IN THE SPECIAL COURT [CONSTITUTED UNDER THE (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992] AT BOMBAY

SPECIAL CASE NO.3 OF 1997
(RC 1 (BSC)/93-BOM)

Central Bureau of Investigation .....Complainant.

V/s

1. R.S. Pai .... Accused No.1

2. KRN Sehnoy .... Accused No.2

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Mr. V.G. Pradhan with Mr. R.S. Mhamane for the CBI.

Mr. Sunil Kale for accused No.1.

Mr. R.M. Tiwari with Mr. D.P. Kamath for accused No.2.

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CORAM: V.M. KANADE, J.
Judge, Special Court.
DATE : 15th October, 2008.

ORAL JUDGMENT:

1. Heard Shri V.G. Pradhan & Shri R.S. Mhamane the learned Special Public Prosecutors appearing for CBI. I have also heard Shri Kale, the learned Counsel appearing on behalf of accused No.1 and Shri Tiwari, the learned Counsel appearing on behalf of accused No.2.

2. In the present case, the complaint dated 02/06/1993 was filed by Shri V. Sethumadhavan, Chief Vigilance Officer of the Syndicate Bank. Initially, the complaint was filed for the offence punishable under section 120-B read with section 420 of the Indian Penal code and section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act against one R Sundaresan, the then Divisional Manager, Syndicate Bank, FIM Division, Bombay and Directors and Office bearers of M/s Fair Growth Investments Ltd. (FGIL) and M/s Fair Growth Financial Services Ltd. (FGFSL). In the said complaint, it was alleged that Shri R. Sundaresan was in-charge of FIM Division of the Syndicate Bank at Bombay and Portfolio Management Services transactions were conducted at his instance without specific authorization from the Head Office and that these transactions were entered into pursuant to the criminal conspiracy which was entered into with an object of cheating the Syndicate Bank and that the said R. Sundaresan and others abused their position to cause wrongful gain to other accused and corresponding wrongful loss to the Syndicate Bank. After the offence was registered, CBI made an investigation and charge-sheet came to be filed against R.S. Pai, the Executive Director of Syndicate Bank, accused No.1 herein and K.R.N. Shenoy, Managing Director of M/s Fair Growth Investments Ltd., accused No.2 herein. R.

Sundaresan who was initially named as an accused in the complaint was dropped from the array of accused and in the charge-sheet it was alleged that Shri R.S. Pai, Executive Director of the Syndicate Bank and Shri K.R.N. Shenoy had entered into a conspiracy with an object of committing criminal breach of trust of the funds placed with the Portfolio Management Scheme of the Syndicate Bank by Oil Industries Development Board (hereinafter referred to as "OIDB"). Four charges were framed against both the accused. In the first charge, it was alleged that during the period from October 1991 to May 1992, accused Nos. 1 and 2 had entered into criminal conspiracy for siphoning off funds and providing and investing these funds in the Portfolio Management Scheme of the Syndicate Bank and, therefore, they had committed an offence punishable under section 120-B read with section 409 of the Indian Penal Code. The second charge which was levelled against accused No.1 was that he misused his official position as an Executive Director of a Nationalized Bank i.e the Syndicate Bank to place with the Portfolio Management Scheme (hereinafter referred to as "PMS") of the Syndicate Bank an amount of Rs 132.33 crores. He was also charged that seven remittances of various amounts during the period from 02/04/1992 and 30/05/1992 which were remitted by OIDB were invested in PMS activity of the

Syndicate Bank in violation of directions/guidelines contained in the letters sent by the Syndicate Bank and also in violation of RBI's Circular dated 18/01/1991. The accused No.1 was further charged for illegally investing the said amount in the Company of accused No.2 in order to enable him and his Company to make a wrongful gain and, therefore, it was alleged that accused No.1 committed an offence punishable under section 409 of the Indian Penal Code.

3. The third charge which was framed against the accused No.1 was that as a motive and/or reward for causing aforesaid wrongful gain to accused No.2, he got transferred 62000 shares from the promoters' quota of M/s Fair Growth Investment Ltd (FGIL) and its sister concern the Fair Growth Financial Services Ltd., in his name and he thereby committed an offence punishable under section 13(1)(d) read with section 13(2) and section 7 of the Prevention of Corruption Act. The fourth charge which was framed against accused No.2 was that he had instigated and abetted accused No.1 by transferring the said 62,000 shares in favour of accused No.1 in order to enable FGIL to make wrongful gain of Rs 93,17,77,925/-.

4. Both the accused pleaded not guilty to the said charge.

Prosecution examined 16 witnesses and has brought on record number of documents in support of its case.

5. I will deal with the facts and the prosecution case in detail after setting out the points for determination.

6. The following points therefore arise for determination:-

| POINTS | FINDINGS |
|---|---|
| (1) Whether the prosecution has established that accused No.1 being the Executive Director of Syndicate Bank, entered into criminal conspiracy with accused No.2 who was the Managing Director of the non-government non-banking financial company viz. M/s Fair Growth Investments Ltd. (FGIL) with the object of illegally and dishonestly committing criminal breach of trust of the funds placed in the Portfolio Management Scheme (PMS) of the Syndicate Bank by a Government of India Undertaking viz. Oil Industry Development Board (OIDB) and thereby committed an offence punishable under section 120B red with section 409 | In the negative |

of the Indian Penal Code by violating specific directions given by the OIDB and the guidelines given by the Reserve Bank of India?

(2) Whether the prosecution has established that in pursuance of the said conspiracy, accused No.1 used his official position to persuade OIDB to place in Portfolio Management Scheme (PMS) of Syndicate Bank an amount of Rs 132.22 crores through several remittances of various amounts during the period from 2.4.1992 to 30.5.1992 in violation of the directions given by OIDB and whether the prosecution has proved that the accused No.1 invested in the said Company through accused No.2 an amount of Rs 93, 17,77,925 through five remittances during the period 07/05/1992 to 29/06/1992 in order to enable accused No.2 to make wrongful gains and thereby committed an offence under section 409 of the Indian Penal Code?

In the negative.

(3) Whether the prosecution has established that in pursuance of the said

In the negative.

conspiracy, accused No.1 has a motive or reward for causing the wrongful gain to accused No.2 and/or his Company obtained 62000 shares in his name and in the name of his family members from the promoters' quota of FGIL and it's sister concern the Fairgrowth Financial Services Ltd and committed an offence punishable under section 13(1)(d) read with section 13(2) and section 7 of the Prevention of Corruption Act, 1988?

(4) Whether the prosecution has established that the accused No.2 instigated and abetted accused No.1 in obtaining the said 62000 shares by way of motive/reward for enabling him to make the aforesaid wrongful gain of Rs 93,17,77,925/- and thereby committed an offence punishable under section 12 of the Prevention of Corruption Act. — In the negative.

(5) What order? — As per final order

**FACTS, FINDINGS & CONCLUSION:**

7. Before taking into consideration the rival submissions, it would be relevant to briefly take into consideration the chronology of events and facts and circumstances of this case.

8. Accused No.1 - R. S. Pai was the Executive Director of Syndicate Bank and was stationed at Manipal, Karnataka and was posted at Head Office of Syndicate Bank. OIDB is a Government Organization having its Head Office at Delhi. OIDB had number of surplus funds at its disposal which were lying idle and they wanted to invest the said amount for a period of one year in order to ensure that it would earn higher profit on the said funds. Syndicate Bank had taken a policy decision of promoting its PMS and had given offer to all the Companies, Government Corporations, individuals, to invest their money in PMS. Accordingly, offer letters were issued by Syndicate Bank to various Companies. One such offer letter was also sent to OIDB. The Reserve Bank of India also had revised its guidelines in respect of investments which were to be received by the Nationalized Banks in their PMS. Copies of these letters were also sent to OIDB. Syndicate Bank had informed the OIDB that it would get a tentative

return of 18.25% on its investments. OIDB, through various remittances, sent an amount of rs 132.22 crores to the Syndicate Bank, Kasturba Gandhi Marg Branch, New Delhi. This amount, in turn, was sent to the FIM Department of the Syndicate Bank at Bombay, who, in turn, invested these amounts in shares of Private Companies. The remittances were sent by OIDB between the period from 02/04/1992 to 30/05/1992.

9. It is the case of the prosecution that OIDB had specifically instructed the Syndicate Bank to invest the amount remitted by it in Government Securities, Government Bonds only and not in shares of Private Companies. It is the case of the prosecution that the Officials of OIDB were kept in dark and these funds which were remitted for the purpose of being invested in Government Securities were, in fact, diverted in favour of accused No.2 – K. R. N. Shenoy in order to enable him to invest the said amount in his own Company. On the other hand, it is the case of the Syndicate Bank in its letters and correspondence between the parties that OIDB was aware that the amount which was remitted in PMS was always at the risk of the investors and that these remittances were invested in shares of blue -chip private companies. Prosecution case, therefore, is that the

accused No.1, who was the Executive Director of Syndicate Bank was, therefore, directly responsible for the investments which were made by FIM Branch of the Syndicate Bank, Fort, Bombay in Private Companies, contrary to the specific instructions which were given by OIDB and contrary to the guidelines which were given by RBI. Prosecution case further is that, as a return for the favour given by accused No.1 to accused No.2, 62000 shares were transferred in the name of accused No.1 from the promoters' quota of M/s Fair Growth Investments Ltd. (FGIL) and its sister concern M/s Fairgrowth Financial Services Ltd. and, accordingly, a complaint was lodged on 02/06/1993 by Shri V. Sethumadhavan, Chief Vigilance Officer, Syndicate Bank, Head Office, Manipal with the Central Bureau of Investigation, Mumabi under section 120B read with section 420 of the Indian Penal Code and under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 against Shri R. Sundaresan, the then Divisional Manager, Syndicate Bank, FIM Division, Bombay and Directors and Office bearers of M/s Fair Growth Investments Ltd. (FGIL) and its sister concern M/s. Fair Growth Financial Services Ltd. (FGFSL)

10. On 24/07/1997, a charge-sheet was filed by the Central Bureau

of Investigation, Bank Securities & Fraud Cell, Bombay in the Special Court constituted under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 at Bombay against Shri R.S. Pai, the then Executive Director, Syndicate Bank, the accused No.1 and Shri K. R. N. Shenoy, Managing Director of M/s Fair Growth Investments Ltd., the accused No.2 and the charge-sheet was registered as Special Case No.3 of 1997 in the Special Court at Bombay.

11. Both the accused filed discharge applications and during the course of hearing of these discharge applications, the Counsel for the prosecution thought it necessary to file additional documents and additional statements in addition to the charge-sheet which was already filed. Accordingly CBI filed Misc. Application No.338 of 2000 under section 173 of the Code of Criminal Procedure on 26/07/2000, seeking permission of the Court to place on record (i) list of 15 additional witnesses and their respective statements recorded under section 161 of the Code of Criminal Procedure, (ii) list of all the 67 persons whose statements were recorded under section 161 of the Code of Criminal Procedure, (iii) list of all search/seizure receipt memos under which all documents have been seized by CBI and (iv)

additional list of documents with the CBI on which reliance was placed by CBI. This application was rejected by the Special Court on 26/07/2000.

12. CBI preferred an appeal in the Apex Court against the said order and the appeal was allowed by the Apex Court on 03/04/2002 and the order passed by the Special Court was set aside and the permission was granted to CBI for production of additional documents. Thereafter, again, discharge applications filed by the accused were heard and were dismissed. Charge was framed against the accused, after they pleaded not guilty to the offence with which they were charged. Prosecution, in support of its case, examined 16 witnesses and brought on record number of documents.

13. After having gone through the oral and documentary evidence which is brought on record, in my view, the prosecution has not established that accused No.1 committed an offence punishable under section 120B read with section 409 of the Indian Penal Code or has committed an offence punishable under section 13(1)(d) read with section 13(2) read with section 7 of the Prevention of Corruption Act, 1988. Prosecution also has not established that the accused No.2 has

aided or abetted accused No.1 for commission of the offence punishable under section 409 of the Indian Penal code or for the offence punishable under section 13(1)(d) read with section 13(2) read with section 7 of the Prevention of Corruption Act, 1988. Prosecution has not established that accused Nos. 1 and 2 had entered into criminal conspiracy of diverting funds remitted by OIDB to the Private Company of accused No.2 in oder to cause wrongful gain to accused No.2 and wrongful loss to OIDB.

14. I have come to the above conclusion for the following reasons.

15. The first point which falls for consideration is : whether the prosecution has established that accused No.1 and accused No.2 had entered into conspiracy to misappropriate the funds which were sent by OIDB?

16. In the present case, admitted position is that the funds which were remitted by OIDB were sent directly to Syndicate Bank, Delhi Branch and, thereafter, Delhi Branch of Syndicate Bank had sent these amounts to FIM Branch of the Syndicate Bank at Bombay and, thereafter, Syndicate Bank, Bombay Branch, had remitted these

amounts to accused No.2 for the purpose of investing it in the Companies. Prosecution has not been in a position to establish any direct link with accused No.1 who was the Executive Director of Syndicate Bank and was stationed at Manipal, Karnataka State where the Syndicate Bank has its Head Office. Neither the witnesses who were examined from OIDB nor the witnesses who have been examined from the Syndicate Bank have stated that these funds were given to accused No.2 on the instructions of accused No.1. On the contrary, there is a documentary evidence on record to indicate that OIDB Officers had, in turn, stated in their letter that they had no concern with the FIM Branch of the Syndicate Bank at Bombay and that they were concerned directly with the Delhi Branch of the Syndicate Bank since the remittances were made through the Delhi Branch of the Syndicate Bank.

17. In order to establish the offence of conspiracy, prosecution has to bring on record either direct or indirect evidence for the purpose of establishing that there was meeting of minds on the part of the accused to commit an illegal act by illegal means. It is normally not possible to get direct evidence to establish the offence of criminal conspiracy and, in large number of cases, prosecution has established criminal

conspiracy on the basis of circumstantial evidence. Law in respect of criminal conspiracy has been laid down in several judgments of the Apex Court and this Court. In the recent judgment in the case of Ram Narayan Popli Vs. CBI reported in **(2003) 3 SCC 641**, arising out of Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 the Apex Court has made the following observations.

> "342. It would be appropriate to deal with the question of conspiracy. Section 120-B IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows:
>
> > "120-A. When two or more persons agree to do, or cause to be done,-
> > (1)an illegal act, or
> > (2)an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
> > Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."
>
> The elements of a criminal conspiracy have been stated to be : *(a)* an object to be accomplished, *(b)*a plan or scheme embodying means to accomplish that object, *(c)*an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means

embodied in the agreement, or by any effectual means, and *(d)*in the jurisdiction where the statute required to overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. 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 (See: *American Jurisprudence,* Vol. II, Sec. 23, p.559) For an offence punishable under section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two mor more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise actus contra actum, capable of being enforced, if lawful, punishable if for a criminal

object or for use of criminal menas.

**343.** No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by 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 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.

**344.** In Halsbury's Laws of England (vide 4th Edn., Vol.11, p.44, para 58), the English law as to conspiracy has been stated thus:-

> "58. Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the court.
>
> The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus

reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

**345.** There is no difference between the mode of proof of the offence of conspiracy and that of any other offence. It can be established by direct or circumstantial evidence. [See: *Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra* [AIR 1965 SC 682] (AIR at p.686).]

**346.** It was held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a 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.

> ".... `as against each of the persons believed to be so conspiring as well for the purpose of showing that any such person was a party to it'. ... In short, the section can be analysed as follows: *(1)* There shall be a prima facie evidence effording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their

common intention will be evidence against the other, (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour." (AIR p.687, para 8)

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) [(1980) 2 SCC 665] held that to prove criminal conspiracy, there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistable inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the

commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

**347.** 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.

**348.** The provision of Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. Russell on Crime (12th Edn. Vol.I.,p.202) may be usefully noted:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the

scheme or agreement between the parties, agreement is essential. Mere knowledge, or even discussion, of the plan is not per se, enough."

**349.** Glanville Williams in Criminal Law (2nd Edn., p. 382) states:

> "The question arose in Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for `concert of action', no agreement to 'cooperate'."

**350.** Coleridge, J. while summing up the case to the jury in R. v. Murphy [(1837) 173 ER 502] (ER ar p.508) states:

> "..... I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an

act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing , you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, `had they this common design, and did they pursue it by these common means – the design being unlawful?"

**351.** As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which they itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the

conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trappings of the provisions contained in Section 120-B (See: *Suresh Chandra Bahri v. State of Bihar* [1995 Supp (1) SCC 80]

**352.** The conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. (See : *E.K. Chandrasenan v. State of Kerala* [(1995) 2 SCC 99])

**353.** In Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609] (AIR at p. 1954), this Court observed: (SCC pp. 732-33, para 275).

> "275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But he court must enquire whether the two persons are independently pursing the same end or they have come together to the pursuit of unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of

conspiracy requires some kind of physical fanifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to tansmission of thoughts sharing the unlawful design may be sufficient."

"Conspiracy can be proved by circumstances and other materials." (See: *State of Bihar* v. *Paramhans Yadav* [1986 Pat LJR 688 (HC) )

:[T]o 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 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 service to an unlawful use." (See: *State of Maharashtra* v. *Som Nath Thapa* [(1996) 4 SCC 659]), SCC p. 668, para 24.)

**354.** It was noticed that Section 120-A and 120-B IPC have brought the law of conspiracy in India in line with the English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy, some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence, whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code.

**355.** I may usefully refer to *Ajay Aggarwal* v. *Union of India,* [(1993) 3 SCC 609]. It was held : (SCC p.617, para 8-9)

"8. ..... It is not necessary that each

conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of `criminal conspiracy' was stated first by Lord Denman in *Jones case* [ R. v. Jones, 1832 B & Ad 345] that an indictment for conspiracy must `charge a conspiracy to do an unlawful act by unlawful means' and was elaborated by Willies, J. on behalf of the Judges while referring the question to the House of Lords in *Mulcahy* v. *R* [(1868) 3 HL 306] and the House of Lords in unanimous decision reiterated in *Quinn* v. *Leathem* [1901 AC 495]:

> `A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being

enforced, if lawful: and punishable if for a criminal object, or for the use of criminal means.'

9. This Court in *E.G. Barsay* v. *State of Bombay* [AIR 1961 SC 1762] held:

> `The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law.'

In *Yash Pal Mittal* v. *State of Punjab* [(1977) 4 SCC 540] the rule was laid as follows : (SCC p. 543, para 9)

> `... The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in he main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one

another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators.'

10. *In Mohd. Usman Mohd. Hussain Maiyar* v. *State of Maharashtra* [(1981) 2 SCC 443] it was held that for an offence under Section 120-B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."

**356.** After referring to some judgments of the United States Supreme Court and of this Court in *Yash Pal Mittal* v. *State of Punjab* [(1977) 4 SCC 540] and *Ajay Aggarwal* v. *Union of India* [ [1993) 3 SCC 609] the Court in *State of Maharashtra* v. *Som Nath Thapa* [(1996) 4 SCC 659] summarized the position of law and the requirements to establish the charge of conspiracy, as under: (SCC p. 668, para 24)

"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 service to an unlawful use." [See *State of Kerala* v. *P. Sugathan* [(2000) 8 SCC 203] (SCC p. 212, para 14)]"

18. Keeping in view the aforesaid principle laid down by the Apex Court, it has to be seen whether the prosecution has established the case of criminal conspiracy against accused Nos. 1 and 2. It has to be noted here that, initially, the complaint was lodged by Shri V. Sethumadhavan against Shri R. Sundaresan. In the said complaint, it is specifically alleged that Shri R. Sundaresan who was the then Divisional Manager of FIM Branch of Syndicate Bank at Bombay was responsible for misappropriation and for diverting the funds which

were remitted from the Delhi Branch of the Syndicate Bank to FIM Branch of Syndicate Bank at Bombay. However, surprisingly, charges against the said Shri R. Sundaresan were dropped when the charge-sheet was filed and this person who was named as accused was, later on, examined as a witness by the prosecution. No explanation has been given by the prosecution as to why and for what reason the Investigating Officer felt that it was not necessary to make the said R. Sundaresan as an accused and in his place accused No.1 – R.S. Pai who was stationed at Manipal, Karnataka State, was made an accused in this case. When a query was made by this Court whether there was any direct or indirect evidence against accused No.1 for the purpose of proving that accused Nos. 1 and 2 conspired together, Mr. V.G. Pradhan, the learned Special Public Prosecutor, very candidly stated that no such documentary or oral evidence is available which could establish that accused No.1 – R.S. Pai had entered into conspiracy with accused No.2 – K. R. N. Shenoy. Prosecution has examined in all 16 witnesses.

19. P.W. 1 – V.P. Chugh, at the relevant time, was working as an accountant in OIDB. It is pertinent to note that questions were asked by Mr. Pradhan, the learned Special Public Prosecutor, to this witness

without declaring the said witness as hostile. Thereafter, after the witness was cross-examined by the Counsel appearing for accused Nos. 1 and 2, permission was sought by Mr. V.G. Pradhan, the learned Special Public Prosecutor appearing for CBI to re-examine this witness. Though the objection was raised by the Counsel appearing on behalf of the accused, this objection was overruled for the reasons stated in the order and Mr. Pradhan was permitted to re-examine this witness. Liberty, however, was given for the accused to cross-examine him since certain new documents were sought to be brought on record. This witness, however, did not make himself available for further cross-examination and though several dates were taken by the prosecution to produce the said witness for further cross-examination, he did not remain present and, therefore, ultimately, order had to be passed by this Court after a lapse of almost 8 months to delete the re-examination which was taken by Mr. V.G. Pradhan, Special Public Prosecutor for CBI.

P.W. 2 – Arvind Kaushal was working as Financial Adviser and Chief Accounts Officer for a period from October, 1991 to May, 1992. P.W. 1 was also working in the same Department and he was subordinate to P.W. 2.

P.W 3 - R. Sundaresan was working as Divisional Manager of FIM Division Branch of Syndicate Bank at Bombay. A complaint was lodged against him by Shri V. Sethumadhavan of the Vigilance Branch of the Syndicate Bank. However, his name was dropped and in his place the name of R.S. Pai was included and R. Sundaresan was examined as the witness on behalf of the prosecution.

P.W. 4 – E.R. Seshadri was working as Deputy General Manager of Syndicate Bank at Delhi Zonal Office.

P. W 5 – R. Kalyanasundaram was working in the Syndicate Bank in its Funds and Investment Management Department (FIM) during the relevant period.

P.W 6 - Shreyas Morakhia and P.W. 7 – Sharad Jamnadas Shah were carrying on business in the Stock Exchange at the relevant time. However, they did not support the prosecution case.

P.W. 8 – Ameet Dalal was a stock broker at Bombay Stock Exchange at the relevant time. He has brought on record the contract

note signed by him at Exhibit-119.

P.W. 9 – M. Damodaran was a Joint Secretary, Ministry of Finance at the relevant time and he had given sanction to prosecute accused No.1.

P.W. 10 - K. P. Suresh Prabhu was posted at Syndicate Bank, FIM Branch, Fort, Bombay during the relevant period.

P.W. 11 – Jayant Rege was holding the post of Assistant General Manager in the Syndicate Bank and he has brought on record Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 and also companion regulation i.e. Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 at Exhibit 125 collectively.

P.W. 12 – Prasanna Shenoy was, at the relevant time, posted as Assistant Vice President, Fairgrowth Investments Ltd at Bombay.

P.W. 13 – Dattapal Neroy was working as a Manager of Syndicate Bank from 1972 to January 1992 and, thereafter, he was working in Fairgrowth Investments Pvt. Ltd.

P.W. 14 – V. Sethumadhavan was working with Reserve Bank of India and he was sent on deputation to Syndicate Bank from 1991 to 1994 as Chief Vigilance Officer.

P.W. 15 – Sushil Prasad Singh was working as Inspector of Police in the CBI Bank Securities Cell, Bombay in June, 1992 and a written complaint was received by him from V. Sethumadhavan, Chief Vigilance Officer, Syndicate Bank in the last week of May, 1993 and it was registered by him on 02/06/1993. He has stated that, initially, the case was investigated by Mr. Pradeep Kumar, Inspector of Police and that the said Pradeep Kumar was repatriated to his Parent Branch in Kerala on 13/04/1996 and, thereafter, the case was transferred to him.

P.W. 16 – Pradip Kumar was the Investigating Officer who carried out the investigation after the complaint was lodged on 02/06/1993 till 1996 when he handed over the investigation to P.W 15 – Sushil Prasad Singh.

20. The accused have not examined any witness. Prosecution has

brought on record number of documents. Since the charge levelled against accused Nos. 1 and 2 is of conspiracy to commit offence punishable under section 409 of the Indian Penal Code, substantive charge under section 409 of the Indian Penal Code is also framed against accused No.1 and charge of abetment to commit offence under section 409 is levelled against accused No.2. It would be appropriate if the entire evidence on record is examined to see whether the aforesaid charges have been proved against accused Nos. 1 and 2. In this context, it will be necessary first to see what is the evidence against accused No.1.

21. In a nutshell, the evidence which is brought on record is to the effect that OIDB had surplus funds at its disposal. Inquiries were made by OIDB with the Nationalized Bank, informing them about its intention of investing these surplus funds. Counter offers were made by the Nationalized Banks to OIDB. Syndicate Bank had made an offer to OIDB, asking them to invest their surplus funds in PMS services for a period of one year and had assured the OIDB of expected return of 18.25% interest per annum. The offer document sent to OIDB clearly disclosed that the moneys parked with the Syndicate Bank under PMS activities would be invested in the capital market instruments and

would be at the risk of constituents and that the expected returns would be about 18.25% per annum. Though these letters were received by OIDB, an initial amount of Rs 20 crores (approx.) was sent by OIDB to the Syndicate Bank Delhi Branch as first remittance on 03/04/1992 and at that time there was no contract or agreement between the OIDB and Syndicate bank. Subsequently, five more remittances of various amounts were sent during 02/04/1992 and 30/05/1992 aggregating to Rs 132.22 crores. Though OIDB has asserted that it had informed the Syndicate Bank about the guidelines and directions for the investments of the said amounts in its six letters dated 21/04/1992, 29/04/1992, 01/05/1992, 04/05/1992, 12/05/1992 and 14/05/1992, the admitted position is that when the first remittance was sent on 03/04/1992 for an amount of Rs 20 crores (approx.), no such directions were issued. After the scam broke out in April 1992, the OIDB appears to have written letters to Syndicate Bank, asking them to invest the amounts remitted by them only in Government Securities. However, when the Syndicate Bank informed the OIDB Officers that the expected returns of 18.25% interest per annum would be achieved only because of investments made in PMS which, in turn, meant that the amounts would be invested by purchasing shares in the capital market of Blue-chip Companies.

Thereafter, OIDB issued a clarification to its earlier letters by adding the word "etc." to directions contained in six letters. Prosecution has proved remittances which have been made by OIDB between 02/04/1992 and 30/05/1992 in favour of Syndicate Bank, Kasturba Gandhi Marg Branch, New Delhi. Prosecution has also proved remittances of the amount from Syndicate Bank, Kasturba Gandhi Marg Branch, New Delhi to the FIM Branch of Syndicate Bank, Fort, Bombay through interbank advice notes. Prosecution also has proved that this amount was used for the purpose of purchasing shares in the open market and these shares were purchased in the name of OIDB. The brokers in the Stock Exchange who have been examined have identified the contract notes for the purchase of shares out of the said amount remitted to FIM Branch of the Syndicate Bank, Fort, Bombay. The evidence on record and particularly the evidence of P.W. 1 – V.P. Chugh and P.W 2 – Arvind Kaushal, on close scrutiny, clearly indicates that the officials of OIDB had tried to salvage the position of their investment in PMS activity by writing various letters to Delhi Branch of the Syndicate Bank, seeking their explanation about investments made by Syndicate Bank, after the amount was remitted by OIDB to Syndicate Bank, Delhi Branch. Though the prosecution has brought on record documents to prove the remittances from OIDB to the Delhi

Branch of the Syndicate Bank and from Delhi Branch of the Syndicate Bank to FIM Branch of the Syndicate Bank, Fort, Bombay, it has not been in a position to establish the manner in which the accused No.1 who was the Executive Director of the Syndicate Bank and who was stationed at Manipal, Karnataka State is involved in the entire episode of investment of the funds sent by OIDB in various shares in the capital market. Though an an attempt has been made by the prosecution by examining P.W. 3 – R. Sundaresan and other witnesses from the Syndicate Bank to suggest that it was under the oral instructions of R.S. Pai – accused No.1 that the said investments were made in the capital market, there is no documentary evidence on record and except the bare words of P.W. 3, there is no vital evidence to indicate involvement of accused No.1 in the entire episode. P.W 3 – R. Sundaresan has stated in his evidence that he had met R. S. Pai in Hongkong and on the request made by him to R. S. Pai, he was brought to FIM Branch of Syndicate Bank, Fort, Bombay. Prosecution has further brought on record statements of witnesses working in the Syndicate Bank. In March, 1992 a meeting was conveyed by R.S. Pai – accused No.1 in which he has stated that the profitability of the Bank had to be increased and suggested that for that purpose PMS should be increased and efforts should be made for the purpose of mobilization

of funds from various Companies so that these could be invested in PMS services and, as a result, higher margin of profit could be earned through PMS activities. P.W. 3 – R. Sundaresan has stated that he had orally directed him to engage accused No.2 for the purpose of investment of moneys collected from his customers in the capital market instruments. Though P.W. 3 has tried to suggest that it was at the behest of accused No.1 these investments were made, his testimony has not been supported by the other witnesses who were examined through the Syndicate Bank who have stated in their evidence that a Committee was formed and FIM Branch of the Syndicate Bank, Fort, Bombay would decide the amounts which would be invested in the capital market. The time and the scrips and other particulars would be decided by the said Committee. Admittedly, accused No.1 – R.S. Pai was not the member of this Committee. There is, therefore, a clear contradiction in the evidence of P.W. 3 – R. Sundaresan and other witnesses from the Syndicate Bank. Though P.W. 3 – R. Sundaresan has stated that they had acted as per the oral instructions of accused No.1 – R.S. Pai, the other witnesses have stated that decision to make investments was made by the Committee consisting of four members of which P.W. 3 was one of the members. Further, the evidence which is brought on record also clearly indicates that the funds of the OIDB

were entrusted to the Kasturba Gandhi Marg Branch of the Syndicate Bank at New Delhi, which, in turn, had entrusted these amounts to the FIM Branch of the Syndicate Bank, Fort, Bombay. There is thus no evidence on record to show that the funds of OIDB were entrusted to R.S. Pai who was stationed at Manipal, Karnataka State or that the funds were routed through the Head Office to the Bombay Office. On the contrary, when the letter was written by FIM Branch of the Syndicate Bank, Fort, Bombay to OIDB, a reply was sent by the officials of OIDB stating that they were not concerned with the FIM Division of the Syndicate Bank, Fort, Bombay as they had dealt only with the Kasturba Gandhi Marg Branch of the Syndicate Bank at New Delhi. This clearly indicates that there was no entrustment of funds to accused No.1 and, therefore the principal ingredient for the offence punishable under section 409 is clearly absent as the entrustment of funds by the OIDB to accused No.1 has not been established. Further, though accused No.2 has been charged for the offence of conspiracy of committing criminal breach of trust, the documentary evidence on record indicates that the amounts which were remitted by the Kasturba Gandhi Marg Branch of the Syndicate Bank at New Delhi to the FIM Division of the Syndicate Bank, Fort, Bombay were not invested in the Companies owned by accused No.2 and the amount of Rs 93 crores

was invested in shares in the capital market which were purchased in the name of OIDB. This indicates that there was actual purchase of shares in favour of OIDB and the transaction in question was not an ostensible purchase or sale transaction of shares.

22. Now it will be appropriate to examine the evidence which is brought on record by the prosecution and to see whether the said evidence is sufficient for the purpose of establishing the case against accused Nos. 1 and 2.

23. P.W. 1 – V.P. Chugh has deposed that the Oil Industry Development Board was constituted under the Oil Industry Development Act, 1974. The Government levied cess under section 15 of the said Act. P.W. 2 – Arvind Kaushal has stated that OIDB was constituted under the statute and, therefore, was an autonomous body and the Government levied cess on oil and the proceeds were credited to the consolidated funds of India and, therefore, from time to time, the amounts were transferred to its statutory organizations. The funds which were given to OIDB from the consolidated funds were spent on research and development and the funds were also given to various oil sector companies for the purpose of development. P.W. 1 has further

stated that over and above giving loans to the approved Companies, OIDB still had surplus funds at its disposal and these funds were deposited with the Nationalized Banks only and some amounts were invested in Saving Bank Accounts kept in Fixed Deposits and for a short time in Government Securities. He has stated that during the period from October, 1991 to May, 1992, OIDB had accounts with the Indian Overseas Bank, State Bank of India and number of other Nationalized Banks. P.W. 2 – Arvind Kaushal has further stated in his evidence that the guidelines were laid down regarding the manner in which these surplus funds were to be utilized or invested by the OIDB. He has further stated that the Syndicate Bank was one such Bank with whom the OIDB had transaction between the period from October, 1991 to May, 1992. P.W. 1 has stated that investment decisions were taken by making endorsement on the file. He has stated that the offers which came from the Bank were in writing and the accountant was to ascertain the number of investments which were made at the time of maturity of the fixed deposits and other instruments and to find out about the over all situation in respect of such investments. P.W. 2 further has deposed that the proposal would be tabulated by the accountant and P.W. 1 would examine the offers which were received and make specific recommendations to the Financial Adviser. He has

stated that the Chairman of the Board used to be the Minister in charge of Petroleum and Natural Gas who had directed that all the investments would require his approval. He has stated that, initially, Shri Malviya was the Minister of the Portfolio and, thereafter, he was replaced by Shri B. Shankaranand and that during this period the express approval of the Hon'ble Minister was taken and, after the approval was obtained from the competent authority, the concerned Bank would be informed about the amount which was to be invested and the manner in which it was to be invested. He has specifically stated that the approval was obtained from the Minister to invest the surplus funds in other securities since the higher rate of interest was given if investment was made in Portfolio Management Services and investment advisory services. P.W. 2 has stated that the Officers of the OIDB had informed the Secretary that there was no possibility of getting a firm commitment regarding fixed returns in terms of interest. He has stated that, however, the Bank informed to the Secretary of the Board that they would ensure that there would be fixed higher rate of interest. It is relevant to note the statements made by P.W. 1 in his deposition on page Nos.4 and 5 of the notes of evidence in respect of the funds entrusted with OIDB which read as under:-

"During the relevant period, the Syndicate Bank was entrusted with the funds of OIDB under the PMS. The Syndicate Bank also had given offer to us for investment in PMS. During the relevant period, we were dealing with offices of Syndicate Bank and letters were received from Bombay, Delhi, and DGM of their bank also had correspondence with us. Some letters were addressed to Chairman, OIDB while some letters were addressed to me as DCFAO and some were addressed to the accountant. If the offer was accepted, these banks would be informed the period for which their offer was accepted and the amount which was to be invested and the rate of interest which was accepted by the OIDB and also the period for which the amount was invested. As soon as we accepted their offer, we would inform them that the amount had to be invested in securities, bonds, and units of UTI and also the lock in period and the rate of interest. These conditions were intimated to them in writing and also these conditions were personally discussed with the officer of bank that these amounts would be invested as stated hereinabove. It was also clarified to them that this amount would not be invested in Private Sector Bonds. These conditions were intimated to them in order to ensure that our funds are not lost since PMS depends on market fluctuations at the time of investment and at the time of disinvestment also. No person from the Syndicate Bank came to me for the purpose of discussing the matter of investment. The letters which were sent by these banks were kept in a file."

At the same time P.W. 2 in his evidence has stated about the funds which were deployed in Syndicate Bank. He has stated in his

deposition on pages Nos. 29 and 30 of the notes of evidence as under:-

> "During the relevant period, surplus funds were deployed in the Syndicate Bank. During this period, the investment were not made in one bulk amount but were made in different installments. Roughly, I could say that in four to five installment investment was made. It is possible that it could be more or less installments. The OIDB dealt with the banks only through their offices and branches in New Delhi. The mode of investment in these branches in New Delhi was that either the representative of the bank would come to the board and collect the cheque or the officer of the board would come to the board and collect the cheque or the officer of the board would go to the bank and deliver the cheque and letter. The covering letter which was sent alongwith the cheque gave specific directions to the bank regarding amount to be invested, securities, the period of investment and lastly the manner of deployment of those funds."

24. In this context, in entire evidence of P.W. 1 and P.W. 2, no reference at all has been made to accused No.1 – R.S. Pai. It has never been stated by both the witnesses that the funds were entrusted to R.S. Pai or that he had, on telephone or orally made any commitment for fixed return of the investments made by OIDB with the Syndicate Bank. On the contrary, the letter which is written by the Syndicate Bank clearly indicates that they had offered tentative interest rates and

no firm commitment was made by them. The only evidence which is sought to be brought on record against accused No.1 – R.S. Pai is the statement of P.W. 5 – R. Kalyanasundaram who has stated that R. S. Pai – accused No.1 and K. R. N. Shenoy – accused No.2 were known to each other and both had worked together in Syndicate Bank and that K. R. N. Shenoy – accused No.2 has resigned as Assistant General Manager in Syndicate Bank and, thereafter, joined the FGIL. The accused Nos. 1 and 2 have not disbursed the remittances which were made by OIDB to the Delhi Branch of the Syndicate Bank or further remittances made by Delhi Branch of Syndicate Bank to the FIM Division of Syndicate Bank, Fort, Bombay. Only other evidence which is brought on record against accused No.1 is through the evidence of P.W. 4 – E.R. Seshadri, P.W. 5 - R. Kalyansundaram, P.W. 3 – R. Sundaresan, Divisional Manager of Syndicate Bank at Bombay. P.W. 3 – R. Sundaresan has stated in his deposition on page 55 of the notes of evidence as under:-

> "I say that the head office of the Syndicate Bank is at Manipal, Karnataka. I say that Shri R.S. Pai was operating from the head office at Manipal. I say that Mr. Shenoy was working at Bombay."

Similarly P.W. 4 – E.R. Sheshadri has stated in his deposition on page 94 of the notes of evidence as under:-

> "I say that I know Shri R.S. Pai. He was Executive Director in the Syndicate Bank and was posted at Manipal."

And P.W. 5 – R. Kalyanasundaram has stated in his deposition on page No.109 of the notes of evidence as under:-

> "I say that at that time Shri R.S. Pai was an Executive Director of the Syndicate Bank. I say that Shri R.S. Pai's office was situated at Manipal, South Karnataka."

Further, P.W. 3 – R. Sundaresan in his evidence has stated that he had met accused No.1 – R.S. Pai when he visited Hongkong and he had stated that R.S. Pai expressed his concern about the deteriorating condition of the Bank. P. W. 3 in his deposition on page Nos. 51 and 52 of the notes of evidence has stated as under:-

> "I say that I have met R.S. Pai in Hongkong when he had come there in a capacity as Chairman of the Board of Directors in the year 1991. In Syndicate Bank, he was a Executive Director. During this period when Mr. Pai visited Hongkong, we did

> discuss about the financial health of Syndicate Bank. At that time, he expressed his concern about the deteriorating condition of the bank and that something had to be done to improve the said condition. I say that at that time, I had discussed with him that I was due to return to India and he suggested that he would try to get the posting in Bombay in the Merchant Banking Division."

The other evidence against accused No.1 has come through P.W. 3 – R. Sundaresan. He has stated that a meeting was held in March, 1992 and R.S. Pai had made an appeal to all the Executives to mobilize funds. P.W. 3 in his deposition on page Nos. 53 and 54 of the notes of evidence has stated as under:-

> "In the first week of March 1992, the meeting was held at Zonal Office and in the said meeting, Mr. R.S. Pai discussed many issues and more particularly issues concerning the profitability in general and he also announced that FIM would soon start the Portfolio Management Services. He also informed us this was in addition to the Nariman Point Branch where this activity had already started. He made an appeal to all the executives who were present there to keep this in mind and accordingly, mobilise funds. I say that most of the senior executives and zonal heads from Delhi and other branches were present. I say that Mr. Sheshadri who was a DGM of Delhi zone was also present. He

welcomed his idea and he assured us that with his contacts in Delhi, he would be in a position to mobilise funds for that purpose."

P.W. 4 – E. R. Sheshadri has further stated in his deposition on page Nos. 95 and 96 of the notes of evidence as under:-

"Some time in March, 1992, the Zonal Office had convened meeting of all Zonal Managers in order to discuss strategies of the Bank for the next financial year. This meeting was held for the purpose of discussing strategies of growth development and management of the Bank and its various branches. I was present at the said meeting which was held at Pune. Shri R.S. Pai was presiding over the said meeting which was held at Pune. I remember that during this relevant period I had a colleague by name Shri Sundaresan Prabhu. He was, at the relevant time, Funds Investment Manager and was posted at Bombay. I say that another colleague namely Shri P.S. Prabhu was also posted at Bombay. I say that he was Assistant General Manager at that time. I do not remember whether Shri Sundaresan Prabhu and Shri P.S. Prabhu were present in the meeting which was held at Pune.

I say that in this meeting Shri R.S. Pai informed us that the Bank was earning less profits and he, therefore, suggested various ways and methods for overcoming difficult situation which was faced by the

> Bank. He, therefore, suggested that the Bank had Investment Department which had ability to invest surplus funds of their bank. Similarly, Investment Department was also in a position to invest surplus funds of the Syndicate Bank. I say that expectation of Shri R.S. Pai as Head of the organization was that all the branches and Zonal Offices should generate good profits for the Bank. I say that about 20 members were present at the said meeting."

25. From the aforesaid evidence, apart from bare words of P.W. 3 – R. Sundaresan that he was acting on the oral instructions of R.S. Pai, there is no other evidence on record to suggest that R.S. Pai – accused No.1 was monitoring the entire transaction. The entire evidence of these witnesses, as stated hereinabove, does not even remotely connect the accused No.1 with the investments made by OIDB with the Delhi Branch of the Syndicate Bank nor with the investments made by FIM Branch of the Syndicate Bank, Fort, Bombay. On the other hand, the entire correspondence with the OIDB has been made either through the Delhi Branch of Syndicate Bank or by Shri R. Sundaresan as Divisional Manager of Syndicate Bank, FIM Branch, Fort, Bombay. It has to be noted here, as observed hereinabove, that P.W. 1 – V.P. Chugh was permitted to be re-examined and he was further cross-examined by the Counsel for the accused. P.W. 1, however, thereafter,

did not make himself available for further cross-examination after his re-examination was taken by Mr. V.G. Pradhan, the learned Special Public Prosecutor. As a result, an objection was taken by the learned Counsel appearing on behalf of the accused that the entire re-examination of V.P. Chugh, therefore, be struck off from the record and, accordingly, I had passed an order, directing that the said entire re-examination be struck off from the record. The documents which were exhibited by P.W. 1 in the re-examination, therefore, also were not permitted to be read in evidence. No application was made by the prosecution for recalling the said order. Thereafter, at no time, P.W. 1 – V.P. Chugh was made available for further cross-examination. Even otherwise, therefore, an adverse inference will have to be drawn against the prosecution for not making V.P. Chugh available for cross-examination. An adverse inference will have to be drawn that V.P. Chugh was not permitted to be cross-examined because the prosecution was afraid that he may not support the prosecution case. In fact, on earlier occasion, Mr. V.G. Pradhan had sought leave of this Court to cross-examine V.P. Chugh without declaring him hostile. P.W. 1 further has, in his evidence, stated that he was not aware of the guidelines laid by the Reserve Bank of India and/or SEBI. The entire evidence of P.W. 1, therefore, even otherwise, becomes completely

unreliable and atleast his evidence is of no assistance to the prosecution for establishing the case against accused Nos. 1 and 2. Same is the case of evidence given by P.W. 3 – R. Sundaresan. Initially, he was named as accused in a complaint which was filed by V. Sethumadhavan, Vigilance Officer of the Syndicate Bank. For a period of one month after the complaint was filed, P.W. 16 – Pradip Kumar who was the Investigating Officer did not even care to record the statement of P.W. 3. All the correspondence is made and directions have been given by P.W. 3 under his signature. There is absolutely no evidence to show that he was under direct control of accused No.1 – R.S. Pai, except his bare word that he was acting under his instructions. His evidence has not been corroborated by any other witness or by any documentary evidence on record. Prosecution also has not been in a position to give any plausible explanation as to why the prosecution chose to drop him as an accused and examined him as a witness on behalf of the prosecution. Evidence of P.W. 2 – Arvind Kaushal also indicates that all the correspondence was made by him after the scam was broke out and the letters written by him appear to be an afterthought to salvage the damage caused to OIDB. It has come on record that the first remittance which was made by OIDB was without entering into any formal document between the OIDB and the

Syndicate Bank and it is only on the basis of offer letters which were sent by either party, OIDB is trying to make out a case that it had remitted the amount for investing it only in Government Securities, though the first remittance of Rs 20 crores (approx) was made even without giving any intimation to the Kasturba Gandhi Marg Branch of the Syndicate Bank at New Delhi. To that extent, therefore, evidence of P.W. 2 – Arvind Kaushal also does not establish any nexus between the accused Nos. 1 and 2 and the remittances which were made by the Officials of the OIDB.

26. For the aforesaid reasons, I am of the view that the prosecution has not established that there was a conspiracy between accused Nos. 1 and 2 for utilizing the funds of OIDB or that the accused No.1 had persuaded the Officials of the OIDB to park their funds with the Syndicate Bank with an assurance of fixed returns. Similarly, the entrustment of money by OIDB to R.S. Pai alsso has not been established.

27. Having seen the oral evidence against accused Nos. 1 and 2, it will have to be examined whether from the documentary evidence which is brought on record, any case is made out against both the

accused. For that purpose, it is necessary to see the chronology of events. I have already stated that from 02/04/1992 to 30/05/1992 various remittances were made by the OIDB in the Kasturba Gandhi Marg Branch of the Syndicate Bank at New Delhi for an amount of Rs 93,17,77,925/- and this amount, in turn, was invested by accused No.1 and the said amount was remitted to accused No.2 through five remittances of various amounts during the period 07/05/1992 to 29/06/1992. Now, it will have to be seen the manner in which the amounts were paid and the correspondence between the parties before and after the remittances were made in order to appreciate the rival contentions.

28. According to the prosecution, a meeting was arranged by accused No.1 in March, 1992 wherein he has urged all his Executives to mobilize funds from individual clients, so that these funds could be invested in the PMS services. At this stage, it would be relevant to take into consideration the RBI guidelines which have been issued. The Reserve Bank of India issued guidelines which have been brought on record at Exhibit-14. The said circular was communicated to the Chairman/Chief Executive of all Scheduled, Commercial Banks. All this was in relation to Portfolio Management Scheme on behalf of

clients. In para 2 of the said guidelines, it has been stated as under:-

> "2. Our scrutiny of 'portfolio management services' provided by some banks, however, has disclosed certain disquieting features as under :
>
> (i) Banks have been accepting short term funds, i.e. for a period less than one year, for portfolio management.
>
> (ii) Banks have been accepting funds for portfolio management and instead of managing such funds themselves, placed such funds with other banks for management.
>
> (iii) Banks have been deploying portfolio funds in call money market and bills market.
>
> (iv) Banks have not been maintaining client-wise records of funds accepted for portfolio management and investments made thereagainst. They have been using portfolio funds for their own purposes. They have also been mixing their own investments with those of their clients."

It was under these circumstances, the Reserve Bank of India issued guidelines to Banks. Clause (iv) of para 3 of the said guidelines is as follows:-

> "3. It has, therefore, been considered

necessary to issue further guidelines to banks on this matter. Portfolio management services (PMS) may be provided by banks/their subsidiaries to their clients henceforth, subject strictly to the following revised guidelines :

(i) .....

(ii) .....

(iii) .....

(iv) The funds accepted for portfolio management are essentially expected to be deployed in capital market instruments such as shares, debentures, bonds, securities etc. In any case, portfolio funds should not be deployed for lending in call money/bill market and lending to/placement with corporate bodies.

(v) .....

(vi).....

(vii) ....."

The Reserve Bank of India, therefore, had clearly indicated in its guidelines that funds which were placed with the Nationalized Bank under PMS are essentially expected to be invested in capital market instruments such as shares, debentures, bonds, securities etc. The restrictions, however, were placed in order to ensure that these investments are not made for short term below one year and the

minimum period of investment should be one year. A restriction was also imposed by the RBI that this money should not be deployed for lending in call money/bills market and lending to/placement with corporate bodies. The RBI guidelines, therefore, clearly stipulated that when funds were deployed with the Nationalized Banks in the PMS, these funds were essentially to be used for the purpose of investment in capital market instruments. In this background, it has to be seen from the documentary evidence i.e the contents of correspondence as to what had transpired between the OIDB and the Syndicate Bank. The Accountant of OIDB Shri B.S. Sharma had issued a letter dated 21/03/1992 to all the Banks, a list of which is attached to the said letter which is brought on record at Exhibit-13. It would be worthwhile to see the relevant contents of the said letter at Exhibit-13, which reads as under:-

> **"Sub: Investment of funds in Portfolio Management Scheme for a period of one year.**
>
> Sir,
>
> We propose to invest a part of our surplus funds in the Portfolio Management Scheme for a period of one year. You are requested to make your best offer for the same positively by 23.3.1992. The offer may please be made after consulting higher management with a view

to giving best possible rate and avoiding any subsequent revision thereto."

Copy of this letter was also addressed to the Syndicate Bank alongwith all other Nationalized Banks which is evident from the list annexed to Exhibit-13. From the aforesaid letter, it is evident that the OIDB was very clear in its mind of investing its funds in the Portfolio Management Scheme (PMS).

29. The Syndicate Bank also had written a letter dated 21/03/1992 to the OIDB. This letter is sent by the Assistant General Manager of the Kasturba Gandhi Marg Branch of the Syndicate Bank, New Delhi. In this letter, it has been stated that Syndicate Bank had learnt that the surplus funds with the OIDB were to be invested and an offer was made by the Bank to invest these funds in the PMS. It would be relevant, therefore, to see exactly what was the offer made by the Syndicate Bank. The relevant portion of the said letter at Exhibit-7, reads as under.

"Dear Sir,

Re : **Investment of your funds with us under Portfolio Management Scheme.**

> We learn that you have surplus funds meant for investment. In this connection, we would like to offer our expertise services to you for management of your funds, that may be placed with our Bank, by you, under Portfolio Management Scheme, so as to enable you to get the maximum possible returns.
>
> In the past, we have been successful in getting a return of around 18% to our existing portfolio clients and we hope to achieve near about the same level of return to you also. However, the indicate yield for you would be about 18.25% p.a. [Emphasis supplied]
>
> Such funds placed with us by you will be managed by us as per the guidelines issued by RBI/SEBI in the matter."

30. At this juncture, it would also be relevant to consider another guideline which was issued by the RBI in its guidelines at Exhibit-14 In clause (ii) of para 3 of Exhibit-14, it is stated as under:-

> "3(ii) 'PMS' should be in the nature of investment consultancy/management, for a fee, entirely at the customer's risk, without guaranteeing, either directly or indirectly, a pre-determined return. The bank should charge a definite fee for the services rendered independent of the return to the client."

From the letter which is referred to at Exhibit-7, it is clear that the Assistant Manager of the Kasturba Gandhi Marg Branch of the Syndicate Bank, New Delhi had clearly stated that the yield was

indicative only to the extent of 18.25%. This is relevant because in the subsequent correspondence between the OIDB Officials and the Bank, much emphasis has been laid by the prosecution on these letters to indicate that the Syndicate Bank had promised and assured OIDB that it would give them the assured returns. The above letter at Exhibit-7 which is written prior in point of time to the first investment which is made, clearly states that the only indicative yield of the interest has been mentioned. Officials of the OIDB, therefore, were clearly aware that what was the promise given by the Syndicate Bank and i.e only the indicative yield of the investments which were made in the PMS. The subsequent correspondence between the Officials of the OIDB with the Syndicate Bank clearly is after the scam broke out and as I would presently point out, obviously, this was in order to save their own skin from the possible fallout of the investments made at their behest with the Syndicate Bank. The documents which I am presently dealing with clearly suggest that the Officials of the OIDB were aware that the investments were being made in PMS and that the yield would only an indicative yield. However, the subsequent correspondence which strangely has begun after 21/4/1992 clearly suggests that the Officials of the OIDB have tried to put a wool over their eyes or atleast suggest that they were not aware that the investments were made in the PMS

which clearly was meant for investments which were essentially to be made in the capital market instruments as indicated hereinabove in the RBI guidelines. Syndicate Bank also had in the letter written to the F.A & C.A.O. of OIDB, New Delhi i.e. P.W. 1 dated 16/04/1992 given details of PMS. This has become necessary to point out the details which have been given by the Deputy General Manager, New Delhi Branch of the Syndicate Bank. In this letter which is at Exhibit-15, categorically, the following information was given:-

" Dear Sir,

Re : Portfolio Management Scheme

We bring to your kind notice that we have a well equipped Merchant Banking Division offering amongst others, PORTFOLIO MANAGEMENT SERVICES, as per the Reserve Bank of India guidelines:

These services are extended by us on the following lines:

1. Funds placed with the Bank by the constituents under the scheme shall be for a minimum period of 12 months. In case of regular placements, each such additional placement shall be for a period of 12 months.

2. These funds will be invested by the Bank in Capital Market instruments such as shares, debentures, PSU bonds, Government Securities etc.

3. The services of the Bank in this direction will be akin to Investment Management Consultancy.

4. These funds will be managed at the risk and responsibility of the constituents.

5. The Bank does not guarantee any predetermined return on these funds as per the guidelines.

6. All expenses, costs, losses incurred and risks undertaken by the Bank in managing the portfolio shall be for account of the constituents.

7. The Bank shall be paid a "Back-end" service charges at 1% (One per cent only) per annum on the funds placed from the date of respective placements.

8. The Bank reserves the right to recover all expenses and service charges together with other incidentals arising out of managing the portfolio by debiting the concerned portfolio account at the appropriate time without reference to the constituents.

9. The portfolio will be effectively managed by the Bank on the lines recommended by the Reserve Bank of India from time to time.

We shall be thankful to receive your funds for placement under the said scheme." [Emphasis supplied]

This letter has been received by OIDB and there is a stamp of

acknowledgment and the letter has been received on the same day and F.A & C.A.O. of OIDB has put his initials acknowledging receipt of this letter. This letter assumes importance for two reasons. Later on, the Officials of OIDB in their correspondence feigned ignorance about the investments which were made by the Syndicate Bank in the capital market instruments and have stated that specific directions were given by the OIDB to invest their funds only in Government Securities. It is important to note that when the first remittance was sent on 03/04/1992, the said amount was remitted to the Delhi Branch of the Syndicate Bank even before the formal agreement was executed between the parties and after receipt of this letter at Exhibit-15. Therefore, there is no manner of doubt that the Syndicate Bank clearly indicated that the funds which were invested in PMS were meant to be invested in capital market instruments and that the risk was entirely of the constituents and 1% "Back-end" service charges would be paid to the Bank. The subsequent correspondence reveals that P.W. 2 has produced one of the letters wherein he has expressed his surprise as to how an amount of Rs 33 lacs (approximately) was charged as service fee by the Syndicate Bank. The subsequent correspondence, therefore, is clearly contrary to what the Syndicate Bank had clearly informed the F.A. & C.A.O. of OIDB, New Delhi. I shall refer to the said letter at

later stage. The stand taken by the OIDB, therefore, is clearly contrary to the documents which are on record. In fact, the documents which have been brought on record clearly falsifies the case of the prosecution. It is surprising as to how the CBI did not make any investigation in respect of Officials of OIDB who were equally responsible for making these investments with the Syndicate Bank when they were fully aware about the nature of the investments and the indicative yield of the said investments as also the risk involved in making these investments under PMS. The correspondence clearly indicates that the Officers of OIDB had jumped the wagoner to make a quick money and put at risk the funds which were at its disposal and which were sent to OIDB from the consolidated funds of India. Though the matter was of such a serious nature, the evidence of P.W. 15 and 16 who were Investigating Officers shows the manner in which the investigation had been carried out. It clearly reveals that an attempt has been made to protect the Officials of the OIDB and to let go the persons who were directly responsible for the entire episode. A complaint was filed by Shri V. Sethumadhavan who was the Chief Vigilance Officer against Shri R. Sundaresan. No explanation has been given as to why no case was filed against him and later on he was examined as prosecution witness.

31. In the backdrop of these documents, now it has to be seen as to how the Officials of OIDB have later on tried to give twist to the entire episode which was obviously meant for the purpose of saving their own skin. After this letter at Exhibit-15 was received by F.A. & C.A.O. of the OIDB, New Delhi and acknowledgment to that effect was given it is thereafter he addressed a letter to the Chief Manager of the Syndicate Bank dated 21/4/1992 which is at Exhibit-5. P.W. 1 in this letter states as under:-

> "We have parked funds to the extent of Rs 20.09 crores with you as per acknowledgment received from your bank vide your letter No.216, DZO DGMS F-20,92 dated 18.4.92 for their proper management under 'Portfolio Investment'. Your acknowledgment of deployment of our funds in Govt. Securities, Units of UTI and Public Sector Bonds, Safe Custody of securities giving return as contained in your letter No.788/9005/92, dated 25/26.3.1992 is awaited which may please be expedited." [Emphasis supplied]

Since the reference is made to the letter dated 25/03/1992, it has to be seen what was mentioned in the said letter which is at Exhibit-6

dated 25/03/1992. It is stated by the Divisional Manager of the New Delhi Branch of the Syndicate Bank that yield on the investment made by the OIDB would not be less that 18.25% . P.W. 1, therefore, does not make any reference to the letter received by him dated 16/04/1992 in which details of the PMS was given. He, however, makes a reference to letter dated 25/26.03.1992. P.W. 1, therefore feigned ignorance about receipt of the letter dated 16/04/1992. This clearly indicates that though P.W. 1 – V.P. Chugh was very well aware that the funds parked with the Syndicate Bank were to be deployed under PMS with all its attending risk involved, he feigned ignorance about this letter and makes a stray reference to the letter dated 25/26.03.1992. It has to be noted that the letter dated 25/26.03.1992 has been written with reference to the letter written by the Assistant General Manager of the Syndicate Bank to the OIDB dated 21/03/1992. The said letter appears to be a confirmation of what is stated in letter dated 21/03/1992. In this context, therefore, it will be necessary to see the relevant contents of the said letter which is at Exhibit-6 dated 25/26.03.1992 which read as under:-

> "Further to our letter of offer vide ref. No.PMS/269/5037/HKS/92 dated 21.3.1992, this is to confirm that the yield on your

> investment would be not less than 18.25% p.a. on the investment made by you with our Bank upto Rs 140 crores (Rupees One hundred forty crores) for one year."

This letter, therefore, was in addition to what was mentioned in Exhibit-7. In the letter at Exhibit-7 dated 21/03/1992, it has been clearly mentioned that the indicative yield of 18.25% per annum would be available on the funds placed with the Syndicate Bank. A reference also has been made to the guidelines issued by RBI/SEBI in the said letter. P.W. 1, instead of making reference to letter dated 21/03/1992 at Exhibit-7 and further letter which was written dated 16/04/1992 at Exhibit-15 giving complete details of PMS, chooses to make a reference only to letter dated 25/26.3.1992 at Exhibit-6. This clearly shows the dishonesty on the part of the prosecution witnesses and that a dishonest stand was taken by the Officials of OIDB even before the investments were made. This further indicates that they were very well aware that the said investments were made contrary to the regulations which were laid down by the Central Government and the guidelines and the resolutions passed by the OIDB in its internal meetings. However, in their correspondence, Officials of OIDB have feigned ignorance about the information given by the Syndicate Bank to them. These documents, therefore, clearly falsify the stand taken by

the OIDB's Officials. As I have already indicated that an adverse inference has to be drawn against the prosecution, particularly because of the conduct of P.W. 1 in not making himself available for further cross-examination. Prosecution though had an ample opportunity to get this witness, did not take any steps whatsoever for making him available for further cross-examination.

32. The above discussion clearly reveals that the Investigating Agency acted in a totally sloppy manner though facts and the documents clearly speak for themselves. On the one hand, no explanation is given by the Investigating Officers P.W. 15 and 16 why no investigation was made at the OIDB end though they had an ample opportunity to do so. On the other hand, though the entire documentary evidence clearly suggests that the correspondence was essentially between the OIDB's officials and the Officers of New Delhi Branch of the Syndicate Bank and the FIM Branch of the Syndicate Bank, Fort, Bombay, further investigation has not been made after these documents were made available to the prosecution.

33. The subsequent correspondence reveals that P.W. 1 in his subsequent correspondence has maintained his stand that the funds in

the PMS were to be invested in Government Securities. Letter dated 29/04/1992 at Exhibit-8 is written by P.W. 1 – V.P. Chugh to the Chief Manager, Syndicate Bank, Bhagwan Das Road, New Delhi records that four cheques, all dated 29/04/1992 drawn on State Bank of India, K.G. Marg, New Delhi were sent for deployment under Portfolio Management Scheme with effect from 29/04/1992 @ 19.51%. The amount of the said cheques was Rs 81,68,50,924.65. It is interesting to note that in para 3 of this letter he has stated as under:-

> "3. The funds have been parked with you for their proper management as "Portfolio Investment" in Government Securities Units of UTI & Public Sector Bonds in accordance with RBI guidelines."

In this connection, it will also be relevant to note the following correspondence between S.K. Pujari, the Accountant of OIDB and P.W. 3 – R. Sundaresan, Divisional Manager of the Syndicate Bank. In the letter at Exhibit-19 dated 18/06/1993, S.K. Pujari has informed the Divisional Manager as under:-

> "Sub: Investment of funds under P.M.S
> Ref : Your letter No.1212/FIM/PMS/93, dated June 7, 1993.

Sir,

> The Oil Industry Development Board has made no investment with your branch. Whatever investments the Board has made these have been made with the Bank's office/branch located at New Delhi. Therefore, no cognizance can be taken of your above mentioned communication. You are advised to take up the matter with the DGM, Syndicate Bank, New Delhi and your headquarters at Manipal."

The second letter is dated 03/06/1992 written by P.W. 1 – V.P. Chugh to the Assistant General Manager of the Syndicate Bank which is at Exhibit-24 in which he has stated that the Bombay Office in its letter dated12/05/1992 has sent an acknowledgment regarding receipt of funds amounting to Rs 61.43 crores from OIDB through your K.G. Branch Office for placement in Portfolio Management. He has stated that since the entire funds of Rs 198.38 crores have been given to Delhi Office only, there was no occasion for Bombay Office to write the said letter. Again, P.W. 1 wrote a letter which is at Exhibit-26 dated 03/08/1992 in which he has made a reference to the letter dated July 18, 1992 from the Bombay Office regarding confirmation of investment of funds. In para 2 of the said letter dated 3/8/1992 at Exhibit-26, he has mentioned as under:-

> "Your Bombay Office vide its letter dated July 18, 1992 has sent confirmation regarding investment of funds and holding securities. This is inexplicable since the funds have been placed with your bank on the basis of offer received from your office."

So, on the one hand, OIDB has later on taken a stand that it was not concerned with any other Office and that it had deployed the funds only with the K.G. Marg Branch of the Syndicate Bank, New Delhi. No reference was made to any communication made by accused No.1 – R.S. Pai. This clearly establishes that the funds were entrusted by OIDB even according to P.W. 1 and P.W. 2 with the Delhi Branch of the Syndicate Bank and not even with the FIM Branch of the Syndicate Bank, Fort, Bombay, much less with R.S. Pai who was the Executive Director and who was stationed at Manipal, Karnataka. The correspondence also indicates that though Officials of OIDB were very well aware about the letter dated 16/04/1992 at Exhibit-15 and the other letter dated 21/4/1992, they had feigned ignorance about the same and in their letters have stated that the funds were deployed for the purpose of investment in Government Securities only and the Syndicate Bank Officers at Delhi Branch had assured them of fixed returns of above 18% and, later on, in the subsequent correspondence, they have maintained that the fund were deployed for investment at

19.51% per annum. This is clearly contrary to the correspondence between the Assistant General Manager, Syndicate Bank and the OIDB. In the letter dated 27/04/1992 at Exhibit-17, the Assistant General manager of the Syndicate Bank has again stated that the indicative yield on the investment under PMS was 19.51% per annum. The said letter at Exhibit-17 reads as under:-

> "Further to our earlier letter to you on the subject offering an indicative yield of 18.50% for your investment under Portfolio Management Scheme with us we are now pleased to offer you an indicative yield of 19.51% (Nineteen point five one percent p.a.)" [Emphasis supplied]

and yet P.W. 1 in his letter which is written two days after the letter at Exhibit-17, states that the investment of Rs 81,68,50,924.65 under PMS has been made with effect from 29/04/1992 @ 19.51%. All this correspondence clearly reveals that on the one hand officials of the OIDB were very well aware of the risk which was involved in investing their surplus funds in PMS and, on the other hand, for the purpose of creating record in its office, in the correspondence they have shown audacity of stating that the funds were to be given for deployment in Government Securities for a assured sum of interest, though in each

letter sent by the Officers of the Delhi Branch of the Syndicate Bank, they were at pains to point out that the yield was only an indicative yield. Apart from this, it is evident that neither P.W. 1 - V.P. Chugh nor P.W. 2 - Arvind Kaushal have made any reference to either Mr. R.S. Pai – accused No.1 or Mr. K. R. N. Shenoy – accused No.2. Therefore, entrustment of funds with accused No.1 has not at all been established. A boogie has been raised by the Officials of the OIDB that they were not aware that their surplus funds were being invested in PMS under their own risk, though they were specifically informed by the Officers of the Delhi Branch of the Syndicate Bank and the CBI has turned a blind eye towards the OIDB Officials which is reflected from the evidence of P.W. 15 and 16 who were the Investigating Officers who have clearly stated in their cross-examination that though involvement of OIDB Officials also appears to be eminent from these documents, no investigation was made by the CBI on that front. The attempt made by the OIDB Officials to play hide-and-seek at the same time is reflected from the following letter which is at Exhibit-9 and this letter is written by Mr. S.K. Pujari. Mr. S.K. Pujari writes a letter to the Chief Manager, Syndicate Bank in which he states as under:-

"Sir,

The following amendment may please be made under the investment No.4 of our letter dated 29.4.92.

S.No.4 Portfolio Management Scheme for a period of one year.

Read

S.No.4 Portfolio Management Scheme for a period of one year. Investments in Units, Bonds of Public Sector Units, Certificates of Deposit, Commercial paper of Government, Companies, Govt. Securities, etc."

This letter obviously has been written after it was pointed out by the Syndicate Bank Officials that the PMS pertains only to investments in capital market. The Officials of the OIDB, therefore, clearly made an attempt to hide this fact from the higher Officials of the OIDB and the Central Government. Unfortunately, though this is clearly evident from these documents, no steps have been taken by CBI to probe into this aspect at all, though the funds came from the consolidated fund of India and under section 15 of the Oil Industry Development Act, 1974 the Government had levied cess and, thereafter had transferred these funds to OIDB for various purposes. In view of this documentary evidence, therefore, I am clearly of the view that, in any case, there is

no connection between the investment of funds by the OIDB either with accused No.1 or accused No.2. Therefore, point Nos. 1 and 2 are answered in the negative.

34. Prosecution has also proved the remittances of money from Delhi Branch of the Syndicate Bank to its Bombay Branch through inter-bank credit advise note since these documents are not disputed. Even if the said documents are accepted, as I have indicated earlier, nothing turns on the said documents of transfer of money from the Syndicate Bank, New Delhi Branch to the FIM Branch of the Syndicate Bank at Fort, Bombay and the further amount which has been sent to FGIL. An attempt has been made by the prosecution to show that accused No.1 knew accused No.2 while he was working in the Syndicate Bank and further an attempt is made to show that P.W. 3 – R Sundaresan was brought from Hongkong to the FIM Branch of the Syndicate Bank at Fort, Bombay. It is also said by some of the witnesses that because Mr. Prabhu did not agree with Mr R.S. Pai – accused No.1, he was suddenly transferred and in his place Mr. R. Sundaresan was posted as Divisional Manager. It is the further case of prosecution and it is so stated by P.W. 3 and P.W. 5 that on account of suggestion made by R.S. Pai – accused No.1 that accused No.2 was

appointed for the purpose of making investments in the capital market instruments. The second limb of the prosecution case therefore is that Mr. R.S. Pai had persuaded OIDB Officials to invest its money in Syndicate Bank and, on the other hand, the said money was siphoned off in favour of FGIL and it's sister concern the Fairgrowth Financial Services Ltd since the said company of which accused No.2 was a Managing Director was under liquidity crunch and, therefore, accused No.2 and his Company had wrongfully gained from the transfer of funds to it and wrongful loss was caused to OIDB.

35. First of all, it is pertinent to note here that though original complaint which was filed by V. Sethumadhavan and an FIR was lodged which is at Exhibit-130, it was alleged that P.W. 3 – R. Sundaresan had cheated the Bank and there was wrongful loss caused to OIDB and wrongful gain to accused No.2. Later on, when the charge-sheet was filed, a charge of cheating was dropped. No charges were levelled against P.W. 3 – R. Sundaresan who was named as an accused in the original complaint and the charge was levelled against accused No.1 – R.S. Pai for the substantive offence of criminal breach of trust under section 409 of the Indian Penal Code and conspiracy along with the offence under the Prevention of Corruption Act.

Though, it has been charged that the entire amount was transferred in the name of Company of accused No.2, it is a matter of record that the actual shares to the tune of Rs 93 crores approximately were purchased in the name of OIDB. The decision to make investment was taken by the Committee of four persons in which accused No.1 was not a member and, on the other hand, P.W. 3 – R. Sundaresan was the member of the Committee alongwith three other persons. This falsifies the case of the prosecution that the investments were made in FGIL and its sister concern the Fairgrowth Financial Services Ltd of which the accused No.2 was the Managing Director at the instance of Mr. R.S. Pai – accused No.1. This decision was taken by the Committee of four persons which decided the date and the manner which the investments were to be made. This clearly indicates that the transaction of investment in shares from the PMS of the client was not an ostensible share transaction but was an actual share transaction. It is interesting to note that the prosecution has not stated whether actual loss was caused to the OIDB as a result of investment made. No such complaint has been made either by V. Sethumadhavan who lodged a complaint or by Officials of OIDB that the said funds of Rs 132.22 crores which were deployed were lost or not repaid. Prosecution ought to have produced the said fact on record as to what happened thereafter in order to

make the record straight. Obvious inference therefore has to be drawn. It is a matter of record that the entire amount was repaid to OIDB alongwith interest and, as such, no loss was caused to the OIDB. None of the witnesses who was examined from the Syndicate Bank stated that any loss was caused to the Syndicate Bank. Prosecution, therefore, has miserably failed in establishing the charge of criminal conspiracy to commit an offence of criminal breach of trust by accused No.1 and accused No.2 or the substantive charge of criminal breach of trust against accused No.1 Accordingly, point Nos. 1 and 2 are answered in the negative.

36. So far as 3rd and 4th charge is concerned, prosecution has not proved that 62000 shares from the promoters' quota of FGIL and its sister concern M/s Fair Growth Financial Services Ltd were transferred in the name of accused No.1 or in the name of his family members. The 3rd and 4th charge read as under:-

> "**THIRDLY,** that in pursuance to the said conspiracy you Accused No.1, as a motive and/or reward for causing the aforesaid wrongful gain to accused No.2 and/or his said company, dishonestly obtained in your name and in the name of your family members of 62,000 shares from promoters' quota of the

FGIL and its sister concern the Fairgrowth Financial Services Ltd., and you have thereby committed offences punishable under sections 13(1)(d) read with section 13(2) and section 7 of the Prevention of Corruption Act, 1988."

"**FOURTHLY**, that you Accused No.2 instigated and abetted accused No.1 in obtaining the said 62000 shares by way of motive/reward for enabling you and/or your said company to make the aforesaid wrongful gain of Rs 93,17,77,925/- and you have thereby committed an offence punishable under section 12, Prevention of Corruption Act, 1988."

37. In order to establish that accused Nos. 1 and 2 had committed an offence as charged under 3rd and 4th charge, it was necessary to establish that the FGIL and its sister concern M/s. Fair Growth Financial Services Ltd had transferred the aforesaid 62000 shares from its promoters' quota in favour of accused No.1 and his family members. Unfortunately, prosecution has miserably failed in establishing the said charge since it has not been proved that the said shares were, in fact, transferred in the name of accused No.1 or his family members. All those documents which were marked as X-1 to X-14 have not been proved and, therefore, these documents could not be exhibited. The relevant witness who could prove the contents of the said documents and who was the author of the said documents was not examined by

the prosecution. Prosecution witness viz Investigating Officer who had produced these documents in the search conducted as per search warrant dated 05/04/1994, did not identify the signatures and handwriting of the said persons who prepared the documents and, as a result, though the search warrant was brought on record alongwith these documents, the relevant documents were not proved and, therefore, are not the part of the record. Prosecution, therefore, is not in a position to establish that these shares which were seized pursuant to the search warrant which was issued were, in fact, transferred in the name of accused No.1 or his family members. That being the position, the 3rd and 4th charge has not been established by the prosecution and the accused Nos. 1 and 2, therefore, have to be acquitted of the said charge which is levelled against them. It has to be noted here that, though ample opportunity was given to the prosecution to examine the said witness, in spite of diligent efforts being made by the prosecution, they were unable to examine the said witness. Points Nos. 3 and 4 are, therefore, answered in the negative.

38. I have already indicated hereinabove that documents which are marked at X-1 to X-14 for identification, though it was a very important piece of evidence for the purpose of showing that certain

favours were received by accused No.1 and to that extent to show his involvement in the said matter, have not been proved at all. As a result, documents at marked at X-1 to X-14 cannot be read in evidence. The search warrant dated 04/05/1994 has been proved and is at Exhibit-134 and 135. However, the documents which were seized and are at serial Nos. 1 to 18 in the report, however, could not be proved as P.W. 15 – Sushil Prasad Singh who has made the panchanama has stated that certain documents were seized by S.S. Nair, Deputy Superintendent of Police from the residence of accused No.1. He has stated that when these documents were seized, he was not connected with the investigation of the case. He has further stated that when these documents were seized during the course of investigation and D-52 to D-57 were signed by the witnesses. He has stated that, however, he was not in a position to identify the signatures of these witnesses. He has also stated that he cannot identify the signature of Vineet Suchanti. The documents D-52 to D-57 were seized during the search of residence of accused No.1 at Bangalore on 06/05/1994. Prosecution has neither examined the author of these documents which are marked as X-1 to X-14, nor have they examined any person who could identify the signature of the various signatories. As a result, all these documents not being proved, no inference can be drawn that

shares of FGIL were transferred in favour of accused No.1 and the members of his family as a motive or reward and, therefore, I have already held that point Nos. 3 and 4 have not been proved by the prosecution.

39. As a result of the above discussion, it is clear that no case has been made out against the present accused and the accused are liable to be acquitted.

40. At this stage, it would be appropriate to make a reference to the assistance which is given to this Court by the Special Public Prosecutors Mr. V.G. Pradhan and Mr. R.S. Mhamane who have taken great efforts to put up the case of the prosecution and without their assistance, it would not have been possible for this Court to decide this case.

41. Accordingly, the following order is passed:-

**ORDER**

In the result, both the accused are acquitted of the offences with which they were charged. Their bails bonds stand cancelled.

(V.M. KANADE)