Parmeshwaran makes it clear that, there was also a circular issued by the RBI stating that, the Subsidiaries of the Banks cannot undertake transactions, which Banks themselves were prohibited from undertaking.

155. In the present case, admittedly, ABFSL was 'Subsidiary' of Andhra Bank and if Andhra Bank was prohibited from entering into the transactions against the Banker's Receipts and the Ready Forward Transactions, except in SGL Securities, there does not arise SPSC-6-1993.doc any question of Andhra Bank's Subsidiary - ABFSL entering into such transactions and that too, against Security Receipt, which, as deposed by all the witnesses, including RBI Officer PW-16 Ganapathi, was not a legally recognized valid instrument for money market transaction. Therefore, there does not appear any substance in the contention of learned counsel for the Accused that there was no circular issued by RBI prohibiting such transactions.

156. This position is clarified by PW-18 Parmeshwaran himself in his cross-examination also by deposing that, "When I said that the Subsidiaries of the Bank could not carry out transactions,

which the Banks were prevented from carrying on, it means, if there is prohibition on Banks to carry out certain transactions, the Subsidiaries of the Banks are prevented from carrying on that transaction".

157. Thus, if the Banks were absolutely prohibited from carrying out 'Ready Forward Transactions' in the securities, other than Government Securities and the Banks could undertake 'Ready Forward Transactions' only with the Banks, then it follows that the Subsidiaries of the Banks, like ABFSL, was prohibited from undertaking 'Ready Forward Transactions' against Security Receipt SPSC-6-1993.doc with Non-Banking Financial Company like FGFSL. Therefore, the contention of learned counsel for the Accused that, there was no prohibition on ABFSL to enter into such Ready Forward Transactions with the FGFSL, is devoid of any substance.

158. It is pertinent to note that, as per these witnesses and the Accused, if it was a 'normal practice' during those days to enter into 'Money Market Transactions' against 'Securities Receipts' and there was nothing illegal in it, then, there was no reason for the Accused-persons from ABFSL, viz. Accused No.7-Sundara Babu, to be in a panic position after the scam broke out and insist, or, one may even call as pressurize, the Accused-persons, viz. Accused No.2- Laxminarayanan and Accused No.3-Srinivasan, to procure the physical securities of the transactions entered into earlier. As the further discussion proves, Accused-persons from FGFSL then would not have forged the 'Securities'. This very fact proves that, to the knowledge of the Accused-persons also, such type of transactions were not legal. Otherwise, they would have justified these transactions to the R.B.I., after the scam broke out. Thus, it follows that, if these transactions were prohibited by R.B.I., then, on the pretext of 'normal market practice', Accused cannot justify them as legal. What is "prohibited" cannot be 'normal', nor can it be 'legal'. SPSC-6-1993.doc

159. Moreover, as can be seen, because of this so-called 'normal practice' only, the scam has broke out, as this practice has resulted into over-sold position on account of no physical securities being actually delivered or exchanged. Hence, such a 'normal practice', which has resulted into the loss of faith of general public into the Banking System and which has led to the commission of more serious criminal offence like forgery, can hardly be called as legal, so as to shield the Accused.

160. As regards the next contention that both these Companies, ABFSL and FGFSL, were classified as 'Loan Companies', as deposed by PW-16 K.P. Ganapathy, and hence, there was nothing wrong in these Companies entering into the transactions of borrowing and lending of money, the evidence on record shows that, the transactions entered into by these Companies were not in the nature of loan transactions, but they have entered into ostensible transactions of sale and purchase of securities. In this respect, reliance placed on the letters Exhibits '796' and '797', sent by RBI to CBI during the course of investigation, is misplaced. As per these letters, 'Inter-Corporate Deposits' were 'Exempted Deposits' upto 9 th April 1993. Hence, it is submitted that, if FGFSL had taken 'Inter-SPSC-6-1993.doc Corporate Deposit' from ABFSL, there was nothing wrong or illegal. However, this argument is misconceived. If the transactions were really in the nature of 'Inter-Corporate Deposits', then, things would have been different. But, here in the case, the transactions are of sale and purchase of securities, as can be seen from the Memos of Sale, Memos of Purchase, Securities Receipts, Vouchers and Cheques. It is pertinent to note that, Accused-persons themselves were

aware that these transactions were of a sale and purchase of securities and hence, after the scam broke out, as deposed by the witnesses, Accused No.7-Sundara Babu started insisting on FGFSL for physical securities and as the further part of discussion will show, to mislead the RBI and Auditors, some securities were actually forged. Now after finding that these transactions in the nature of sale and purchase of securities against Securities Receipts are in the nature of Ready Forward Transactions and, therefore, they were prohibited by the RBI, the contention is raised that, these transactions can also be considered as 'loan transactions'. This contention cannot be accepted, as the nature of the transactions and the documents entered into therefor, does not support the said contention.

161. Moreover, 'Circular' produced on record by the SPSC-6-1993.doc Prosecution at 'Exhibit-606' dated 18 th January 1991 makes it clear that the Banks, which include its Subsidiaries, were not to deploy funds for lending in Money Market, Bill Markets etc. They were also prohibited from accepting Short-Term Deposits i.e. for a period of less than one year. It was specifically made clear that, any violation in that behalf will be viewed very seriously.

162. Hence, reliance placed on the reply sent by RBI to CBI in the course of investigation, vide 'Exhibit-796' and 'Exhibit-797, is totally misplaced.

163. According to learned counsel for the Accused, very formation of ABFSL as a 'Subsidiary' of Andhra Bank was to enter into the money market transactions for the purpose of earning profit and if at all any decisions were taken by these Accused persons to enter into such transactions, the Board of Directors of the Andhra Bank was fully aware of the same; hence, according to him, the Accused-persons cannot be made scapegoat, if they had acted as per the policy of the ABFSL and with an object to earn the profits for the Andhra Bank.

164. It is submitted that, as deposed by PW-31 Prasanna SPSC-6-1993.doc Panicker, the 'Deputy Chief Officer' in Merchant Banking Division of Andhra Bank, the process of preliminary work for the formation of ABFSL commenced sometime in the year 1987. It was as per the policy of RBI, to encourage the Banking Institutions to form 'Subsidiaries' for financial services and home loans. As per that policy only, ABFSL was formed. The application to that effect was made in the year 1988. Necessary permission was obtained from RBI and Finance Minister in the year 1991 and thereafter, ABFSL was formed. The letter to that effect is produced at 'Exhibit-651'.

165. Thus, it is submitted that, it was the top Management/ Chairman of ABFSL and FGFSL, who had decided to carry on the business of money market operation between them in accordance with the then existing practices. As per the instructions of the Board of Directors of FGFSL, headed by Late B. Ratnakar, a letter dated 4 th February 1991 (Exhibit-224) was sent to the Chairman of the Andhra Bank, confirming the arrangement of securities transactions i.e. without exchange of physical securities underlying the transactions. This letter is exhibited through the evidence of PW-3 K. Rajgopalan, the Vice President of FGFSL. PW-31 Prasanna Panicker, the Deputy Chief Officer in Merchant Banking Division of Andhra Bank, has also admitted that this letter was given to him by SPSC-6-1993.doc Accused No.7-Sundara Babu, the 'Managing Director' of ABFSL, stating that it was required to be submitted to the Board of Directors of Andhra Bank. Accordingly, he had submitted

the said letter to the Board of Directors of Andhra Bank. PW-33 K.R. Nayak has admitted that, this letter is found reflected in the 'Minutes' of the meeting of the Board of Directors. He has further admitted that, as per the Agenda Item No.15, this letter was discussed in the meeting of the Board of Directors held on 14th June 1991. It is found reflected in the 'Minutes' of that meeting also.

166. It is submitted that, PW-37 Savitri Mahesh, who was, at the relevant time, working as 'Manager' in the Bangalore Branch of Andhra Bank, has also admitted receipt of this letter from FGFSL and has also explained as to why there is a difference between the letter at 'Exhibit-224' and at 'Exhibit-664'. The letter at 'Exhibit-664' is signed by Accused No.2-Laxminarayanan. According to her evidence, the letter at 'Exhibit-224', addressed to the Chairman of the Andhra Bank with annexures thereto, was put up before the Board of Directors and she has forwarded the same with annexures to the Chairman of the Andhra Bank.

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167. According to learned counsel for the Accused, PW-71 B. Srinivasa Rao, the 'General Manager' of Andhra Bank, who has lodged the complaint in this case, has also admitted that this letter at 'Exhibit-224' was written by FGFSL to Andhra Bank about the modalities, under which the transactions were to be carried out between the two Companies. It was addressed to the Chairman of the Andhra Bank. The Chairman has sent it to him for preparing the note. In the annexure to the said letter, FGFSL had informed that the transactions would be carried out on the basis of the Bank Receipt, Security Receipt and Bonds as per the market practice; that is how the business was also done between ABFSL and FGFSL. He has further admitted that, all the Directors of ABFSL were knowing the nature of the business, which ABFSL was to do. The main business of ABFSL was to deal with the Securities and Bonds and other Financial Instruments. With his vast experience in the field, he has stated that, he was aware as to how securities transactions take place. Normally, they were taking place on 'Ready Forward' basis.

168. Thus, it is submitted that, the top Management of ABFSL was fully aware about the nature of the transaction and the Board of Directors itself in its meeting has permitted such transactions in the nature of 'Ready Forward' against the Securities Receipts. SPSC-6-1993.doc

169. According to learned counsel for the Accused, therefore, as deposed by PW-7 Anand Madhbhushi, "the Board of Directors of ABFSL had never raised any objection to the nature of transactions that ABFSL was having with FGFSL and all the transactions entered into by ABFSL, including the transactions entered with FGFSL, were also brought to the notice of the Board of Directors".

170. It is deposed by PW-31 Prasanna Panicker, the Deputy Chief Officer in Merchant Banking Division of Andhra Bank also that, "he used to report to the Board of Directors all the decisions taken at ABFSL".

171. At the relevant time, according to learned counsel for the Accused, as deposed by PW-34 Koteswar Rao, the Company Secretary of ABFSL, the eminent personalities, like Mr. K.R. Nayak



(PW-33) was the Chairman and Mr. A.T. Akolkar, Mr. V.L. Dutt, Mr. M.J. Pherwani, Mr. O. Swaminatha Reddy and Mr. Y. Sundara Babu (Accused No.7) were the Directors of ABFSL. Out of them, Mr. V.L. Dutt, Mr. O. Swaminatha Reddy and Mr. M.J. Pherwani were the independent Directors. Hence, with full knowledge of the Board of Directors and as per the policy decisions taken by them, therefore, these transactions were entered into.

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172. It is submitted that, even in respect of FGFSL, as deposed by PW1-R. Ganesh, it was the Board of Directors, which was taking policy decisions. According to him, the notes of activities of Money Market Department conducted by him were also put up to the Board of Directors. The inflow and outflow of the amount borrowed from ABFSL was intimated to the Members and the Chairman. Similarly, the nature of the documents, which were issued for borrowing funds, was also intimated to them.

173. Thus, it is submitted that, so far as the decisions, which were taken, whether in respect of the nature of the transactions, the nature of the documents, on the basis of which the transactions were to be conducted, were taken at the policy level by the Board of Directors and the higher-ups in both the Companies and not by the Accused-persons individually or in their capacity as the Managing Director/s. Hence, Accused-persons alone cannot be made the scapegoats for implementing the policy decisions taken at the higher level.

174. However, in my considered opinion, this contention is SPSC-6-1993.doc misconceived, as though above-said witnesses have admitted that the letter 'Exhibit-224' was placed in the meeting of Board of Directors of ABFSL and it is also found reflected in the minutes of the meeting, however, except for PW-71 B. Srinivas Rao, none of them have categorically deposed that, along with the letter 'Exhibit- 224' Annexure-2, which deals with Money Market Transactions was also placed. Minutes of the meeting also does not make specific reference to this Annexure-2. It is only in Annexure-2, there is reference to Money Market Transactions, as Money Receipt Transactions against Securities Receipts without being backed by physicals. Hence, if Annexure-2 was brought to the notice of Board of Directors, there would have been specific reference to approval of such practice. The evidence of PW-33 K. Ramchandra Nayak, conversely, categorically proves that letter 'Exhibit-224' was not accompanied with Annexure-2.

175. After referring to the Minutes of the said meeting dated 14th June 1991, he has further confirmed that, the 'Minutes' (Exhibit-655) do not refer to this Annexure-2, which contained the 'Money Market Transaction Proposal' given by FGFSL, in which it was mentioned that 'Money Market Transactions' means 'Money SPSC-6-1993.doc Receipt Transactions' or the 'transactions based on the Securities Receipts only, without being backed by the physical securities'.

176. To a specific question as to 'what difference it would have made with respect to the decisions that were arrived at in the Board Meeting dated 14th June 1991, had the Annexure-2 been placed before the Board of Directors?', his answer is clinching that, "some of the proposals mentioned in Annexure-2 to the letter being contrary to the RBI directions, policy and also the policy of the

Andhra Bank, they would not have been accepted" . Further to a specific question as to 'whether he was aware that there were transactions of raising of funds and deployment of funds on behalf of ABFSL against the Securities Receipts with FGFSL?' , he has categorically answered in negative. According to his evidence, Accused No.7-Sundara Babu had told him that the outstandings were fully covered by the securities, but it was only later that he learnt that there was no sufficient securities. His evidence is also categorical to the effect that, he would not have allowed raising of funds and deployment of funds, had he known that such transactions were not backed by sufficient securities. It is his evidence that, he has always been telling Accused No.7-Sundara Babu and Accused No.3-Srinivasan to follow the RBI Guidelines and SPSC-6-1993.doc Finance Ministry's Guidelines in respect of these transactions. As per his evidence, after the scam broke out, the Governor of Reserve Bank of India contacted him on phone and he told him that they had no transactions with FGFSL, but when he went to the Office on the next day and called for the Board Note, he saw outstandings from FGFSL. According to his evidence, Accused No.7-Sundara Babu has put up a 'Note' before him that they were fully covered by the securities; however, during inspection, it was noticed that there was shortfall in the securities.

177. In his cross-examination, he has again re-affirmed that, the letter dated 4th February 1991, though addressed to the Chairman of the Andhra Bank, he had not received the said letter and especially 'Annexure-2' thereof was not placed before him or even before the Board of Directors. According to him, there is no reference to the 'Annexure-2' of the said letter in the Minutes of the meeting of the Board of Directors.

178. Thus, his evidence goes to prove that this material 'Annexure-2' to the letter (Exhibit-224) was not put up before the Board of Directors in the meeting. His evidence also proves that, if SPSC-6-1993.doc this 'Annexure-2' to the letter (Exhibit-224) was put up before the Board of Directors, the Board of Directors definitely would not have permitted such 'Money Market Transactions' on the basis of ostensible securities, without being backed by the physical securities.

179. Moreover, even assuming that the decision was taken at higher level, the actual transactions at the ground level were implemented by Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman at ABFSL and Accused No.2- Laxminarayanan and Accused No.3-Srinivasan at FGFSL. As deposed by PW-7 Anand Madhbhushi, the affairs of the Company were managed by the Managing Director of the Company, who used to report to the Board of Directors. Accused No.7-Sundara Babu was the 'Managing Director' of ABFSL. The final decision in respect of all the operations of ABFSL, including the decision as to whether to undertake the transaction or not, including money market transactions, was taken by the Managing Director, namely, Accused No.7-Sundara Babu. It was Accused No.7-Sundara Babu, in his capacity as the 'Managing Director', who was instructing the Branches of ABFSL to enter into money market transactions and on SPSC-6-1993.doc the basis of his instructions, the transactions used to be put through by the Branches. At the end of the day, a 'Daily Transaction Report' used to be submitted by the Branches to the Head Office and the Managing Director-Sundara Babu. The Branches at Mumbai and Bangalore were executing the decisions taken by the Managing Director, Accused No.7-Sundara Babu.

180. As deposed by PW-30 Ramesh Shenoy also, the decisions regarding deployment of funds of ABFSL used to be taken by the Managing Director, Accused No.7-Sundara Babu, and then those decisions were conveyed to him and others by PW-7 Anand Madhbbhushi. It is his evidence that, as in other cases, the decision to deploy the funds to FGFSL was also being taken at the Head Office by Accused No.7-Sundara Babu. Accused No.3-Srinivasan and Accused No.9-Iyer from FGFSL used to contact them telephonically.

181. It is deposed by PW-32 S.S. Varadrajan, who was deputed to ABFSL, Chennai, as 'Senior Vice President', also that, it was Accused No.7-Sundara Babu, the Managing Director, who used to take the decisions in respect of deployment of funds of the ABFSL and those decisions were communicated to them by PW-7 Anand Madhbbhushi.

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182. It may also be stated that, if top management at ABFSL was really aware about the nature of these transactions, then, after the scam broke out, Accused No.7-Sundara Babu would not have insisted for physical securities from FGFSL.

183. It has also to be remembered that, at FGFSL, Accused No.4-the FGFSL Company itself and Accused No.1-Dharampal (Since Deceased), Chairman, are also prosecuted along with Accused No.2- Laxminarayanan, Executive Director at Bangalore, and Accused No.3-Srinivasan, Executive Director at Mumbai. Therefore, it is not a case that Accused No.2-Laxminarayanan and Accused No.3- Srinivasan alone are made the scapegoats.

184. At ABFSL, Accused No.7-Sundara Babu was the 'Executive Director', being the 'Managing Director'. Hence, in that way, he was the top management. Accused No.5-Chacko was the 'Head' of the ABFSL Office at Bangalore and Accused No.8-Kalyana Raman was the 'Head' of the ABFSL Office at Mumbai. They had acted along with Accused No.7-Sundara Babu. They have deployed the funds with cheques signed by them against the 'Securities Receipts'. Hence, this argument that they are alone made the SPSC-6-1993.doc scapegoats, cannot be accepted. This argument, at the most, could have been accepted in respect of the clerical staff, but not in respect of the persons like Accused, who were in powerful positions like Director, Executive Director and 'Head' of Office etc. Moreover, this argument is a sort of a game of shifting the blame, which, as observed by the Hon'ble Apex Court in the case of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748 , is the outcome of the thread of self-preservation running through their defences.

185. Moreover, if something is illegal, then, it cannot be justified even on the ground that, it was done at the instance of superiors. It is apart that here in the case, there is serious doubt as to whether Annexure-II to the 'Note' (Exhibit-224) was brought to the notice of the Board of Directors of ABFSL. In the 'Minutes' of the meeting, there is no specific reference to Annexure-II, which specifically pertains to 'Money Market Transactions' based on 'Securities Receipts'. Considering the charge of criminal conspiracy, which is found proved against these Accused, there is every possibility of this Annexure-II being not placed before the Board of Directors and that's why there is difference between 'Exhibit-224' and 'Exhibit-664'.

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186. The contention that, during those days, it was a common market practice to deploy the funds against the 'Securities Receipts' is more than adequately dealt with by the Hon'ble Apex Court in the case of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748. In this Judgment, which also pertains to the 'Securities Scam', the Hon'ble Apex Court had occasion to deal with such market practices, behind which the Accused-persons in the said case had taken the shelter and while rejecting the same, it was held, in paragraph No.377, as follows :-

"377. The accused persons have tried to take shelter behind what they have described as "market practices". Such practices even if existing, cannot take the place of statutory and regulatory functions. There is no public interest involved in such practices and they cannot be a substitute for compliance with the regulatory or statutory prescriptions. An attempt was made to show that there was subsequent disapproval of the market practices : at the point of time when the transactions took place there was no embargo. It is their stand that the practices were a part of accepted norms. We do not find anything plausible in these explanations. A practice even if was prevailing, if wrong, is not to be approved. The subsequent clarifications do not in any way put SPSC-6-1993.doc seal the approval of the practices adopted on their part; on the other hand, it contemns it." [Emphasis Supplied]

187. In the case of Vinayak Narayan Deosthali Vs. Central Bureau of Investigation, (2015) 2 SCC 553, also, which case again pertains to the similar 'Security Scam', where money was advanced against 'Banker's Receipt', it was held by the Hon'ble Apex Court that, "The patent illegality cannot be defended in the name of market practice or even in the name of direction of Higher Authorities."

188. It was held so from the similar facts of that case showing that, the false Banker's Receipts were issued for non-existing securities.

189. Here in the case, therefore, the Accused even cannot contend that the policy decisions were taken at the level of Board of Directors and they were merely implementing the same and doing it as a normal market practice. The similar contentions raised to that effect in the above-said two Judgments of the Hon'ble Apex Court, in the backdrop of the similar facts and case, being outrightly rejected SPSC-6-1993.doc by the Apex Court, needless to state that, this Court cannot accept the same.

190. As regards the next contention that, there was no default or failure on the part of the FGFSL in compliance with the demand of securities, as deposed by PW-7 Anand Madhbhushi, and as also no irregularity was noticed by any of the Officers of Andhra Bank or ABFSL in these transactions till the scam broke out, as deposed by PW-30 Ramesh Shenoy, PW-33 K.R. Nayak, PW-34 Koteswar Rao or PW-71 B. Srinivas Rao, it has to be observed that, the evidence of PW-16 Ganapathi clearly goes to prove that, several serious irregularities were noticed in these transactions. It was found, on scrutiny, that, the securities were not actually handed over and the Securities Receipts were issued to cover the money market transactions. No actual securities were delivered. As stated above, he has

submitted reports to that effect vide 'Exhibits-596' to 'Exhibits-599'.

191. The reason why these irregularities were not noticed earlier is that, these Officers of, both, the FGFSL and the ABFSL were very much parties to these transactions and they were knowing that these transactions were only ostensibly in the nature of sale and SPSC-6-1993.doc purchase of securities, but in reality, these were transactions for advancing funds for interest. Hence, there was no question of these Officers from ABFSL demanding the physical securities of these transactions to FGFSL till the scam broke out and RBI insisted for the same. Hence, there was also no question of them considering it as irregularities. Only when the independent Officers from RBI scrutinized the record, it could be noticed that, the securities were not delivered and the funds, which were received by FGFSL from ABFSL towards sale of the securities, were used for other purpose like investment in Share Market.

192. As deposed by the Prosecution Witnesses themselves, like PW-1 Ganesh, these funds were diverted to Mumbai Office of FGFSL for investment in the Share Market and, therefore, it was not the case that the irregularities were not there. The very fact that the funds were diverted not for purchase of securities, but for investment in the Share Market at Mumbai, goes to prove that these transactions were not the transactions against physical securities, but only against 'Securities Receipts', which were strictly prohibited.

193. As regards the next contention that the ABFSL was earning good profits in these transactions and had declared a good SPSC-6-1993.doc dividend to Andhra Bank and not suffered any financial loss, as deposed by PW-7 Anand Madhbhushi, PW-33 K.R. Nayak and PW-30 Ramesh Shenoy, similar such contention raised by the Accused is also rejected by the Hon'ble Apex Court in the case of R. Venkatakrisnan Vs. Central Bureau of Investigation, AIR 2010 SC 1812, in the similar set of facts of the said case proving diversion of funds. In that case also, which again pertains to 'Securities Scam' of the year 1992, the Accused had allowed the diversion of huge sum meant for the specific purpose and it was argued that, as no loss is proved to be caused, no offence is made out. While rejecting this contention outrightly, it was held by the Hon'ble Supreme Court that, "if the transaction was illegal, as a result whereof, a private person, who was not meant to be expected to reap the fruit of "call money", was allowed to retain the same for a period to make an unlawful gain therefrom, then, the offence of criminal breach of trust must be held to have been made out. It is for the same reason, the submission that as nobody ultimately suffered any loss, an offence under Section 409 of IPC was not made out, cannot be accepted."

194. In paragraph No.153 of the said Judgment, the Hon'ble Apex Court was further pleased to affirm that; SPSC-6-1993.doc "153. A Bank or Financial Institution may not suffer ultimate loss, but if the money has been allowed to be used by another person illegally for illegal purposes, the ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also attracts the ingredients of Section 405 of the Penal Code".

[Emphasis Supplied]

195. In the present case, admittedly, the funds, which were meant to be used for the purchase of the securities, were diverted for the benefit of FGFSL, which has invested those funds in the speculative business of Share Market and earned the profit in crores. If, out of that profit, some profit is let out to Andhra Bank also, in the form of good 'Dividend', it cannot wipe out the illegality involved in the transactions. When the Accused-persons, who are the officials from ABFSL and were entrusted with the hard-earned money of the customers of the Bank, whether it is called public money or otherwise, had dominion over the said money and were expected to use those funds for the particular purpose, had diverted those funds for the benefit of FGFSL, then, the conduct of the Accused, as held in above-said Judgment of the Hon'ble Apex Court, clearly amounts to criminal breach of trust and hence the argument that there was no loss suffered by ABFSL, cannot be accepted. SPSC-6-1993.doc

196. In this respect, the Hon'ble Apex Court was in the case of Ram Narain Poply (Supra) pleased to observe, in paragraph No.361, as follows :-

"361. To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract : and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him that amounts to a criminal appropriation of trust as defined by Section 405. The Section is relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust."

[Emphasis Supplied]

197. In this decision, the Hon'ble Apex Court has quoted with approval its earlier decision in Jaswantrao Manilal Akhaney Vs. The State of Bombay, AIR 1956 SC 575, to the following effect, "If the Managing Director of the Bank entrusted with securities owned by the pledger disposes of their SPSC-6-1993.doc securities against the stipulated terms of the contract entered into by the parties with an intent to cause wrongful loss to the pledger and wrongful gain to the bank, there can be no question but that the Managing Director has necessarily mens rea required by Section

405."

198. According to the Hon'ble Apex Court, "The term 'entrustment' is not necessarily a term of law. It may have different implications in different context. In its most general signification all it imports is the handing over possession for some purpose which may not imply this conferring of any proprietary right at all."

199. In this decision, the Hon'ble Apex Court has further categorically held that, "When a person misappropriates to his own use the property that does not belong to him, the misappropriation is

dishonest even though there was an intention to restore it at some future point of time".

200. According to the Hon'ble Apex Court, "To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion, which SPSC-6-1993.doc may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion."

[Emphasis Supplied]

201. In the same Judgment, the Hon'ble Apex Court has also considered the submission advanced by the learned counsel for the Accused therein that, repayment of the amount has already been done and the Accounts are scored out, which argument is advanced in the present case also by submitting that, all the amounts due to ABFSL were recovered and scored up through the sale of the securities received or recovered from FGFSL. While dealing with this contention, the Hon'ble Apex Court, in the case of Ram Narain Poply (Supra), has observed, in paragraph No.358, as follows :-

"358. Much has also been submitted that repayment has been made. That itself is not an indication of lack of dishonest intention. Sometimes, it so happens that with a view to create confidence the repayments are made so that for the future transactions the money can be dishonestly misappropriated. This is a part of the scheme and the factum of repayment cannot be considered in isolation. The repayment as has been rightly contended by the Solicitor SPSC-6-1993.doc General can be a factor to be considered while awarding sentence, but cannot be a ground for proving innocence of the accused."

[Emphasis Supplied]

202. In this case, therefore, in the face of gross violation of the various rules, guidelines, when the funds were transferred, the mere fact that, ultimately, after the scam broke out, the Accounts were scored up, does not dilute, in any way, the nature of the offence.

203. As observed by the Hon'ble Apex Court in the above referred decision of Vinayak Narayan Deosthali Vs. Central Bureau of Investigation, (2015) 2 SCC 553, in paragraph No.15, while dealing with the contention of the Accused therein, which contention is raised by the Accused-persons in this case also, that they had not derived any benefit or caused any loss to the Bank that, "It was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorized conversion of public funds to private funds of an individual. Issuing of Bank Receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual. SPSC-6-1993.doc Patent illegality cannot be defended in the name of practice or direction of higher authorities. Mens rea is

established from the fact that false Bank Receipts were issued for non-existent securities."

[Emphasis Supplied]

204. By holding thus in the said case, the offences of conspiracy, forgery, misappropriation and of corruption were held established against the Accused, some of whom were also the Bank Officials, like in this case. In the instant case also, this contention raised by the Accused that they have not received any individual benefit; conversely, ABFSL has earned the profit, therefore, cannot be accepted. Hence, none of the arguments advanced by learned counsel for the Accused on this aspect holds merits, so as to accept the same. As a matter of fact, all these arguments were already advanced by similar such Accused in other cases of 'Financial Scams', that took place during the said period and those arguments were rejected by the Hon'ble Apex Court. Hence, there is no question of this Court accepting the similar arguments in the backdrop of the facts of the present case, wherein the illegalities alleged are more or less the same.

SPSC-6-1993.doc

205. As held in the above-said Judgment, the fact remains that, action of the Accused involved unauthorized conversion of public funds to private funds of a private company. Issuing 'Security Receipt' for securities without existence of securities could not be justified, except for illegal benefit. As held here-in-above by the Hon'ble Apex Court, mens rea is established from the fact that false 'Securities Receipts' were issued for non-existent securities. Hence, charge for the offence punishable under Sections 409 and 420 r/w. 120-B of IPC is required to be held as proved by the Prosecution beyond reasonable doubt. This act of the Accused of diverting the funds of ABFSL to FGFSL for speculative purposes was anything but intended to be in public interest.

Point No.5 :- Charge for offence u/s. 13(2) of the Prevention of Corruption Act.

206. As observed by the Hon'ble Apex Court in the case of R. Venkatakrishnan (Supra), in this case, thus, Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Rama have misused their positions as 'public servants', so that FGFSL get the pecuniary benefit and, therefore, apart from the offence punishable under Sections 420 and 409 of IPC, they are required to be held as SPSC-6-1993.doc guilty of criminal misconduct under the provision of Section 13(1)

(d)(iii) of the Prevention of Corruption Act, 1988. It was held in this Judgment that, "Such acts of the 'public servants' were anything but intended to be in public interest. On the contrary, public loss and suffering occasioned thereby was immeasurable. Though it is true, as has been argued before us, that all the funds diverted have subsequently been returned to NHB and no actual loss has been occasioned thereby either to UCO Bank or NHB, it must not be forgotten that white collared crimes of such nature affect the whole society, even though they may not have any immediate victims."

[Emphasis Supplied]



207. Accordingly, in the above-said decision, the Hon'ble Apex Court has held the Officers of UCO Bank and the Officers of NHB liable for criminal misconduct under Section 13(1)(d)(iii) of the Prevention of Corruption Act.

208. In the instant case also, the evidence on record clearly goes to prove that Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman, who, at the relevant time, being the Officers of ABFSL, were, admittedly, the 'public servants', have, by misusing their positions as 'public servants', played a SPSC-6-1993.doc specific role in diversion of the funds of ABFSL to the Account of FGFSL ostensibly under the transactions of sale and purchase against the Securities Receipts, which were never intended to be the securities transactions, and thus misused their official positions, as 'public servants'. Hence, they are also held guilty for the offence punishable u/s. 13(1)(d)(iii) r/w. 13(2) of the Prevention of Corruption Act.

Point No.1 :- Charge of Criminal Conspiracy.

209. In this backdrop, the charge of criminal conspiracy is required to be looked into and for that purpose, the manner in which the floating of "ABFSL" and "FGFSL" took place, needs to be considered.

210. The main instrumental personality behind floating of both ABFSL and FGFSL was 'Late B. Ratnakar'. He was the former Chairman of Canara Bank and CANFINA, which was floated by him as 'Subsidiary' to Canara Bank. PW-33 K.R. Nayak had worked under Mr. Ratnakar in Canara Bank. Hence, after he became the 'Managing Director and Chairman' of the Andhra Bank, following the foot-steps of Late B. Ratnakar, his 'Mentor' in Canara Bank, he also floated the SPSC-6-1993.doc similar 'Subsidiary' of Andhra Bank in the name of ABFSL. As deposed by PW-71 B. Srinivasa Rao in his cross-examination, "it is because of Mr. Ratnakar's association with Mr. K.R. Nayak and that Mr. K.R. Nayak subsequently heading Andhra Bank, that Mr. K.R. Nayak thought of floating a new company in the name of "ABFSL".

211. By that time, Mr. Ratnakar has left the CANFINA and he had floated FGFSL along with others. Some of the Accused in the present case were also working with Mr. Ratnakar in CANFINA viz. Accused No.2-Laxminarayanan was initially working in CANFINA with Mr. Ratnakar and thereafter had joined FGFSL. Similarly, Accused No.3-Srinivasan was also initially working in CANFINA with Mr. Ratnakar and then joined FGFSL at Mumbai as 'Vice President'. PW-1 Ganesh, who has subsequently turned 'Approver', was also initially working in CANFINA and thereafter had joined FGFSL. Accused No.9-Iyer was also working in CANFINA and then had joined FGFSL. Accused No.11-Chandrashekar was similarly working in CANFINA and then joined FGFSL. Accused No.1-Dharampal (Since Deceased), for that matter, was also working initially in CANFINA and then joined FGFSL. Accused No.6-Abraham (Since Deceased) was also earlier working in CANFINA and thereafter joined FGFSL. SPSC-6-1993.doc

212. Thus, Accused No.1-Dharampal (Since Deceased), Accused No.2-Laxminarayanan, Accused No.3-Srinivasan, Accused No.6- Abraham (Since Deceased), Accused No.9-Iyer and Accused No.11-Chandrashekar were all previously working in CANFINA and then joined FGFSL. At the relevant

time, Accused No.1-Dharampal (Since Deceased), Accused No.3-Srinivasan and Accused No.9-Iyer were working in FGFSL at Mumbai; whereas, Accused No.2- Laxminarayanan, Accused No.6-Abraham (Since Deceased) and Accused No.11-Chandrashekar were working at Bangalore. Out of them, Accused No.2-Laxminarayanan was the 'Executive Director' at Bangalore; whereas, Accused No.3-Srinivasan was 'Executive Director' at Mumbai.

213. As against this, Accused No.8-Kalyana Raman, Accused No.7-Sundara Babu and Accused No.5-Chacko were the 'Officers' working initially in Andhra Bank and thereafter had joined ABFSL. Accused No.5-Chacko was the 'Head' of the Office of ABFSL at Bangalore. Accused No.7-Sundara Babu was the 'Managing Director' of ABFSL at Hyderabad and looking after the office at Hyderabad. SPSC-6-1993.doc

214. As stated above, most of the witnesses examined by the Prosecution in this case, as enumerated above, including PW-1 Ganesh - the Approver, were also working initially at CANFINA and had then joined FGFSL either on the invitation or request of Accused No.2-Laxminarayanan.

215. Thus, all these Accused-persons and some of the Prosecution Witnesses were also closely connected with one other. Not only that, as admitted by majority of the Prosecution Witnesses, including PW-71 B. Srinivasa Rao, at the instance of PW-33 K.R. Nayak, who was previously working in CANFINA, some of the Officers of Andhra Bank were sent to FGFSL for training, before FGFSL became operational. Accused No.5-Tharian Chacko was the first one to be trained there.

216. Thus, here in the case, not only the Accused-persons but even the Prosecution Witnesses are also closely inter-linked/ connected through the common person, namely, "B. Ratnakar". They had all come together to form this "ABFSL", as rightly submitted by learned Special P.P., to act as 'front-bank' for FGFSL to mobilize surplus funds from Public / Private Corporate Sectors through the SPSC-6-1993.doc Andhra Bank, so as to overcome certain procedural difficulties and various restrictive covenants. The nature of the transactions entered into by these two Companies, which are of manipulative nature, ostensibly for sale and purchase of securities, but in reality for deployment of funds, proves the case of Prosecution that ABFSL was put up as a 'Front-Bank' to FGFSL for availing funds for its Share Market activities. It is needless to state that, evidence relating to offence of criminal conspiracy can never be direct. It has to be inferred from attending circumstances. It may be true that, FGFSL was having some other clients also, which is bound to be there, but, as admitted by the Prosecution Witnesses, including PW-9 Lalitha, the major partner of FGFSL in money market transactions was ABFSL. As deposed by her, more than 40% to 50% of the transactions were with ABFSL.

217. In the landmark decision of the Hon'ble Apex Court in the case of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748, the Apex Court has, at length, dealt with the charge of criminal conspiracy, in the backdrop of the similar allegations, in a case arising out of the decision of this Court in the matter of Harshad Mehta and others. While dealing with the SPSC-6-1993.doc essential ingredients of the offence of criminal conspiracy, punishable u/s. 120B IPC, the Hon'ble Apex Court was, in paragraph No.349 of its Judgment, pleased to hold that, "349. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open

to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."

[Emphasis Supplied]

218. In paragraph No.345 of the said Judgment, while dealing with the ingredients of the offence of criminal conspiracy, the Hon'ble Apex Court was further pleased to hold that, "345. .... There should be an agreement between the persons who are alleged to have conspired and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and SPSC-6-1993.doc such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

[Emphasis Supplied]

219. This Court can also place reliance on another landmark decision of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659, wherein the Hon'ble Apex Court was pleased to observe as follows :-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or SPSC-6-1993.doc service to an unlawful use." [See State of Kerala v. P.

Sugathan, (2000) 8 SCC 203, SCC p. 212, para 14]" [Emphasis Supplied]

220. While dealing with the offence of criminal conspiracy in respect of the financial frauds, the Hon'ble Apex Court in the case of Ram Narain Poply (supra), in paragraph No.344, was pleased to observe that, "344. .... The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement and support which

co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

[Emphasis Supplied]

221. In the context of Section 10 of the Indian Evidence Act, it was held by the Hon'ble Apex Court, in paragraph No.348, that, the expression "in furtherance to their common intention" in Section 10 is very comprehensive and appears to have been designedly used to give it a wider scope than the words "in furtherance of" used in the SPSC-6-1993.doc English Law : with the result anything said, done or written by co-

conspirator after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

222. In this Judgment, while dealing with the diversion of the funds of the public body, it was observed by the Hon'ble Apex Court, in paragraph Nos.380 and 381, that, "380. The offences in these cases were not of the conventional or traditional type. The ultimate objective was to use public money in a carefully planned manner for personal use with no right to do it.

381. Funds of public bodies were utilized as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL a Government Company, were diverted and all the concerned accused persons A1, A3 and A5 played dubious roles in these illegitimate transactions. Their acts had serious repercussions on the economic system of the country and the magnitude of financial impact involved in the present appeal is only tip of the iceberg. There were several connected cases and interestingly some of the prosecution witnesses in the present case are stated to be accused in those cases. That itself explains the thread of self-SPSC-6-1993.doc perseverance running through their testimony. Therefore, the need to pierce the facadial smoke screen to unravel the truth to lift the veil so that the apparent, which is not real can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

[Emphasis Supplied]

223. In the instant case, the evidence on record, as discussed above, clearly goes to prove that, without the active connivance and collusion of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan at FGFSL and Accused No.5-Chacko, Accused No.7- Sundara Babu and Accused No.8-Kalyana Raman at ABFSL, the crores of the funds of ABFSL could not have been diverted to the business of Share Market. The evidence on record also goes to prove that, there was violation of the rules and regulations of the Banking Institutions and financial transactions in doing so. Without having securities in hands, the cheques were issued and the sale proceeds of the same were then sent to Share Market business of FGFSL at Mumbai. As deposed by the Prosecution Witnesses, these

transactions were never intended also to be as the securities transactions. Ostensibly only, they were meant to be securities transactions, but even the Officers of the ABFSL were aware that FGFSL was not having securities in their hands and they never SPSC-6-1993.doc intended also to sell or deliver such securities. Therefore, it is clear that, all these Accused have acted hand-in-gloves in these transactions.

224. The criminality on the part of these Accused of issuing the cheques, without there being securities or BRs and the criminality on the part of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan of encashing those cheques, knowing fully well that there were no transactions of sale and purchase of securities and thereafter diverting those funds to the share market business could not have taken place, unless all these Accused had played their individual parts in tandem, which parts were supplementary and complementary to each other. These transactions could not have taken place, if these Accused-persons had not acted in collusion with each other. The entire sequence of transactions clearly proves that these Accused had acted in collusion; everyone playing his part towards achieving the common object of criminal conspiracy. There need not be any direct link or proof to establish this criminal conspiracy, as contended by these accused. As per the well settled position of law, such conspiracy can be rarely established by the direct evidence. Hence, the Prosecution SPSC-6-1993.doc and this Court has to draw the inference of this conspiracy in this case from the facts, circumstances and documents elucidated above, which are more than self-speaking.

225. The Hon'ble Apex Court has occasion to deal with similar such submissions, as advanced by learned counsel for Accused in this case in respect of the charge of criminal conspiracy in the decision of R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SC 737. It was an appeal against the decision of this Special Court, pertaining to the 'Call Money Transaction' between NHB and UCO Bank. While dealing with the offence of criminal conspiracy in the said case, the Hon'ble Apex Court has quoted with approval the above referred paragraph No.344 in the case of Ram Narain Poply (Supra) to reiterate that, "The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible, which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment."

SPSC-6-1993.doc

226. The Hon'ble Apex Court has further quoted with approval in paragraph No.101, the observations made in the case of State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600, wherein it was held that, "The cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances."

227. Here in the case, Accused No.5-Chacko, Accused No.7- Sundara Babu and Accused No.8-Kalyana Raman, therefore, cannot say that, the decisions were taken at higher level at ABFSL by the Board of Directors. Similarly, Accused No.2-Laxminarayanan and Accused No.3-Srinivasan also cannot shift the blame on their superiors, when they themselves have entered into the

transactions, which, to their own knowledge, were not securities transactions and which, ultimately, ended into diversion of the crores of funds of the Public Bank, like Andhra Bank, into the Share Market for the benefit of FGFSL. These illegalities could not have taken place without there being some active connivance between these two sets of Accused. It was only due to the encouragement and support, which the co- conspirators, in this case - Accused No.2-Laxminarayanan, Accused No.3-Srinivasan, Accused No.5-Chacko, Accused No.7-Sundara Babu SPSC-6-1993.doc and Accused No.8-Kalyana Raman, gave to each other, that the diversion of the funds of the Bank was possible, which, if left to individual effort, would have been impossible and, therefore, it furnishes the ground for proving the charge of criminal conspiracy.

228. As stated above, the very object of forming "ABFSL" was to provide a 'front-bank' for diverting the funds to the Share Market, in order to overcome the restrictions and covenants imposed by RBI for diversion of such funds. The formation of "ABFSL" and "FGFSL" was, thus, in the seeds of criminal conspiracy are found hatched and implemented by these Officers, who cannot be considered as totally innocent or unaware of whatever transactions they were entering into.

229. As deposed by the Prosecution Witnesses, Accused No.7- Sundara Babu being in the position of the 'Managing Director' of ABFSL, was taking all the policy decisions, which were being implemented at ABFSL's Office in Mumbai by Accused No.8-Kalyana Raman and in ABFSL Office at Bangalore by Accused No.5-Chacko. The cheques for these transactions are issued by them. SPSC-6-1993.doc

230. In the FGFSL Office, Accused No.2-Laxminarayanan was controlling the affairs and he was taking the decisions, which were to be implemented. Similarly, at Mumbai Office of FGFSL, Accused No.3-Srinivasan was the Officer, who was taking the decisions and implementing them in respect of these 'Money Market Transactions'. Hence, none of these Accused can escape from the clutches of the law as regards this deployment of funds in 'Money Market Transactions' against Securities Receipts, without actually having the Securities Receipts or without intending to enter into such securities transactions.

231. As regards Accused No.4-the FGFSL Company, the record shows that initially it was represented by its Managing Director, Accused No.1-K Dharampal. On his death, the Company is taken over by the new Management and on behalf of the new Management, Mr. Yogesh Patel is appointed as its Authorized Representative. In that capacity, he has filed his affidavit on 2nd August 2014, stating that the present Management has no objection in the proceedings of this matter and the Company will accept the decision of this Court. In that way, there is no challenge to the case of Prosecution from Accused No.4-Company. The evidence on record clearly proves the SPSC-6-1993.doc involvement of the Company. The very formation of the Company is itself the outcome of the criminal conspiracy. Hence, Accused No.4- Company cannot escape from its liability.

232. To sum up, therefore, in respect of Point Nos.1, 2 and 3, I have no hesitation in holding Accused No.2-Laxminarayanan and Accused No.3-Srinivasan of FGFSL, Accused No.4-FGFSL itself and Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman from ABFSL guilty for the offence of criminal conspiracy and cheating, punishable under Section 120-B and

Section 420 r/w. 120-B of IPC and Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman for further offence, punishable u/s. 409 r/w. 120-B of IPC.

233. As Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman, despite being public servants, have also misused their positions as such in allowing the diversion of public funds, all ostensibly under securities transactions and thereby facilitated FGFSL to obtain pecuniary advantage, by investing that money into Share Market. These acts were anything but intended to be in public interest. On the contrary, as observed by the Hon'ble Apex Court in the case of Vinayak Deosthali (Supra), the SPSC-6-1993.doc public loss and suffering occasioned because of this financial scam was immeasurable. Though it is true, as has been argued, that all the funds diverted have been subsequently returned to ABFSL and no actual loss has been occasioned thereby either to ABFSL or FGFSL, but, as held in this Judgment of Vinayak Deosthali (Supra) by the Hon'ble Apex Court, it must not be forgotten that, white collar crimes of such a nature affect the whole society, even though they may not have any immediate victim. Accordingly, I hold Accused No.5-Tharian Chacko, Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman guilty for the offence of criminal misconduct, punishable u/s. 13(2), r/w. 13(d)(iii) of the Prevention of Corruption Act. Point Nos.1, 2, 3 and 5 are answered, accordingly, in affirmative.

Point No.4 :- Deployment of Funds without Securities - as 'Clean Advance'.

234. This brings me to the next charge of the Prosecution case in respect of deployment of funds by ABFSL to FGFSL without Securities Receipts, as 'clean advance'. In this respect, two specific instances are cited by the Prosecution; the first pertains to Bangalore Office; whereas, the second pertains to Mumbai Office. SPSC-6-1993.doc

235. As regards the first instance, it is alleged that, Accused No.7-Sundara Babu and Accused No.5-Chacko of ABFSL, Bangalore, abetted by Accused No.2-Laxminarayanan of FGFSL, had deployed the funds of Rs.7.5 Crores to FGFSL, Bangalore, on 31 st October 1991, without even taking Securities Receipts and thus, in the nature of 'clean advance'. However, none of the Prosecution Witness has deposed about this specific transaction having taken place between ABFSL, Bangalore, and FGFSL, Bangalore. As a matter of fact, PW-1 Ganesh has deposed that, "for all the transactions with ABFSL, Securities Receipts were issued". Even PW-7 Anand Madhbbhushi, Senior Vice President of ABFSL, Hyderabad, has also categorically admitted that, the amount of Rs.7.10 Crores was invested in IRFC Bonds at Bangalore. This witness was, in his cross-examination, shown the 'Day Book', in which at Page No.51, there is an entry made in the handwriting of PW-34 Koteswar Rao against the date '31 st October, 1991', mentioning that amount of Rs.7.10 Crores was invested in IRFC Bonds at Bangalore. This entry is encircled, taken on record and marked as 'Exhibit-375'. Therefore, in respect of this allegation, there is no evidence produced on record by the Prosecution for implicating any of the Accused No.2- SPSC-6-1993.doc Laxminarayanan, Accused No.5-Chacko or Accused No.7-Sundara Babu.

236. The second instance alleged by the Prosecution in this respect pertains to the transactions entered into by FGFSL, Mumbai with ABFSL, Mumbai, in the sums of Rs.2 Crores and Rs.2.5 Crores, respectively, without Securities Receipts. As per the Prosecution case, Accused

No.7-Sundara Babu and Accused No.8-Kalyana Raman of ABFSL, Mumbai, abetted by Accused No.3-Srinivasan and Accused No.9-Iyer of FGFSL, had deployed these sums of Rs.2 Crores and Rs.2.5 Crores to FGFSL, Mumbai, on 16th April 1992 and 17th April 1992, respectively, without even taking Securities Receipts. However, again none of the Prosecution Witness has deposed about these two transactions. Conversely, the Defence has established, through the evidence of PW-7 Anand Madhbhushi, that, all the transactions that took place between ABFSL, Mumbai and FGFSL, Mumbai had all the relevant documents.

237. Moreover, the documents produced and exhibited by the Prosecution itself disprove these allegations. PW-7 Anand Madhbhushi has, though initially deposed that the cheque dated 16 th SPSC-6-1993.doc April 1992 for Rs.2 Crores was signed by Accused No.8-Kalyana Raman, in his cross-examination, he has admitted that the said cheque was signed by PW-30 Ramesh Shenoy. Further he has admitted in his cross-examination that, in the 'Placement Register' maintained at ABFSL Head Office at Hyderabad, this transaction is mentioned at 'Serial No.47A', showing that 17% NPTC Bonds were obtained as security. Against this transaction, FGFSL had delivered security of 17% NPTC Bonds to ABFSL, Mumbai. This fact is also admitted by PW-7 Anand Madhbhushi by referring to the letter dated 1st June 1992, addressed to ABFSL by FGFSL stating that, the Allotment Letter for NPTC is issued for 75% Non-Cumulative Bonds of the value of Rs.5 Crores is enclosed with the said letter. According to his evidence, this letter was very much received. In such situation, it has to be held that, against this deployment of the amount of Rs.2 Crores also, the security was physically delivered in the form of NPTC Bonds.

238. In respect of the second transaction of Rs.2.5 Crores also, PW-7 Anand Madhbhushi, by referring to his entries in the 'Diary' (Exhibit-233), has admitted that this transaction is not finding place in his 'Diary'. According to his evidence, even the 'Placement SPSC-6-1993.doc Register' maintained by ABFSL, Mumbai, for the relevant period of 7th May 1992, does not show any transaction of deployment of Rs.2.5 Crores of ABFSL, Mumbai with FGFSL, Mumbai on that day.

239. Hence, it has to be held that, the Prosecution has failed to prove that Accused No.7-Sundara Babu and Accused No.8-Kalyana Raman, abetted by Accused No.3-Srinivasan and Accused No.9-Iyer, caused ABFSL, Mumbai, to deploy Rs.2 Crores on 16 th April 1992 and Rs.2.5 Crores on 7th May 1992 with FGFSL, Mumbai, without taking Security Receipt as 'clean advance'. Point No.4 is, therefore, answered in negative.

Forgery and Falsification of Accounts / Forgery of Bank Receipts :-

240. This brings me to one more piece of evidence in respect of which, as rightly submitted by learned counsel for the Accused, there is no allegation in the 'Charge-Sheet'. Even the charge is also not framed.

241. The material evidence in this respect is that of PW-1 R. Ganesh, the Approver. According to him, around the month of SPSC-6-1993.doc March, 1992, Accused No.7-Sundara Babu had some doubt as to whether the FGFSL was holding the securities, which were mentioned in the 'Memorandum of Sale'. Hence, he enquired about it with Accused No.2-Laxminarayanan, who



assured him that FGFSL was actually dealing with the Bank Receipts and Securities also. In order to satisfy Accused No.7-Sundara Babu that FGFSL was holding Bank Receipts, according to PW-1 R. Ganesh, three Bank Receipts were forged by FGFSL; signature on one of the Bank Receipts was forged by Accused No.2-Laxminarayanan and signatures on the other two Bank Receipts were forged by him. These three Bank Receipts were handed over to ABFSL. Apart from these three Bank Receipts, FGFSL had forged other Bank Receipts also, along with the other securities.

242. It is his evidence that, for the purpose of forging Bank Receipts, letter-heads of concerned Banks were necessary. FGFSL did not have any blank letter-heads of the Banks. Therefore, Accused No.2-Laxminarayanan asked him to print letter-heads of 4 to 5 Banks. Therefore, he went to PW-3 K. Rajgopalan, who contacted a person who was doing the work of screen printing and from that screen printer, he got the letter-heads of various Banks prepared SPSC-6-1993.doc and printed. The screen printing of the letter-heads was done at Bangalore. To facilitate screen printing of letter-heads, he had supplied PW-3 K. Rajgopalan the letter-heads of various Banks. PW-3 K. Rajgopalan handed over all the blank screen printed letter-heads of various Banks to him. He took them to Accused No.2- Laxminarayanan and asked him to keep the same in his safe custody.

243. According to PW-1 R. Ganesh, this was done in the month of March, 1992. They had screen printed letter-heads of about 4 to 5 Banks. The Letter-head Pad of each Bank might be of 100 pages each. Out of these screen printed letter-heads, they used 3 letter- heads for forging the Bank Receipts of the Banks, whose letter-heads were screen printed. He has, from his memory, told the names of the two Banks, namely, Standard Chartered Bank and Grindlays Bank. According to his evidence, a few of these letter-heads were used for forging Bank Receipts, to be handed over to ABFSL. Some of the letter-heads were used for forging documents to show that the securities were purchased by FGFSL from various Banks. It is his evidence that, these documents were prepared for showing them to the Auditors.

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244. He has further deposed that, for the purpose of forging Bank Receipts and other documents, they also needed rubber- stamps of concerned Banks. Accused No.2-Laxminarayanan asked him to procure the rubber-stamps. Hence, again he went to PW-3 K. Rajgopalan and PW-3 K. Rajgopalan deputed his Peon for getting the rubber-stamps of concerned Banks prepared. After those rubber-stamps got prepared, they were handed over to this witness and he had handed over the same to the Secretary of Accused No.2- Laxminarayanan. It is his evidence that, for the purpose of forging the above-referred three Bank Receipts, some of the rubber-stamps, so prepared, were also used. They were also used for preparing other documents for the purpose of showing them to the Auditor.

245. According to his further evidence, this material used for the purpose of forging the Bank Receipts and other documents, was collected in Bangalore and it was also used on the instructions of Accused No.3-Srinivasan for forging some Bank Receipts, to be handed over by Mumbai office to some Banks in Mumbai. According to him, Accused No.3-Srinivasan came to know about the availability of material for preparing forged documents, because, in his visit at SPSC-6-1993.doc Bangalore in March, 1992, this witness has informed him about it. It is his evidence that, the Bank

Receipts, which were handed over to the Banks in Mumbai by Accused No.3-Srinivasan, were prepared by him at Bangalore itself and he has forged the signatures on those Bank Receipts. He had faxed the forged Bank Receipts to Mumbai Office and the faxed copies of the forged Bank Receipts were handed over to the Banks in Mumbai. According to his evidence, Accused No.3-Srinivasan thereafter told him that the faxed copies of the forged Bank Receipts were handed over by him to the Banks in Mumbai to show that FGFSL was holding the Bank Receipts. Originals of the Bank Receipts, which were prepared by Accused No.3-Srinivasan, remained with him and this witness does not know what he ultimately did with the originals.

246. Prosecution has tried to support its case through the evidence of PW-47 M. Amla Nathan, who was doing the business of making rubber-stamps under the name and style as "M/s. Vimla Traders". According to him, on the basis of the orders, giving the specifications, he used to prepare the rubber-stamps. Sometimes, these orders used to be in writing or sometimes orally, with specimens. It is his evidence that, one Peter Edward has placed the SPSC-6-1993.doc order of rubber-stamps with his Company in the year 1992. Peter Edward was belonging to M/s. FGFSL. He had also given the specimen copy. Accordingly, this witness has prepared the rubber-stamps and delivered the same to Peter Edward along with the Cash Bill. It is his evidence that, Peter Edward has also placed the order for Bank Seals. The order was placed in writing, along with the specimen of Bank Seal. It is his evidence that, he felt it odd as to how a private person can place the order for Bank Seals; however, Peter Edward explained to him that, his Senior Officer Ganesh has told him to do so. Hence, he executed this order within one or two days and issued the receipt for the payment of Rs.200/-.

247. However, in his cross-examination, he has admitted that, in this receipt, it is not stated as to what kind of rubber-stamp was prepared and in whose name the receipt was issued. It was also not mentioned in the receipt, against whom the Bill was drawn. It is his evidence that, Peter Edward had told him that he was working for FGFSL; however, he himself does not know as to whether FGFSL has no employee by name Peter Edward. He even does not have the record to show that he has prepared any rubber-seal or stamp for FGFSL.

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248. PW-3 K. Rajgopalan himself has also not stated anything about his engaging the services of someone to prepare the rubber-seals or letter-pads. As a matter of fact, he has denied any knowledge about the forgery. Though he is declared hostile and cross-examined at length by learned Special P.P. on this aspect, nothing worthwhile is elicited in his cross-examination to support the Prosecution case on this material aspect.

249. According to the Prosecution, 'Exhibit-193' is the 'Bank Receipt', allegedly forged by Accused No.2-Laxminarayanan and the original of this Bank Receipt was handed over to ABFSL in March, 1991. On receiving it back from ABFSL, one or two days of handing it over to them, the original was destroyed. Exhibits "194" and "195" were the Bank Receipts allegedly forged by PW-1 Ganesh, again on the instructions of Accused No.2-Laxminarayanan. In respect of this, it is pertinent to note that, PW-1 Ganesh has admitted in his cross-examination itself that, all these 3 Bank Receipts were dated

"1991" and that he did not notice the mistake in the date. At another place in his cross-examination, PW-1 Ganesh says that, Accused No.2-Laxminarayanan had asked him to prepare these Bank SPSC-6-1993.doc Receipts in March, 1991, but he prepared them in April, 1992. It is pertinent to note that, FGFSL's dealings with ABFSL itself had not commenced till July, 1991. In his statement recorded by C.B.I., PW-1 Ganesh has also not disclosed that Accused No.2-Laxminarayanan had allegedly forged one of the Bank Receipts. He is also not sure of the name of the officer in ABFSL to whom the Bank Receipts were given.

250. The two Handwriting Experts, PW-69 Satyanarayan Gupta and PW-70 Suresh Mukhi, to whom these Bank Receipts were referred for expert opinion, have also not given any opinion in respect of these two documents.

251. PW-1 Ganesh has also admitted that, he does not know whether these Bank Receipts have been actually destroyed or not and if yes, by whom? Thus, the evidence of the Approver PW-1 Ganesh on this aspect is not supported from any other independent source.

252. Even in respect of the allegation as to the forgery of Bank Receipt (Exhibit-196), it is the evidence of PW-1 Ganesh that, when SPSC-6-1993.doc Accused No.3-Srinivasan came to know about the availability of material for preparing forged documents from PW-1 Ganesh, Accused No.3-Srinivasan faxed the forged Bank Receipts to Mumbai Office and the fax copies of the forged Bank Receipts were handed over to the Banks in Mumbai. However, this evidence is also self-contradicted by PW-1 Ganesh in his cross-examination by deposing that, it was the Chennai Branch of FGFSL that was dealing with the Standard Chartered Bank, Madras, and Accused No.3-Srinivasan was, admittedly, not working in FGFSL, Chennai Office. Moreover, as per his evidence, Accused No.3-Srinivasan allegedly faxed the forged Bank Receipts from Bangalore to Mumbai and the fax copies of the Bank Receipts were handed over to the Bank in Mumbai. However, what is produced and exhibited by the Prosecution is mere photocopy and not the fax copy. Significantly, PW-1 Ganesh himself admits that, he is not sure as to which Bank, this Bank Receipt was allegedly given. Most importantly, C.B.I. did not even refer the Bank Receipt (Exhibit-196) to the Forensic Expert for their opinion, even though other photocopies were referred. On this aspect, the Prosecution has not examined any other witness to support the evidence of PW-1 Ganesh.

SPSC-6-1993.doc

253. Thus, as regards this allegation, it has to be held that, the Prosecution has failed to prove beyond reasonable doubt that these Bank Receipts were forged by PW-1 Ganesh at the instance of Accused No.2-Laxminarayanan or Accused No.3-Srinivasan.

254. The most crucial and vital factor as regards this aspect is that, there is no allegation to that effect in the entire 'Charge-Sheet' and, accordingly, no specific charge to that effect is framed against Accused No.2-Laxminarayanan or Accused No.3-Srinivasan of forging of these Bank Receipts or of using these forged Receipts. Hence, the evidence laid on this aspect, which is not proving the Prosecution case, so as to frame the additional charge, even at this stage, needs to be ignored.

**Point No.6 :- Charge of Forgery in respect of Allotment Letters of NPTC Bonds.**

255. As per the evidence of PW-1 R. Ganesh, in the month of March, 1992, at the instance of Accused No.2-Laxminarayanan, he had been to the office of Mr. Subramaniam, the Director of NPTC, along with PW-63 Rajan Mishra of ABFSL, as ABFSL wanted to apply for subscribing the NPTC Bonds. Accordingly, NPTC issued eight SPSC-6-1993.doc Allotment Letters of total value of Rs.25 Crores in favour of ABFSL. The Allotment Letters were on white sheets of papers. It was a computer print-out, taken on the Laser Printer. PW-63 Rajan Mishra handed over those Allotment Letters to this witness. He carried them to the Office of FGFSL in Bangalore and handed over those Allotment Letters to Accused No.2-Laxminarayanan. After looking at those Allotment Letters, Accused No.2-Laxminarayanan told him that all these letters were printed on the Laser Printer and they had Laser Printer in their Office. Therefore, they can replicate these Allotment Letters in their Office. This witness told Accused No.2- Laxminarayanan that, on the Allotment Letters, there is an emblem, which cannot be replicated on the printed letter. Hence, on the instructions of Accused No.2-Laxminarayanan, PW-1 Ganesh contacted Accused No.6-Abraham Zachariah (Since Deceased), who was working in the Office of FGFSL at Bangalore, to find out from him whether he can get the emblem printed. Accordingly, Accused No.6-Abraham got the emblem printed on the plain white paper.

256. As per the evidence of this witness, he handed over those plain white papers with emblem printed thereon to Mrs. Mahalakshmi, who was working in their Office. She replicated eight Allotment Letters, using those papers and the Laser Printer in their SPSC-6-1993.doc Office. Then he took those letters to Accused No.2-Laxminarayanan. At the instance of Accused No.2-Laxminarayanan, he forged the signatures of Mr. Subramaniam, the Director of NPTC, on all those eight Allotment Letters. Accused No.2-Laxminarayanan then told him to keep the said eight Allotment Letters in his custody. According to him, he told Accused No.2-Laxminarayanan that, presently they do not require these forged documents for borrowing funds. Accused No.2-Laxminarayanan, however, told him, nevertheless, to keep those documents in a safe custody to use them in future in emergency.

257. As per further evidence of PW-1 R. Ganesh, after the scam broke out in the last week of May, 1992, it became increasingly difficult for FGFSL to raise funds, as FGFSL was experiencing financial crunch. Hence, Accused No.2-Laxminarayanan asked him to use these replicated Allotment Letters of NPTC for raising funds. It is his evidence that, by using 3 replicated Allotment Letters of NPTC, FGFSL raised Rs.10 Crores from ABFSL. Accused No.2- Laxminarayanan also asked him to send the replicated Allotment Letters of the value of Rs.5 Crores to Cochin Office of FGFSL. However, those letters were misplaced on the way and could not SPSC-6-1993.doc reach the Cochin Office. Therefore, no funds could be raised by the Cochin Office by using those Allotment Letters. It is his evidence that, on the instructions of Accused No.2-Laxminarayanan, he sent remaining replicated Allotment Letters to Madras Office of FGFSL and to his knowledge, on the basis of some of those letters, an attempt was made to borrow money to the tune of Rs.3 Crores. However, that attempt was not successful and ultimately, money was not borrowed. Further to his knowledge, Madras Office of FGFSL borrowed Rs.1 Crore on the basis of the shares from Bush Barak Allen India Limited. As that Company wanted some additional security, therefore, some of the replicated

Allotment Letters were given to Madras Office for being handed over to Bush Barak Allen India Limited. Thus, according to the evidence of this witness, in the Bangalore Office, there did not remain a single replicated Allotment Letter.

258. As per the further evidence of this witness, in the absence of Accused No.2-Laxminarayanan, he was looking after Bangalore Office of FGFSL. In the second week of May, 1992, Accused No.2-Laxminarayanan was on a foreign tour. During that time, Accused No.7-Sundara Babu spoke with him on telephone and SPSC-6-1993.doc informed him that he has to submit a statement to RBI and there was shortfall of Rs.30 Crores. He also informed him that, he was holding Securities Receipts issued by FGFSL, but physical securities were not given by FGFSL. He, therefore, asked this witness to handover physical securities worth Rs.30 Crores. According to him, he explained to Accused No.7-Sundara Babu that, FGFSL was not in a position to deliver securities of Rs.30 Crores, but Accused No.7- Sundara Babu informed him that, he has to deliver physicals to ABFSL; otherwise, they will be in difficulty, as they had to give reply to the RBI.

259. It is evidence of PW-1 Ganesh that, thereafter he contacted Accused No.3-Srinivasan in Mumbai, informing him about his conversation with Accused No.7-Sundara Babu and requested Accused No.3-Srinivasan to give some physicals to be handed over to ABFSL. Accused No.3-Srinivasan, however, expressed his inability. Hence, he tried to contact Accused No.2-Laxminarayanan, who was on foreign tour, but he was not successful in contacting Accused No.2-Laxminarayanan. In these circumstances, he asked Mrs. Mahalakshmi again to replicate the Allotment Letters of NPTC Bonds, as was done earlier. Accordingly, she did it by using those forged and replicated Allotment Letters of the face-value of Rs.30 SPSC-6-1993.doc Crores. He handed over those Allotment Letters to ABFSL. As promised by Accused No.7-Sundara Babu, those Allotment Letters were retained by ABFSL only for a day or two and then they were returned to FGFSL. It is his evidence that, the Allotment Letters were handed over to ABFSL by FGFSL without accompanying the Transfer Form.

260. According to his evidence, after Accused No.2- Laxminarayanan returned from foreign tour around 25th May, 1992, this witness informed him about the entire episode of replicating the Allotment Letters. After listening to it, Accused No.2- Laxminarayanan approved the transactions. He also informed Accused No.2-Laxminarayanan that, now they are having replicated Allotment Letters back with them. Accused No.2-Laxminarayanan told him to destroy those letters. Accordingly, he has destroyed those letters. He has identified the documents at Exhibits "197", "198" and "199" as the three NPTC Allotment Letters, which were replicated in the Office of FGFSL. According to him, signatures thereon were forged by him on the instructions of Accused No.2-Laxminarayanan.

261. PW-1 Ganesh has proved on record the 'Memorandum of SPSC-6-1993.doc Sale' (Exhibit-173) in respect of the sale of "13% NPC Bonds" to ABFSL, on the instructions of Accused No.3-Srinivasan. According to his evidence, these Bonds were sold to ABFSL by FGFSL for raising money to be supplied to Mumbai Office. Along with it, he has also written a letter to Accused No.3-Srinivasan vide 'Exhibit-174', which was also prepared on the instructions of Accused No.3- Srinivasan. Office-copy of the Security Receipt of this transaction, which bears his signature and which he has

handed over to ABFSL, is also produced on record at 'Exhibit-175'. According to his evidence, it was not necessary to prepare the Security Receipt and hand it over to ABFSL in this transaction, because, in this transaction, physical security in the form of Allotment Letters of NPC Bonds was delivered and this was a transaction of sale of security and not a funding transaction. However, according to him, the Office has prepared the Security Receipt, because of the practice that was being followed for last more than a year and it was also handed over to ABFSL, because of such practice. The 'Memorandum of Purchase' relating to this transaction dated 20 th May 1992 is proved by him vide 'Exhibit-176', which is signed by him and prepared on the instructions of Accused No.3-Srinivasan. According to his evidence, as per this 'Memorandum of Purchase', the SPSC-6-1993.doc Allotment Letters of NPC Bonds were to be re-purchased by FGFSL on 19th June, 1992. However, the transaction was not reversed on the due date, as, by that time, the scam has broke out and all the Accounts of FGFSL were frozen by RBI.

262. In this respect, the Prosecution has also placed reliance on the copy of the 'Office Note', submitted by PW-1 Ganesh to Accused No.2-Laxminarayanan (Exhibit-216), in which the alphabet 'D' is written to indicate that the Allotment Letters of 9% NPTC Bonds handed over to ABFSL were duplicate ones. According to PW- 1 Ganesh, Accused No.2-Laxminarayanan has signed on it at the bottom, after writing 'Noted for ratification' in his own handwriting.

263. Prosecution has then examined PW-63 Rajan Mishra, who was working in ABFSL at Delhi. He was given the responsibility to mobilize the 'Deposits' from various Public Sector Undertakings and was directly reporting to the Managing Director Accused No.7- Sundara Babu. It is his evidence that, he used to contact Public Sector Undertakings, like Power Finance Corporation, FGFSL, etc. He gave the 'Letter of Introduction' (Exhibit-729) to NPTC, requesting them to place their funds with ABFSL. According to his SPSC-6-1993.doc evidence, he has been to the Office of the NPTC with PW-1 Ganesh. There, they met Director (Finance) of NPTC Mr. Subramaniam, who told them that the Bonds worth Rs.25 Crores were allotted to ABFSL. They were given the original 'Allotment Letters' on the issuance of cheques for the amount of Rs.25 Crores towards the payment of the Bonds. He has sent those 'Allotment Letters' in a sealed envelope along with PW-1 Ganesh for delivery to FGFSL, Bangalore, retaining photocopies thereof with him. It is his evidence that, towards the end of March, 1992, he got the cheque for the amount of Rs.13 Lakhs towards the interest on the said Bonds, which he deposited in the Account of ABFSL. He had already informed about the same to Accused No.7-Sundara Babu and Sundara Babu has told him that, this amount be paid to FGFSL. Accordingly, he has issued the cheque of the said amount of interest in favour of FGFSL by the end of April, 1992, along with the covering letter at 'Exhibit-734'. He has further deposed that, the reason for paying the amount of interest to FGFSL was that, Accused No.7- Sundara Babu had told him that the Bonds were further transferred to FGFSL and, therefore, FGFSL was entitled to get the said amount.

264. Prosecution has further corroborated the evidence of PW- SPSC-6-1993.doc 1 R. Ganesh on this point through the evidence of various other witnesses. The material witness out of them is PW-9 Lalitha Devi, who was, at the relevant time, working in the said Office as 'Secretary' and helping PW-1 R. Ganesh in his work. She has admitted that, PW-1 R. Ganesh had given her NPTC Allotment Letter and had asked her to enter the contents of those letter in the computer. Accordingly, she has

entered the format in the computer and on his instructions, she has taken out the print-out of that and handed it over to PW-1 R. Ganesh. According to her, the print-out was taken on the white paper and it did not have the letterhead format.

265. It may be true that, in the cross-examination, she has admitted that, she does not remember how many times she took out the print-out. When she was shown the document at 'Exhibit-197', she has stated that the format of the Allotment Letter, which she has entered into the computer, is exactly the same; however, she was not sure whether the contents of the entire NPTC Bonds were exactly the same. She does not know what PW-1 R. Ganesh did with the print-out of that Allotment Letter. However, she has categorically stated that, the format she has handed over to PW-1 R. Ganesh did SPSC-6-1993.doc not have any signature on it. When the documents at Exhibits "197", "198" and "199" were shown to her, she has stated that, all those documents are in the same format. Only the folio numbers and distinctive numbers are different. However, she does not remember the folio number and distinctive numbers of the documents, which were given to her by PW-1 R. Ganesh for feeding in the computer.

266. The Prosecution has then led the evidence of PW-61 P.D. Tuteja, who was working as 'Company Secretary' in NPTC in the year 1992. He has deposed about the budget allocation of Rs.200 Crores to the NPTC for raising of Bonds and, accordingly, NPTC issued 'offer letters' to the respective Buyers, Banks and Financial Institutions for purchase of the NPTC Bonds. He has deposed that, ABFSL had also made the offer for the Bonds of Rs.200 Crores; out of which, the Bonds worth Rs.100 Crores were tax-free and the Bonds worth Rs.100 Crores were taxable. Total Bonds of Rs.25 Crores were offered by NPTC to ABFSL. Out of that, 20% Bonds were to be offered for 'public subscription' and if no such public subscription was received, then ABFSL has to purchase the same. After the offer was accepted by ABFSL, it has credited the amount of Rs.25 Crores in the Andhra Bank in the Account of NPTC and thereafter, the SPSC-6-1993.doc Allotment Letters, as desired by ABFSL, were issued. The formal Bonds were to be issued over a period of time.

267. He has identified the letter at 'Exhibit-197' as the same 'Allotment Letter' issued by the NPTC; however, he has categorically stated that, the said letter is tampered with, as the signatures and initials appearing thereon are not that of the Director (Finance) Mr. P.V. Subramaniam and the Chief Secretary. He has also noticed that the letters "NPTC" written in the box on the said Allotment Letter are not the ones, which they used to have on their Allotment Letter in the box. Moreover, the box containing those letters used to be larger one in the original letter. The words 'Memorandum of Articles of Association' were also not written correctly, as it used to be "Memorandum and Articles of Association". According to him, the 'Allotment Letter' at 'Exhibit-198' is also having the same deficiency. In addition thereto, the middle box in the said letter was not having proper computer alignment to contain all the letters. This was also, therefore, not a genuine letter. The letter at 'Exhibit-199' also suffers from the same deficiency. According to him, all the three letters were, therefore, not genuine.

268. Thus, the evidence brought on record by the Prosecution, SPSC-6-1993.doc through these witnesses, proves that the NPTC Bonds of Rs.25 Crores were issued to ABFSL. The Allotment Letters thereof were issued in the name of ABFSL, but, as deposed by PW-63 Rajan Mishra, original

Allotment Letters were handed over to PW-1 Ganesh, who has at the instance of Accused No.2-Laxminarayanan, got the said letters replicated with the help of PW-9 Lalitha, as deposed by her. Exhibits "196", "197" and "198" are those replicated Allotment Letters, on the strength of which the funds were raised from ABFSL. As deposed by PW-61 Tuteja, these letters at Exhibits "196", "197" and "198" are tampered and not genuine. The Handwriting Expert PW-70 S.L. Mukhi has also deposed that, the signatures appearing on these letters are not that of Mr. Subramanian, the Director and authorized signatory of NPTC. Therefore, it follows that these letters are forged one.

269. Further, most importantly, there is evidence of PW-16 Ganapathi and PW-17 Khatib, the two independent Officers from RBI, that, on 2nd July 1992, when PW-17 Khatib went to the FGFSL Office at Bangalore to deliver the order prohibiting FGFSL from conducting further transactions, PW-1 Ganesh told him that, apart from UTI Certificate and Allotment Letter of HUDCO Bond, in relation to which SPSC-6-1993.doc he had already given statement vide 'Exhibit-209', Allotment Letters of NPTC Bonds were also not original and were tampered with. Accordingly, he has given the statement in writing vide 'Exhibit-213'. He has also given the details of tampered letters in this statement 'Exhibit-213'. According to his evidence, on that day, Accused No.2- Laxminarayanan has also given additional statement about utilization of forged Allotment Letters of NPTC Bonds of Rs.5 Crores each by pledging them with ABFSL. This statement at 'Exhibit-601' is supporting and proving that Allotment Letters of NPTC Bonds were not only forged, but they were also used.

270. In this case of Prosecution, learned counsel for the Accused Mr. Rao has tried to point out some inconsistencies. However, in my considered opinion, those inconsistencies are of very minor nature. Hence, instead of being fatal to the Prosecution case, they give an in-built guarantee of truthfulness of Prosecution case on this point. For example, it is submitted that, if PW-1 Ganesh has already observed, at the time of receiving the NPTC Letters of Allotment at Delhi, that they were on a white sheet of paper, it was a computer print-out and they were printed on a Laser Printer, then, there was no need for Accused No.2-Laxminarayanan to once again tell him at Bangalore the same features of the Letter of Allotment. SPSC-6-1993.doc Needless to say that, the submission on this point does not go to the root of the matter.

271. Secondly, it is submitted that, the offices, in which PW-1 Ganesh and Accused No.2-Laxminarayanan were working at the relevant time, were also situate at different places. PW-1 Ganesh was functioning from FGFSL's Manipal Centre Office at Bangalore, while Accused No.2-Laxminarayanan was working at Vittal Mallya Road Office in Bangalore. Hence, it becomes difficult to accept that this alleged forgery was carried out at the instance of Accused No.2-Laxminarayanan. Now this argument is cited just to show how flimsy it is. Merely because they were working in different offices, that too in the same city, does not mean that they had no occasion to meet each other.

272. Further it is submitted that, there is also inconsistency in the evidence of PW-1 Ganesh as to keeping of these forged Allotment Letters in the safe custody. According to PW-1 Ganesh, Accused No.2-Laxminarayanan asked him to keep those forged Allotment Letters in his custody. However, in his cross-examination, he has contradicted himself by stating that, those letters were kept by Accused No.2-Laxminarayanan in his drawer, which was not SPSC-6-1993.doc locked. According to



learned counsel for the Accused, this is a fatal contradiction on the vital aspect of the case. In my considered opinion, what is relevant is the evidence of PW-9 Lalitha that these letters were replicated by her. It is not relevant in whose custody or drawer they were kept. Hence, this contradiction does not become fatal in any way.

273. Further it is submitted that, in the last week of May, 1992, according to PW-1 Ganesh, after the scam has broke out, Accused No.2-Laxminarayan asked him to use replicated Letters of Allotment of NPTC Bonds and by using the same, he raised the amount of Rs.10 Crores from ABFSL. However, in his cross- examination, PW-1 Ganesh has admitted that, the loan raised from ABFSL, by giving them these three forged Allotment Letters, was repaid on 27th May 1992, thereby clearly contradicting his earlier statement that the funds were raised only in the last week of May, 1992 on the basis of these letters. As to the exact date or month when the act was done, in my considered opinion, it would be absurd to expect the witness to depose about the same, when, admittedly, these incidents took place about 20 years back. SPSC-6-1993.doc

274. According to learned counsel for the Accused, if as per the evidence of PW-1 Ganesh, the alleged forgery of NPTC Allotment Letters was done in March, 1992, itself, i.e. well before the outbreak of the scam, then, there was absolutely no pressure at all to do so. Conversely, as admitted by PW-1 Ganesh, the day on which the forgery of the Allotment Letter was done, the fund position of FGFSL was good and they were able to borrow the money on Securities Receipts. It clearly exposes his claim. As there was no necessity of funds and financial position was sound then, there was no necessity of replicating these Securities Receipts also.

275. However, this argument also cannot be accepted as the evidence of PW-1 Ganesh proves that, in the month of March, 1992, Accused No.7-Sundara Babu had some doubt as to whether the FGFSL was holding the securities, which were mentioned in the 'Memorandum of Sale'. Hence, he enquired about it with Accused No.2-Laxminarayanan, who assured him that FGFSL was holding such securities. Hence, in order to satisfy Accused No.7-Sundara Babu, if required, these forged replicated letters were kept ready to use them in future emergency. Accordingly, they were actually used SPSC-6-1993.doc in the last week of May, 1992, when, due to breaking out of scam, it became increasingly difficult for FGFSL to raise the funds.

276. As regards the reliance placed on his 'Diary', it is submitted that, PW-1 Ganesh himself has admitted in his cross- examination several other factors proving that the entries made therein are not correct and not made in the day-to-day course of business. For e.g., he has admitted in his cross-examination, after looking into the 'Diary' (Exhibit-15), that the Allotment Letter of Rs.3 Crores Bonds was sold on 28th February 1992 to Tamil Nadu Mercantile Bank; whereas, the Allotment Letters of the Bonds of Rs.5 Crores were sold to Nedungadi Bank on 3 rd March 1992. In view thereof, he has to admit that the statement in his examination-in- chief that, he has gone to Delhi for getting Allotment Letters in the second week of March, 1992, was not correct. He had admitted that, as the Bonds were sold only after they were allotted; therefore, he must have gone to Delhi to collect the Allotment Letters before 28 th February 1992. After looking at 'Exhibit-197', he has stated that, the date mentioned on the Allotment Letter of NPTC Bonds is 10 th March 1992 and, therefore, the Allotment Letters were available only after 10th March 1992.

SPSC-6-1993.doc

277. In my considered opinion, this argument again pertain to the recalling power or memory of the witness. As stated above, PW-1 Ganesh is deposing about the incidents that took place at-least 20 years ago. Therefore, merely because he has stated in examination- in-chief that he has gone to Delhi to bring Allotment Letters in March 1992 instead of February 1992, is of no consequence at all to demolish his evidence or even to test his credibility.

278. In respect of the 'Office Note' (Exhibit-216), it is submitted by learned counsel for the Accused that, according to the evidence of PW-1 Ganesh, he had put up several such office notes, like the one at 'Exhibit-216', before Accused No.2-Laxminarayanan; however, the Prosecution has not produced any other 'Office Note'.

279. In my considered opinion, on this aspect also, Prosecution is not expected to produce all the 'Office Notes', but only the relevant and incriminating one. Hence, again nothing can be adversely inferred against Prosecution on account of it.

280. Further, it is submitted that, PW-1 Ganesh has admitted that, some of the transactions mentioned in the 'Office Note' at SPSC-6-1993.doc 'Exhibit-216' are not reflected in his 'Diary' (Exhibit-15) and some of the transactions in the 'Diary' are not reflected in the 'Office Note' (Exhibit-216). Therefore, the entries in both these documents 'Diary' and the 'Office Note' are not matching and hence, not reliable. Moreover, PW-3 Rajgopalan, Senior Vice President' of FGFSL, Bangalore, who had worked with PW-1 Ganesh and Accused No.2- Laxminarayan, has confirmed in his deposition that he could not identify the handwriting and initials on this 'Office Note' (Exhibit-

216) as that of Accused No.2-Laxminarayanan. The Prosecution has, however not sent this 'Office Note' (Exhibit-216) to the Handwriting Expert, though several other documents have been sent.

281. However, in my considered opinion, none of these contentions raised by learned counsel for the Accused deserve consideration. Whatever discrepancies pointed out in the evidence of PW-1 Ganesh, as stated above, are of a very minor nature and are in respect of inconsequential details. When the witness is deposing in the year 2006 about the dates and years of the incidents that had happened in the year 1992, such discrepancies are bound to happen. These discrepancies, however, do not touch the core and substratum of his evidence. His evidence and the evidence of PW-9 Lalitha clearly proves that, the Allotment Letters of NPTC Bonds were SPSC-6-1993.doc replicated in the Office of FGFSL and evidence of PW-61 P.D. Tuteja proves that Exhibits "196", "197" and "198" are not the original Allotment Letters. The evidence of Forensic Expert PW-70 S.L. Mukhi goes to prove that, the authorship of the questioned signatures on the NPTC Allotment Letters could not be connected to the writer of specimen signatures of Mr. T.V. Subramanian, the Director (Finance) of NPTC. It may be true that, the Forensic Expert has not given a definite opinion as to who has forged the signatures, but his opinion goes to prove that these Allotment Letters were not bearing the signature of the Authorized Signatory Mr. T.V. Subramanian and thus they were forged. Hence, it has to be held that, these Allotment Letters were forged one.

282. Moreover, the evidence of PW-1 Ganesh that, at the instance of Accused No.2-Laxminarayanan, he has sent the replicated Allotment Letters of NPTC of the value of Rs.5 Crores to Cochin Office of FGFSL; however, those letters were misplaced on the way and could not reach the Cochin Office, gets complete support and corroboration from the evidence of PW-11 V. Laxman, who has proved the letter at 'Exhibit-575', which he has sent to PW-1 Ganesh, informing him that the Cochin Office of FGFSL has not received the Allotment Letters of NPTC Bonds.

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283. As regards the contention raised by learned counsel for the Accused relating to the non-examination of Mrs. Mahalakshmi, the Prosecution has filed various reports on record proving that, despite repeated summonses issued to her on various addresses, she could not be served and her whereabouts are not known. PW-9 Lalitha, who was working with her, has also deposed that, she does not know the present whereabouts of Mrs. Mahalakshmi. Thus, her non-examination as a 'witness' is for a reason and hence it cannot be said that the Prosecution has withheld her evidence. Moreover, Mrs. Mahalakshmi, was merely a "Computer Programmer" and it was PW- 9 Lalitha, the typist, who had actually replicated those Allotment Letters by feeding contents thereof in the computer and she has deposed about the same. Her evidence to that effect has remained totally unchallenged on record. Therefore, it cannot be said that non- examination of Mrs. Mahalakshmi is in any way fatal to the Prosecution case.

284. As regards the submission of learned counsel for the Accused that Prosecution has not succeeded in proving that any funds were actually raised by using these forged letters, in my considered opinion, the evidence of PW-1 Ganesh, supported with SPSC-6-1993.doc 'Memorandum of Sale' (Exhibit-173), 'Letter' (Exhibit-174), 'Memorandum of Purchase' (Exhibit-176) and 'Security Receipt' (Exhibit-175) proves that, these "13% NPTC Bonds" were sold to ABFSL for raising money to be supplied to Mumbai Office of FGFSL. Moreover, evidence of PW-1 Ganesh, supported with evidence of PW- 11 V. Laxman, goes to prove that the attempt was very much made to raise such funds, even by sending some of these replicated letters to Cochin and Madras Offices of FGFSL. Hence, merely because those attempts were not successful, it cannot be said that forgery was not committed.

285. Moreover, the evidence of PW-1 Ganesh clearly goes to show that these letters were replicated, initially to show Accused No.7-Sundara Babu of ABFSL that, FGFSL was actually holding the physical securities and further these letters were handed over to Madras Office of FGFSL for using as additional security to Bush Barak Allen India Ltd., from which it has borrowed Rs.1 Crore.

286. It must also be stated that, for constituting the offence of forgery, it is not essential that the forged documents should actually be used for raising the money. It is sufficient that the forged documents are used as a genuine for cheating or misleading the SPSC-6-1993.doc other side. In my considered opinion, therefore, the Prosecution has sufficiently proved this charge of forgery in Allotment Letters of NPTC Bonds.

Point No.7 :- Charge of 'Forgery' in respect of UTI Certificates.

287. Coming to the second set of forgery pertaining to UTI Certificates, evidence of PW-1 Ganesh reveals that, most of the money that was taken from ABFSL, was to be repaid by the month of May, 1992 and the Office of the FGFSL in Bangalore was experiencing financial crunch during that period. A large part of the amount was transferred from Bangalore Office to Mumbai Office of FGFSL, as the scam has broke out by that time. Therefore, he contacted Accused No.3-Srinivasan in Mumbai, apprised him about the situation and asked for money, to be paid to ABFSL. Accused No.3-Srinivasan, however, informed him that the funds, which were received from Bangalore Office, were invested in the Share Market and the Share Market has crashed due to the scam. Hence, if the shares are liquidated at that time, FGFSL would suffer huge loss; therefore, Accused No.3-Srinivasan asked him to manage the issue of repayment by borrowing more funds from the market. This witness informed Accused No.3-Srinivasan that, ABFSL was in a SPSC-6-1993.doc position to lend money, but it was not ready to lend money against Securities Receipts and they wanted actual physical securities. Accused No.3-Srinivasan, therefore, asked this witness to use replicated Allotment Letters of NPTC Bonds for raising money. This witness informed Accused No.3-Srinivasan that, they had already raised money on the basis of the replicated Allotment Letters of NPTC Bonds and, therefore, it was not possible to raise more money on the basis of those Allotment Letters. Accused No.3-Srinivasan then asked PW-1 Ganesh whether they had in Bangalore Office any UTI units. It is the evidence of PW-1 Ganesh that, he informed Accused No.3-Srinivasan that they were having some UTI Units in small lots but not in large lots. It is the evidence of this witness that Accused No.3-Srinivasan then suggested him that he can do necessary forgery in those UTI Units and convert the small lots into large lots. Accused No.3-Srinivasan also offered to send original Transfer Forms, so that those original Transfer Forms can be handed over to ABFSL for raising money from them.

288. Accordingly, as per the evidence of PW-1 Ganesh, he himself, Accused No.6-Abraham Zachariah (Since Deceased), and Accused No.11-P. Chandrashekar carried out necessary forgery in UTI Unit Certificates of '1964 Scheme' to convert small lots into the SPSC-6-1993.doc large lots by using the original Transfer Forms, which were sent by Accused No.3-Srinivasan from Mumbai. By using these forged UTI Certificates, they raised funds from ABFSL. It is his evidence that, in order to use the Transfer Forms, which were sent by Accused No.3-Srinivasan from Mumbai, they had to carry out forgery on the Units by rubbing out original names, which were mentioned on the Units. As the money was being raised for the operations of the Mumbai Office, he requested Accused No.3-Srinivasan to lodge the securities in the ABFSL Office in Mumbai. Accused No.3-Srinivasan, however, refused to do so, as the scam has broke out in Mumbai and it was not safe to lodge the forged Units in the Mumbai Office of ABFSL. Accused No.3-Srinivasan, therefore, asked this witness to lodge the forged Units in the Bangalore Office of ABFSL.

289. PW-1 Ganesh has identified 'Exhibit-171' as the 'Security Receipt' dated 20th May 1992, under which these forged UTI Units were sold to ABFSL for Rs.34 Crores, which is signed by him and some portion thereon is in the handwriting of Accused No.5-Chacko. There is entry to that effect in his 'Diary' (Exhibit-15) at Sr. No.1, made in his handwriting. According to his evidence, the amount of Rs.34 Crores mentioned in 'Exhibit-171' was actually received from SPSC-6-1993.doc ABFSL on the basis of these forged Units. 'Exhibit-172' is the 'Memo of Purchase' of this transaction. The date of repayment was 19 th June 1992. However, the amount was not repaid on the due date, as the

scam has broke out by that time and FGFSL Accounts were frozen. As per his evidence, 'Exhibit-177' dated 21 st May 1992 is the 'Memo of Sale' of "UTI 1964 Units", which were forged. Under this 'Memo of Sale', the amount of Rs.4.75 Crores was borrowed from ABFSL, on the instructions of Accused No.3-Srinivasan, on the basis of the forged Units. It's Security Receipt is at 'Exhibit-178', which was though not required to be prepared, as physical delivery of the forged Units was given, but it was prepared as per practice. The entry of this transaction is made in his 'Diary' (Exhibit-15) at Sr. No.3. The three separate 'Memos of Purchase' of these transactions were prepared for the amount of Rs.3 Crores, Rs.1 Crore and Rs.75 Lakhs, respectively, vide 'Exhibit-179'. The amount of this transaction was to be repaid on 20th June 1992, 22nd June 1992 and 23rd June 1992, which, however, could not be repaid, as, by that time, the Accounts of FGFSL came to be frozen.

290. As per the evidence of PW-1 Ganesh, the forgery on these Units was done by three of them, namely, he himself, Accused No.6- SPSC-6-1993.doc Abraham Zachariah (Since Deceased) and Accused No.11-P. Chandrashekar, in the third week of May, 1992 at Bangalore Office late in the night. It is his evidence that, they had to do the forgery late in the night, because it was only late in the evening Accused No.3-Srinivasan has told him from Mumbai that he was not in a position to give money from Mumbai. According to his evidence, on the next day, the funds were required to be made available to ABFSL for repayment of the amount due to them from FGFSL and funds were also needed by Accused No.3-Srinivasan in Mumbai. Hence, there was urgency. As per his evidence, as regards the actual forgery of Units, the rubbing part was carried out by Accused No.6-Abraham Zachariah (Since Deceased) and thereafter, the new names were typed on the electronic typewriter by Accused No.11-P. Chandrashekar.

291. It is his further evidence that, on the next day, as soon as he came to the Office in the morning at 8:30 am, Accused No.3- Srinivasan called him from Mumbai and asked him to lodge forged Units with ABFSL, Bangalore, and to transfer the funds to him in Mumbai. Accordingly, he lodged the forged Units in ABFSL, Bangalore, and raised the amount of Rs.42.50 Crores. Out of this SPSC-6-1993.doc amount, a sum of Rs.15.50 Crores was transferred to Mumbai Office. It is his evidence that, while this forgery for raising funds was done, Accused No.2-Laxminarayanan was on a foreign tour and, therefore, was not available in Bangalore. He returned to Bangalore in a day or two, after the funds were raised, and on his arrival in Office, he was informed about the entire transaction, which this witness has carried out, as per the instructions of Accused No.3-Srinivasan. According to his evidence, Accused No.2-Laxminarayanan immediately spoke about it with Accused No.3-Srinivasan in his presence. He got all the details from Accused No.3-Srinivasan and thereafter only, Accused No.2-Laxminarayanan approved the entire transaction.

292. PW-1 Ganesh has then deposed about the details of the forgery carried out in the UTI Units. According to him, as regards the Unit at 'Exhibit-200', the forgery was carried out in two aspects; firstly, the name of the Unit-holder was changed to 'National Housing Bank' and, accordingly, the address of the new Unit-holder was written. The "100" Units were converted into "7,50,00,000" Units. On the reverse side of the document, the rubber-stamp of 'National Housing Bank' was put. According to his evidence, this rubber-stamp SPSC-6-1993.doc was available in the Office, as they had already prepared rubber- stamps of several Banks and National Housing Bank was one of such type. Then he has also identified the Transfer Form, which was given to ABFSL along with the Unit

Certificate. The rubber-stamp of 'National Housing Bank' was put on this Transfer Form and signatures thereon were forged by him. This Transfer Form is at 'Exhibit-201'.

293. Further, he has identified another 'Unit Certificate' at 'Exhibit-202', which was forged by him, Accused No.6-Abraham Zachariah (Since Deceased) and Accused No.11-P. Chandrashekar. Original Certificate was of a small lot, which was converted to 1,10,15,500 Units. The name of the original owner was also changed to 'Rinky Industrial Oil India Limited'. Address of the new Unit- holder was accordingly forged on 'Exhibit-202'.

294. Further, this witness has identified and proved on record the document at 'Exhibit-203', which is one more UTI Certificate, which was forged by them. Here also, the forgery was to convert the small lot into a large lot of 1,14,84,500 Units. The name of the original Unit-holder of the Certificate was also changed to 'Rinky SPSC-6-1993.doc Industrial Oil India Limited'. The address was also changed. According to his evidence, the Unit Certificates at Exhibits "202" and "203" were forged to match the contents of the two Transfer Forms sent by Accused No.3-Srinivasan from Mumbai Office to their Bangalore Office. These Transfer Forms are marked as 'Exhibit-204'. It is his evidence that, the originals of UTI Certificates at Exhibits "200", "202" and "203" were bought by FGFSL from a Broker and they were a small lot of Units.

295. This entire evidence of PW-1 Ganesh as to the actual part of forgery in Unit Certificates has remained unshattered on record. Conversely, by bringing some more particulars thereof, it is further fortified. It is brought out in his cross-examination that, for the first time, the Unit Certificates were forged in the Office of FGFSL, Bangalore on 19th May 1992 and he is saying so, after referring to his 'Diary' at 'Exhibit-15'. According to him, the inference as to the date is drawn on the basis of the entries made therein, though in the 'Diary', it is not specifically mentioned that, on that day, the forgery was made. It is further brought out in cross-examination that the work of forgery was carried out after mid-night on 19 th May, 1992. For entering into Registered Office in the night, they got the key SPSC-6-1993.doc from the office-boy, who was having the key. At that time, Accused No.11-P. Chandrashekar and Accused No.6-Abraham Zachariah (Since Deceased), were with him. He and Accused No.6-Abraham had taken Accused No.11-P. Chandrashekar with them because he knew how to operate the electronic typewriter.

296. This evidence is further fortified through his cross- examination, as under :-

"For the purpose of committing forgery, we went to Registered Office and we had with us small lot of Unit Certificates. We had forged in all three Unit Certificates. The total number of Units involved in the forged Unit Certificates I do not remember. After forging the Unit Certificates, next day they were placed with ABFSL for raising money from ABFSL.

Out of three Unit Certificates, in two, the name of the holder was shown as Rinki Industrial Oil and in one, name of holder was shown as Hindustan Door Oliver Ltd. The Unit Certificates, where holder is shown as Rinki Industrial Oil, were sent to ABFSL along with the Transfer Forms, which were original and not forged. The Unit Certificates, where holder was shown to be 'Hindustan Door

Oliver Ltd., the Transfer Form was forged by me. The two Transfer Forms, which were used by me, along with two forged Unit Certificates, were sent to Registered Office by Mumbai Office, along with genuine Unit Certificates, to be delivered SPSC-6-1993.doc to SKF Industries. This was before March, 1992. The original Units, which were sent from Mumbai, where holder was Rinki Industrial Oil Ltd., were transferred subsequently to Rao and Company. It is true to say that the Mumbai Office of FFSL did not sell the Unit Certificate, where the holder was shown to be Rinki Industrial Oil Ltd. to Rao and Company. On the basis of 3 forged Unit Certificates on 20th May, 1992 FFSL borrowed an amount of Rs.42.05 Crores from ABFSL. The original Unit Certificates, where holder was shown as Rinki Oil Industries Ltd were available in the Registered Office of FFSL. Though the original certificates were available, forged certificates were used for raising money, because on the basis of original certificates, we could have borrowed about Rs.2.8 Crores only and we wanted to borrow a huge amount. The basic need of huge funds arose because Bombay Office owed large amount to the Registered Office. The Bombay Office was not in a position to pay the amount and, therefore, the Registered Office was not in a position to honour its commitment to ABFSL and the other Financial Institutions and Mr. Srinivasan also required some more funds for market operations. Due to all these reasons, the money has been raised. A large part of the amount of Rs.42.05 Crores, which was raised from ABFSL, was sent to Bombay Office. Out of Rs.42 Crores, the amount of Rs.15.50 Crores was transferred to Mumbai Office. The one more forged Unit Certificate, where the holder is shown as 'National Housing Bank' was also given to ABFSL."

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297. It is also brought on record through his cross- examination that, after ABFSL had informed him in the evening of 19th May 1992 that, they were in a position to lend an amount of Rs.42 Crores, he started making preparation for committing forgery of the Unit Certificates.

298. In the cross-examination, it is also brought on record that, "Accused No.3-Srinivasan had asked him to forge the Unit Certificates. Whatever was necessary for accomplishing the forgery, they did and changed the numbers wherever it was necessary to do so". It is denied by him that Unit Certificates were forged by him on his own and not because somebody asked him to do so.

299. The Prosecution has then led the evidence of various witnesses to prove that the FGFSL Office at Bangalore was in possession of original Unit Certificates, which were of smaller lots and standing in the name of different allottees. One of them is PW-13 Gururaja, who was working with M/s. L.K.S. Murthy and Company as a 'Dealer' and dealing in the stocks and shares. According to him, 'Exhibit-585' is the 'Form' filled in by him on behalf of the client Mr. Rama Murthy. It bears the rubber-stamp of M/s. L.K.S. Murthy and SPSC-6-1993.doc Co., who was the 'Agent' appointed by the Unit Trust of India for canvassing sale of its Units. This application was made for buying Units under the "UTI 1964 Scheme". The amount for purchasing the Units was paid in cash. He has also identified 'Form No.5', which is at 'Exhibit-586', as the application form filled in on behalf of the client Mr. Chandrashekhar (PW-15), which was also having the rubber- stamp of M/s. L.K.S. Murthy and Co. It was an application for buying Units under the "UTI 1964 Scheme". The form bears the signature of PW-15 C.V. Chandrashekhar, on whose behalf it was filled in. The amount for purchasing the Units mentioned in this form was also paid in cash. Then he has identified

'Exhibit-587' as another application form filled in on behalf of the client Mr. Balasubramanyan (PW-14), bearing the rubber-stamp of M/s. L.K.S. Murthy and Co., applying for the purchase of UTI Units under "UTI 1964 Scheme". This form was signed by Mr. Balasubramanyan (PW-

14) and the amount for purchasing the Units was paid in cash.

300. According to his evidence, all these three 'Transfer Forms', when brought to him by the respective clients, namely, PW- 14 Balasubramanyan, Rama Murthy and PW-15 Chandrashekhar, they were already signed. The amount received from the clients for purchase of the Units was deposited in cash in the UCO Bank, SPSC-6-1993.doc Bangalore. The cheque was issued for purchase of these Units on behalf of the clients. He has identified the 'Pay-in-Slip' to that effect at 'Exhibit-588' and the 'Bill' at 'Exhibit-589'. It is his evidence that, as per the document at 'Exhibit-589', the 10,080 Units were purchased under this Bill dated 10th April, 1992, which included the Units purchased by the applicants vide applications at Exhibits "585", "586" and "587". These Units were sold to FGFSL @ Rs.15.20 for an aggregate amount of Rs.1,53,216/- [Rupees One Lakh Fifty- Three Thousand Two Hundred Sixteen]. The cheque to that effect was received from FGFSL and PW-1 R. Ganesh has signed on the document at 'Exhibit-589' on behalf of FGFSL. In his cross- examination, it is brought on record that the physical delivery of the Unit Certificates was effected on 10th April 1992 and not on 26 th May 1992. Except that, there is nothing much in his cross-examination. Thus, his evidence more than sufficiently proves that, FGFSL Office, Bangalore, was in possession of original Unit Certificates of smaller lots, which were standing in the name of different allottees, like Ram Murthy, PW-14 V.S. Balasubramanyan and PW-15 C.V. Chandrashekhar.

301. The Prosecution has then also led the evidence of PW-14 SPSC-6-1993.doc Balasubramanyan to prove that, in the year 1989, through PW-13 Gururaja, he has purchased 1,120 UTI Units. He has also deposed about PW-15 C.V. Chandrashekhar filling up the application form and purchasing the UTI Units from PW-13 Gururaja.

302. The evidence of PW-15 C.V. Chandrashekhar also proves that, he has applied for these UTI Units, as stated by PW-13 Gururaja. His evidence thus proves the Prosecution case that, these original UTI Units were purchased in the name of different applicants, like PW-14 V.S. Balasubramanyan, PW-15 C.V. Chandrashekhar, Rama Murthy, which were for a small lot and the Dealer PW-13 Gururaja has sold these original Unit Certificates to FGFSL and, thus, FGFSL was in possession of these original Unit Certificates of small lots, in which forgery was done to make them of larger lot.

303. To prove that the original Unit Certificates were allotted to Rinki Industrial Oils Limited, the Prosecution has examined PW- 23 Ashvin Desai, who was working as 'General Manager (Finance)' in the said Company. According to his evidence, in December 1990, as per the resolution passed by the Company, 5,00,000 Units of UTI SPSC-6-1993.doc were purchased worth about Rs.74 to 75 Lakhs. Accordingly, they got two Unit Certificates; one representing 1,00,000 Units and the other representing 4,00,000 Units. In May, 1991, as his Company needed funds, the funds were borrowed from FGFSL and for clearing that loan, both these Unit Certificates were pledged with FGFSL. By the end of the year 1991, when his Company realized that the debt could not be repaid, a request was



made to FGFSL to adjust the Certificates against the debt and to communicate to the Company, if there was any deficit, which was to be paid by the Company, so that the payment can be made or the amount can be refunded, if there was any excess.

304. As per his evidence, for that purpose, his Company delivered to FGFSL duly signed two blank 'Transfer Forms' of the Units. The 'Transfer Forms' were signed on behalf of the Company by their Managing Director and he himself. He has identified the 'Transfer Form' (Exhibit-204), when shown to him. It is his evidence that, 'Transfer Form' at 'Exhibit-204' has been signed by him and his Managing Director S.K. Gandhi. It is his evidence that, the place where his Company is situate is Baroda. In this 'Transfer Form' (Exhibit-204), the name 'Baroda' is erased therefrom and the word 'Mumbai' has been overwritten. Pin-Code of Mumbai is also written, SPSC-6-1993.doc which he has not written in the 'Transfer Form'. According to his evidence, his Company did not have any Establishment or Branch at Mumbai. It is his further evidence that, the name and address of his Company mentioned in the Unit Certificate at 'Exhibit-202' is also not correct. Moreover, according to him, his Company had purchased only 5,00,000 Units; whereas, the number of Units mentioned in 'Exhibit-202' is 1,10,15,500. It is his evidence that, these numbers of Units were never purchased by the Company. When his attention was drawn to the fact that, as per this Certificate, it was issued on 5th September 1990, he has clarified that, this Certificate could not have been bought by his Company on that day, as the Board of Directors of his Company had, for the first time, passed the resolution to buy the Units, only in December, 1990.

305. In respect of the UTI Certificate at 'Exhibit-203' also, he has deposed that, it contains wrong name and address of his Company. The number of Units shown therein is 1,14,84,500; however, these many Units were not purchased by his Company. Similarly, the said Certificate is shown to be issued on 5 th September 1990; however, at that time, his Company has not even decided to buy the Units, as the said decision was taken only in December, 1990.

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306. In respect of both these Unit Certificates (Exhibits "202" and "203"), he has deposed that, certain initials and handwritten portions on the reverse side of these documents were not there, when these Unit Certificates were handed over to FGFSL by his Company.

307. This witness is not at all cross-examined on these material aspects, proving that the Certificates at Exhibits "202" and "203" were tampered with and the 'Transfer Forms' at 'Exhibit-204' were also the tampered ones. The only suggestion given to him and accepted by him is that, the Unit Certificates and Transfer Forms were given to FGFSL by his Company in May, 1991, when the funds were borrowed.

308. PW-25 Shivram Godbole is the witness from 'Hindustan Dorr Oliver Limited', who has deposed that, his Company has pledged some Unit Certificates with FGFSL. He has identified the document at 'Exhibit-627' as bearing his signature and initials. However, when he was shown the document at 'Exhibit-202', he has categorically stated that, this is not the same Certificate, which his Company has pledged with FGFSL, as the Unit-holder's address SPSC-6-1993.doc mentioned thereon is wrong

and the number of Units stated therein is also too large. According to him, his Company had pledged a very small number of Units with FGFSL. Moreover, the address of 'Dorr Oliver House', as given in 'Exhibit-202', is also not correct. He has further stated that, 'Rinki Industrial Oils (India) Limited' was not having their Office at 'Dorr Oliver House' at any time. According to him, along with the Unit Certificates, his Company had handed over 'Transfer Form' to FGFSL, which was signed by him, as per the procedure. However, when 'Exhibit-204' was shown to him, he has stated that, this was not the 'Transfer Form', which had been submitted to FGFSL, along with the Unit Certificates. He is stating so, because the said 'Transfer Form' has been signed for 'Rinki Industrial Oils (India) Ltd.' as a 'Director' thereof. He has also denied that the said 'Transfer Form' bears his signature at any place.

309. The evidence of these witnesses thus more than sufficiently proves that the original UTI Certificates of smaller lots were in possession of FGFSL, having purchased the same from these witnesses. These Certificates were tampered with by changing the name of the allottee and the number of Units.

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310. As per evidence of PW-1 Ganesh, the disclosure about these forged securities came to the light in the month of June, 1992, when the team of the Officers of RBI visited to FGFSL, Bangalore, and informed that they had taken the securities that were handed over by FGFSL to ABFSL in their custody. This team of RBI Officers made inquiries with PW-1 R. Ganesh and other Officers as to how they have acquired these securities. They asked PW-1 R. Ganesh and others to show their Books and Registers to establish how they have acquired these securities. At that time, PW-1 R. Ganesh made a disclosure to the team of RBI Officers that, most of the securities, which were handed over by FGFSL to ABFSL were not genuine or original. He also informed that, the duplicate securities were given as an adjustment, as ABFSL was insisting upon handing over the physical securities. These documents were given to ABFSL to be held till FGFSL makes payment to them and thus, these securities were not actually sold to ABFSL. RBI Officers' team then asked PW-1 R. Ganesh to give the statement in writing about the nature of securities handed over to ABFSL.

311. It is the evidence of PW-1 R. Ganesh that, he was scared to give the statement in writing, as he was the only person available SPSC-6-1993.doc in the Office at that time. Therefore, he asked them to wait. Then Accused No.2-Laxminarayanan came to the Office. PW-1 Ganesh apprised Accused No.2-Laxminarayanan about the situation. Accused No.2-Laxminarayanan then also informed RBI Officers' team that the securities handed over to ABFSL were forged securities and not the genuine. Accused No.2-Laxminarayanan then took PW-1 Ganesh to his room and dictated the said statement. This witness has signed it and handed it over to RBI Officers' team. RBI Officers' team then typed it out and thereafter, again this witness has signed on the typewritten statement. The handwritten statement is marked as 'Exhibit-209', whereas, typewritten statement is marked as 'Exhibit-210'. The signature of PW-1 Ganesh on both the documents is admitted and proved by him.

312. It is his evidence that, Accused No.2-Laxminarayanan had also given a similar statement to the RBI Officers' team in his own handwriting and signed by him. RBI Officers' team had typed it out and the typewritten statement was also signed by Accused No.2- Laxminarayanan. The handwritten

statement of Accused No.2- Laxminarayanan is at 'Exhibit-211' and the typewritten statement of Accused No.2-Laxminarayanan is at 'Exhibit-212'. SPSC-6-1993.doc

313. In cross-examination of PW-1 Ganesh, it is brought on record that, when Accused No.2-Laxminarayanan entered the Office on that day, RBI Team was in his office and was asking him about the missing Unit Certificates. Accused No.2-Laxminarayanan advised him to tell the truth to the RBI Team. It is only after Accused No.2- Laxminarayanan advised him to tell the truth, by his written statement, he informed the RBI Team about the forgery of the Bonds. In his cross-examination, he has further admitted that, he has started giving statement in writing, only after Accused No.2- Laxminarayanan came to the Office. He has denied suggestion that, even in the absence of Accused No.2-Laxminarayan, he was in the process of giving the statement and this written statement (Exhibit-

209) was given by him voluntarily.

314. This witness has also identified his additional statement given to the RBI Officers' team on 2nd July 1992, which is at 'Exhibit- 213'. As in the earlier statement 'Exhibit-210', forgery in respect of some of the securities viz. Allotment Letters of NPTC Bonds was not mentioned, this additional statement 'Exhibit-213' was given by him before the RBI Officers.

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315. The Prosecution has fully corroborated this evidence of PW-1 Ganesh, by examining six RBI Officers. The material evidence in this respect is of PW-16 K.P. Ganapathi and PW-17 A.A. Khatib, who were working as 'Deputy Chief Officer' and 'Deputy General Manager', respectively, in the Department of Financial Companies in RBI.

316. According to the evidence of PW-16 Ganapathi, on 11 th June, 1992, he was directed by his superiors to carry out scrutiny of the transactions undertaken by FGFSL. Hence, he has deputed PW- 17 Khatib to do the scrutiny. He started scrutiny on the same date. On 30th June, 1992, along with PW-17 Khatib, PW-16 Ganapathi also visited the office of FGFSL, Bangalore, in order to take charge of the Unit Certificates of UTI. There they met PW-1 R. Ganesh and asked him to handover the UTI Unit Certificate, which was received back by FGFSL from ABFSL, after paying an amount of Rs.16.04 Crores. PW-1 R. Ganesh, however, told them that the Certificate was not available in Bangalore Office, because, it has been sent to Mumbai Office. When he was asked to give the documentary proof to that effect, he was not in a position to do so. He was extremely agitated. SPSC-6-1993.doc

317. As per evidence of PW-16 K.P. Ganapathi and PW-17 Khatib, at that time, Accused No.2-Laxminarayanan came. PW-16 Ganapathi and PW-17 Khatib told Accused No.2-Laxminarayanan the purpose of their visit. Then Accused No.2-Laxminarayanan talked with PW-1 R. Ganesh and told him that they had to admit that the document has been destroyed. Thereupon, PW-16 Ganapathi and PW-17 Khatib asked PW-1 Ganesh to give it in writing. Accordingly, a note was written by PW-1 Ganesh. It was typed on the typewriter of FGFSL by Mr.

Lognathan. It was signed by PW-1 Ganesh, admitting that the document has been destroyed. At that time, PW-1 Ganesh was informed that, Mr. L.K. Sastry (PW-21) from the Department of Banking Operations had already taken possession of the three UTI Unit Certificates from ABFSL and has delivered those Certificates to the Manager of RBI and it was found that those Certificates were fake. Then PW-1 Ganesh admitted that those three Certificates were fake and, therefore, in his statement, he has recorded it and signed it. Both these witnesses have identified 'Exhibit-209' as the same handwritten note signed by PW-1 Ganesh and 'Exhibit-210' as the note typewritten by Mr. Lognathan and signed by PW-1 Ganesh.

318. It is their evidence that, at that time, PW-1 Ganesh told that, apart from UTI Certificates, he has tampered with Allotment SPSC-6-1993.doc Letters of HUDCO Bonds also. He has given a statement to that effect and signed it. Accused No.2-Laxminarayanan also gave a statement to the same effect in his own handwriting, which is at 'Exhibit-211'. It is signed by him. It's typewritten copy, which is also signed by him in the presence of these two witnesses and PW-1 Ganesh, is at 'Exhibit-212'. The document at 'Exhibit-213' is the additional statement of PW-1 Ganesh. 'Exhibit-601' is the additional statement given by Accused No.2-Laxminarayan and handed over to PW-17 Khatib on 2nd July 1992, admitting the forgery and utilization of forged Allotment Letters of NPTC Bonds. FGFSL was then prohibited by the letter of RBI from carrying out any further transactions.

319. There is nothing in the cross-examination of PW-16 Ganapathi and PW-17 Khatib to disbelieve these two witnesses. As a matter of fact, there is no cross-examination at all on these material aspects. Not a single suggestion is put up to any of these two witnesses that they had pressurized either PW-1 Ganesh or Accused No.2-Laxminarayanan to give such statement. It is pertinent to note that, both these witnesses are totally independent, being the highly placed and respected Officers from RBI, who have no reason to implicate either PW-1 Ganesh or Accused No.2-Laxminarayanan falsely in this offence of forgery. They were just discharging their SPSC-6-1993.doc duties, during the course of which they happened to record the statements of PW-1 Ganesh and Accused No.2-Laxminarayanan.

320. There is further supporting and corroborating evidence of PW-19 Bandopadhyay, who was working as 'Additional Chief General Manager' in RBI in the Department of Financial Companies, that, in the meeting, which he has held, of ABFSL Officers and which was attended by Accused No.7-Sundara Babu, Accused No.7- Sundara Babu informed that, ABFSL has heavy transactions in the securities with FGFSL to the tune of Rs.300 Crores and these transactions were of 'Ready Forward' nature. In these transactions, FGFSL merely promised to deliver the securities against the Securities Receipts.

321. In view thereof, PW-19 Bandopadhyay had appointed two Firms of Chartered Accountants; M/s. Karnavat for FGFSL, Mumbai Office, and M/s. K.P. Rama and Company to scrutinize the Accounts of FGFSL, Bangalore. These Chartered Accountants were to assist the RBI Officers in carrying out inspection. It is his evidence that, on 12th June 1992, which was the first day of inspection, it was found that the record of FGFSL was not properly maintained and hence, all the efforts to carry out inspection had failed. Therefore, FGFSL was SPSC-6-1993.doc first directed to prepare Balance Sheet. Accordingly, the Balance Sheet was handed over on 22nd June 1992. At that

time, Chartered Accountants found that nothing was tallying in the sense that records were not available to substantiate what is given in the Balance Sheet (Exhibit-610). It is his evidence that, on or about 30 th June 1992, it came to the light that certain Unit Certificates of UTI have been tampered with by FGFSL and they have been used as securities delivered to ABFSL. He has also received the statement of PW-1 Ganesh, wherein he has admitted that, the Allotment Letters of NPTC Bonds were also forged. He has placed a detailed 'Note' to that effect vide 'Exhibit-611' to his Executive Director and on the basis of that 'Note', his Department has issued directions to FGFSL and its Group Companies placing restrictions on their activities.

322. Prosecution has then examined PW-21 L.K. Sastry, the retired Deputy General Manager in the RBI. On 26 th June 1992, he was directed by the Joint Chief Officer of RBI to go to the Office of ABFSL at Bangalore and obtain photocopies of UTI Unit Certificates in their possession. As per his evidence, accordingly, he went to the Office of ABFSL and obtained the photocopies of UTI Unit Certificates and brought them to the Office of the RBI. On the next morning, those photocopies of the documents were faxed to Mumbai Office at SPSC-6-1993.doc RBI. On the next day, on the request of his Joint Chief Officer, he again went to the Office of ABFSL to get certificate from them that they were not holding any other UTI Certificate than the ones, of which photocopies had been given to him. It is his evidence that, on 29th June 1992, while he was sitting in the Office of the Joint Chief Officer, a call was received from PW-18 N.D. Parmeshwaran, the Chief Officer at Mumbai Office of RBI and in the said call, the Joint Chief Officer told him to go to the Office of ABFSL at Bangalore and to ask FGFSL to deposit UTI Certificates in their possession with RBI in original. Accordingly, he reached to the Office of ABFSL on 29 th June 1992 at about 5 p.m. There, ABFSL Officers were not responding, they were trying to contact their Head Office and the Officers of the Andhra Bank at Hyderabad. This went on upto mid-night. Then, at about 1:30 a.m., ABFSL Officers agreed to deposit the UTI Certificates with RBI. Those Certificates were kept in a sealed envelope, which were signed by three Officers of ABFSL, namely, Mr. Rajan, Mr. Ramchandra Reddy and Mr. Ishwarprasad. Accompanied by these three officers, he came to the Office of the RBI and delivered that sealed envelope to the Manager Mr. S.N. Razdan.

323. According to his evidence, on 1st July 1992, he was instructed by his superior to see that the Certificates, which were SPSC-6-1993.doc kept in the sealed cover, were inspected by the Officers from UTI. Accordingly, he contacted the UTI Office and PW-22 Mr. Colman, the Manager of UTI at Bangalore, came to RBI Office to examine those Certificates. In his presence, the sealed envelope was opened. Mr. Colman examined the Certificates in the presence of the Officers and opined that the format of the Certificate is alright, but the names of the Depositors and the amount, numbers and addresses therein have been erased and overwritten. Mr. Colman opined that, the Units in original were of Rs.10/- each, but by erasing and overwriting, they were made to look like Units to the tune of Rs.90 Crores. Accordingly, Mr. Colman submitted his report to the RBI. The certificates were again put in the envelope. The envelope was sealed and again delivered to the Manager of RBI. This witness has identified the Certificates produced at Exhibits "200", "202" and "203" to be the same Certificates, which were found to be tampered with.

324. The evidence of Mr. Colman is led by the Prosecution as PW-22. He has corroborated the evidence of PW-21 L.K. Sastry by deposing that, while he was working as 'Manager' and was

in-charge of the Bangalore Office of UTI in 1991, he was also looking after the SPSC-6-1993.doc entire operation in relation to the sale of the Units and their accounting. It is his evidence that, they used to receive the blank Unit Certificate Forms either from Mumbai Office or Chennai Office of UTI, once or twice in a year in bulk. Those UTI Certificate Forms had numbers at the back and the numbers were given serially. When an Investor applied for allotment of Unit Certificate, his cheque used to be sent for realization. After the cheque was realized, the said Investor was allotted Units, considering the number of Units he has applied for. Thus, all the applications received would be made into a batch. That information was then fed in the computer, processed by the computer, the details of the Forms of Unit Certificates were filled in, including Unit Certificate number, name, address, number of Units allotted and the date. The number of Unit Certificate was in eleven digits. Only last six digits indicate the serial number. The earlier digits were indicating the details about the office, which allotted and the details about the year of the issue, status of the unit- holder and the scheme. In the office, they used to maintain a Register called 'Unit Certificate Intent Register'. In that Register, all the details and particulars in relation to a Unit, which was sold by the UTI to an Investor, were filled in, including the details in relation to the blank Unit Certificate Form, which was used for the Units. SPSC-6-1993.doc Thereafter, the Certificate was sent to Despatch Department, after entering the date, on which it was printed and the date on which it was dispatched in the Batch Control Register. It is his evidence that, a Register called 'Unit-Holder Register' was also maintained. In that Register, all the information disclosed by the Investor about himself in the application form, together with all the details of the Unit Certificates sold to him, were entered. In the 'Batch Control Register', starting and ending Certificate numbers, number of applications, total number of Units sold by the UTI, were entered. 'Exhibit-621' is the certified true copy of the 'Unit-Holder Register'.

325. This witness, in his evidence, was shown the UTI Certificates marked as Exhibits "200", "202" and "203". According to his evidence, these Certificates were shown to him by the Regional Manager Mr. Razdan of RBI Office at Bangalore. These Certificates were in the sealed envelope. After verifying the seal in the presence of the Officers, the envelope was opened and these Certificates were taken out of the envelope. They were given to him for verification and on verification, he found that, these UTI Certificates were issued by his Office, but the details and numbers in the UTI Certificates were erased and some other numbers were filled in. According to him, Unit Certificate number, number of Units in figure and words, SPSC-6-1993.doc name and address of the Unit-holder and consolidated stamp duty that has been paid and also the place and date, are all erased from the original computer print-out and new details have been filled-in in these Certificates on the typewriter. It is his evidence that, the 'Minutes' of this meeting in the Office of RBI, Bangalore, were prepared, which he has signed and it is produced at 'Exhibit-622'.

326. It is his further evidence that, thereafter, an Inspector of C.B.I. came to his office along with these Unit Certificates and collected the information from his Office on the basis of the record maintained by them about the names of the persons, to whom the original Units were allotted. It is his evidence that, at that time, he has also verified the stationary number of each Certificate, which was on the reverse side and which was not tampered with. On the basis of that number, from the record maintained in his Office, he could trace out the names of the Original Allottees and disclosed the same to the C.B.I. Inspector. He has identified Exhibits "201" and "204" as the 'Transfer

Application Forms', which were incomplete and never received in his Office. According to his evidence, if the Unit Certificate is to be transferred, then an application has to be made jointly by the 'Transferor' and the 'Transferee', giving full SPSC-6-1993.doc details and the application used to be duly stamped. After the application was received with UTI Office, along with original Certificate, the application used to be verified and thereafter a new Unit Certificate in the name of the 'Transferee' was issued and the original Unit Certificate would be cancelled and retained with UTI.

327. It is pertinent to note that, this witness is hardly cross- examined. Not a single question is asked to him, challenging his evidence about the tampering of the Unit Certificates. His unchallenged evidence thus clinchingly proves that the Unit Certificates recovered from the ABFSL Office (Exhibits "200", "202" and "203") were clearly forged ones.

328. According to learned Defence Counsel, however, there are several inconsistencies in the case of Prosecution on this point. It is submitted that, none of the Prosecution Witness has stated that it was Accused No.3-Srinivasan, who had given instructions to PW-1 Ganesh or Accused No.6-Abraham (Since Deceased) or Accused No.11-P. Chandrashekhar for carrying out such forgery. It is urged that, the Prosecution has not even attempted to prove the allegation that the funds were due from Mumbai office to Bangalore Office of SPSC-6-1993.doc FGFSL. No Bank statements are produced on record to that effect. Significantly, PW-1 Ganesh himself has admitted in his cross-examination that, there is no document on record to show that Mumbai Office owed an amount of Rs.15 Crores to the Registered Office at Bangalore.

329. However, in my considered opinion, this submission is devoid of merit. All along, the evidence led on record has proved that, the funds generated from ABFSL were never used for purchase of securities, but they were diverted to Mumbai Office for Share Market business. I have already held this fact as proved on record. It is also a matter of record that, in May, 1992, as the scam broke out, Share Market in Mumbai was closed for some time. Hence, there was financial crunch for FGFSL Office in Mumbai. Over and above that, RBI has started investigation in these transactions and hence, ABFSL was insisting for physical securities. When all these facts are proved on record, there is no necessity of any Bank Statement or other document to further prove that this fund was due from Mumbai Office.

330. It is next submitted by learned counsel for the Accused that, as per the document at Exhibit-592, the transaction in small SPSC-6-1993.doc lots of Units took place between M/s. L.K.S. Murthy and Company and FGFSL, Bangalore on 26th May 1992. Therefore, PW-1 Ganesh could not have had the small lot of Units in his possession in the third week of May, 1992 or specifically on 19 th May 1992, when he allegedly carried out forgery. It is urged that, if Accused No.3- Srinivasan had offered to send the original 'Unit Transfer Forms', day time of 20th May, 1992 was the earliest that the said 'Transfer Forms' could have been received by FGFSL, Bangalore. However, PW- 1 Ganesh alleged that the forgery was completed on the night of 19 th May, 1992 itself, which is physically impossible.

331. However, in my considered opinion, learned counsel for the Accused is again highlighting the discrepancy in dates. As stated earlier, if the witness is deposing about the incidents after more than

two decades, these sorts of discrepancies do not weigh. Human memory is not like a computer. It is bound to fail in minor details. The question is not on which exact date the forgery was made. The question is whether such forgery was committed and this fact is proved on record by the Prosecution through the evidence of the witnesses discussed above beyond reasonable doubt. SPSC-6-1993.doc

332. Further it is submitted that, these Transfer Forms were very much available in the office of PW-1 Ganesh. He has admitted, after looking to his 'Diary' (Exhibit-14), that, there was an entry on 16th September 1991 that 20 Lakhs Units were sold to M/s. Eskayef Ltd. The sale was by Mumbai Office through the Registered Office at Bangalore. The delivery was to be immediate. However, he does not remember as to exactly when these Units were sent in December, 1991. He also does not know that the Unit Certificates were accompanied by Transfer Forms. He does not remember whether the Unit Certificates received from Mumbai Office along with the Unit Certificate of Bangalore Registered Office were handed over to M/s. Eskayef Ltd. or not.

333. By placing reliance on the record of Miscellaneous Application No.283 of 1996 filed by FGFSL against M/s. Smithkline Beecham Pharmaceuticals (I) Ltd. (formerly, Eskayef Ltd.) i.e. M/s. Eskayef Industries, and one Miscellaneous Petition No.70 of 1992 filed by Hindustan Dorr Oliver Limited Vs. A.K. Menon, the Custodian, it is pointed out that, the Unit Certificates and the Transfer Forms standing in the name of M/s. Rinki Industrial Oils Ltd. were in the custody of PW-1 Ganesh from 18 th December 1991, SPSC-6-1993.doc i.e. the date on which they were handed over to M/s. Eskayef Ltd., and returned by M/s. Eskayef Ltd. to him on 29th April 1992. Similarly, the Unit Certificates and Transfer Forms standing in the name of M/s. Hindustan Dorr Oliver Ltd. were in the custody of PW-1 Ganesh from 9th April 1992, i.e. the date on which he handed over them to M/s. Eskayef Ltd., and were returned by M/s. Eskayef Ltd. to him on 29th April 1992.

334. By placing reliance on the correspondence between FGFSL, Mumbai and M/s. Eskayef Ltd., it is submitted that, the said correspondence establishes handling of the Unit Certificates and the Transfer Deeds by PW-1 Ganesh from December, 1991 to April, 1992. The return of Unit Certificates and Transfer Forms on 29 th April, 1992 by M/s. Eskayef Ltd. to PW-1 Ganesh, duly acknowledged by PW-1 Ganesh, proves that he was in possession of those documents from 29th April 1992. It is urged that, the availability of these Unit Certificates and the Transfer Forms standing in the name of M/s. Rinki Industrial Oils (I) Ltd. and M/s. Hindustan Dorr Oliver Ltd. in the hands of PW-1 Ganesh from 29th April, 1992 clearly disproves the allegation of PW-1 Ganesh that, Accused No.3-Srinivasan has sent the Transfer Forms in May, 1992 for the purpose of forgery. SPSC-6-1993.doc

335. According to learned counsel for the Accused, PW-1 Ganesh has admitted in his cross-examination that, the Unit Certificates standing in the name of M/s. Rinki Industrial Oils (I) Ltd. were transferred into the name of M/s. Rinki and Company at his behest and FGFSL, Mumbai, did not have anything to do with it.

336. As regards the Unit Certificates and the Transfer Deeds of M/s. Hindustan Dorr Oliver Ltd., it is submitted that, as is evident from the judicial orders passed in Miscellaneous Petition No.70 of 1992, one Certificate of 4 Lakhs Units, along with the duly signed Transfer Deed, was given by



FGFSL, Bangalore to M/s. Eskayef Ltd. on 11th June 1992; while the other Unit Certificate for 6 Lakhs Units, along with the duly signed Transfer Deed, was in possession of FGFSL, Bangalore, at the time of FGFSL's notification, and was seized by CBI. Thus, it is very evident that the Unit Certificates and the Transfer Forms relating to M/s. Rinki Industrial Oils (I) Ltd. and M/s. Hindustan Dorr Oliver Ltd. were in the hands of PW-1 Ganesh on and from 29th April 1992 till at-least 11 th June, 1992 or 2nd July 1992 and were only dealt with by PW-1 Ganesh and no one else. Therefore, his allegation that, the Unit Certificates and the Transfer SPSC-6-1993.doc Forms (Exhibit-204) were manipulated in May, 1992 for the purpose of forgery, is entirely false and baseless.

337. In my considered opinion, even assuming that PW-1 Ganesh was in possession of the 'Transfer Forms' since before, his evidence, as subsequent discussion shows, clearly proves that the forgery was done at the instance of Accused No.3-Srinivasan, as his Mumbai Office of FGFSL was in urgent need of funds.

338. As regards the actual forgery, it is submitted that, the office-boy, whose name PW-1 Ganesh fails to remember and who had allegedly handed over the keys to PW-1 Ganesh, is not examined by the Prosecution, though he was the key-witness. There is also no evidence to show that, Accused No.11-Chandrashekhar was present at the relevant time. According to learned counsel for the Accused, the conflicting versions given by PW-1 Ganesh in the light of 'Exhibit- 209', which is his handwritten confession, absence of any document under which the forged Units were lodged by PW-1 Ganesh with ABFSL, Bangalore and the impossibility of small lot of Units having been available with PW-1 Ganesh before 26th May 1992, makes it obvious that the allegedly forged Units were not forged on the date and in the manner as stated by PW-1 Ganesh.

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339. As regards the alleged forgery carried out at the instance of Accused No.2-Laxminarayanan in respect of the UTI Certificates, it is submitted that, there is no explanation forthcoming from PW-1 Ganesh as to when the alleged forgery was done in the last week of May, 1992, or, as to how he has got access to the Registered Office and whether anyone else was present in the Office at that time. There is also no explanation as to from where National Housing Bank's rubber-stamp was obtained to affix on the 'Transfer Forms' in the name of National Housing Bank (Exhibit-201). Though the Prosecution has examined PW-24 B. Muralidharan on this aspect, he has not corroborated the evidence of PW-1 Ganesh. Moreover, though PW-1 Ganesh alleges that it was Accused No.2-Laxminarayanan, who has instructed him to carry out the forgery of Unit Certificates, he admits that, some signatures on the 'Transfer Forms' (Exhibit-201) were forged by him on his own. Hence, it is urged that, it is unbelievable that this witness would require instructions from Accused No.2-Laxminarayanan for allegedly forging the Unit Certificates in the name of National Housing Bank (Exhibit-200).

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340. As regards the tampering with small lot of Unit Certificates, it is submitted that, the expert witness from UTI PW-22 Colman was unable to identify the actual holder of the Units from UTI Records. Further, the only small lot of Unit-holder PW-15 C.V. Chandrashekhhar has categorically denied that the alleged tampered Unit Certificate at 'Exhibit-203' was his Unit Certificate and the signature appearing on the reverse side of the Certificate was his.

341. Even as regards the forensic evidence, it is submitted that, there is no definitive opinion on the questioned transcript in comparison to the specimen. No opinion is given about the signatures on the Transfer Form in comparison with the specimen signature of the authorized officials of National Housing Bank as well as PW-1 Ganesh, who has allegedly forged the same. The rubber- stamp impression on the Unit Certificates and the Transfer Deed are proved to be not that of the specimen provided by NHB. Even in respect of the Units in the name of M/s. Rinki Industrial Oils (I) Ltd., no definitive opinion is given on the questioned transcript in comparison to the specimen. According to learned counsel for the Accused, therefore, in the absence of any definitive opinion pointing out the forgery, this charge also cannot be held to be proved. SPSC-6-1993.doc

342. In the alternate, it is submitted that, if this charge is held to be proved, then, it will be only against PW-1 Ganesh, who has actually committed the alleged forgery, but in no case it can be held as proved against Accused No.3-Srinivasan or Accused No.2- Laxminarayanan, as alleged. Hence, the involvement of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan in this case of forgery is absolutely without any evidence and sans any material on record to that effect.

343. As regards evidence of PW-1 Ganesh in respect of involvement of Accused No.2-Laxminarayanan and Accused No.3- Srinivasan in this forgery, I will be dealing with it separately, but so far as forgery part of Unit Certificates is concerned, in my considered opinion, even in the face of all the contentions raised by learned counsel for the Accused, which contentions are in the nature of inferences to be drawn, there is more than convincing oral and documentary evidence on record to prove the same.

344. Just to recapitulate, the evidence of PW-13 Gururaja shows that, the UTI Certificates in small lots were purchased by him SPSC-6-1993.doc on behalf of PW-14 V.S. Balasubramanyan and PW-15 C.V. Chandrashekhhar, as deposed by them also. His evidence also shows that, he has sold those Unit Certificates to FGFSL and thus, PW-1 Ganesh was in possession of those Unit Certificates of small lots. Evidence of PW-21 L.K. Sastry, from Reserve Bank of India, proves that, these forged Certificates were seized from the Office of ABFSL. The evidence of PW-22 Colman proves that, these Unit Certificates, on verification, were found to be tampered with. Most importantly, the evidence of PW-70 S.L. Mukhi, the Forensic Expert, also proves that the questioned transcripts of Unit Certificates were taken after erasing original typed script / writing. Moreover, the reverse of the Unit Certificates revealed that the original signatures were obliterated with correcting fluid.

345. His evidence and report further proves that, as regards the Unit Certificates issued in the name of NHB, original writings when deciphered, read as "Rama Murthy v". Further, the rubber- stamp impression on the Unit Certificate and Transfer Deed were found to be not that of the specimen provided by NHB.

346. Even in respect of the Unit Certificates issued in the SPSC-6-1993.doc name of M/s. Rinki Industrial Oils Ltd., the questioned transcripts on the said Unit Certificates were found to be re-typed, after erasing original transcripts / writings. Therefore, his evidence categorically proves that the original Unit Certificates were tampered with by erasing the original portion thereon.

347. The evidence of PW-1 Ganesh further shows that, these forged Unit Certificates were sold to ABFSL for raising the funds. The 'Memorandum of Sale' of the Unit Certificates relating to the transaction dated 20th May 1992, is at 'Exhibit-171'; whereas, the 'Memorandum of Purchase' of the said Unit Certificates is at 'Exhibit- 172'. In respect of other Unit Certificates, there is a 'Memorandum of Sale' dated 21st May 1992 at 'Exhibit-177' and 'Memorandum of Purchase' of the said Unit Certificates is at 'Exhibit-179'. In respect of the third set of the Unit Certificates, the transaction is dated 25 th May, 1992 and it's 'Memorandum of Sale' is at 'Exhibit-183' and 'Memorandum of Purchase' is at 'Exhibit-185'.

348. As regards the forged Unit Certificates of NHB, for 7.50 Crores Units, they were lodged on 28th May 1992 and they are, as stated above, at 'Exhibit-200'. The 'Transfer Form' thereof is at 'Exhibit-201'. The forged Unit Certificate in respect of M/s. Rinki SPSC-6-1993.doc Industrial Oils Ltd. for 1,10,15,500 Units is lodged on 20 th May 1992. It's 'Transfer Form' is at 'Exhibit-204' and the forged Unit Certificate at 'Exhibit-203' was lodged on the same date. The evidence of PW-1 Ganesh is more than sufficient on record to that effect and it is also supported with the documentary evidence on record. Hence, as regards the forgery aspect of the Unit Certificates, I have no hesitation in holding that the Prosecution has more than sufficiently and adequately proved the same beyond reasonable doubt. Point No.8 :- Charge of Forgery in respect of Allotment Letters of HUDCO Bonds.

349. The third allegation of forgery pertains to Allotment Letters of HUDCO Bonds. As per evidence of PW-1 Ganesh, in the month of May, 1992, after the scam broke out, Accused No.3- Srinivasan told him that, he had borrowed large amount from ABFSL for Mumbai Office and ABFSL was insisting upon physicals being handed over. Therefore, Accused No.3-Srinivasan enquired with him on telephone as to whether some more NPTC Bonds or UTI Certificates can be forged and handed over to ABFSL. PW-1 Ganesh however, told him that, it was not possible now. Thereupon, Accused No.3-Srinivasan faxed the original Letter of Allotment of Bonds SPSC-6-1993.doc issued by 'Housing and Urban Development Corporation' (HUDCO) and asked him to forge the Allotment Letter on similar lines.

350. As per the evidence of this witness, after receiving the faxed copy of Allotment Letter of HUDCO Bonds, this document was also forged by him and PW-8 S. Chandrashekhar along with one Office Assistant. It is his evidence that, this entire document at 'Exhibit-205' is a forged document. Even the signatures on this document were forged. It was prepared to look like the document, which was faxed to him by Accused No.3-Srinivasan vide 'Exhibit- 206'. He has also identified another Letter of Allotment at 'Exhibit- 207', forged by them on the instructions of Accused No.3-Srinivasan, by using the Allotment Letter sent by fax. Both the forged Allotment Letters at Exhibits "205" and "207" were handed over to ABFSL. The document at 'Exhibit-207' was handed over personally to ABFSL by Accused No.2-Laxminarayanan and the document at 'Exhibit-205' was handed over by one Office Assistant. 'Exhibit-180' is the 'Memorandum of Sale' and 'Exhibit-182' is the

'Memorandum of Purchase' of this transaction dated 26th May, 1992, under which an amount of Rs.8.40 Crores was raised from ABFSL on the basis of these forged letters.

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351. This witness has admitted forgery of the HUDCO Bonds in his statement (Exhibit-209) given before the R.B.I. Officer PW-17 Khatib on 30th June 1992. As stated above, PW-16 Ganapathi and PW-17 Khatib have also deposed about PW-1 Ganesh, in his statement (Exhibit-209), admitting that these Allotment Letters of HUDCO Bonds were forged. In his statement (Exhibit-211), Accused No.2-Laxminarayanan has also admitted the said fact.

352. In his cross-examination, at page 325, PW-1 Ganesh has further confirmed his evidence, as follows :-

"On the basis of faxed Allotment Letters, we had forged two Allotment Letters. On the basis of those forged Allotment Letters, according to my memory, amount of Rs.8 Crores was borrowed from ABFSL."

"I have forged two HUDCO Allotment Letters of value of Rs.20 Crores and Rs.25 Crores. On the basis of one of those Letters, an amount of Rs.8.4 Crores was borrowed from ABFSL and the second forged Allotment Letter was handed over to ABFSL to cover the liability of Mumbai Office and that is what I have stated in the previous para of portion marked in the statement. Both the forged Allotment Letters were given to ABFSL. No Transfer Certificates were given along with the forged Allotment Letters. We did not hand over Transfer Form, because ABFSL never asked us to give any Transfer Form along with the forged Allotment Letters. It is not true to say that SPSC-6-1993.doc I forged Allotment Letters of HUDCO, NPTC and also forged Units of UTI on my own. It is not true to say that neither Accused No.2, nor Accused No.3 advised me to forge these documents. It is not true to say that I never informed them that these documents have been forged and had handed over to Financial Institutions."

353. This evidence of PW-1 Ganesh about forging of the Allotment Letters of HUDCO Bonds, is fully corroborated by PW-9 Lalitha, who has deposed that, PW-1 R. Ganesh has given her Allotment Letters of HUDCO Bonds also for being fed into the computer. She remembered that the front portion of the Letter of Allotment of HUDCO Bond was fed into the computer by her; however, she has not fed in the computer the reverse portion. According to her evidence, she has fed this format into the computer only once. The documents at Exhibits "205", "206" and "207" were shown to her and she has admitted that these documents are in the same format, which she has fed into computer; however, she cannot identify the signature part on these documents. As regards these documents, she has stated that, after she fed the Letter of Allotment in the computer, she took the print-outs and handed them over to PW-1 R. Ganesh. What PW-1 R. Ganesh did thereafter, she does not know.

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354. As regards this forgery and, that too, at the instance of Accused No.3-Srinivasan, the Defence has tried to falsify the entire evidence of PW-1 Ganesh on this aspect. It is submitted that, the story of the Prosecution that the Allotment Letters of HUDCO Bonds were faxed by FGFSL, Mumbai Office to Bangalore Office for the purpose of forgery, is totally incorrect and false. According to learned counsel for the Accused, these Allotment Letters were faxed for the purpose of collection of 'Interest Warrants' due from CANFINA, Bangalore, and not, as alleged by PW-1 Ganesh, for the purpose of forgery. It is submitted that, the 'Interest Warrants' were due to FGFSL, Mumbai of the face-value of Rs.29 Crores on 9% HUDCO Bonds, from CANFINA, Bangalore, on account of a bonafide commercial transaction between FGFSL, Mumbai, and BOI Finance Limited, Mumbai.

355. According to learned counsel for the Accused, during the course of investigation of this case, the statements of Mr. A.V. Meenakshi Sundaram, BOI Finance Official, and Mr. Venkatramani, City Bank Finance Official, were recorded by CBI under Section 161 of the Code of Criminal Procedure. In their statement, both these SPSC-6-1993.doc officials have clearly spoken about the outstanding 'Interest Warrants' due of the face-value of Rs.29 Crores of Bonds from CANFINA and that it was FGFSL's responsibility to obtain the same from CANFINA. Both these witnesses have produced on record various documents to show that this amount of interest was due. It is submitted that, the Prosecution did not examine these witnesses to prove these documents. Hence, Accused No.3-Srinivasan has tendered these documents as a part of his statement recorded under Section 313 of the Cr.P.C. According to learned counsel for the Accused, these documents clearly bring out that the transaction was a bonafide one and 'Interest Warrants' of the face-value of Rs.29 Crores of Bonds were due to be collected from CANFINA, Bangalore, and it was FGFSL's responsibility to do so. The Letters of Allotment of HUDCO Bonds faxed by FGFSL, Mumbai Office to Bangalore Office on 22nd May, 1992, accordingly, consisted of the letter dated 20 th March 1992, addressed by FGFSL, Mumbai to HUDCO, Delhi and bearing the handwritten clarification of HUDCO Officials and the Letters of Allotment of HUDCO and Transfer Forms running into eleven pages. According to him, the document produced along with the 'Charge-Sheet' at 'D-176', which is the 'list of documents', is very categorical that all these documents were faxed copies and it was a SPSC-6-1993.doc composite bunch of 12 faxed papers (Pages 398 to 409). However, in the examination-in-chief of PW-1 Ganesh, the Prosecution has got exhibited only three sheets out of the same and they were marked as 'Exhibit-206'. The Defence has, therefore, recalled PW-6 B.S. Shankar Narayan to prove on record the entire bunch of faxed documents relating to HUDCO Bonds, including the letter dated 20 th March 1992 of FGFSL, Mumbai and thereby established the actual purpose for which the faxed documents were sent.

356. It is submitted that, this PW-6 B.S. Shankar Narayan, on his recall for further cross-examination, has categorically admitted that he has handed over ten to eleven faxed pages to the Investigating Officer D.B. Desai. He has further admitted that, this set of faxed messages was sent from FGFSL, Mumbai to its Bangalore Office for the purpose of follow-up of collection of 'Interest Warrants' from CANFINA, Bangalore.

357. Thus, according to learned counsel for the Accused, this entire case of the forgery of HUDCO Bonds and for that purpose, Accused No.3-Srinivasan sending the fax copy of the Transfer Forms, is totally based on false foundation. SPSC-6-1993.doc

358. Further it is submitted that, there is also no corroboration at all as to the actual act of alleged forgery. It is submitted that, though according to PW-1 Ganesh, he has, after receiving the fax copy of the Letter of Allotment, forged the document along with PW-8 S. Chandrashekhar and there was one Office Assistant with them, he has admitted that, he does not remember the name of the Office Assistant. PW-8 S. Chandrashekhar has turned hostile and not supported the evidence of PW-1 Ganesh. Moreover, according to learned counsel for the Accused, there is no evidence on record to show that these documents are forged on the instructions of Accused No.2-Laxminarayanan and Accused No.3- Srinivasan. None of the colleague of PW-1 Ganesh is deposing that such instructions were given by Accused No.2-Laxminarayana or Accused No.3-Srinivasan, as alleged by PW-1 Ganesh.

359. In respect of use of these alleged forged HUDCO Bonds, it is submitted that, again there is no evidence to prove that the amount of Rs.8 Crores was borrowed from ABFSL against it. It is urged that, neither in his statement recorded by CBI Officer nor in his confessional statement made before the Metropolitan SPSC-6-1993.doc Magistrate, PW-1 Ganesh has stated about the use of these forged Bonds. For the first time, he has deposed about the same in his evidence by stating that, he had borrowed a sum of Rs.8.40 Crores against these forged Bonds. It is submitted that, when, at the relevant time, there was absolutely no pressure from ABFSL to deliver physical securities, there was no question of forging these letters of HUDCO Bonds.

360. By placing reliance on the evidence of PW-7 Anand Madhbhushi from ABFSL, it is urged that, according to him also, there was no written communication from ABFSL asking for delivery of physicals. PW-1 Ganesh has also not put up any note to Accused No.2-Laxminarayanan or any other Officer of FGFSL or the Board saying that, ABFSL is exerting pressure for delivery of the physicals. There were several other securities apart from the securities mentioned in the letter at Exhibit-617, which were seized by RBI and hence, there was no reason at all for forging these securities. According to learned counsel for the Accused, therefore, there is absolutely no material evidence on record as regards this alleged forgery, the use of the forged documents or reason for forging the same and in the alternate, for PW-1 Ganesh forging the same at SPSC-6-1993.doc the instance of Accused No.3-Srinivasan. The entire case on this aspect is, therefore, absolutely concocted and false.

361. All said and done and after considering all the submissions advanced by learned counsel for the Accused, which mainly pertain to involvement of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan in this forgery, which I will be considering separately, the fact remains that, the evidence of PW-1 Ganesh, PW-9 Lalitha, PW-6 B.S. Shankar and 'Exhibit-209' categorically goes to prove that these Allotment Letters of HUDCO Bonds were tampered with and were thus forged.

362. Most importantly, the evidence of the Forensic Expert PW-70 S.L. Mukhi also proves that these Allotment Letters were tampered with and were thus forged. It is categorically opined by him that, the authorship of the questioned signatures on the letters 'Exhibit-205' and 'Exhibit-207' could not be connected to the authorized signatories of the HUDCO Company, Mr. Gopal Krishnan, the Secretary, and Mr. R.V. Raghuram, the Chief Finance Officer. He has further opined that, certain handwriting on the reverse of these letters was connected to PW-1 Ganesh. In my considered opinion, SPSC-6-1993.doc this evidence is more than sufficient to prove that these letters were

forged.

363. This evidence relating to forgery of securities is also supported from documentary evidence, like 'Exhibit-208'. It is the evidence of PW-1 Ganesh that, FGFSL has started handing over actual securities to ABFSL only in the month of May, 1992. Prior to that, only Securities Receipts were issued. According to his evidence, Accused No.2-Laxminarayanan told him that they should maintain a 'Book', indicating the securities which were handed over to ABFSL and the said 'Book' should also show whether the securities handed over were original or duplicate. For indicating in the 'Book' that a particular security handed over to ABFSL was original or duplicate, this witness then started using the letter "O" for 'Original Security' and letter "D" for 'Duplicate Security'. Accused No.2-Laxminarayanan looked at that 'Book' and said that, instead of letter 'D', letter 'C' can be used to show that the security is duplicate. Accordingly, Accused No.2-Laxminarayanan himself scored out letter 'D' and substituted it by letter 'C'. This witness has identified the sheet of paper, which is marked as 'Exhibit-208' from the said 'Book'. According to him, entries in the said 'Book' are in the SPSC-6-1993.doc handwriting of two Office Assistants; by name Mrs. Mahalakshmi and Ms. Lalitha Devi (PW-9). According to him, on this sheet of paper, whichever securities were original are indicated by writing letter "O" on the right side and initially, letter "D" for 'Duplicate Security', which letter was subsequently converted by Accused No.2- Laxminarayanan to letter "C".

364. The Prosecution has then relied upon the evidence of PW- 6 B.S. Shankar Narayan, who was working with M/s. Fairgrowth Agency and has assisted the Special Officer for investigating certain irregularities, after the scam has broke out. According to his evidence, during the course of investigation, he came across the document marked as 'Exhibit-208' and he collected the same. He was informed that, this document at 'Exhibit-208' was in the handwriting of PW-1 R. Ganesh. PW-9 Lalitha Devi told him that, this document contained the information about the sale of securities by FGFSL. She also informed him that the letter "O" against the entry, written on the document, indicates the word "Original" and letter "C" against the entry indicates the word "Copy". It may be true, he has denied that there was overwriting on the letter "C" and it was converted to letter "D". However, even a cursory glance to this SPSC-6-1993.doc document shows that, this scoring is apparent on the face of it and it proves that, such document at 'Exhibit-208' was maintained, detailing the original and duplicate securities separately.

365. Moreover, having regard to the conditions prevailing at the relevant time also, especially considering that all the transactions of FGFSL with ABFSL were against the Securities Receipts and after the scam broke out, the RBI Officers were insisting on ABFSL and ABFSL in its turn was insisting on FGFSL for the physical securities of those transactions, as deposed by PW-1 Ganesh, there was tremendous pressure on FGFSL to somehow procure those physical securities. It is deposed by PW-10 Anwar Gundmi, Vice President of FGFSL Office at Mumbai also that, in May-June, 1992, Mumbai Office of FGFSL faced some difficulties, because there was liquidity crunch, as the Share Market was closed for sometime. As the scam has broke out in Mumbai, the conditions were not conducive in the FGFSL Office at Mumbai to procure such securities or even to forge those securities. Hence, as deposed by PW- 1 Ganesh, forgery of these securities in a very clever and shrewd manner was done in the FGFSL Office at Bangalore.

366. The evidence of PW-1 Ganesh in this respect is consistent SPSC-6-1993.doc on major aspects throughout the proceedings, from the immediate statement given before the RBI Officers, which is proved through the evidence of PW-16 Ganapathi and PW-17 Khatib. In this statement 'Exhibit-209 (Handwritten)' and 'Exhibit-210 (Typewritten)' and the additional statement 'Exhibit-213', he has categorically stated as to how these securities were tampered with and also the reason for the same and their utilization for raising the funds. In his 'Suicide Note' (Exhibit-214), which was written immediately after his statement recorded before the RBI Officer, also, he has confirmed and reiterated how he succumbed to the pressure from his Office at Bangalore and the FGFSL Mumbai Office, which made him forge these securities, which, according to him, was done only for the interest of the Organization, otherwise, it was bound to be doomed, and it was not done for any personal benefit.

367. In the statement of Accused No.2-Laxminarayanan recorded before the RBI Officer at Exhibit-211 (Handwritten) and Exhibit-212 (Typewritten) also, he has admitted that, these securities were required to be forged in order to meet the tremendous pressure faced from the Mumbai Office for the hard physical securities and also for the funds, which were required to be SPSC-6-1993.doc raised and which could not be done in Mumbai and, therefore, the recourse was taken to Bangalore Office.

368. In his confessional statement recorded under Section 164 of the Code before the Metropolitan Magistrate also, PW-1 Ganesh has remained consistent about this case of forgery of these three Securities. Not only that, in his evidence before the Court also, one does not find any major inconsistencies or contradictions, so as to disbelieve his evidence.

369. As a matter of fact, if PW-1 Ganesh, who has carried out this major part of the forgery, is himself deposing about the same implicating himself to a large extent, since beginning till the end of the trial, there is no reason at all to disbelieve this case of forgery; especially when it is corroborated from other evidence on record, including the crucial evidence of Forensic Expert PW-70 S.L. Mukhi, whose opinion, supported with reasons that these securities were tampered with, has remained unshattered on record.

370. It is also pertinent to note that, PW-1 Ganesh has even attempted to commit suicide, which is an admitted fact, on account SPSC-6-1993.doc of this act of forgery committed at his hands and having regret for the same; especially because, according to him, he was pressurized to do so by Accused No.2-Laxminarayanan and Accused No.3- Srinivasan and both of them were now making him scapegoat.

371. Thus, as regards the offence of forgery, though the Defence might have advanced several submissions to point out some inconsistencies or conflicting versions, which are, as a matter of fact, bound to happen in any truthful case, considering the lapse of more than 20 years and which are variances on fringes or embellishments in details, in my considered opinion, there is abundant clinching and cogent evidence on record to prove beyond reasonable doubt the forgery of these three Securities, namely, Allotment Letters of NPTC, UTI Certificates and Allotment Letters of HUDCO Bonds. Involvement of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan :-



372. According to learned counsel for the Accused, however, even if the offence of forgery is held to be proved, the real question for consideration is, 'whether the evidence of PW-1 Ganesh that he has indulged into this forgery at the instance of Accused No.2- SPSC-6-1993.doc Laxminarayanan and Accused No.3-Srinivasan can be relied upon to hold Accused No.2-Laxminarayanan and Accused No.3-Srinivasan guilty for the said offence ?'

373. According to him, admittedly, PW-1 Ganesh is not an independent witness as such, but he is an 'Accomplice'. He has played the major role in the act of forgery. It is submitted that, as per the evidence on record, the actual act of forgery was committed by him and hence, there is every possibility that, now to save himself from the penal consequences, he is involving Accused No.2-Laxminarayanan and Accused No.3-Srinivasan. Hence, according to him, much reliance cannot be placed on the evidence of PW-1 Ganesh, who has turned 'Approver' to save his skin.

374. Now, in order to appreciate the evidence of PW-1 Ganesh on this aspect, it would be necessary to consider the law laid down by the Hon'ble Apex Court in its various Judgments, regarding credibility of the evidence of the 'Approver', as relied upon by learned Special P.P. and learned counsel for the Accused. SPSC-6-1993.doc Evidence of Approver :-

375. The first Judgment relied upon by learned Special P.P. is that of Haroom Haji Abdulla Vs. State of Maharashtra, AIR 1968 SC 832, wherein, in paragraph No.12, the Hon'ble Apex Court has, after relying upon its earlier Judgment in the case of Rameshwar Vs. State of Rajasthan, AIR 1952 SC 54, held that, "Every detail of the story of the Accomplice need not be confirmed by independent evidence, although some additional independent evidence must be looked for to see whether the Approver is speaking the truth and there must be some evidence, direct or circumstantial, which connects the co-accused with the crime independently of the Accomplice. One such circumstance may be the making of a number of confessions without a chance for prior consultation between the confessing co-Accused. But before even a number of such confessions can be used, each such confession must inspire confidence, both, in its content and in the manner and circumstances of its making. If there be any suspicion of false implication, the confession must be discarded as of no probative value. This may result from a variety of circumstances, of which a few alone may be mentioned, such as why the accused confessed, whether he expected a gain for himself by implicating his co-accused, the part he assigns to himself and that to his co-accused, the opportunity for being coached up to narrate a false story or a story false in certain details. Where there is a single retracted SPSC-6-1993.doc confession, corroborating other Accomplice evidence, the caution must necessarily be still greater and the probative value smaller. Even if there are more than one such confession and they are proved to be given independently and without an opportunity for a prior concert, the probative value may increase but the need for caution remains because a number of suspects may be prompted by the same or different motives to embroil a particular individual. It is only when false implication is excluded after close scrutiny that confession of a co-accused can be used to lend assurance to other evidence. This was so stated by Sir Lawrence Jenkins in Emperor Vs. Lalit Mohan Chuckerburty, (1911) ILR 38 Cal. 559, and accepted by this Court and a retracted confession cannot obviously go further or have higher value."

[Emphasis Supplied]

376. According to learned Special P.P., here in the case, the evidence of PW-1 Ganesh is corroborated not only with his own three consistent confessional statements; one statement before RBI, another in the 'Suicide Note', and the third confessional statement before the Metropolitan Magistrate, but it is also supported and corroborated from the confessional statement of co-Accused No.2- Laxminarayanan, who has also given his statement before the RBI Officer at 'Exhibit-211' (Handwritten) and 'Exhibit-212' (Typewritten), wherein he has admitted his role in the forgery on SPSC-6-1993.doc account of pressure from Accused No.3-Srinivasan, who was working in FGFSL, Mumbai Office. In the submission of learned Special P.P, absolutely no suspicion of false implication is brought on record from any of these confessional statements. Admittedly, neither PW-1 Ganesh nor Accused No.2-Laxminarayanan expected any gain for themselves by implicating the other Accused and in such circumstances, there is no reason to discard these confessional statements.

377. Learned Special P.P. has then relied upon another Judgment of the Hon'ble Apex Court in the case of Ravinder Singh Vs. State of Haryana, AIR 1975 SC 856 ; especially paragraph Nos.12 to 14 thereof, in which the Hon'ble Apex Court has considered the evidentiary value of the Approver's testimony. It was observed as follows :-

12. "An 'Approver' is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in Court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected brevi menu. Secondly, once that hurdle is SPSC-6-1993.doc crossed, the story given by an 'Approver' so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an 'Approver' confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an Approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an 'Approver' appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

[Emphasis Supplied]

378. These very observations of the Hon'ble Apex Court in this Judgment are relied upon by learned counsel for the Accused also to submit that, if the 'Approver' is the most unworthy friend, he having bargained for his immunity, his testimony cannot be relied upon, unless his worthiness for credibility is proved. The essential test for the same is to ascertain whether the story he relates appears intrinsically to be a natural and probable and thereafter SPSC-6-1993.doc whether such story implicates

him in such a manner as to give rise to a conclusion of guilty beyond a reasonable doubt. Here in the case, it is submitted by learned counsel for the Accused that, PW-1 Ganesh is not a witness, on whose testimony this Court can place implicit reliance. If the story is woven by him, it also cannot be called as intrinsically to be a natural and probable. If this witness, who was ambitious and was the "blue eyed boy" of the Prosecution, has gone to the extent of committing forgery in respect of some securities on his own, without even waiting for the instructions from Accused No.2-Laxminarayanan, who was away on a foreign tour, his evidence that he has done forgery at the instance of Accused No.2-

Laxminarayanan and/or Accused No.3-Srinivasan, cannot be accepted, merely because he is implicating himself to a major extent in the offence of forgery.

379. Learned counsel for the Accused has, therefore, relied upon the Judgment of the Hon'ble Apex Court in the case of Mohd. Hussain Umar Kochra Vs. K.S. Dalipsinghji and Anr., (1969) 3 SCC 429, to submit that, "there is no such corroboration in this case coming from the independent source and one 'Accomplice' cannot corroborate another". He has also relied upon the relevant SPSC-6-1993.doc observations of the Hon'ble Apex Court in the case of Sarwan Singh S/o. Rattan Singh Vs. State of Punjab, AIR 1957 SC 637, wherein the Hon'ble Apex Court was pleased to observe, in paragraph No.7, as follows :-

7. "..... An 'Accomplice' is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt, that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and Courts are naturally reluctant to act on such tainted evidence, unless it is corroborated in material particulars by other independent evidence. It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted, it would render the evidence of the 'Accomplice' wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the 'Approver' can be reasonably and safely accepted as true. But, it must never be forgotten that before the Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is, whether even as an 'Accomplice', the 'Approver' is a reliable witness? If the answer to this question is against the 'Approver', then, there is an end SPSC-6-1993.doc of the matter and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an 'Approver's' evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test, which is common to all witnesses. If this test is satisfied, the second test which still remains to be applied is that the 'Approver's' evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the 'Approver'." [Emphasis Supplied]

380. To further buttress this point, learned counsel for the Accused has placed reliance on the Judgment of the Hon'ble Apex Court in the case of Abdul Sattar Vs. Union Territory, Chandigarh, 1985 (Supp.) SCC 599, wherein the Prosecution had sought to prove its case by relying upon the evidence of the 'Approver' and it was held that, "The 'Approver' is a competent witness, but the position in law is fairly well settled that on the uncorroborated testimony of the 'Approver', it would be risky to base the conviction, particularly, in respect of a serious charge like murder. Once the evidence of the 'Approver' is found to be not reliable, the worth of his evidence is lost and such evidence, even by seeking corroboration, cannot be made the foundation of a conviction."

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381. This legal position is, according to learned counsel for the Accused, re-confirmed by the Hon'ble Apex court in its various Judgments, like Narayan Chetanram Chaudhary Vs. State of Maharashtra, (2000) 8 SCC 457, wherein it was held that, "For corroborative evidence, the Court must look at the broad spectrum of the 'Approver's' version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration may depend upon the facts of different cases. Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable."

382. Further, learned counsel for the Accused has also relied upon the Judgment of the Hon'ble Apex Court in the case of Sheshanna Bhumanna Yadav Vs. State of Maharashtra, (1970) 2 SCC 122, wherein the Hon'ble Apex Court has discussed about the test of reliability of Approver's evidence and rule as to corroboration of his testimony, as follows:-

"The law with regard to appreciation of Approver's evidence is based on the effect of Sections 133 and 114, illustration (b) of the Evidence Act, namely, that an 'Accomplice' is competent to depose, but, as a rule of caution, it will be unsafe to convict upon his testimony SPSC-6-1993.doc alone. The warning of the danger of convicting on uncorroborated evidence is, therefore, given when the evidence is that of an 'Accomplice'. The primary meaning of 'Accomplice' is any party to the crime charged and someone who aids and abets the commission of crime. The nature of corroboration is that, it is confirmatory evidence and it may consist of the evidence of second witness or of circumstances, like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the Accused with the crime. When it is said that the corroborative evidence must implicate the Accused in material particulars, it means that, it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. That evidence must confirm that part of the testimony, which suggests that the crime was committed by the Accused. If a witness says that, the Accused and he stole the sheep and he put the skins in a certain place, the discovery of the skins in that place would not corroborate the evidence of the witness as against the Accused. But, if the skins were found in the Accused's house, this would corroborate, because it would tend to confirm the statement that the Accused had some hand in the theft."

383. Learned counsel for the Accused has then placed reliance on much celebrated observations of the Hon'ble Apex Court in the case of Dagdu and Ors. Vs. State of Maharashtra, (1977) 3 SCC 68 , wherein the Three-Judge Bench of the Hon'ble Apex Court has, after SPSC-6-1993.doc considering the scope of Section 133 and Illustration (b) to Section 114 of the Indian Evidence Act, 1872, held as follows:-

"In Bhiiboni Sahu Vs. King the Privy Council, after noticing Section 133 and Illustration (b) to Section 114 of the Evidence Act, observed that, whilst it is not illegal to act on the uncorroborated evidence of an 'Accomplice', it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act on the evidence of an 'Accomplice', unless it is corroborated in material respects, so as to implicate the Accused; and further that the evidence of one 'Accomplice' cannot be used to corroborate the evidence of another 'Accomplice'. The rule of prudence was based on the interpretation of the phrase "corroborated in material particulars" in Illustration (b). Delivering the judgment of the Judicial Committee, Sir John Beaumont observed that, The danger of acting on 'Accomplice' evidence is not merely that the 'Accomplice' is on his own admission a man of bad character, who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position, in which he can hardly fail to have a strong bias in favour of the Prosecution; the real danger is that he is telling a story, which in its general outline is true and it is easy for him to work into the story matter, which is untrue.

He may implicate ten people in an offence and the story may be true in all its details as to eight of them but untrue as to the other two whose names may have been SPSC-6-1993.doc introduced because they are enemies of the 'Approver'. The only real safeguard, therefore, against the risk of condemning the innocent with the guilty lies in insisting on independent evidence, which in some measure implicates each Accused."

384. Learned counsel for the Accused has also placed reliance on the Judgment of the Hon'ble Apex Court in the case of Kashmira Singh Vs. The State of M.P., AIR 1952 SC 159 , wherein it was held that, "The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshall the evidence against the accused, excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then, of course, it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to set on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to land assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept." SPSC-6-1993.doc

385. In this Judgment, it was further held that, "It follows that the testimony of an 'Accomplice' can, in law, be used to corroborate another, though it ought not to be so used, save in exceptional

circumstances and for the reasons disclosed. The tendency of include the innocent with the guilty is peculiarly prevalent in India and it is very difficult for the Court to guard against the danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence, which, in some measure, implicates such accused."

386. Learned counsel for the Accused has then placed reliance on the Judgment of the Hon'ble Apex Court in the case of Haricharan Kurmi Vs. State of Bihar, along with connected matter, AIR 1964 SC 1184, as regards the probative value of the confession of the co-accused to hold that, "Though such confession may be regarded as evidence in that generic sense, because of the provisions of Section 30 of the Indian Evidence Act, 1872, the fact remains that, it is not evidence, as defined by Section 3 of the said Act. The result, therefore, is that, in dealing with a case against an Accused-person, the Court cannot start with the confession of a co-accused-person; it must begin with other evidence adduced by the Prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then, it is permissible to turn to the confession, in order to receive SPSC-6-1993.doc assurance to the conclusion of guilt, which the judicial mind is about to reach on the said other evidence.

387. It was further held that, "In criminal cases, where the other evidence adduced against the accused-person is wholly unsatisfactory and the Prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence, which is the basis of criminal jurisprudence, assists the accused- person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

388. According to learned counsel for the Accused, in a series of its Judgments, thus, the Hon'ble Apex Court has expressed the view that, the testimony of an 'Accomplice', being of a tainted character and, as such, is very weak, it can be acted upon only subject to the requirement, which has now become virtually a part of the law, that it is corroborated in material particulars.

389. Learned counsel for the Accused has, in this respect, tried to point out several circumstances to submit that, the Approver's testimony in this case cannot be trusted. It is urged that, PW-1 Ganesh has, at several places, given contrary and conflicting versions. There is long list of prevarications in his statements. There SPSC-6-1993.doc is also no explanation as to why the physicals were given in respect of 9% HUDCO Bonds, when Securities Receipts were already given. There is also no evidence to show that the entries in his 'Diaries' are consistent with his testimony.

390. Apart from and in addition to that, it is urged that, this witness was not only an over-ambitious person, but he was also, being a Chartered Accountant, well versed in money market as well as stock operations and had handled both these areas in CANFINA as well as FGFSL. By citing his quotes from his interview in the magazine 'Business World', published by Anand Bazar Patrika Group in December, 1991, it is urged that, the 'Financial Management' was his forte. Moreover, he has admitted that, he was 'in-charge' of Money Market Operations in FGFSL and used to decide on deployment of funds as well as on interest rates. The notes of activities of Money Market Department conducted by him were directly put up before the Board of Directors. As admitted by him, during the month of April and May, 1992, he was 'in-charge' of Money Market Operations. In

the absence of Accused No.2- Laxminarayanan, he was looking after the Bangalore Office of FGFSL. Therefore, if he was able to take the decision on his own, SPSC-6-1993.doc according to learned counsel for the Accused, it becomes difficult to accept that only on the instructions of Accused No.2- Laxminarayanan or Accused No.3-Srinivasan, he could have tampered with the securities.

391. As a matter of fact, according to the learned counsel for the Accused, even after the scam broke out and the FGFSL was notified, PW-1 Ganesh continued to indulge in alleged forgery, as can be seen from the tampering, which he has done in respect of the Units in the name of Mr. Rao in July, 1992. According to learned counsel for the Accused, therefore, PW-1 Ganesh is not a witness on whom the Court can place reliance.

392. It is submitted by learned counsel for the Accused that, the Chief Metropolitan Magistrates Court in Bangalore, in Criminal Case No.2551 of 1994 filed against Accused No.2-R. Laxminarayanan, PW-2 N. Shankar and PW-3 K. Rajgopalan, has refused to place reliance on his evidence and also his statement recorded under Section 164 of the Cr.P.C.

393. According to learned counsel for the Accused, therefore, SPSC-6-1993.doc when this witness is bereft of any credibility and after playing a major role in committing the forgery, when he is trying to shift the blame on Accused No.2-Laxminarayanan and Accused No.3- Srinivasan, then, this Court should be wary to act upon his evidence, which is clearly given to save himself from the clutches of the law, in view of the pardon extended to him by the CBI. According to learned counsel for the Accused, therefore, considering the law laid down by the Hon'ble Apex Court in the afore-said cases, as this witness has failed to satisfy the test of credibility, in the absence of any corroboration coming from independent source, Accused No.2- Laxminarayanan and Accused No.3-Srinivasan cannot be implicated on the sole basis of his evidence.

394. It is urged that, apart from his evidence, admittedly, the Prosecution is not having any other corroborating evidence. This fact is certified by the Prosecution itself while supporting the grant of pardon to PW-1 Ganesh in their application bearing Miscellaneous Application No.106 of 1993 dated 30th June, 1993. It is urged that, in paragraph No.2(C) of the said application, it is categorically stated by the Prosecution that, "The Prosecution does not possess adequate evidence against higher echelons of the Organization and it would SPSC-6-1993.doc not be possible for the Prosecution to prove the case against other Accused without the evidence of PW-1 Ganesh."

395. Thus, it is urged that, in the own words of the CBI, there is no other independent evidence. Hence, the evidence of PW-1 Ganesh, who has actually committed the forgery, needs to be discarded as regards the involvement in the forgery of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan.

396. At this stage, therefore, in my considered opinion, it would be necessary to consider in detail the statement of PW-1 Ganesh, 'Exhibit-209' (handwritten and signed) and 'Exhibit-210' (typewritten and signed), which is recorded before the RBI Team PW-16 Ganapathi and PW-17 Khatib, as it is a material piece of evidence. It is reproduced as follows :-

"ABFSL was the main source of funding, in addition to others, for the operations of the Company. The main operation of Investments and Disinvestments is being carried out only at Bombay. On 16th / 17th of May 1992, as there was tremendous pressure for repayment in Bombay and ABFSL was prepared to give only on physicals, some tampered Certificates of UTI were lodged, as indicated below, with an assurance from Bombay that the money will be returned within a week.

SPSC-6-1993.doc Number of Units Sr.

No.	Certificate No.	Original	As lodged with ABFSL	Da Lod
1	000019114503883	Varying	1,10,15,500	21-0
2	000019114503884	Between	1,10,15,500	21-0
3	000019114503885	1000	1,14,84,500	21-0
4	00001911503655240	1500	7,50,00,000	28-0

Subsequently, there was further pressure for delivering the physicals both from ABFSL as well as our Mumbai Office for an uncovered portion of Rs.160 Crores. To save the Organization and ultimately the image of the Company, additional physical Certificates (not originals) of 9% HUDCO Bonds, as indicated below, were given to ABFSL. The format of the Allotment Letters of these Bonds were faxed to us by our Mumbai Office.

Sr. No.	Letter of Allotment Number of HUDCO Bonds	Distinctive Numbers	Number of Units No. of Bonds and Face-Valueeq	L
1	62 SLB.1/000009	1000001 To 1200000 1450001	2,00,000 x Rs.1,000/- 2,50,000	03-
2	65 SLB.1/000012	To 000012	x Rs.1,000/-	03-

In order to get back these Allotment Letters and Certificates of Units of UTI from ABFSL, I had built up tremendous pressure on our Mumbai Office and matter was brought to the notice of the Executive Director / Managing Director. We were in a dilemma as to what to do as by that time, ABFSL had reported to have informed RBI and the Ministry.

SPSC-6-1993.doc I plead, anything that has been done, as mentioned above, is only to safeguard the interest of the Organization and not for any personal benefit whatsoever. It was with a fond hope



that Mumbai Branch will repay the amount, so that these Certificates can be recovered, the above process was adopted by me, which was subsequently informed to the Executive Director/ Managing Director. During the second week of May, 1992, payments were due to ABFSL from Mumbai (the funds were originally transferred by R.O. to Mumbai). Since Mumbai Branch was already under tremendous pressure, to repay the monies borrowed from BOI Finance and NHB, they were not in a position to send in their repayments to Bangalore, so that commitment to ABFSL from our end could be met. We have been borrowing funds from ABFSL since October, 1991 and not even on a single occasion, there has been a default from our side. Moreover, the act of committing a default on the money market transactions would have certainly put our Organization at shame and exposed to adverse publicity. Not only were the funds not coming in from Mumbai Branch, but there was tremendous pressure from Mr.Srinivasan/Mr.Gopal of our Mumbai Office to raise money and remit it to them. In fact, very words used by them were - "beg, borrow or steal". The pressure was, no doubt, building up very much on me, when Mr. Srinivasan, Mr. Gopal, Mr. Anwar and Mr. K.R.N. Shenoy repeatedly banged me with telephone calls and pressurized me to raise funds from the market. It was Mr. Srinivasan, who enquired whether I had Unit SPSC-6-1993.doc Certificates of small lots, so that I could tamper with them and increase the quantity, which will provide a cover for the borrowings from ABFSL. Incidentally, I had some Units in our possession, but I requested Mr. Srinivasan to lodge the tampered Certificates at ABFSL, Mumbai. It was Mr. Srinivasan, who said that, since I had a better relationship with Mr. Chacko of ABFSL, Bangalore, he suggested that the tampered Certificates should be handed over at ABFSL, Bangalore. To this suggestion, when I expressed my reluctance and suggested to Mr. Srinivasan to handle the work at Mumbai, he said since the job has to be done overnight, it was better that I handle it at my end. Moreover, he gave me the assurance that nothing would go wrong anywhere and the Bonds can be got back by us in 15 days time, once the funds were sent to us by Mumbai Branch.

For the funds taken by Mumbai Branch from ABFSL, further pressure was given by Mr. Srinivasan to cover the transaction at Bangalore by the delivery of tampered Certificates.

Since these Certificates were not originals, we had also not included the same in our statements of assets and liabilities to RBI. I repeat the above mistake was committed purely on account of fear to save the Organization and on account of pressure from our Mumbai Office.

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One of the Certificates of UTI bearing

No.000019114503883 lodged with ABFSL on 21-05- 1992 was returned by them on 17-06-1992 on a repayment of Rs.16.04 Crores by us to them. The same has been destroyed." [Emphasis Supplied]

397. In my considered opinion, this statement of PW-1 Ganesh, recorded by RBI Officers, PW-16 Ganapathi and PW-17 Khatib, immediately after the incident, is self-eloquent to implicate Accused No.3-Srinivasan and gives corroboration to the testimony of PW-1 Ganesh from independent sources; viz. the evidence of PW-16 Ganapathi and PW-17 Khatib and the contemporaneous documents.

398. Subsequent thereto, within two days, on 2 nd July 1992, PW-1 Ganesh has given additional / supplementary statement before RBI vide 'Exhibit-213', with his signature thereon, again before the R.B.I. Officers, PW-16 Ganapathi and PW-17 Khatib, stating about tampering and forging of the Allotment Letters of NPTC Bonds to the value of Rs.10 Crores. This evidence is coming not only from the independent witnesses, but it is also supported with the contemporaneous documents, like the 'Notes' (Exhibit-596 to Exhibit-599) sent by PW-16 K. Ganapathi about it to his superiors. SPSC-6-1993.doc

399. At this stage, the statement given by Accused No.2- Laxminarayanan before the RBI Officer at 'Exhibit-211' (Handwritten) and 'Exhibit-212' (Typewritten), proved through the evidence of PW-1 Ganesh, PW-16 Ganapathi and PW-17 Khatib, is also necessary to be considered, wherein also, he has confirmed about PW-1 Ganesh informing him, after he returned from abroad, that four physical securities have been tampered with at the pressure from Mumbai Office. According to him, he also made an unsuccessful attempt to talk with the Managing Director of ABFSL for return of these physical securities, as they were not genuine. He has also reiterated that, due to pressure for submission of physicals with a short notice by ABFSL and due to the fear that the scam will put the Organization into jeopardy, such a step was resorted to. As stated by him, subsequently, he was, however, trying to correct the situation but in vain. His statement can be reproduced as follows :-

"ABFSL was the main source of funding in addition to others for the operations of the company. The main operation of Investments/Disinvestments is being carried out only at Bombay. It was informed to me by Mr. Ganesh subsequent to my return after leave that four physicals have been tampered at the pressure from Bombay. I was trying to recover the certificates from ABFSL, which was in vain, as by the time the matter SPSC-6-1993.doc was reported to have been informed to RBI/Ministry. I also requested our Managing Director to arrange for the funds, as major portion of the funds was transferred and utilized by Bombay only. The fact about submission of these tampered documents was informed to our Managing Director. I also made an unsuccessful attempt to talk to Managing Director of ABFSL for returning the documents with a plea that they could not be genuine, as they are reported to have been borrowed. Hence, these certificates were not included in our statement to RBI and we acknowledged the debt and uncovered portion, as they were to ABFSL as on 22 nd June, 1992. Due to pressure for submission of physicals with short notice by ABFSL and the scam will put the organization into jeopardy, such a step was resorted to as reported to me subsequently. I was trying to correct the situation but in vain."

400. Thus, the statement of PW-1 Ganesh and that of Accused No.2-Laxminarayanan, as recorded by the RBI Team, gives clear admission not only about the forgery of these physical securities and

that it was at the pressure of Mumbai Office of FGFSL, but, statement of PW-1 Ganesh in this respect clearly implicates that, it was done specifically at the instance of Accused No.3-Srinivasan. In this statement, PW-1 Ganesh has not implicated Accused No.2- Laxminarayanan. However, the name of Accused No.3-Srinivasan was expressly taken, as he was the one who has not only pressurized SPSC-6-1993.doc him by using the words "beg, borrow or steal", but also by enquiring with him as to whether PW-1 Ganesh has Unit Certificates of small lot, so that he could tamper with them and increase the quantity, which would provide a cover for borrowings from ABFSL. According to this statement of PW-1 Ganesh (Exhibit-209), it was Accused No.3-Srinivasan, who suggested PW-1 Ganesh that the tampered Unit Certificates be handed over to ABFSL, Bangalore and convinced him to do so, as it was to be done overnight and he further gave him assurance that nothing would go wrong anywhere and the Bonds can be got back in fifteen days time, once the funds were sent by the Mumbai Branch. At the cost of repetition, it has to be stated that, there is not a single suggestion even for the sake of it either to PW-16 Ganapathi or to PW-17 Khatib that these statements were not given by PW-1 Ganesh or Accused No.2-Laxminarayanan voluntarily. Thus, the involvement of Accused No.3-Srinivasan is sufficiently spelt out in this forgery of physicals from the very beginning, it being the first statement made by PW-1 Ganesh before the RBI Officer. Accused No.2-Laxminarayanan has also, in his statement (Exhibit-212), indirectly involved Accused No.3-Srinivasan by deposing that, according to his knowledge, the physicals were tampered with due to the pressure exercised by the Office of FGFSL SPSC-6-1993.doc at Mumbai and, admittedly, at the relevant time, Accused No.3- Srinivasan was the Officer in FGFSL, Mumbai Office. 'Suicide Note' of PW-1 Ganesh :-

401. According to the evidence of PW-1 Ganesh, initially, he had thought that these forged securities would be used only for a short period, till FGFSL was able to repay the money owed to ABFSL; but then, when he realized that Accused No.2-Laxminarayanan was telling everybody that these documents were forged by PW-1 Ganesh only and PW-1 Ganesh alone was responsible for the forgery, though, according to this witness, the entire Office was involved therein, and this fact was also reported in the newspaper, he got mentally disturbed. Hence, he attempted to commit suicide by consuming sleeping pills.

402. According to his evidence, what was stated in the statement given to the RBI Officers' team was not the correct state of affairs. He had written in the said statement whatever was told to him by Accused No.2-Laxminarayanan. Hence, in the suicide note at 'Exhibit-214', he has mentioned the detailed facts. This suicide note was written by him while sitting in a car, which was parked in the SPSC-6-1993.doc compound of their Office, before consuming the sleeping pills. Thereafter, he became unconscious and was taken to the hospital, where he was admitted for three days. After the C.B.I. started investigation of the case, his statement was recorded, where he disclosed the true facts. Thereafter he was arrested by CBI, he applied for bail. After he was released on bail, he approached the RBI Officers and informed them that what was stated in the statement given to RBI Officers' team was not correct. It was stated as per the instructions of Accused No.2-Laxminarayanan and now he wanted to retract from that statement. He was, however, told to approach the Court. Accordingly, he approached the Metropolitan Magistrates Court at Mumbai, where his confessional statement, under Section 164 of the Code of Criminal Procedure, 1908, came to be recorded vide 'Exhibit-219', along with the letter addressed by him to the Chief Metropolitan

Magistrate at 'Exhibit-218'.

403. In his cross-examination, he has further confirmed that the 'Suicide Note' was written by him in the Maruti Car on the back seat. At that time, he did not have the writing pad. However, the handwriting was uniform, except the end part viz. the fourth page of the 'Suicide Note', which was blurred, as at that time, he has already SPSC-6-1993.doc started losing his consciousness. As a result, the last page, i.e. fourth page of the 'Suicide Note', was not clearly legible. His signature is on the third page. The fourth page is not signed by him. The last line of the 'Suicide Note' reads thus;

"I will lead fresh life in the next birth. Please do not allow me to assist the RBI people."

404. It is further deposed by him that, he was not sure to whom the 'Suicide Note' should be addressed. Therefore, he did not address it to anybody.

405. In this 'Suicide Note' (Exhibit-214) dated 3 rd July 1992, PW-1 Ganesh has again reiterated that, he has not committed any crime of cheating or fraud. It was the 'Management', which pressurized him to do this. It was further stated by him that, all said and done, he has been subjected to great mental torture for the past twenty days. In this 'Suicide Note', he has further confirmed that, he has not made any personal benefit out of any transaction, but he was a victim of the circumstances; it was his fate; however, let the guilty be punished, since he has been trapped. In this suicide note, he has further stated as follows :-

SPSC-6-1993.doc "All these monies raised have been deployed by Dharampal and he has siphoned off money. It is not my personal asset, but it is of Dharampal, Anwar and Srinivasan."

406. Thus, he has implicated in this 'Suicide Note', Accused No.1-Dharampal, in addition to Accused No.3-Srinivasan. However, as regards Accused No.2-Laxminarayanan, whom he has called as his 'Guru', he has not implicated him in any of these offences of forgery.

407. According to learned counsel for the Accused, this 'Suicide Note' produced in the case at 'Exhibit-214' is not at all the genuine or the original Suicide Note, which was found by the witnesses, when PW-1 Ganesh was found in unconscious condition in his car. It is submitted that, PW-2 Shankar, who was the first one to see PW-1 Ganesh in the car in unconscious condition, has noticed the 'Suicide Note' lying in the car and he has handed over the said 'Suicide Note' to his colleague PW-3 Rajgopalan. According to his evidence, he has read the 'Suicide Note' written by PW-1 Ganesh. It was in two and a half sheets. It was not signed by PW-1 Ganesh. In the said Note, PW-1 Ganesh had mentioned certain things that had happened in the Company and he had taken the responsibility of SPSC-6-1993.doc those things. Apart from him, various other people in the Office have also read the said Suicide Note. However, when this 'Suicide Note' at 'Exhibit-214' was shown to him, this witness has categorically stated that, this is not the 'Suicide Note' written by PW-1 Ganesh and which was found in the car.

408. PW-3 Rajgopalan has also admitted a suggestion in his cross-examination that, 'Exhibit-214' is not the 'Suicide Note' of PW- 1 Ganesh, which he has seen on the date PW-1 Ganesh tried to commit

suicide. PW-6 B.S. Shankar Narayan has then stated that, in the 'Suicide Note', which he has seen, signature of PW-1 Ganesh was not appearing. Moreover, in the said 'Suicide Note', PW-1 Ganesh has not attributed misdeed to anybody else but himself. He has kept that 'Suicide Note' in a file in his office and CBI has seized that file along with the other files from his office.

409. According to learned counsel for the Accused, if the 'Suicide Note' (Exhibit-214) is a manipulated document by CBI, then, no reliance, worth the name, can be placed on such 'Suicide Note'.

410. In order to appreciate these submissions, the contents of SPSC-6-1993.doc 'Suicide Note' (Exhibit-214) are required to be reproduced for ready reference, which read as under :-

Page 1 "I have not committed any crime by cheating or fraud. It was the Management, which pressurized me to do this. But all said and done, I have been subjected to great mental torture for the past 20 days by RBI. That is why I have decided to die. My personal assets are the following Bank Accounts :-

- (i) Canara Bank, Lovelle Road;
- (ii) Canara Bank, Cunnigham Road;
- (iii) Canara Bank, Trinity Circle;
- (iv) Karnataka Bank, .....(illegible).

Page 2

My sincere respects to Mr. Laxminarayanan (my 'Guru'), my brother, my mother, Mr. Rajgopalan, Mr. K.....(illegible), Mr. Chandrashekhhar, Mr. Zachariah, Mr. Shankar, Mr. Jagannath, Mr. Prashanthi. I have not made any personal benefit out of any transaction. But I am a victim of circumstances. This is my fate. I am happy. Let the guilty be punished and since I have been trapped. All these monies raised have been deployed by Dharampal and he has siphoned with money. It is not my personal assets to be attached but it is of Dharampal, Anwar and Srinivasan. All love to all these.

Page 3 Once again I stress, I have not had any personal gains.

Truth alone will triumph. My relatives are so nice and SPSC-6-1993.doc are not in the know of things. Please do not harass them. My gold chain is for my Niece Ms. Kavya. Please give it to her.

Ganesh (Signature) Page 4 My regards to Mr. R. Laxminarayanan. Will definitely takes us to dizzy heights. I am a person, who has floated .....(illegible) and money market instruments and .....(illegible). No, there is no way to escape. I accept the crime. There is no way to come out of the situation. ....(illegible). I will lead a fresh life in the next birth. Please do not allow me to assist RBI people.

Thank you, (illegible)"

411. In my considered opinion, even if these witnesses have disowned this 'Suicide Note' (Exhibit-214), may be because Accused No.2-Laxminarayanan and Accused No.3-Srinivasan are their superior officers, the contents of the 'Suicide Note' (Exhibit-214) clearly prove it to be a genuine 'Suicide Note'. There is no exaggeration or attributing of unnecessary guilt to the Accused. Whatever stated therein is consistent with his statement (Exhibit-

209) recorded by RBI Officers and even consistent with the statement of Accused No.2-Laxminarayanan that, due to pressure SPSC-6-1993.doc from the Management, he has committed the crime of cheating and fraud and he regrets for the same, to the extent of ending his life.

412. It is pertinent to note that, the fact that he has attempted to commit suicide is not disputed. The fact that some 'Suicide Note' was found with him is not disputed. Moreover, though it is contended that this 'Suicide Note' is fabricated by C.B.I., it becomes difficult to accept the same. If C.B.I. really wanted to fabricate it, C.B.I. would have directly involved Accused No.2-Laxminarayanan and Accused No.3-Srinivasan or for that matter, Accused No.1- Dharampal (Since Deceased) and other Accused also, as their involvement is already found reflected in his first statement (Exhibit-209) given before PW-16 Ganapathi and PW-17 Khatib. However, the 'Suicide Note' (Exhibit-214) is not involving them. The entire 'Suicide Note' (Exhibit-214) is on joint four full-scope papers.

413. Moreover, even if this 'Suicide Note' (Exhibit-214) is excluded from consideration, there is his confessional statement (Exhibit-214) recorded before the Metropolitan Magistrate, under Section 164 of the Code, on 18 th December 1992. It is a long statement, giving all the details of the business, the forgery and everything about which he has deposed in his evidence before the SPSC-6-1993.doc Court also. Here in this statement, he has involved Accused No.2- Laxminarayanan, may be for the first time, as regards the replicating of the Allotment Letters of NPTC Bonds and keeping them in his custody for using them in case of urgency for raising loans. Here in this statement, PW-1 Ganesh has also stated that, in May, 1992, when they were hard-pressed for the funds, as substantial amount of funds was blocked at their Mumbai Office, Accused No.2-Laxminarayanan asked him to raise the funds on replicated NPTC Allotment Letters. Accused No.3-Srinivasan has also over the phone asked him to send one NPTC Allotment Letter for the face-value of Rs.5 Crores. Accordingly, one NPTC Allotment Letter for the face-value of Rs.5 Crores was forged. Then, at the instance of Accused No.2-Laxminarayanan, he has lodged some NPTC Allotment Letters of the face-value of Rs.15 Crores with ABFSL. He has also deposed that, when Accused No.2- Laxminarayanan was away in Singapore also, he has sent such replicated Allotment Letters and informed Accused No.2-Laxminarayanan about the same, when he returned from abroad. He has submitted the 'note' at 'Exhibit-216' to that effect, which was approved by Accused No.2-Laxminarayanan.

414. Thereafter, in this statement recorded before the SPSC-6-1993.doc Metropolitan Magistrate, he has reiterated the role of Accused No.3- Srinivasan about pressurizing him in respect of tampering of Unit Certificates. He has stated that, since the pressure given by Accused No.3-Srinivasan was unbearable, he has succumbed to that pressure and tampered with the UTI Certificates and utilized the same.

415. Thus, in this statement, he has reconfirmed the involvement of Accused No.3-Srinivasan and, for the first time, implicated Accused No.2-Laxminarayanan. His evidence before this Court is more or less consistent with his confessional statement (Exhibit-214).

416. In my considered opinion, this evidence is required to be considered, having regard to the probability factor as to 'whether PW-1 Ganesh could have done forgery to such a huge extent in respect of these three kinds of securities from time to time on his own alone, voluntarily, without, at-least, keeping in loop his superior officers and whether he was capable of doing so? ' After all, he was not the 'Head' of that Office, so as to take the decision of forging the securities independently, unless someone has asked him to do so. SPSC-6-1993.doc

417. His evidence clearly goes to show that, he used to report all events to Accused No.2-Laxminarayanan on daily basis (Page

292). He has further deposed that, whatever he did in 'Money Market Transactions', was taught to him by Accused No.2- Laxminarayanan and he did it at that time, because he thought it was time-gap arrangement (Page 284). His evidence further reveals that, Accused No.2-Laxminarayanan and Accused No.3-Srinivasan were close to each other, as both were earlier working in CANFINA. Accused No.2-Laxminarayanan was the 'Head' of the 'Money Market Transactions'. Hence, without his concurrence or without his instructions, it becomes difficult to accept that, he could have done such a criminal act of forgery.

418. It is pertinent to note that, only after Accused No.2- Laxminarayanan came to the Office, he gave a statement before the RBI Officers. Till then, he waited to give anything in writing. Therefore, on probability factor, it becomes as good as nil that PW-1 Ganesh will do such act on his own and just to save himself, implicate Accused No.2-Laxminarayanan and Accused No.3- Srinivasan falsely.

SPSC-6-1993.doc

419. As to absence of involvement of Accused No.2- Laxminarayanan in the 'Statement' at 'Exhibit-209' and 'Exhibit- 213', made before the RBI, it can easily be explained; as this statement was made very much in the presence of Accused No.2- Laxminarayanan, hence, it was least likely that he will implicate Accused No.2-Laxminarayanan at that time. Secondly, as stated by him in the 'Suicide Note' and in his evidence, he was treating Accused No.2-Laxminarayanan as his 'Guru' and he liked him and was respecting Accused No.2-Laxminarayanan. Therefore, his not implicating Accused No.2-Laxminarayanan in initial stages can be perfectly explained and hence, cannot become fatal.

420. Moreover, if, as held by the Hon'ble Supreme Court, one of the condition for credibility of the evidence of the 'Approver' is the role in the crime he attributes to himself and to other co-accused, then, that test is also satisfied in this case, as PW-1 Ganesh has attributed entire role for carrying out forgery to himself and not to co-accused. His conduct of committing suicide, being full of remorse and regret, his act of giving confessional statement on his own before the Metropolitan Magistrate, all lead to vouch for his SPSC-6-1993.doc credibility and rules out the possibility of false implication

of Accused No.2-Laxminarayanan and Accused No.3-Srinivasan.

421. As contended by learned counsel for the Accused, if PW-1 Ganesh was really over-ambitious and, at this young age, has achieved the success, then, he would not have spoiled his bright future by committing the offence of cheating or forgery on his own, unless he was pressurized to do so by Accused No.3-Srinivasan or to please Accused No.2-Laxminarayanan, who was his 'Boss' and 'Guru' and whom he liked, therefore, to please him, on assurance that it was merely a time-gap arrangement and there was nothing illegal about it, he has done it.

422. In my considered opinion, therefore, the evidence of PW- 1 Ganesh in this case definitely carries a ring of truth, so as to inspire confidence in judicial mind and it is supported and corroborated from attending circumstances, the evidence of independent witnesses, like two R.B.I. Officers and the contemporaneous documents. Most importantly, the probability factor echoes in his favour. Hence, I have no hesitation in relying upon his evidence to hold that, Prosecution has succeeded in proving the guilt of Accused No.2-Laxminarayanan and Accused SPSC-6-1993.doc No.3-Srinivasan for the offence under Sections 467, 468 and 471 r/w. 120-B of IPC beyond reasonable doubt and, accordingly, answer Point Nos.6, 7 and 8 in affirmative.

Involvement of Accused No.11-P. Chandrashekar :-

423. As regards the involvement of Accused No.11-P. Chandrashekhar in the forgery of UTI Units, though his presence is deposed to by PW-1 Ganesh at the time of actual forgery, the evidence of PW-1 Ganesh also proves that he was taken with them because he knew how to operate the electronic typewriter. The only role attributed to him is that, he has typed new names in 'UTI Certificates' on electronic typewriter. In my considered opinion, if for the similar role played by PW-9 Lalitha or PW-8 Chandrashekhar or Mrs. Mahalaxmi, they are not made Accused in this case, in that situation, considering the role attributed to Accused No.11-P. Chandrashekar, he also cannot be convicted. Hence, that being the only charge levelled against him, he needs to be acquitted. Point No.9 :- Charge of Section 477-A r/w. 109 of IPC.

424. Similarly, as regards the case of Prosecution that Accused No.5-Chacko has accepted these forged securities, knowing SPSC-6-1993.doc or having reason to believe them to be forged, it has to be answered in negative. There is no direct evidence on record to that effect even of PW-1 Ganesh to show that Accused No.5-Chacko had knowledge that these securities were forged. It also becomes difficult to infer any knowledge or reason on the part of Accused No.5-Chacko to believe that these securities were forged, as the forgery is done ingeniously and hence, it cannot be detected as such easily. Hence, for want of sufficient evidence on record on this point, benefit of doubt is extended to Accused No.5-Chacko as regards this charge. Point No.9 is answered, accordingly, in negative. Point No.10 :- Charge in respect of creating bogus 'Contract Notes'.

425. As per the case of the Prosecution, as Securities Receipts issued by FGFSL were not backed-up by the physical securities, because the funds raised on these Securities Receipts were used for speculative transactions, the Scrip Register of FGFSL, Mumbai, showed an over-sold position in the Books of Accounts of FGFSL, Mumbai. Hence, in order to cover up the over-sold position and in



order to convince the Auditors of FGFSL, around March-April, 1992 Accused No.3-Srinivasan and Accused No.9-Gopal Iyer obtained SPSC-6-1993.doc seventy-seven (77) bogus 'Contract Notes', showing fictitious purchases and sales of various securities, from Accused No.10-Pallav Sheth and on the strength of these bogus Contract Notes, dishonestly falsified the Books of Accounts of FGFSL, Mumbai.

426. To prove this charge, the Prosecution has, in the first place, relied upon the evidence of PW-10 Anwar Gundmi, who was, at the relevant time, working as 'Executive Vice President' in the Mumbai Office of FGFSL at the relevant time. According to his evidence, in the month of May-June 1992, Mumbai Office of FGFSL started facing some difficulties, because of the liquidity crunch, as the Share Market was closed for some time. For tackling this liquidity crunch, the FGFSL at Mumbai was trying to receive the outstanding delivery of shares from the Brokers. As at that time, shares approximately worth Rs.50 Crores were to be delivered by Accused No.10-Pallav Sheth and PW-60 Shrenik Jhaveri, Accused No.1-Dharampal (Since Deceased) had asked him to go to the Office of Accused No.10-Pallav Sheth for taking delivery of those shares. During this period of two months, FGFSL could recover securities worth Rs.20 to 25 Crores from Accused No.10-Pallav Sheth; however, the delivery of remaining securities was pending. SPSC-6-1993.doc

427. This witness has supported the case of the Prosecution to this extent only. Thereafter, he has denied subsequent part of the Prosecution case. This witness has not stated anything about the execution of the 'Contract Notes' by Accused No.10-Pallav Sheth at the instance of Accused No.3-Srinivasan or Accused No.9-Iyer. Though he is declared hostile and cross-examined by learned Special P.P., nothing incriminating is elicited in his cross-examination. Thus, his evidence is not much helpful to the Prosecution, except to prove that during the said period, FGFSL Office at Mumbai was facing financial crunch and delivery of some shares was due from Accused No.10-Pallav Sheth and PW-60 Shrenik Jhaveri.

428. For that matter, even PW-3 K. Rajgopalan, who was working as 'Vice-President' in FGFSL Office at Bangalore, has also turned hostile and denied that 'Contract Notes' were obtained from Accused No.10-Pallav Sheth and PW-60 Shrenik Jhaveri to cover short-sale position in Mumbai Office of FGFSL.

429. Prosecution has then tried to rely upon the evidence of PW-45 P.K. Balakumar, who, at the relevant time, was working in FGFSL Office at Mumbai as 'Secretary'. It was his job of typing the SPSC-6-1993.doc letters and according to Prosecution case, these 'Contract Notes' ['D- 651' (1 - 77)] were typed by this witness at the instance of Accused No.3-Srinivasan and Accused No.9-Iyer and they were signed by Accused No.10-Pallav Sheth. However, this witness has denied the said fact and not supported the Prosecution case on this point. He is also declared hostile, but nothing worthwhile is elicited in his cross- examination to prove these 'Contract Notes'.

430. The Prosecution has then placed reliance on the evidence of PW-60 Shrenik Jhaveri, with whom Accused No.10-Pallav Sheth was working as 'Sub-Broker'. When, in the course of his evidence, he was confronted with these 'Contract Notes', he has only admitted that, they appear to be having the signatures similar to the signature of Accused No.10-Pallav Sheth. However, he has

not categorically stated that, these 'Contract Notes' are signed by Accused No.10-Pallav Sheth. He has also denied having knowledge that these 'Contract Notes' were issued by Accused No.10-Pallav Sheth. According to him, some of these 'Contract Notes' are also blank one and they were used in his office as a normal stationery. Thus, his evidence is also not of much help to the Prosecution to prove either the contents of these alleged 'Contract Notes' or further SPSC-6-1993.doc to prove categorically that these 'Contract Notes' are signed by Accused No.10-Pallav Sheth.

431. Prosecution has hence relied upon the evidence of the Handwriting Expert PW-70 S.L. Mukhi. No doubt, he has stated that, the questioned handwriting and specimen signature of Accused No.10-Pallav Sheth, which was sent to him for comparison with the signature on these 'Contract Notes', are found to be tallying. His opinion is also supported with the reasons (Exhibit-783) and his evidence and opinion is not much challenged in cross-examination.

432. Therefore, learned Special P.P. has relied upon the Judgment of the Hon'ble Apex Court in the case of Alamgir Vs. State (NCT, Delhi), (2003) 1 SCC 21, in which decision in the case of Murari Lal Vs. State of M.P., (1980) 1 SCC 704, is referred, wherein the Apex Court was pleased to hold that, "the signs of identification of handwriting have attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent. Therefore, doubting the opinion of a Handwriting Expert ought to be a far cry and insistence upon further corroboration as an invariable rule does not seem to be a justifiable conclusion". It was further held that, "there is no rule of law, nor any rule of prudence, which has SPSC-6-1993.doc crystallized into a rule of law that opinion evidence of a Handwriting Expert must never be acted upon, unless substantially corroborated".

433. Learned Special P.P. has also relied upon the opinion of PW-70 S.L. Mukhi that some of the 'Contract Notes' are agreeing with the specimen type print and, therefore, they appear to be computer print-outs taken from the electronic typewriter in the office of FGFSL, Mumbai. According to learned Special P.P., in view of the Judgment of the Five-Judge Bench of the Hon'ble Apex Court in the case of State (Through CBI / New Delhi) Vs. S.J. Choudhary, (1996) 2 SCC 428, the opinion of the Typewriter Expert can be admitted in evidence as 'expert evidence', under Section 45 of the Evidence Act. Hence, here in the case, according learned Special P.P, the Prosecution has proved that the 'Contract Notes' are not only signed by Accused No.10-Pallav Sheth, but they are also typed and printed in the Office of FGFSL.

434. In my considered opinion, even if it is accepted that these 'Contract Notes' are signed by Accused No.10-Pallav Sheth and they are typed and printed in the Office of FGFSL, Mumbai, the material SPSC-6-1993.doc evidence for the Prosecution was to prove from whose custody these 'Contract Notes' were seized and whether they were really used for falsification of accounts. On this aspect, there is no iota of evidence on record as to from whose custody these 'Contract Notes' were seized. The relevant evidence in this respect was that of the Investigating Officer, who has seized these 'Contract Notes' from the Office of FGFSL. However, Prosecution has failed to examine any of the Investigating Officers; especially, the Officer, who has seized these 'Contract Notes'. No 'Panchanama' is also to that effect produced on record to prove the seizure of these 'Contract Notes'.

435. Most importantly, there is no evidence on record to show that these 'Contract Notes' were used to falsify the Account Books of FGFSL, Mumbai. None of the Prosecution Witness, as stated above, has uttered a single word to that effect. Even assuming that, no one from the Office of FGFSL is supporting the Prosecution case on this point, the Prosecution could have examined the 'Auditor' of FGFSL, Mumbai to show that these 'Contract Notes' were shown in the Books of Accounts of FGFSL. The Prosecution has, however, failed to do so.

436. Moreover, if these 'Contract Notes' were mentioned in the Books of Accounts of FGFSL, then, Accused No.10-Pallav Sheth SPSC-6-1993.doc would have claimed the amount of these 'Contract Notes' in Miscellaneous Civil Application No.193 of 1993, wherein the 'Consent Decree' dated 24th February 1994 was passed by this Court in favour of FGFSL against Accused No.10-Pallav Sheth. But that is also not the case.

437. The offence, which is alleged against the Accused can be made out only if the Prosecution can prove that these 'Contract Notes' were used for the purpose of dishonestly falsifying the accounts of FGFSL, Mumbai and these 'Contract Notes' were obtained by Accused No.3-Srinivasan and Accused No.9-Iyer to cover up oversold position, in order to convince the Auditor of FGFSL. Even if it is accepted that the evidence on record proves that, during that period, the Scrip Register of FGFSL, Mumbai showed an oversold position in the Books of Accounts, the fact remains that, not a single iota of evidence is produced on record by the Prosecution that on the basis of these 'Contract Notes', Accused No.3-Srinivasan or Accused No.9-Iyer had falsified the Books of Accounts of FGFSL. That was the incriminating factor, which the Prosecution has failed to prove.

438. Therefore, there is neither evidence to prove that these SPSC-6-1993.doc bogus 'Contract Notes' were dishonestly obtained from Accused No.10-Pallav Sheth by Accused No.3-Srinivasan or Accused No.9- Iyer, nor there is any evidence to prove that, on the basis of these bogus 'Contract Notes', the accounts of FGFSL, Mumbai were falsified. These were the two crucial incriminating ingredients of the offence, which the Prosecution has failed to prove in this case. In absence thereof, neither Accused No.3-Srinivasan, nor Accused No.9-Iyer can be convicted for the offence, punishable under Section 477-A r/w. 120-B of IPC, nor Accused No.10-Pallav Sheth can be convicted for the offence, punishable under Section 109 r/w. 477-A of IPC. Therefore, as regards this charge in respect of creating bogus 'Contract Notes', benefit of doubt is required to be extended to the Accused.

Point No.11 :- Dishonest Suppression of Information by Accused No.7-Sundara Babu; Charge u/s. 202 r/w. 120-B of IPC.

439. It is also the case of the Prosecution that, Accused No.7- Sundara Babu was, though fully aware about the above-referred offences in respect of ostensible securities transactions between FGFSL and ABFSL, intentionally and dishonestly suppressed the SPSC-6-1993.doc said information respecting these offences while putting the 'Informatory Note' on 'Money Market Operations' to the Board of ABFSL during the 6th and 7th Board Meeting held on 30th December 1991 and 23rd March 1992, respectively, and thereby committed the offence punishable under Sections 202 and 203 of IPC. However, on this aspect, neither the said 'Informatory Note' is produced on record, nor

the 'Minutes' of the Board Meetings of ABFSL held on 30th December 1991 and 23rd March 1992 are produced on record. In view thereof, as regards this charge, it has to be held that the Prosecution has failed to prove this charge against Accused No.7- Sundara Babu beyond reasonable doubt.

Point No.12 :- Destruction of 'Unit Certificates' by Accused No.2-Laxminarayanan, Accused No.3-

Srinivasan and Accused No.11-P.

Chandrashekar; Charge u/s. 201 r/w. 120-B of IPC.

440. It is further case of the Prosecution that, Accused Nos.2, 3 and 11 destroyed or caused to be destroyed the Unit Certificate of the value of Rs.17.7 Crores, which was returned by ABFSL, Bangalore, to FGFSL, Mumbai, and it was done knowing or having SPSC-6-1993.doc reason to believe that the offence punishable under Sections 467 and 471 of IPC has been committed in respect thereof. However, as regards this charge, there is no evidence of any eye-witness on record. In the absence of convincing evidence on record on this aspect, therefore, the benefit of doubt cannot be withheld in their case.

Summing up :-

441. The net result of the discussion is that,

(i) Accused No.2-Laxminarayanan, Accused No.3-

Srinivasan, Accused No.4-FGFSL Company, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman stand convicted for the offence punishable under Section 120-B of IPC.

(ii) Accused No.2-Laxminarayanan, Accused No.3-

Srinivasan, Accused No.4-FGFSL Company, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman SPSC-6-1993.doc stand further convicted for the offence punishable under Section 420 r/w. 120-B of IPC.

(iii) Accused No.5-Tharian Chacko, Accused No.7-Y.

Sundara Babu and Accused No.8-Kalyana Raman are further convicted for the offence punishable under Section 409 r/w. 120-B if IPC.

(iv) Accused No.5-Tharian Chacko, Accused No.7-Y.

Sundara Babu and Accused No.8-Kalyana Raman stand further convicted for the offence punishable under Section 13(2) r/w. 13(d)(iii) of the Prevention of Corruption Act.

(v) Accused No.2-Laxminarayanan and Accused No.3-Srinivasan are further convicted for the offence punishable under Sections 467, 468 and 471 r/w. 120-B of IPC.

(vi) Accused No.2-Laxminarayanan, Accused No.3-

Srinivasan, Accused No.4-FGFSL Company, Accused No.5-Tharian Chacko, Accused No.7-Y. SPSC-6-1993.doc Sundara Babu and Accused No.8-Kalyana Raman stand acquitted for the rest of the charges.

(vii) Accused No.9-Gopal Iyer, Accused No.10-Pallav Sheth and Accused No.11-P. Chandrashekar stand acquitted of all the charges levelled against them.

442. At this stage, I stop my dictation in order to hear the Accused-persons and their counsels on the question of sentence.

443. As regards the question of sentence, it is submitted by Accused No.2-Laxminarayanan and on his behalf by learned counsel Mr. B.C.S. Rao that, Accused No.2-Laxminarayanan is having his ailing wife and brother dependent on him. He is also having unblemished service record. He was promoted from time to time. He has completed his long standing service honourably. He has undergone the rigors of this trial for a period of more than 25 years and 11 months. Moreover, his health is also not keeping well. At present, he is of the age of 68 years. Considering, therefore, his role in the entire transaction, it is submitted that a lenient view is justified.

SPSC-6-1993.doc

444. It is submitted by Accused No.3-Srinivasan and his learned counsel also that, it is Accused No.3-Srinivasan, who has assisted the 'Custodian' to recover the entire money, which was due to FGFSL and paid the same to ABFSL. Moreover, in this entire transaction, he has not received any personal benefit. His old mother, wife, mother-in-law and the daughter are depending on him. He has also undergone the rigors of this trial for a period of more than 25 years and, therefore, a lenient view is justified in his case also.

445. On behalf of Accused No.4-FGFSL Company, its Authorized Representative Mr. Yogesh K. Patel is present before the Court and he submits that, at present, the FGFSL Company is undertaken by the new Management. Even then, the Company has, during these last two decades, made every effort to discharge all the principal liabilities and satisfied the same; therefore, a lenient view is justified.

446. As regards Accused No.5-Tharian Chacko also, it is submitted by him and his learned counsel that, he is having his SPSC-6-1993.doc family members as wife and two married daughters. He was working with the Andhra Bank and was sent on deputation to ABFSL. Moreover, he has not received any personal gains out of any of these transactions; therefore, a lenient view is required to be taken in his case also.

447. It is submitted by Accused No.7-Y. Sundara Babu and his learned counsel also that, he has only followed the directions of his superiors. He has also not personally gained anything in these transactions. He has made every effort to recover the physical securities. It is submitted that, even the Management has said that he has not done anything wrong. Further, he is in a devastated state of health. He cannot stand or walk properly. At present, he is of the age of 82 years. He is suffering from various ailments. On account of his health, he has to go to wash-room every one hour and, therefore, a more lenient view is required to be taken in his case.

448. As regards Accused No.8-Kalyana Raman, it is submitted by him and his learned counsel that, even the Management of the Andhra Bank has said that, no employee has done anything wrong. The entire amount has been recovered and saved. He is having SPSC-6-1993.doc unblemished service record. He was honourably discharged in the Departmental Enquiry and his suspension was also set aside. He has retired from the service honourably. A specific letter is also issued in his favour stating that, he has done nothing wrong. His wife, two children are depending on him and hence, a lenient view may be taken.

449. According to learned Special P.P., however, considering the gravity of the offences, which are committed not against any individual person, but against the Society at large, this is not a fit case where a lenient view can be taken. In support of his submission, learned Special P.P. has relied upon the Judgment of the Hon'ble Apex Court in the case of Raj Bala Vs. State of Haryana and Ors., AIR 2015 SC 3142, to submit that, when the offence committed is against the Society at large, then, the Court cannot ignore the cry of the Society for justice. According to him, the submissions made on behalf of the Accused do not make out any mitigating circumstances, so as to take a lenient view.

450. Per contra, learned counsel for the Accused has submitted that, none of the Accused-persons in the present case has SPSC-6-1993.doc derived any personal benefit or gain. Conversely, as admitted by all the Prosecution Witnesses, whatever money was deployed by the ABFSL, it has been received. No one has suffered any pecuniary loss in any of these transactions. Moreover, the Accused-persons in this case are merely the employees and not at all the Directors of the said Companies. Further it is submitted that, in the similar such cases, the Hon'ble Supreme Court has taken a lenient view, having regard to the lapse of time of more than 20 years and in this case, it is more than 25 years from the date of occurrence till the date. It is submitted that, especially when all the Accused-persons are in the twilight years of their lives and suffering from various ailments, the approach of the Court needs to be lenient.

451. It is urged that, the Hon'ble Supreme Court has also reduced the punishment of the Accused in similar such cases and allowed them to be released on the sentence already undergone. Here in the case, according to learned counsel for the Accused, therefore, this is a fit case where utmost lenient view is called for and Accused may be released on the period which they have undergone.

452. I have given my thoughtful consideration to the SPSC-6-1993.doc submissions advanced by learned Special P.P. and learned counsel for the Accused. It is true that, the offence has taken place way back in the year 1992 and as on today, since the date of filing of the Charge-Sheet also, it is more than 24 years and 8 months. During this entire period, it is true that, Accused-persons have

undergone the rigors of the trial, which were in the nature of physical and mental torture also, as the sword of this case was always hanging on their heads.

453. It is also true, as submitted by learned counsel for the Accused, that, the Prosecution has not alleged or proved that any of the Accused had received any pecuniary benefit or the personal gain out of these transactions and, therefore, it cannot be said that this is not a case where a lenient approach should not be adopted; especially considering the peculiar facts of this case.

454. But, at the same time, it has to be considered that these transactions, along with the similar such transactions, had resulted into the financial and securities scam, which has rocked the economy of the nation. The repercussions of these economic offences, as observed by the Hon'ble Apex Court in the similar cases SPSC-6-1993.doc of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748, and Vinayak Narayan Deosthali Vs. Central Bureau of Investigation, (2015) 2 SCC 553, are so serious that several persons have lost their hard-earned monies and also many persons have lost their lives also. The Hon'ble Supreme Court has, in both these cases, taken the view that these offences are required to be viewed more seriously. Hence, the deterrent approach is required, having regard to the Banks Scams, which are, as on today also, rocking the economy of the nation.

455. The point, therefore, to be stressed is that, while awarding the sentence, this Court has to do the balancing act between the factors advanced on behalf of the Accused and the repercussions of their acts on the economy of the nation. While doing so, the Court has also to consider the gravity of the offence i.e. offence of forgery, the use of forged securities and also Accused Nos.5, 7 and 8, being the 'public servants', had committed the acts for the pecuniary benefit of someone else, like Accused No.4-FGFSL Company, which has diverted the funds for speculative transactions in the Share Market business in Mumbai.

456. Therefore, having regard to the serious nature of the SPSC-6-1993.doc offences, the utmost lenient view cannot be taken; because, such leniency can also have the counter-effect. The punishment has to be such that it sends proper signal to the Society at large and at the same time, do the justice to the victims and Accused also. In this case, there may not be any direct victim, but the entire economy of the nation and the faith of the general public in the Banking System has been eroded on account of such scam.

457. As regards the submission that period of imprisonment already undergone by the Accused be considered as sufficient punishment, the record shows that Accused No.2-Laxminarayanan has undergone imprisonment only for the period from 21 st September 1992 to 19th October 1992 i.e. hardly a period of one month. Accused No.3-Srinivasan has undergone imprisonment for the period from 7th September 1992 to 19th October 1992 i.e. again a period of one month and few days; whereas, Accused No.5-Tharian Chacko has undergone imprisonment for the period from 1 st December 1992 to 14th Deceased 1992 i.e. hardly of 14 days. Therefore, this will be a flea-bite sentence and, therefore, after mitigating the extenuating circumstances, I am of the view that following punishment will meet the ends of justice :- SPSC-6-1993.doc " O R D E R "

(i) Accused No.2-Laxminarayanan, Accused No.3-

Srinivasan, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-

Kalyana Raman, are convicted for the offence punishable under Section 420 r/w. 120-B of IPC and sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.20,000/- each; in default, to suffer Rigorous Imprisonment for three months.

(ii) Accused No.5-Tharian Chacko, Accused No.7-Y.

Sundara Babu and Accused No.8-Kalyana Raman are further convicted for the offence punishable under Section 409 r/w. 120-B of IPC and sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs.20,000/- each; in default, to suffer Rigorous Imprisonment for six months.

(iii) Accused No.5-Tharain Chacko, Accused No.7-Y.

Sundara Babu and Accused No.8-Kalyana Raman SPSC-6-1993.doc are further convicted for the offence punishable under Section 13(2) r/w. 13(d)(iii) of the Prevention of Corruption Act and sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs.25,000/- each; in default, to suffer Rigorous Imprisonment for six months.

(iv) Accused No.2-Laxminarayanan and Accused No.3-

Srinivasan are further convicted for the offence punishable under Sections 467, 468 and 471 r/w.

120-B of IPC and sentenced to suffer Rigorous Imprisonment for four years and to pay fine of Rs.30,000/- each; in default, to suffer Rigorous Imprisonment for six months.

(v) Accused No.4-FGFSL Company is, though convicted for the offence punishable under Section 420 r/w. 120-B of IPC, considering that the Management of the said Company is taken over by another Management and the Company is represented by the new Authorized Representative and it cannot be sentenced to imprisonment and it is convicted only for the SPSC-6-1993.doc offence punishable under Section 420 r/w. 120-B of IPC, it is sentenced to pay a fine of Rs.2,00,000/-

only.

(vi) Accused No.2-Laxminarayanan, Accused No.3-



Srinivasan, Accused No.4-FGFSL Company, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman, stand acquitted for the rest of the charges.

(vii) Accused No.9-Gopal Iyer, Accused No.10-Pallav Sheth and Accused No.11-P. Chandrashekar stand acquitted of all the charges levelled against them. Their Bail Bonds stand discharged.

(viii) Accused No.2-Laxminarayanan is entitled to the set-off for the period already undergone from 21 st September 1992 to 19th October 1992.

(ix) Accused No.3-Srinivasan is entitled to the set-off for the period already undergone from 7th September 1992 to 19th October 1992.

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(x) Accused No.5-Tharian Chacko is entitled to the set-off for the period already undergone from 1 st December 1992 to 14th December 1992.

(xi) All the substantive sentences of the Accused, as stated above, are to run concurrently.

(xii) No separate sentence is passed as regards the offence punishable under Section 120-B of IPC.

(xiii) Bail Bonds of Accused No.2-Laxminarayanan, Accused No.3-Srinivasan, Accused No.5-Chacko, Accused No.7-Sundara Babu and Accused No.8- Kalyana Raman, stand cancelled.

458. At this stage, learned counsel for the Accused files applications on behalf of Accused No.2-Laxminarayanan, Accused No.3-Srinivasan, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman, under Section 389(3) of Cr.P.C., for suspension of their sentence and the fine.

459. Considering that the sentence of Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana SPSC-6-1993.doc Raman is only upto three years, they are entitled to be released on bail, as they want to approach the Hon'ble Supreme Court against the Judgment of this Court.

460. Even as regards Accused No.2-Laxminarayanan and Accused No.3-Srinivasan, who are sentenced to suffer imprisonment for more than three years, in view of the provisions of Section 9(4) of the Special Court's Act and also the view taken by this Court earlier and as per the practice followed by this Court, considering that, against the Judgment of this Court, they will have to prefer an Appeal before the Hon'ble Supreme Court, for which some time is required; hence, even if, under Section 389(3) of the Cr.P.C., they are not entitled to be released on bail, under the provisions of Section 9(4) of the Special Court's Act, as this Court has repeatedly exercised its discretion, in this case also, this Court is allowing the applications filed by the Accused for suspension of their sentence, in order to enable them to approach the Hon'ble Supreme Court.

461. Learned Special P.P. submits that, in case of an Appeal against the conviction and under the provisions of Section 10 of the Special Court's Act, the Appeal period is of only 30 days. SPSC-6-1993.doc

462. However, considering the facts of the present case and the punishment imposed, it is necessary to suspend the sentence imposed on Accused No.2-Laxminarayanan, Accused No.3- Srinivasan, Accused No.5-Tharian Chacko, Accused No.7-Y. Sundara Babu and Accused No.8-Kalyana Raman, for a period of four months from today.

463. These Accused, as stated above, are released on the same Bail, on which they were already released. They will, however, have to execute fresh P.R. Bonds of the amount of Rs.20,000/- each by today or tomorrow.

464. As regards the prayer made by learned counsel for the Accused seeking some time to deposit the amount of fine, considering that this Court is having discretion under the provisions of Section 9(4) of the Special Court's Act, the time to deposit the fine amount is granted of two weeks from today.

465. It is made clear that, Accused-persons will have to execute the P.R. Bonds, as directed above, and another Bonds relating to depositing the fine amount within a period of two weeks from the date of this Judgment, today itself. SPSC-6-1993.doc

466. Before I conclude the Judgment, I would like to place on record my profound sense of appreciation and satisfaction for the enormous efforts taken by learned Special P.P. and learned counsel for all the Accused to take this Court through the entire evidence in this case, majority of which was recorded before my learned predecessors. I would also like to take this opportunity to place on record my sense of gratitude to especially the Sheristedar and Associate of this Special Court, namely, Mr. Vijay Joshi and Ms. Charushila Vaidya, who have taken real efforts to maintain the record in a meticulous manner and to render all the assistance to this Court. A note of thanks is due to my Personal Secretary Mrs.Sneha Dixit, who has worked diligently in Summer Vacation also.

467. With this, the Judgment stands concluded.

[DR. SHALINI PHANSALKAR-JOSHI, J.] SPSC-6-1993.doc