

BEFORE THE SPECIAL COURT CONSTITUTED UNDER THE
SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
SECURITIES) ACT, 1992

SPECIAL CASE NO. 4 OF 1994

The Central Bureau of Investigation . . . Complainants
Versus

1. Coodli Ravikumar, 402, Swapna Apartments, Paranjape Scheme- "B", Road No.1, vlie Parle [E], Mumbai -57.
2. Seetapathy Suresh Babu, D/406, Kukreja Complex, Building No.2, LBS Marg, Bhandup [W], Mumbai ~400 078.
3. Atul Manubhai Parikh, 705/6, Prabhu Apartments, Near Rajawadi Hospital, Ghatkopar [E], Mumbai -400 077
4. Pankaj Vrajit Shah, 100, 1/2 "Giriraj", Rajawadi Road No.7, Ghatkopar [E], Bombay-400 077.
5. Sudhir S. Mehta, 3rd Floor, "Madhviv" Dr. A.B. Road, Worli, Bombay - 400 018



6. Smt. Mohana Subramaniam 2,
Usha, Sasmira Marg, Worli,
Mumbai - 400 025,

7. Smt. Jeroo Dalal 16, Maison
Belvedere, M. Karve Road,
Mumbai -20

... Accused

Mr. K.G. Menon with Mr. A.M. Chimalkar, Special
Public Prosecutors for the C.B.I.

Mr. P.G. Sabnis with Mr. Rahul Moghe for accused
No.1.

Mr. A.R. Khan for accused No.2. [Legal Aid]

Mr. Ajay Khandhar for accused Nos.3 and 4.

Mr. Amol Chaugule for accused No.5.

Mr. Amit Desai with Mr. J.G. Lele for Accused Nos.6 &
7.

CORAM : S.K. SHAH, J.

JUDGE,

SPECIAL COURT

DATED : 26th & 27th April, 2005

Offences punishable under section
120-B, 409, 403, 411, 477(A), 467,
477 r/w section 109 of the Indian
Penal Code and Section 13(2) r/w
section 13(1)(d) of the Prevention
of Corruption Act.

ORAL JUDGMENT :-

1. Accused No.1 to 7 named above stand charged for



entering into criminal conspiracy with an object to commit criminal breach of trust by misappropriating the funds of the National Housing Bank [for the sake of brevity hereinafter referred as "NHB"] with an intention to obtain valuable things and pecuniary advantage to Harshad S. Mehta [deceased accused] without any public interest.

. Accused No.1 and Accused No.2 being the employees of the NHB and having dominion over the funds of the NHB stand charge for committing breach of trust by misappropriating the funds of the NHB by transferring the said funds to the accounts of Harshad S. mehta in ANZ Grindlays Bank by showing a fake transaction of purchase of securities from ANZ Grindlays Bank by preparing forged documents to substantiate the transaction of purchase of securities with the aid and abatement of the accused Nos. 3 ^{to} 5 working with Harshad S. Mehta [deceased accused] and with the aid and abatement of accused Nos. 6 and 7 working with ANZ Grindlays Bank who actually credited and transferred the amount to the account of Harshad S. Mehta [deceased accused] with ANZ Grindlays Bank.

. Accused No. 1 and 2 also stand charged for cheating the other financial institutions like State Bank of Patiala, Syndicate Bank, Canbank Mutual Fund, Deutsche Bank, Bank of India Mutual Fund and others by entering into with these institutions the transactions of sale of securities by issuing the Bank Receipts

[hereinafter referred to as "BRs" for short] without they being backed by the securities which were not in existence at all and inducing these institutions to part with large amounts in favour of the NHB and also for preparing forged and fabricated documents to substantiate these transactions of sale.

2. Somewhere in the year, 1988, by an enactment called "National Housing Bank Act, 1988, the National Housing Bank was established as a subsidiary of the Reserve Bank of India [hereinafter referred to as "RBI" for short] to operate as a principal agency to promote housing finance institutions at local and regional levels and to provide finance and other supports to such institutions and for matters connected therewith or incidental thereto. Under Section 14 of the said Act, the NHB was authorised to invest its funds and enter into certain types of transactions like - i) Re-discounting of the Bills of Stock Exchange, ii) Call Money Transactions and iii) Investment of funds by way of ready-forward transactions in public sector bonds, units of U.T.I. etc.

3. The Funds Management Group [hereinafter referred to as "F.M.G." for short] was formed in NHB some time in 1989. The function of FMG was to take care of funds of NHB. The funds of the NHB came in the form of share capital as well as in the form of loan from the R.B.I. called "National Long Term Operation

Fund". The F.M.G. was involved in transactions relating to investment of funds available with NHB. In February, 1989 the R.B.I. accorded permission to the NHB for operating in the bills discounting market and in October, 1990 permission was granted to invest its short term surplus funds by way of call money. By office order dated 31st May, 1991 [Exhibit - 17] the then General Manager Hosangadi [PW29] had elaborated the duties in groups.

4. Ravi Kumar [Accused No.1] joined the NHB in August, 1988 on deputation from the R.B.I. and he was later-on absorbed in the NHB w.e.f. 1st July, 1989. He joined the NHB as Regional Manager and was later-on promoted as Asstt. General Manager from 1.1.1992. He was in-charge of F.M.G. of NHB w.e.f. 1.1.1992. The services of Suresh Babu [Accused No.2] were ^{- Drafted} provided from the other financial institution to the NHB and that at the relevant time, he was working as Asstt. Manager of NHB in the FMG. The accused No.2 -Suresh Babu was assisting accused No.1 -Ravi Kumar for carrying out the operations of FMG.

5. By office order dated 31st May, 1991 [Exhibit - 17], Mr. Hosangadi [PW29], the then General Manager of NHB appointed Shri. B. Murlidharan, Manager in FMG in place of C. Ravi Kumar, Regional Manager directing that Ravi Kumar [Accused No.1] would continue to oversee the working of FMG till completion of the audit for the year, 1990-91. Despite this



Office order, however, Mr. B. Murlidharan was never in-charge of the FMG and Ravi Kumar [Accused No.1] continued to be in-charge of FMG and continued to carry out the transactions in FMG even after the completion of the work of audit for the year, 1990-91.

6. By office order issued on 21st June, 1991 under the signature of Mr. M.J. Pherwani the Chairman of NHB various officers like Hosangadi [PW29]- the General Manager, Mr. Baliga - Asstt. General Manager and four Regional Managers namely Katre [PW13], Ravi Kumar [Accused No.1], Jambukeswaran [PW23] and Rakesh Bhalla [PW21] were authorised to operate the current account No. 7382 of NHB with the RBI. By this office order the General Manager Mr. Hosangadi [PW29] was authorised to operate the current account singly, whereas the other officers were authorised to operate the aforesaid current account of NHB jointly by any two officers. All the transactions carried out in FMG were carried out by the officers who were in charge of the FMG. Ravi Kumar [Accused No.1] being in-charge of the FMG used to enter into transaction either of purchase of the securities or sale of securities. As per the procedure the deal slip used to be prepared with regard to the said transaction and then an entry used to be made in the deal diary and then entries connected to the transactions used to be made in various registers like investment register, RBI scroll used to be made after preparing the sale or purchase voucher. In case of purchase transaction RBI cheque,



used to be issued, signed by accused No.1 and any other authorised officer and the same used to be handed over against the physical securities or BR in lieu of physical security. In case of sale transaction the accused No.1 Ravi Kumar used to issue the BR in lieu of physical securities and the same used to be delivered against the cheque from the counter party bank.

7. The NHB was authorised to enter into call money market only as a lender with effect from 28th October, 1990 in accordance with the permission of the RBI and since then the NHB started participating in the call money market and the said function used to be carried out in the FMG which was headed by Ravi Kumar [Accused No.1]. The NHB was entering into the transaction of buying and selling the securities in exercise of the powers conferred upon it by clause [e] of clause [14] of the said Act with the Schedule Bank, financial institutions, mutual funds and financial services companies sponsored by public sector banks. This transaction used to be carried out by the NHB's office situate at Bombay Life Building, 45, 3rd Floor, Veer Nariman Road, Fort, Bombay-400 023. These transactions used to be carried out by the FMG of NHB directly with the aforesaid agencies. The NHB was not authorised to enter into the transaction of buying and selling the security through any broker. However, the NHB was authorised to enter into such transactions with the aforesaid financial institutions or

their brokers. The nature of transaction used to be on outright basis or on a ready-forward basis. Most of the ready-forward deals used to be on back to back basis, that is, forward purchase deal with one agency, there used to be corresponding ready-forward sale deal with another agency. The conduct of this business was entrusted to FMG. The FMG consisted of only two officers namely Ravi Kumar [Accused No.1] as Regional Manager subsequently as Asstt. General Manager and Suresh Babu [Accused No.2] as Asstt. Manager.

8. The NHB's dealing in securities always used to be with financial institutions directly or through their broker but never purchased or sold the securities from or to the broker on a principal to principal basis. The cheques drawn by NHB always used to be crossed account payee cheques drawn on RBI in favour of the counter party institutions. These cheques used to be handed over to the representatives of the concerned institutions or its broker acting on behalf of the counter party bank.

9. After the security scam broke out, the officers of the NHB namely Hosangadi [PW29], the then Chief General Manager of NHB. Mr. Rakshit [PW1], the then Deputy General Manager of NHB and other two officers, a team of four officers with the help of Jambukeswaran [PW23] and others carried out the investigation in respect of the transactions of NHB with Grindlays Bank and other banks. The investigation so carried out



revealed that Ravi Kumar [Accused No.1] and Suresh Babu [Accused NO.2], during the period from October, 1991 to April, 1992 by corrupt or illegal means or by abusing their official position as public servants issued cheques totalling several crores of rupees in favour of the Grindlays Bank and State Bank of India for ready-forward transactions but without obtaining the concerned securities or BRs therefor and thereby caused wrongful loss to the NHB and that they handed over the cheques to Harshad Mehta [deceased accused] or his representatives or Mr. R. Sitaraman of SBI, who manipulated to get the said cheque to be credited to the current account of Harshad S. Mehta [deceased accused] with Grindlays Bank causing wrongful gain to the Harshad Mehta. With regard to the present case, their investigation revealed that seven cheques for aggregated amount of Rs. 506.54 crores were issued in March - April, 1992 by accused Nos. 1 and 2 in favour of Grindlays Bank in respect of fourteen ready-forward transactions with Grindlays bank without obtaining the sale memos or securities or BRs from Harshad S. Mehta [deceased accused] who had acted as a broker of Grindlays Bank or from Grindlays Bank which was the counter party bank. The investigation also revealed that the transactions were recorded in the books of accounts of NHB despite the securities / BRs. not being received.

10. As such, Shri. Rakshit [PW1], the Dy. General manager of NHB lodged written complaint [Exhibit -

124] with the CBI. This complaint was addressed to DIG, CBI, Mumbai. It was given to Mr. Jacob [PW40] - the Superintendent of Police who registered the case as crime No.RC-52[A]/92- ACB -BOM vide F.I.R [Exhibit - 124A] on 13.7.1992. After registration of the offences' Mr. Jacob [PW40] - the Superintendent of Police himself took up the investigation and carried out the same with the assistance of two Inspectors of Police namely S.S. Gavli [PW31] and S.P. Singh [PW35]. During the course of investigation, he recorded the statements of Rakshit [PW1] on 18.7.1992 and also further statements of other witnesses. During the course of investigation, he also recorded the statements of various witnesses like Akash [PW23], Allwyn Roche[PW25], Dhage [PW26] on 22.8.1992. During the course of investigation, he also recorded the statements of various witnesses who are examined in this case as well as others from time to time. During the course of investigation, he also seized various documents under the seizure memos [Exhibit - 307 to Exhibit - 314].

11. Police Inspector Mr. Gavli [PW31] as per the directions of Mr. Jacob [PW40], the Investigating Officer assisted him. Later during the course of investigation he recorded the statements of various witnesses and also seized documents under the seizure memos. The documents so seized by these officers consisted of deal diary, cheques, investment register, RBI Scroll, purchase and sale voucher, pay-in-slips,



counterfoils of pay-in-slips, statement of account of NHB with RBI, statement of account of Grindlays Bank with RBI, then RBI agency account with Grindlays Bank, extract of Deal Dump maintained with Grindlays Bank etc. During the course of investigation the specimen signatures and hand writing of Mohana [Accused No.6] who was working with the Grindlays Bank were taken and they were forwarded to the Government Examiner of Questioned documents [GEQD], Shimla under the signature and approval of Mr. Jacob [PW40] along with the disputed writings and signatures. On completion of the investigation Mr. Jacob [PW40] revealed that the moneys had been transferred to the accounts of Harshad S. Mehta [deceased accused] in Grindlays Bank and there was conspiracy between the aforesaid accused and the Harshad Mehta [deceased accused] in diverting the funds of NHB to the account of Harshad Mehta [deceased accused] with Grindlays Bank. Mr. Jacob [PW40], the Investigation Officer, also found that the accused No.1 and accused No.2 being the public servants working with the NHB had misused their authority and having dominion over the NHB's fund got the moneys of the NHB transferred to the account of Harshad Mehta [deceased accused] with the Grindlays Bank pursuant to the conspiracy all of these accused and with the aid and abatement of the deceased accused Harshad Mehta and the accused No. 3, 4 and 5 working in his office and the accused No. 6 and 7 working with the Grindlays Bank. He, therefore, made a report to the Sanctioning Authority for getting the sanction

to prosecute the accused No.1 and 2. Accordingly, Mr. Gupta [PW36], who was the Chairman of the NHB having authority to accord sanction, on examining the documents and the C.B.I. report placed before him found *prima facie* case having been made out against both the accused Nos. 1 and 2, accorded sanction [Exhibit - 285 and Exhibit - 286].

12. Thus, on completing the investigation Mr. Jacob [PW40] forwarded the charge-sheet against aforesaid seven accused, deceased accused Harshad S. Mehta and Parthasarthy- the Executive Director of NHB in this Court on 13.7.1994. He filed supplementary charge-sheet against Hosangadi [PW29], the Chief General Manager on 27.9.1995.

13. Harshad S. Mehta died during the pendency of this case. Parthasarthy and Mr. Hosangadi [PW29] were discharged by the order of this Court.

14. All the accused Nos. 1 to 7 pleaded not guilty to the charges, levelled against them. The defence, in short, of accused No.1 is that he has been made scape-goat by the top management of NHB in order to save themselves. It is also his defence that he has not done anything on his own without the prior approval of his superior officers and whatever he had done was done by him in good faith and belief that whatever instructed to him was correct. According to his defence, in NHB no decision could be taken without



the prior approval of the General Manager Hosangadi PW [29] or any officer above him. Therefore, according to accused No.1, he has not committed any offence.

15. The defence of accused No.2 is that he was not authorised to finalise the transaction. He was also not authorised to sign any cheques. According to his defence, it was his duty only to prepare the cheques, vouchers and make entries in respect thereof in the records. According to him, he is also made scape-goat by NHB top management. Therefore, he also claims to be innocent.

16. The defence of accused No.3 is that he was merely an employee of Harshad S. Mehta [since deceased] - accused No.3. He joined the services with Harshad S. Mehta [deceased accused] in June, 1990. He never took part in any deal or transaction between the banks. He was only looking after the back office operations. Whatever contract notes or delivery orders he had initialled, it was done after confirming the deals with the dealers or computer operators. He came in picture only after the deal was done. He had merely received the salary and was not benefit in any other way from the scam. Therefore, he claims to be innocent.

17. The defence of accused No.4 is almost to the same effect. According to his defence, he was merely an employee and got only salary and did not get any

benefit out of the scam.

18. The defence of the accused No.5, who is the younger brother of the deceased accused Harshad S. Mehta, he was holding the power of attorney from Harshad S. Mehta and it was to the extent of signing the documents and cheques of the group companies. He never dealt in securities market and never met any one and that he is not aware of any working of the securities transactions. According to him, he was working in Stock Market. He also, therefore, claims to be innocent.

19. The defence of accused No.6 is that in 1992 she was posted as Asstt. Manager [Customers Relations], M.G. Road Branch of Grindlays Bank. She was not concerned with the securities transactions, which were handled by Investment Banking Division, which was a separate division headed by the General Manager. That she was not concerned with the cheques received for clearing as they were handed by the Clearing Department. Those cheques were received at the cheque deposit counter of the Clearing Division located in that front office and it was the Clearing Department which processed cheques and sent them to the Input department for crediting. Both these departments were part of the back office and reported to the Asstt. Manager Customer Services. The back office was headed by the Asstt. Manager. The case against her is false and she has been falsely implicated in this case. She

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never met or interacted any of the co-accused. It is further her defence that no disciplinary action has been taken against her by the bank and she was continued in the service till 30th June, 2004 when she took early retirement, 11 months prior to her actual retirement due to family commitments. During the service, she also earned promotions and also received all the superannuation benefits together with the regular pension. As such, she claims to be innocent.

20. The defence of accused No.7 is that at the relevant time she was only a trainee in the customer relations department of the ANZ Grindlays Bank. She was asked to train herself as a trainee marketing officer from 24.3.1992 and as such, her duty was to initially provide prompt and superior customer services to the customers ^{of} for the bank. Her service included attending the customer queries, issuing bank statements, advising bank balance to the customers, issuing pay orders as per the customer request, fixed deposits, new accounts opening, issuing travellers cheques and cheque book. She was not concerned with the credits to customers accounts. All the cheques deposited were handled by the Clearing Department. All the securities transactions were handled by the Investment Banking Division. That she is falsely implicated in this case to protect others although she was not concerned with any transaction nor ever met or interacted with any of the co-accused. According to her defence, no disciplinary action was taken against

her and that subsequently she was confirmed in the services in June, 1992 and the confirmation was based on quarterly reviews during the training period conducted by the senior officers of the bank. After confirmation she was regularly receiving increments and promotions. As such, she also claims to be innocent.

21. As such following points arise for my consideration and I have recorded my findings thereon accordingly for the reasons given hereinbelow.

| POINTS | FINDINGS |
|---|-------------------------------------|
| <p>1. Whether it is established by the prosecution that between 1st March, 1992 and 3rd June, 1992 or thereabout, accused No.1 to accused NO.7 or any of them have entered into criminal conspiracy to commit criminal breach of trust by misappropriating the funds of the NAB with an object to obtain pecuniary advantage to Harshad S. Mehta [deceased accused] without any public interest by crediting those funds to the account of Harshad S. Mehta [deceased accused] with the Grindlays Bank and committed offence punishable under section 120B of the I.P.C.?</p> | YES, ONLY ACCUSED NO.1, 2, 5 AND 7. |
| <p>2. Whether it is established by the prosecution in furtherance of the aforesaid criminal conspiracy accused No.1 and accused No.2 or any of them committed criminal breach of trust by issuing cheques at Exhibit - 118 for Rs. 69.08 crores, Exhibit - 20 for Rs. 99.77 crores, Exhibit - 32 for Rs. 53.55 crores, Exhibit - 46 for Rs. 73.3472054.79/-, Exhibit - 47 for Rs. 789044657.54/- and Exhibit - 88 for Rs. 100.095 crores in favour of Grindlays Bank in respect of purported purchase of</p> | |

securities concerning all those transactions when there was no such transaction at all by dishonestly and fraudulently getting the amounts of those cheques credited to the account of Harshad S. Mehta [deceased accused] with the Grindlays Bank and thereby committed an offence punishable under section 409 r/w section 120 [B] of the Indian Penal Code?

YES. BOTH THE ACCUSED NO.1 & 2 IN RESPECT OF ALL THE TRASNACIONS

3. Whether it is established by the prosecution that the accused No. 3 to 7 or any of them abated the accused No.1 and 2 in committing the criminal breach of trust in respect of aforesaid amounts of the aforesaid six cheques and thereby committed an offence punishable under section 409 r/w section 109 r/w section 120 [B] of the Indian Penal Code?

YES, ONLY ACCUSED NO. 7

4. Whether it is established by the prosecution that accused No.1 and 2 or any of them committed criminal breach of trust by issuing RBI cheque [Exhibit - 40] for Rs. 15 crores in favour of Grindlays Bank in a purported transaction of call money when, in fact, there was no such transaction at all and dishonestly and fraudulently got the amount of that cheque credited to the account of Harshad Mehta [deceased accused] with the Grindlays Bank and thereby committed an offence punishable under Section 409 r/w section 120[B] of the Indian Penal Code?

YES, ONLY ACCUSED NO. 7

5. Whether it is established by the prosecution that the accused No.3 to 7 or any of them abated the accused No.1 and 2 in committing the criminal breach of trust in respect of aforesaid amounts of Rs.15 crores and thereby committed an offence punishable under section 409 r/w section 109 r/w section 120 [B] of the Indian Penal Code?

YES, ONLY ACCUSED NO. 7

6. Whether it is established that in

furtherance of the aforesaid criminal conspiracy accused Nos. 3, 4 and 5 acting on behalf of the deceased accused Harshad S. Mehta procured the aforesaid seven cheques [Exhibit - 118, Exhibit - 20, Exhibit - 32, Exhibit - 46, Exhibit - 47, Exhibit - 88 and Exhibit - 40] for the aforesaid amounts and accused Nos. 6 and 7 or any of them passed those cheques issued by accused No.1 and 2 or any of them credited to the account of Harshad S. Mehta [deceased accused] with the Grindlays Bank facilitating the said deceased accused Harshad S. Mehta to misappropriate the amounts of the aforesaid seven cheques and thereby accused No.1 and 7 or any of them intentionally aided and abated the deceased Accused Harshad S. Mehta and committed offence punishable under section 403 r/w section 109 r/w section 120[B] of the Indian Penal Code?

**YES, ONLY
ACCUSED NO.7**

7. Whether it is established by the prosecution that in furtherance of aforesaid criminal conspiracy accused No.1 and 2 or any of them being in the employment of the NHB as an officers acting in that capacity willfully and with intend to defraud, falsified and caused to be falsified investment registers, deal diary and the relevant books in respect of aforesaid purported security transaction concerning the aforesaid seven cheques and thereby committed offence punishable under sections 477 [A] r/w section 120[B] of the Indian Penal Code?

**YES, BOTH THE
ACCUSED NO.1
AND 2.**

8. Whether it is established by the prosecution that in furtherance of the aforesaid criminal conspiracy accused Nos.1 and 2 being in the employment of the NHB and being in-charge of the FMG of the bank dishonestly and fraudulently issued aforesaid seven cheques [at Exhibit - 118, Exhibit - 20, Exhibit - 32, Exhibit - 46, Exhibit - 47, Exhibit - 88 and Exhibit - 40] in favour of the Grindlays Bank in relation to the alleged security transactions which, in fact had never took place

with intend to aid and abate the deceased Accused Harshad S. Mehta to misappropriate the amounts of the aforesaid seven cheques with an active assistance of accused Nos. 1 and 2 by abusing their positions as public servants and acted for said deceased accused Harshad S. Mehta, to get pecuniary advantage of the amounts of the aforesaid seven cheques without any public interest and thereby committed an offences punishable under section 13[2] r/w section 13 [1][d] of the Prevention of Corruption Act and section 120 [B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO. 1 AND 2.

9. Whether it is established by the prosecution that the accused No. 1 and 2 or any of them being in the employment of the NHB and as such being public servants and having been entrusted in such capacity that the funds of the said bank dishonestly misappropriated or converted to their own views or allowed the deceased accused Harshad S. Mehta to misappropriate the amounts of the aforesaid seven cheques and thereby committed offence punishable under section 13[1][2] r/w section 13[1][c] of the Prevention of Corruption Act and section 120 [B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO. 1 AND 2.

10. Whether it is established by the prosecution that between 1.3.1992 or 3.6.1992 or thereabout accused No. 1 to 5 or any of them had also entered into criminal conspiracy to cheat various banks and financial institutions like State Bank of Patiala, Syndicate Bank, Canbank Mutual Fund, Bank of India Mutual Fund, Andhra Bank Financial Services Limited, State Bank of India Mutual Fund, Deutsche Bank, ANZ Grindlays Bank by dishonestly, fraudulently and illegally issued Bankers Receipts [BRs] in respect of the securities which were not at all in existence or held by the NHB intending to be believed that such BRs were backed by the securities dishonestly to make it appear that the BRs were, in fact, in relation

to the genuine security transaction knowing or having reason to believe to be forged BRs and thereby committed an offence punishable under section 120 [B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO. 1 AND 2.

11. Whether it is established by the prosecution that accused Nos. 1 and 2 or any of them made or caused to be made false BRs at Exhibit - 189, 190, 191, 28, 36, 51, 59, 55, 63, 67, 71, 75, 77, 81 and 94 purported to have been issued by the NHB which was dishonestly and fraudulently made with intention of causing it to be believed that these BRs. were made by the authority of NHB by which authority accused Nos. 1 and 2 knew that it was not made and thereby committed an offence punishable under section 467 r/w section 120[B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO. 1 AND 2.

12. Whether it is established by the prosecution that in furtherance of the aforesaid criminal conspiracy accused No.1 and 2 dishonestly and fraudulently used as genuine the aforesaid BRs. which they knew or had reason to believe to be forged documents and thereby committed an offence punishable under section 471 r/w section 471 r/w section 120[B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO. 1 AND 2.

13. Whether it is established by the prosecution that in furtherance of the aforesaid criminal conspiracy accused No. 1 and 2 or any of them being in the employment of the NHB and while holding the positions as an officer of the NHB, acting in that capacity willfully and with intend to defraud falsified and caused to be falsified deal diary, BRs, cost memos and relevant vouchers in respect of purported transactions of sale of securities as indicated by the aforesaid BRs. with the respective financial institutions and abated the making of false entries with regard to those transactions and committed offence punishable under section 477 [A] r/w section 120[B] of the Indian

YES, BOTH THE ACCUSED NO. 1 AND 2.

Penal Code?

14. Whether it is established by the prosecution that in furtherance of the aforesaid criminal conspiracy and in the course of same transaction, accused No.1 and 2 being in the employment of the NHB and being public servants dishonestly and fraudulently induced the State Bank of Patiala, Syndicate Bank, Canbank Mutual Fund, Deutsche Bank, Bank of India Mutual Fund, Andhra Bank Financial Services Limited, ANZ Grindlays Bank by passing cheque payments in favour of NHB by means of cheques at Exhibit - 111, 29, 37, 52, 60, 56, 64, 68, 72, 78, 82 and 95 for rupees indicated in those cheques, on the basis of deception by falsely representing that the said NHB had entered securities transactions inspite of respective securities were not backed by the aforesaid BRs and thereby committed offence punishable under section 420 r/w section 120[B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO.1 AND 2.

15. Whether it is established by the prosecution that in furtherance of the aforesaid criminal conspiracy accused No. 1 and 2 or any of them being in the employment of the NHB as such being public servants dishonestly and fraudulently issued or caused to be issued the aforesaid BRs. for respective amounts in favour of the aforesaid respective financial institutions in relation to the purported security transactions which NHB purportedly had with the respective financial institutions which, in fact, never took place by abusing their position as public servants without any public interest and thereby committed an offence of criminal misconduct punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act and section 120[B] of the Indian Penal Code?

YES, BOTH THE ACCUSED NO.1 AND 2.

16. What offences, if any, accused No. 1 to accused No.7 or any of them have committed?

AS PER FINAL ORDER

17. What order?

AS PER
FINAL ORDER

REASONING

22. There are two parts of the conspiracy which was hatched between March, 1992 and May - June, 1992. In the first part, the conspiracy was to transfer NHB's fund with the intervention of the deceased accused Harshad S. Mehta or his representatives to Grindlays Bank where Harshad S. Mehta [deceased accused] had an account and with the help and connivance of the officers working in the Grindlays Bank to get that amount credited to the running account of Harshad S. Mehta [deceased accused]. The second part of the conspiracy which was hatched during the same period was to generate funds by showing the transaction of sale of securities by NHB to other financial institutions with the help of Harshad S. Mehta or his representatives and get the funds from those financial institutions in the name of NHB and in that process cheating the other financial institutions to sent those funds to NHB on the basis of the BRs. issued by NHB when those BRs were not backed by the securities. In the first part, the involvement was of accused No.1 to 7, that is accused No.1 and 2 working with the NHB, accused Nos. 3, 4 and 5 and Harshad S. Mehta [deceased accused] working with Harshad S. Mehta's firm and accused Nos. 6 and 7 working in the Grindlays Bank with their help the cheques were issued by NHB in favour of the Grindlays Bank and were

credited to the Grindlays Bank account with the RBI and immediately transferred to the current account of Harshad S. Mehta [deceased accused] by issuing credit vouchers. In the second part, the involvement was only of accused Nos. 1 and 2 working in NHB and accused Nos. 3, 4 and 5 and Harshad S. Mehta [deceased accused] working with Harshad S. Mehta's firm.

23. At the outset it should be mentioned that the purchase and sale transactions having taken place on the respective dates between respective financial institutions is not under dispute. There is also no dispute as to the documents which are produced on record in respect of the purchase and sale transactions. There is no dispute with regard to the purchase transactions, RBI cheques were issued under the signature of accused No.1 and other authorised officers of the NHB in favour of Grindlays Bank, those cheques were deposited to the RBI as a result the account of the NHB with the RBI was debited with the amount of the cheque and Grindlays Bank's account with the RBI was credited with that amount and on the same day credit vouchers were prepared in the Grindlays Bank and the amount of the cheques was credited to the current account of Harshad S. Mehta [deceased accused] with the Grindlays Bank. It is not in dispute that Harshad S. Mehta [deceased accused] was having current account with the ANZ Grindlays Bank and the Current Account number was 01CBN8537700. The

account was in the name of the firm "M/s. Harshad S. Mehta". It is not in dispute that accused Nos. 3 and 4 were working in Harshad S. Mehta's firm, which was situate in Makers Chamber, Nariman Point, Bombay. It is also not in dispute that accused No.5 who is the younger brother of Harshad S. Mehta [deceased accused] was also working with Harshad S. Mehta. Accused No.5 has stated in his statement recorded under section 313 of the Code of Criminal Procedure that he was holding a power of attorney from Harshad S. Mehta and used to work on behalf of Harshad S. Mehta in the absence of Harshad S. Mehta [deceased accused].

24. There is also no dispute regarding the transaction of sale. With regard to those transactions, BRs were issued by accused No.1 and one BR by accused No.2. The counter party bank\$ have issued cheques in favour of NHB and those cheques have been deposited with RBI and the amount of cheques have been credited to the account of NHB with the RBI and debited the counter party bank's account with the RBI.

25. I shall briefly refer to the documentary evidence which is undisputed in purchase transactions which have been proved ~~to~~ through the evidence of Sivaraman [PW24] and Rakshit [PW1]. Undisputedly, Sivaraman [PW24] was working with NHB at the relevant time. After having retired on superannuation from the Accountant General's office, he joined NHB in January, 1992 as Assistant in FMG. His evidence shows that at that

time Rakshit [PW1] was in-charge of Funds Department and Suresh Babu [Accused NO.2] was assisting Ravi Kumar [Accused No.1]. Ravi Kumar [Accused NO.1] used to sit in one cabin and he himself and Suresh Babu [Accused No.2] used to sit out side accused No.1's cabin. It is undisputed that the people who were working in FMG were only Ravi Kumar [Accused No.1] who was Asstt. General Manager, Suresh Babu [Accused No.2] who was Asstt. Manager and Sivaraman [PW24]. According to the evidence of Sivaraman [PW24], accused NO.1 - Ravi Kumar used to enter into all the transactions, the deal slip used to be prepared on the basis of it and as per the instructions of Ravi Kumar [Accused No.1], he himself [Sivaraman -PW24] and Suresh Babu [Accused No.2] used to make entries in Deal Diary, Investment Register, prepare vouchers, prepare RBI cheque, make entry in RBI scroll, prepare RBI pay in slip and forward the cheque to counter party bank in case of transaction of purchase of securities, after getting the signature of Ravi Kumar [Accused No.1] and the signature of other authorised officers on the cheque. There is no dispute with regard to this procedure followed in the FMG of NHB in case of transaction of purchase of securities.

26. At this juncture, it is necessary to mention that prosecution has led evidence with regard to the transaction of purchase of units on 23.3.1992 for Rs.14.10 crores and Rs.2.68 crores in respect of which two BRs / cheques [Exhibit - 101 and 102] were issued

as also the entries in the investment register and the deal diary were made as per Exhibit - 98 and 97 respectively and vouchers were also prepared at Exhibit - 99 and Exhibit - 100. However, no charge in respect of these transactions has been framed. Learned Counsel for the C.B.I. submits that no charge has been framed in respect of these transactions of purchase of securities as on the very next day i.e. 24.3.1992 the transaction was reversed and the amount of the two cheques was netted in the transaction of purchase of units, NTPC Bonds and IRFC Bonds which took place on 25.3.1992. As per voucher [Exhibit - 117] and the cheque only for Rs. 690830345.64 [Exhibit - 118] was issued when the total amount due for the purchase of aforesaid security was Rs.1362383561.64. Therefore, I shall not be taking into consideration the transaction dated 23.3.1992.

27. In all there were fourteen transactions of purchase of securities about which there is no dispute and I shall set out those transactions of purchase briefly hereinbelow.

[II] FIRST TRANSACTION- It was dated 24.3.1992. Under this transaction 4 crore units, 50 crore 17 % NTPC Bonds and 30 crore 9% IRFC Bonds were purchased totally worth Rs.1362683561.64 paise. As indicated in the Deal Diary entry [Exhibit - 114] and voucher [Exhibit - 117], both of which are in the hand writing of

Accused No.2. As stated above, the amount of Rs. 14.10 crores and Rs.2.68 crores with regard to the purchase of securities on 23.3.1992 as per deal diary entry [Exhibit - 97] and vouchers [Exhibit - 99 and Exhibit - 100] were netted out as the said transaction was reversed and, therefore, the cheque for the balance amount of Rs.690830348.64 paise was issued by the NHB in favour of Grindlays Bank as per cheque at Exhibit - 118. Although this cheque is dated 23.3.1992, it was encashed on 24.3.1992. The voucher is dated 24.3.1992 [Exhibit - 117]. The cheque [Exhibit - 118] is in the hand writing of Ravi Kumar [Accused No.1] and also signed by him and the second signatory is ^A Jambukeshwaran [PW24]. The cheque was scrolled in the RBI Scroll by accused No.2 as per Exhibit -119. It is further undisputed that this cheque was forwarded to Grindlays Bank and the Grindlays Bank had forward the same to RBI along with pay in slip [Exhibit - 179] and the amount of this cheque was debited to NHB's account with the RBI as per Exhibit - 120 and the amount was credited to the account of ANZ Grindlays Bank with RBI as per Exhibit - 176. It is further undisputed, as seen from the evidence of Roche [PW25], that on the basis of this cheque a debit voucher [Exhibit - 233] was prepared whereby the RBI Sub-Agency Account

with ANZ Grindlays Bank was debited with the amount of this cheque. It is further undisputed that credit voucher [Exhibit - 232] was prepared in respect of this cheque and the amount of this cheque was credited to the account of Harshad S. Mehta as per Exhibit - 261, entry No. 134.

[III] THE SECOND TRANSACTION was pertaining to the Call Money Lending Transaction which took place on 25.3.1992. On that day the RBI cheque [Exhibit - 40] for Rs. 15 crores was issued under the signature of Ravi Kumar [Accused No.1] in favour of ANZ Grindlays Bank by way of call money lending transaction as indicated in the deal diary entry [Exhibit - 38] made by accused No.1 himself. On the basis of this deal diary, entry in the investment register [Exhibit - 83] was made by accused No.2 - Suresh Babu and Accused No.2 also prepared the voucher [at Exhibit - 39]. The voucher indicated that the transaction was lending call money that is Rs. 15 crores with interest at the rate of 25 % per annum, maturity date being 27.3.1992. The cheque was scrolled in RBI scroll as per Exhibit - 41 [1]. This amount was sent to the Grindlays Bank. As per the evidence of Roche [PW25], the cheque was sent to the RBI with pay in slip [Exhibit - 170]. That the amount of this

cheque i.e. Rs. 15 crores were debited to the account of NHB with RBI as per Exhibit - 41 [1] and the amount was credited to the Grindlays Bank's account with RBI as per Exhibit - 171. The debit voucher [Exhibit - 231] in respect of this cheque was prepared whereby the amount was debited to the RBI Sub-Agency Account with the ANZ Grindlays Bank [Exhibit - 236]. On the same day the credit voucher [Exhibit - 230] was prepared directing the credit of this amount to be given to the account of Harshad S. Mehta [deceased accused] and accordingly the amount of Rs. 15 crores came to be credited to the account of Harshad S. Mehta as per Exhibit - 261, entry No. 145.

[III] THE THIRD TRANSACTION is dated 13.4.1992 which was with regard to the purchase of 6 crores units for Rs.99,77,50,000/- as per deal diary entry [Exhibit - 23] and the investment register entry [Exhibit - 24] which were made by Sivaraman [PW24]. In respect of the said transaction voucher [Exhibit - 19] prepared by Accused No.2 -Suresh Babu and that the cheque [Exhibit - 20] for the aforesaid amount was issued under the signature of accused No.1. The cheque was scrolled by Sivaraman [PW24] in the RBI Scroll as per Exhibit - 22(1). There is no dispute that this cheque was forwarded

to and received by the ANZ Grindlays bank on the same day and it was forwarded to RBI under the pay in slip [Exhibit - 166] and the amount was debited to the account of NHB with the RBI as per entry Exhibit - 21[1] and the said amount was credited to the Grindlays Bank account with the RBI as per entry [Exhibit - 167]. The debit voucher [Exhibit - 234] in respect of the same was prepared and the amount was debited to the RBI Sub-Agency account with ANZ Grindlays Bank. It is further undisputed that the credit voucher [Exhibit - 224] was prepared in respect of this cheque and the amount of this cheque was credited to the account of Harshad S. Mehta as per Exhibit - 226, entry No. 136.

. This entry No. 136 [Exhibit - 126(1)] pertains to total amount of Rs.1635719178.08/-. This amount includes the amount of this cheque i.e. Rs. 997750000/-. This could be seen from the credit voucher [Exhibit - 224]. This credit voucher pertains to three cheques including the cheque [Exhibit - 20] and other two cheques totalling amount to Rs.1635719178.08/-.

[IV] THE FOURTH TRANSACTION took place on 13.4.1992. It was in respect of purchase of 3.50 crores units from Grindlays Bank for Rs. 53.55 crores as per the deal diary entry

Exhibit - 23[3], voucher [Exhibit - 31] and entry in investment register [Exhibit - 30] above which entry was made by Sivaraman [PW24]. In respect of this transaction the cheque at Exhibit - 32 was issued by Accused No.1 - Ravi Kumar for the aforesaid amount in favour of Grindlays Bank and the cheque was scrolled by Shivaraman [PW24] as per entry [Exhibit - 22(3)]. There is no dispute that this cheque was forwarded to ANZ Grindlays Bank and it was received by the ANZ Grindlays Bank and the same was forwarded to RBI along with pay in slip [Exhibit - 168] and the amount of this cheque was debited to the account of NHB with RBI as per Exhibit - 21[3] and the credit to the account of Grindlays Bank with RBI [Exhibit - 167(2)]. The debit voucher [Exhibit - 234] was prepared in respect of this cheque and the amount was debited to RBI Sub-Agency account with Grindlays Bank as per Exhibit - 225]. There is further no dispute that credit voucher [Exhibit - 224] was prepared in respect of this cheque on the basis of which the amount was credited to the Harshad Mehta's account as per Exhibit - 226[1], entry No. 136.

The entry No. 136 is for Rs.1635719178.08. This amount includes the amount of this cheque [Exhibit - 32] for Rs. 53.55 crores, as could be seen from the credit voucher [Exhibit - 224] which pertains to three



cheques including the cheque at Exhibit - 32.

[IV] THE FIFTH TRANSACTION also took place on 13.2.1992 but it was in respect of purchase of nine different securities totalling for Rs.1522516712.33. In respect of this transaction, there was only one voucher prepared which is at Exhibit - 45. On the back of this voucher, the deals of nine different securities are given along with the amounts for which they were purchased. The nine securities were as -

- [1] 10 crores 9% IRFC Bonds for Rs. 95295890.41,
- [2] 20 crores 9% IRFC Bonds for Rs.180591780.82,
- [3] 25 crores 9% IRFC Bonds for Rs.225729726.03,
- [4] 15 crores 9% IRFC Bonds for Rs.142943835.62,
- [5] 11 crores 9% IRFC Bonds for Rs. 99325479.45,
- [6] 5 crores 9% IRFC Bonds for Rs. 45147945.21,
- [7] 50 crores 17% NTPC Bonds for Rs. 499095890.41,
- [8] 15 crores 9% CIL Bonds for Rs. 132665753.42, &
- [9] 11.5 crores 9% CIL Bonds for Rs.101710410.96,

These transactions are indicated in deal diary entry [Exhibit - 23(5) and (6)] made by Shivaraman [PW24], the investment register entry [Exhibit - 48] made by Suresh Babu [Accused No.2], the voucher [Exhibit - 35] prepared by Accused No.2. All these securities were purchased from ANZ Grindlays Bank. In respect of



these nine transactions two RBI cheques [Exhibit - 46 and Exhibit - 47] were issued under the signature of Ravi Kumar [Accused No.1]. The cheque at Exhibit - 46 is for Rs. 733472054.79 and the cheque at Exhibit - 47 is for Rs.789044657.54. Both these cheques are issued in favour of ANZ Grindlays Bank. The total of these cheques deals with the total cost of the nine purchases i.e. Rs.1522516712.33. Both these cheques were scrolled in RBI Scroll by Sivaraman [PW24] as per Exhibit - 22[5] and Exhibit - 22[6]. It is undisputed that both these cheques were forwarded to ANZ Grindlays Bank on the same day and then were forwarded to RBI along with pay in slip [Exhibit - 169] and on the basis of the cheque and the pay in slip NHB's account with the RBI was debited with the amount of these cheques as per entry [Exhibit - 21 (5) and (6)] and the account of ANZ Grindlays Bank was credited with the amount of these two cheques as per Exhibit - 167 [3]. It is to be noted that pay in slip [Exhibit - 169] is for Rs. 1535416712.33 and it is in respect of in all three cheques including the two cheques [Exhibit - 46 and Exhibit - 47] and the consolidated amount of three cheques was credited to ANZ Grindlays bank's account as per entry Exhibit - 167 [3]. It is further undisputed that in respect of these two cheques, debit voucher Exhibit - 229 was prepared and the consolidated amount of these two cheques was debited to RBI Sub-Agency account with the Grindlays Bank. It is further undisputed that two credit vouchers [Exhibit - 227 and Exhibit - 228] were

prepared in respect of these two cheques and both the amounts were credited to the account of Harshad S. Mehta as per Exhibit - 226, entry No. 137 and Exhibit - 138.

[V] THE FIFTH TRANSACTION was on 20.4.1992 when 100 shares 17% NTPC Bonds were purchased by the NHB from the Grindlays Bank for Rs. 1000952054.79/- as per deal diary entry [Exhibit - 85], which were made by Suresh Babu [Accused No.21], the voucher [Exhibit - 87] which was prepared by Sivaraman [PW24] and the cheque [Exhibit - 88] which is ~~signed~~ ^{- and -} in the hand writing of Suresh Babu [Accused No.23] and signed by Jambukeswaran [PW23] and Katre [PW23]. It is further undisputed that this cheque was scrolled in RBI scroll as per Exhibit - 89 of Sivaraman [PW24]. It is further undisputed that this cheque was forwarded to Grindlays Bank and then it was forwarded to RBI along with pay in slip [Exhibit - 172] and on the basis of the cheque and the pay in slip the amount of this cheque was debited to NHB's account with the RBI as per Exhibit - 173 and credited to the account of Grindlays Bank with the RBI as per Exhibit - 174. It is further undisputed that in ANZ Grindlays Bank, the debit voucher [Exhibit - 241] was prepared in respect of this cheque and the amount of this cheque was debited to RBI

Sub-Agency Account as per Exhibit - 242. It is further undisputed that the credit voucher [Exhibit - 240] was prepared in respect of this cheque and on the basis of the said credit voucher the amount was credited to the account of Harshad S. Mehta [deceased accused] as per Exhibit - 262, entry No. 164.

28. Coming to the Sale Transactions, it is undisputed that there were in all fifteen transactions of sale of securities by NHB in favour of counter party banks on different dates and in all twelve cheques were issued by NHB in favour of the respective counter party banks.
- Details -
The details of the sale transaction are as under-

[I] On 24.3.1992 there were three transactions of sale of three different securities as indicated below in favour of the Syndicate Bank :

(i) Sale of 5 crore\$ units for Rs. 75 crores as per deal diary entry No.107 made by accused No.2 voucher Exhibit - 108 made and signed by accused No.2;

(ii) Sale of 30 crore 9% IRFC bonds for Rs.282945205.48 as per deal diary entry No.107 made by accused No.2, voucher [Exhibit - 109 prepared and signed by accused No.2];

(iii) Sale of 50 crore 17% NTPC Bonds for

Rs.479438356.16/- as per deal diary entry No.107 made by accused No.2, and the voucher [Exhibit - 110] prepared and signed by accused No.2;

It is undisputed that in respect of these three transactions, the Syndicate Bank has drawn RBI cheque in favour of NHB on 24.3.1992 for the consolidated sum of Rs.1512383561.64 and the cheque is at Exhibit - 111. This cheque was scrolled in RBI scroll with NHB by accused No.2 as per entry No.112.

It is further undisputed and clear from the evidence of Suresh Prabhu [PW20] - the Funds Manager, working with the Syndicate Bank, Mumbai that he had entered into the transaction of purchase of the aforesaid three securities from the NHB as per deal slip [Exhibit - 182] and had received three contract notes [Exhibit - 180, 184, 185] from the Harshad Mehta's firm as the transaction was through the brokerage firm of Harshad Mehta. It is also clear from his evidence which is undisputed, that three costs memos at Exhibit - 186, 187, 188 in respect of these three transactions were received in Syndicate Bank from the NHB. As also three BRs [Exhibit - 189, 190, 191] in respect of these three transactions from the NHB. It is undisputed that these BRs. were prepared by Suresh Babu [Accused No.2] and signed by Ravi Kumar [accused No.1]. It is further undisputed as indicated from the evidence of Suresh Prabhu [PW20] that these

three BRs. were delivered at the Syndicate Bank office against the cheque issued by Syndicate Bank in favour of NHB at Exhibit - 111. It is further undisputed that the cheque [Exhibit - 111] issued by Syndicate Bank in favour of NHB was forwarded to RBI was encashed on the same day i.e. on 24.3.1992 and the amount of this cheque which is consolidated sum in respect of the three transactions was credited to NHB's account with the RBI as per the extract of account at Exhibit - 113.

[III] On 13.4.1992 there were in all eleven transactions of sale of various securities by NHB to different banks as indicated below :

[i] The transaction of sale of 6.5 crores units to State Bank of Patiala for Rs.997750000/- as per deal diary entry [Exhibit - 23(2)] and investment register entry [Exhibit - 24] made by Sivaraman [PW24], voucher [Exhibit - 26] made by Suresh Babu [Accused No.2]. It is undisputed that in respect of this transaction, the contract note [Exhibit - 159] was issued from the Harshad S. Mehta's firm and the cost memo [Exhibit - 27] was issued by NHB in favour of State Bank of Patiala as initialled by Accused No.1. Similarly BR [Exhibit - 28] duly signed by Accused No.1 was issued in favour of State Bank of Patiala. The deal slip [Exhibit -

158] was prepared at the State Bank of Patiala and the RBI cheque [Exhibit - 29] was issued ^{by} ~~of~~ State Bank of Patiala in favour of NHB. The same cheque was encashed on 13.4.1992 by depositing with the RBI and the amount of this cheque was credited to the account of NHB with RBI as per Exhibit - 21 [2].

(iii) The transaction of sale of 3.5 crores units ~~- 53.55 -~~ to Syndicate Bank for Rs.~~53.55~~ crores as per deal diary entry [Exhibit - 23(4)] and investment register entry [Exhibit - 33] made by Sivaraman [PW24] and voucher [Exhibit - 34] signed by Suresh Babu [Accused No.2]. It is undisputed that in respect of this transaction, cost memo [Exhibit - 35] initialled by Accused No.1 - Ravi Kumar was issued to Syndicate Bank, on the basis of which the Syndicate Bank had issued the RBI cheque [Exhibit - 37] and also prepared the deal slip [Exhibit - 192]. It is further undisputed that this cheque [Exhibit - 37] was received by the NHB against the BR [Exhibit - 36] issued by the accused No.1 - Ravi Kumar. Entry with regard to it was made in the RBI scroll [Exhibit - 28(4)] and that the cheque was deposited with RBI on the basis of which the amount of the cheque was credited to the account of NHB with RBI as

per Exhibit - 21(4).

[iii] There was sale of 25 crores 9% IRFC Bonds by NHB to Canbank Mutual Fund for Rs. 225739726.33 as per the deal diary entry [Exhibit - 23(7)] made by Sivaraman [PW24], investment register entry [Exhibit - 84] and by Suresh Babu [Accused No.2] and the voucher [Exhibit - 49] signed by Suresh Babu [Accused No.2]. It is undisputed that in respect of this transaction the Canbank Mutual Fund had issued the deal slip [Exhibit - 140] pursuant to the contract note issued by the Broker Ashwin Dand [Exhibit - 133]. It is further undisputed that in respect of this transaction cost memo [Exhibit - 50] initialled by accused No.1 was issued on the basis of which the Canbank Mutual fund had issued a cheque for the aforesaid amount [Exhibit - 52] which was received by NHB and scrolled in the RBI scroll at Exhibit - 22071 and the cheque was deposited with RBI and the amount of the cheque was credited to the NHB's account with RBI as per entry [Exhibit - 21(7)]. In respect of this transaction, delivery order was also issued in favour of Canbank Mutual fund requesting them to receive the delivery of the securities from NHB. It is at Exhibit - 134. It is further undisputed that the accused No.1 had issued

BR [Exhibit - 51 in favour of Canbank Mutual Fund.

[iv] Then NHB had sold 20 crores 9% IRFC Bonds to Deutsche Bank for Rs.180591780.82ps. As per the deal diary entry Exhibit - 23[7] made by Sivaraman [PW24], investment register entry [Exhibit - 84] and voucher [Exhibit - 57] prepared and signed by Suresh Babu [Accused No.2]. In respect of this transaction the cost memo [Exhibit - 58] initialled by the accused No.1 was issued and the Deutsche Bank had prepared deal slip [Exhibit - 153] on the basis of the contract note [Exhibit - 135] issued by Broker Ashwin Dand. In respect of this transaction, the Deutsche Bank had prepared the RBI cheque [Exhibit - 60] for the aforesaid amount against the BR [Exhibit - 59] issued under the signature of Ravi Kumar [Accused N.1]. The cheque was received in NHB and it was scrolled in RBI scroll as per Exhibit - 22 [9] and the same was deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry at Exhibit - 21[8].

[v] Then NHB had entered into transaction of sale of 5 crores 9% IRFC Bonds to Canbank Mutual Fund for Rs.45147945.27 as per deal diary entry [Exhibit - 23(7) made by Sivaraman

[PW24], the investment register entry [Exhibit - 84] made by Suresh Babu [Accused No.2] and the voucher [Exhibit - 53] signed by Accused No.2. In respect of this transaction, the contract note [Exhibit - 142] was issued by P.H. Financials and Investments Consultants and the deal slip [Exhibit - 141] was issued by Canbank Mutual Fund as against the BR [Exhibit - 55] under the signature of Accused No.1 - Suresh Babu, the Canbank Mutual Fund had issued the RBI cheque at Exhibit - 56 for the aforesaid amount in favour of NHB which NHB had received and the same was scrolled by Sivaraman [PW24] in the RBI scroll as per entry in [Exhibit - 22(8)] and the cheque was deposited with the RBI and the amount of the cheque was credited to NHB's account with the RBI as per entry [Exhibit - 21(7)].

(vi) Then there was transaction of sale of 11 crores 9% IRFC Bonds by NHB to Deutsche Bank for Rs. 99325479.45 as per deal diary entry [Exhibit - 23(7)] made by Sivaraman [PW24], the investment register entry [Exhibit - 84(2)] made by Suresh Babu [accused No.2] and the voucher [Exhibit - 61] signed by Accused No.2. The broker P.H. financials and investments consultants had issued a contract note Exhibit - 152 to Deutsche Bank, the deal

slip [Exhibit - 151 was issued by Deutsche Bank and the cost memo [Exhibit - 62] was prepared by Ravi Kumar [Accused No.13 under his initials. In respect of the same transaction, the accused No.1 had issued BR [Exhibit - 63] against which the Deutsche Bank had issued RBI cheque [Exhibit - 64] for the aforesaid amount which was received by the NHB and scrolled in RBI scroll at NHB at Exhibit - 22 [10] and the cheque was deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry [Exhibit - 21(8)].

[vii] Then there was transaction of sale of 10 crores 9% IRFC Bonds by NHB to BOI Mutual Fund for Rs.95295890.41 as per deal diary entry [Exhibit - 23(7)] made by Sivaraman [PW24], the investment register entry [Exhibit - 84] made by Suresh Babu [accused No.2] and the voucher [Exhibit - 65] signed by Accused No.2 and the voucher [Exhibit - 65] signed by Suresh Babu [Accused No.2]. In respect of this transaction M/s. L.K. Pandey have issued a contract note Exhibit - 147 and the delivery order Exhibit - 146 to BOI Mutual Fund It is undisputed that the cost memo [Exhibit - 66] initialled by Ravi Kumar [Accused NO.1] was prepared by with regard to this transaction and accused No.1

had also issued BR [Exhibit - 67] against which BOI Mutual Fund had issued RBI cheque [Exhibit - 68] for the aforesaid amount which was received by the NHB and scrolled in RBI scroll at NHB at Exhibit - 22 [11] and the cheque was then deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry [Exhibit - 21(11)].

[viii] Then there was transaction of sale of 11.5 crores 9% CIL Bonds to Andhra Bank Financial Services Ltd. for Rs.101710410.96 as per deal diary entry [Exhibit - 23(7)], the investment register entry [Exhibit - 84] made by Suresh Babu [accused No.2] and the voucher [Exhibit - 69] signed by Accused No.2. In respect of this transaction also the cost memo [Exhibit - 70] initialled by Ravi Kumar [Accused No.1] was issued. Accused No.1 had also issued Br [Exhibit - 71] against which Andhra Bank Financial Services Ltd. had issued RBI cheque for the aforesaid amount [Exhibit - 72] which was received by the NHB and scrolled in RBI scroll at NHB at Exhibit - 22 [12] and the same cheque was then deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry [Exhibit - 21(9)].

[ix] Then there was transaction of sale of 15

crores 9% IRFC Bonds by NHB to Andhra Bank Financial Services Ltd. for Rs.142943835.62/- as per deal diary entry [Exhibit - 23(7)], the investment register entry [Exhibit - 84] made by Suresh Babu [Accused No.2] and the voucher [Exhibit - 73] signed by Accused No.2. In respect of this transaction also the cost memo [Exhibit - 74] was issued under the initials of Ravi Kumar [Accused NO.1]. Accused No.1 had also issued BR [Exhibit - 75] under his signature against which Andhra Bank Financial Services Ltd. had issued RBI cheque [Exhibit - 72]. [This cheque was for consolidated amount of this transaction and the previous transaction in respect of purchase of 9% CIL Bonds] and as already stated, the cheque was received and scrolled in RBI scroll at NHB at Exhibit - 22 [12] and the same cheque was then deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry [Exhibit - 21(9)].

[x] Then there was transaction of sale of 15 crores 9% CIL Bonds to SBI Mutual Fund by NHB for Rs.132665753.42/- as per deal diary entry [Exhibit - 23(7)], the investment register entry [Exhibit - 84] and the voucher [Exhibit - 76] signed by Suresh Babu [Accused No.2]. In respect of this transaction, the broker

L.K. Pandey had issued contract note [At Exhibit - 145] and issued delivery order [Exhibit - 144] in favour of SBI Mutual Fund. Accused No. -Suresh Babu had issued BR [Exhibit - 77] under his signature against which the SBI Mutual Fund had issued RBI cheque [Exhibit - 78] and the same cheque was received in NHB and scrolled in RBI scroll [Exhibit - 22(13)] and the cheque was then deposited with the RBI and the amount of the cheque was credited to NHB's account with the RBI as per entry [Exhibit - 21(11)].

[xi] Then there was transaction of sale of 50 crores 17% NTPC Bonds by NHB to ANZ Grindlays Bank for Rs.499095890.41/- as per deal diary entry [Exhibit - 23(7)], the investment register entry [Exhibit - 84], and the voucher [Exhibit - 79] signed by Suresh Babu [Accused No.2]. In respect of this transaction B.D. Agarwal and Co. - the broker had issued the contract note [Exhibit - 130]. The cost memo [Exhibit - 80] was issued under the initials of Ravi Kumar [Accused NO.1]. The ANZ Grindlays Bank had issued deal slip [Exhibit - 217]. It is further undisputed that the accused No.1 had issued BR [Exhibit - 81] under his signature in respect of these securities against which the ANZ Grindlays Bank had issued RBI cheque

for the said amount [Exhibit -82], which was received by the NHB and the same was scrolled in RBI scroll at NHB at Exhibit -22 [14] and the same cheque was then deposited with the RBI and the amount was credited to NHB's account with the RBI as per entry [Exhibit - 21(10)].

III
- ~~Exhibit~~ Then on 20.4.1992 there was transaction of sale of 100 crores 17½ NTPC Bonds by NHB to State Bank of Patiala for Rs.1001452054.79/- as per deal diary entry [Exhibit -91], the investment register entry [Exhibit -92] made by Suresh Babu [accused No.2] and the voucher [Exhibit -90] prepared by Sivaraman [PW24]. In respect of this transaction also the cost memo [Exhibit -93] was issued by Suresh Babu [Accused No.2]. The contract notes [Exhibit - 161 and 163] and the delivery order [Exhibit - 164] were issued by the Harshad S. Mehta's firm. It is further undisputed that Suresh Babu [Accused No.2] had issued the cost memo [Exhibit - 93] as also the BR [Exhibit - 94] under his signature. The deal slip [Exhibit - 160] prepared by State Bank of Patiala. Against the BR the State Bank of Patiala had issued the RBI cheque [Exhibit - 95] for the aforesaid amount. The same was received by the NHB and scrolled [at Exhibit - 96] and the cheque was deposited with the

RBI and the amount was credited to the NHB's account as per Exhibit - 173.

29. The aforesaid entire evidence is not seriously challenged. Therefore, it is clear that in respect of the transactions of purchase of securities seven cheques were issued under the signature of Ravi Kumar [Accused No.1], on behalf of the NHB in favour of ANZ Grindlays Bank. It is further clear from the aforesaid documents in respect of the purchase transactions, the cheques were received by the Grindlays Bank and they were deposited with the Reserve Bank of India and the amounts of those cheques were deposited in the NHB's account with the RBI and at the same time the amounts were credited to the Grindlays Bank's account with the RBI. It is further established that in the Grindlays Bank, credit vouchers were prepared in respect of those seven cheques favouring the current account of Harasad S. Mehta [deceased accused] and then amounts of those seven cheques were credited to the current account of Harshad S. Mehta [deceased accused] with Grindlays Bank. The case of the prosecution is that there was, in fact, no transaction of purchase of securities, as neither BR nor physical securities were received by the NHB from the Grindlays Bank.

30. The case of the prosecution is also that no such securities were found in possession of the NHB. The case of the prosecution is that these transactions

were routed through the firm of Harshad S. Mehta [deceased accused] with the object of transferring the pecuniary advantage of the moneys of the cheques issued by the NHB to the account of HSM so as to make those funds available for the use of HSM. It is also the case of prosecution that the accused No.1 and 2 did not issue any direction or authorisation along with the cheques to the Grindlays Bank requiring them to credit the amounts of those cheques to the account of HSM. In fact, as per the case of prosecution, the NHB was not authorised to deal in securities transaction through any broker. The prosecution also led evidence to indicate that no such transaction of sale of securities to NHB was indicated in the record of Grindlays Bank. The Grindlays Bank was maintaining the Deal Dump, which is a register in which the record of transactions in respect of securities is maintained on day-to-day basis, ^{but} no entry with regard to the transaction of securities to NHB on the aforesaid dates was found to have been made.

31. In support of its case, prosecution has led the evidence of Rakshit [PW1], Hosangadi [PW29] and Sivaraman [PW24]. Besides, there is also evidence of Jambukeshwaran [PW23], Rakesh Bhalla [PW2]. The evidence of all these witnesses indicate that neither the physical securities nor the DRs in lieu of the physical securities, were ever received in NHB from the Grindlays Bank. The important evidence in this regard is of Khambadkone [PW15], who was then working in the

at

ANZ Grindlays Bank. If all, there was a transaction of purchase of the aforesaid securities by the NHB from the Grindlays Bank, the Grindlays Bank's record would have shown the sale of those securities to the NHB. Witness Khambadkone [PW15] was working in the Grindlays Bank and he was in-charge of the back operation of the Treasury Department of the the Grindlays Bank. His duties were to ensure the statement of Domestic Treasury Transactions as well as Foreign Exchange Transactions. He deposes that security holding register was maintained in back office. This register was in respect of holding of physical securities and BRS. The entries in the security holding register used to be made in respect of sale and purchase transactions of securities on day-to-day basis. The deal slip used to be prepared on the system computer called System Master which was then recently introduced. Once the deal, either for sale or purchase, was processed by his department, the system used to be updated security-wise and simultaneously the entries with regard to the securities were also used to be made in the security holding register, which was manually maintained. His evidence further shows that deal dump register was also maintained in which the record of transaction in respect of securities were used to be maintained on day-to-day basis. The deal dump register is produced at Exhibit - 155. The deal dump\$ for 20.4.1992, 13.4.1992, 25.3.1992 and 24.3.1992 are produced on record and marked as Exhibit - 155/1, Exhibit - 155/2,

Exhibit - 155/3 and Exhibit - 155/4 respectively. He was shown the relevant purchase vouchers of NHB at Exhibit - 19, 31, 45 and 87. Having seen these purchase vouchers, he states that had these transactions taken place between NHB and the Grindlays Bank, they would have been reflected in the deal dump of the respective dates i.e. 13.4.1992 on which date three purchase transactions were made and 20.4.1992 on which date one purchase transaction was made, would have been shown in the deal dump. However, neither of these transactions has been shown in the deal dump [Exhibit - 155/2 and Exhibit - 155/1]. He has also stated that there was no transaction of purchase of units, NTPC Bonds or IRFC bonds by NHB from the Grindlays Bank as indicated in the vouchers [Exhibit - 99 and Exhibit - 100] as there is no entry with regard to this transaction in the deal dump dated 24.3.1992 [Exhibit - 155/4]. He has clarified that there is no transaction of purchase of securities by NHB from the Grindlays Bank on 23.3.1992 as indicated in these two vouchers as also repurchase of these securities by the Grindlays Bank from the NHB on 24.3.1992- the date of maturity. Therefore, he says that there is no transaction of purchase of aforesaid securities by the Grindlays Bank from the NHB. It was ^{- transaction of -} reversal and consequently there was no transaction of sale of these securities by the Grindlays Bank to NHB on 23.3.1992. He was shown the deal dump dated 25.3.1992 [Exhibit - 156] concerning the call money transactions dated 25.3.1992. He was shown relevant voucher [Exhibit - 39]

with regard to call money transaction dated 25.3.1992. If this was really a call money transaction, the entry would have appeared in the deal dump dated 25.3.1992 showing the call money transaction with NHB mentioning the particulars like rate of interest, date of maturity, name of the bank etc. However, in the deal dump (Exhibit - 156) there is no entry in respect of these transactions. Therefore, he clarified that there was no transaction of borrowing Rs.15 crores by the Grindlays Bank from NHB on 25.3.1992. He was cross examined on behalf of accused No.1 but nothing material is elicited in the cross examination so as to doubt the testimony of this witness.

32. What is, however, submitted on behalf of the accused No.1 is that the officers working in the Funds Management Department of the Grindlays Bank were the dealers dealing in securities transaction on behalf of the Grindlays Bank, but none of them has been examined. It is true that no dealer working in the Grindlays Bank is examined. However, that was not necessary because there is positive evidence of Khambadkone (PW15) who was working in the back office, where day-to-day entries with regard to the securities transaction either of purchase or sale as well as call money transactions were entered into in the deal dump register maintained in his department. This was negative evidence, which was required to be led by the prosecution to show that there is no such transaction of purchase of securities by NHB from the Grindlays

Bank or lending of money by NHB to Grindlays Bank had ever taken place. What is material to be noted is that it is not the case made out either on behalf of accused No.1 or on behalf of accused No.2 that the physical securities or BRs in respect of the securities concerning the purchase transactions were exchanged between NHB and the Grindlays Bank, although the documents were prepared in NHB showing the transaction of purchase of securities on the aforesaid dates. The evidence of Khambadkone [PW15], therefore, proves the fact that there was no transaction of purchase of securities by NHB from the Grindlays Bank as indicated by the vouchers at Exhibit - 19, 31, 45 and 87 had ever taken place. Similarly, he also establishes the fact that there was never any transaction of purchase of securities or sale of securities between Grindlays Banks to NHB as indicated by the vouchers- Exhibit -99 and 100 having taken place on 23.3.1992 and 24.3.1992. This evidence also establishes the fact that on 25.3.1992, there was no transaction of lending of money ever having taken place between Grindlays Bank and NHB as indicated by the voucher Exhibit - 39.

. . . Most important evidence to show that there was

in fact no transaction of purchase of securities by NHB from Grindlays Bank is that the Grindlays Bank had disowned such transactions as also the responsibility to reverse them, in the correspondence that ensued between two Banks after the same came to light. That is borne out by evidence of Hosangadi (PW 29) and correspondence at Exh.251 to 255. the stand of Grindlays Bank was that it had no transaction of sale of securities to NHB. This evidence, therefore, makes it clear that securities shown to have been purchased were never received by NHB and thus could not be with NHB. All the transactions were fake transactions.

33. In addition to this, there is evidence of Rakshit [PW1] and Hosangadi [PW29] which shows that these two officers along with others had carried out inspection of record of NHB and they had found that the securities concerning the aforesaid purchase transactions having taken place on 13.4.1993, 20.4.1992, 23.3.1992 and 24.3.1992 were not found with NHB. If, in fact, such transaction of purchase of securities by NHB from the Grindlays Bank had taken place, the relevant securities should have been found with the NHB in the office section of FMG. At least the BRs which are normally issued in lieu of physicals should have been found. But their evidence indicate that even BRs were not found. Therefore, both the witnesses have clearly stated that, in fact, there was

no transaction of purchase of securities at all on any of the aforesaid dates had taken place. They further state that moneys were, however, transferred from NHB to Grindlays Bank by way of various RBI cheques issued by NHB under the signature of accused No.1 in favour of Grindlays Bank. As indicated above, there is no dispute about this aspect. Further both these witnesses have also specifically stated that no receipt passed by Grindlays Bank in respect of call money transaction of Rs. 15 crores having taken place on 25.3.1992 was ever found with NHB. If really it was a transaction of lending of money of Rs. 15 crores by way of call money by NHB to Grindlays Bank had taken place, the Grindlays Bank would have passed receipt. However, as indicated above, it is clear from the evidence of Khambadkone [PW15] as also these two witnesses Rakshit [PW1] and Hosangadi [PW29] that there was no such call money transaction although the money i.e. Rs. 15 crores were transferred by way of RBI cheque issued by accused No.1 in favour of Grindlays Bank without the money having been called by the Grindlays Bank from the NHB. Thus, all the purchase transactions were fake transactions. Similarly the call money transaction was also the fake transaction.

With regard to the transaction dated 20.4.1992, the cheque Exhibit - 88 is signed by Jambukeshwaran [PW23] and Katre [PW13] as second signatory. Perusal

of the voucher [Exhibit-87] would, however, indicates that at the top the date mentioned is "16.4.1992", whereas at the bottom the date mentioned is "20.4.1992". It was vehemently submitted on behalf of the accused No.1 that on 20.4.1992, the accused No.1 was on leave and, therefore, this transaction was not entered into by him and that this transaction was entered into by Jambukeshwaran [PW23]. However, the evidence of Jambukeshwaran [PW23] clearly indicates that this voucher [Exhibit - 87] and the cheque [Exhibit-88] were given to him by accu.No.2and accused No.2 had clarified that this transaction was finalised by accused No.1 on 16.4.1992 itself but it remained to be carried out and it is on this representation made to him by accused No.2 that Jambukeshwaran [PW23] signed the cheque [Exhibit- 88]. This aspect has been brought in the cross examination of Jambukeshwaran [PW23] on behalf of accused No.1. It is true that it has been brought on record that when a deal is finalised on a particular date, the transaction is to be carried out on the same day. There should be no dispute about this aspect. However, what is required to be noted is that in these transactions of purchase including the transaction dated 16.4.1992 or 20.4.1992, in fact, there was no transaction at all because there was no purchase of securities at all. Only the cheques were required to be issued. Jambukeshwaran [PW23] had, in fact, no knowledge of transaction at all and it was on the representation of

accused No.2 that he had put his signature on the cheque after going through the voucher, which was bearing both the dates- 16.4.1992 and 20.4.1992. This portion of evidence, therefore, clearly implicates Suresh Babu [Accused NO.2] being a member of the conspiracy. With regard to the conspiracy, I shall deal later, but suffice it to say at, this stage, that there is involvement of accused Nos. 1 and 2 even in the transaction dated 20.4.1992 although the cheque [Exhibit - 88] is signed by Jambukeshwaran [PW23] and not by accused No.1.

34. On behalf of accused No.1 it was pointed out that there no primary evidence either documentary or oral to show that the securities were not available. However, I do not find any merit in this submission. It has to be noted that during inspection carried out by Rakshit [PW1] and Hosangadi [PW29] the accused No.1 was called back from leave and he had also helped the investigating team carrying out the investigation in this respect. At that time accused No.1 indicated that there were securities, however, he did not know about the same. Therefore accused No.2 was also called back from the leave and it is with the help of both these accused, four packets containing various securities were recovered. The inventory of those securities were made by Sambamurthy [PW34] and lists of those securities were prepared [Exhibit - 278, 279, 280 and 281]. The details of these securities have

been mentioned in these inventories. From this evidence, it is clear that the securities that were found, which were shown to have been purchased by the aforesaid purchase transactions were not there. Here again it has to be noted that it is not the case of accused No. 1 or accused No. 2 that the securities were, in fact, received and they were kept some where and no entries with regard thereto were ever made. Much is also made about admitted fact that no register for holding of securities was maintained in FMG. To maintain such register was also the responsibility of accused Nos. 1 and 2. Therefore, non-maintenance of this register would go against the accused No. 1 and 2 themselves. Apart from this, as discussed above, it is not the case of accused No. 1 and 2 that the securities or BRs were, in fact received from the Grindlays Bank in respect of aforesaid purchase transactions. There is positive evidence of Khambadkone [PW15] to show that no such transaction of purchase of securities by NHB from the Grindlays Bank had ever taken place. Therefore, non-maintenance of such register would be of no help to the accused.

35. From the evidence of Rakshit [PW1], Hosangadi [PW29], Bhalla [PW2], Jambukeshwaran [PW23], Sivaraman [PW24], it is clear that the accused No. 1 was in charge of FMG. There is no dispute that only three persons were working in the FMG i.e. Ravi Kumar [accused No. 1], who was Asstt. General Manager,

Suresh Babu [Accused No.2] - as Asstt. Manager and Sivaraman [PW24] as Assistant. As discussed above, by office order dated 31st May, 1991 [Exhibit - 17] issued under the signature of Hosangadi [PW29], Murlidharan was appointed in place of Ravi Kumar [Accused No.1]. That order indicated that Ravi Kumar [Accused NO.1] would continue to oversee work of FMG till completion of the audit for the year, 1990-91. Much was made on behalf of accused No.1 to submit in respect of this order that the accused No.1 was never in-charge of FMG. However, the evidence of the aforesaid witnesses including that of Sivaraman [PW24] and Hosangadi [PW29] bear out that even after completion of the audit for the year, 1990-91, Accused No.1 continued to hold the charge of FMG despite office order [Exhibit - 17] was issued on 31st May, 1991. He states that accused No.1 was allowed to continue to work in the FMG as such. Hosangadi [PW29] has further stated that all the transactions carried out in the FMG were by the officers in-charge of the FMG and that officer in -charge of the FMG was accused No.1. The evidence of Sivaraman [PW24] also makes it clear that, it was Accused No.1 who was entering into the deal and authorising the deal and it is at his instance that the entries in that deal diary used to be made and other documents used to be prepared like vouchers, preparing of charge, entry in the RBI scroll, entry in the investment register etc. These entries used to be made either by Suresh Babu [Accused

No.2] or by Sivaraman [PW24]. In this regard, it is also further to be noted that Hosangadi [PW29] had stated that in the beginning after the deal was finalised, and deal slip was prepared, the papers connected with the transactions used to be put up to him prior to September 1991. He further states that these documents used to come to him for *post facto* approval only. He further clarifies that since he was frequently required to go on tours and used to be away from the office for official purpose, he was unable to attend to the work of *post facto* sanctions of the deals finalised in FMG. The practice of getting his *post facto* approval was discontinued after September, 1991. He further clarifies that entering into the transaction and deployment of national housing funds was attended to only by Ravi Kumar [Accused NO.1] in the FMG. This also shows that accused No.1 alone was the person in charge of the FMG. It is pertinent to note that accused No.1 has not denied having entered into any of the aforesaid purchase transactions. That aspect has also been clarified from the fact that it was accused No.1 who has signed all the cheques in respect of this purchase transaction except the cheque [Exhibit- 88] in respect of transaction dated 24.4.1992. This cheque is signed by Jambukeshwaran [PW23]. However, I have explained above as to how he signed it on the false representation made to him by accused No.2 and on the basis of voucher presented to him by Accused No.2 in respect of the transaction having been

finalised by accused No.1.

36. Learned Counsel for accused No.1 further submitted that there is no evidence led by prosecution to show that it was the responsibility of accused No.1 to hand over the cheque and collect the securities. There is also no evidence to show as to who handed over the cheques in case of purchase of securities and to whom the said cheques were handed over. Learned Counsel for the CBI has submitted that unfortunately this evidence could not be collected and brought forth before the Court. He, however, submits that the fact remains that the cheques were drawn on RBI in favour of ANZ Grindlays Bank and thus, cheques had, in fact, reached Grindlays Bank and on the basis of those cheques, the amounts have been debited to the account of NHB with the RBI and credited to the account of Grindlays Bank with the RBI. As could be seen from the evidence of Sivaraman [PW24], he clearly states that the cheques used to be handed over against the physical security or BRs. in a transaction of purchase of securities by NHB. This is obviously so because no cheque could be handed over or in other words no payment could be made unless the security purchased is received or is assured to be delivered as the assurances contained in the BRs. Therefore, either physical securities or BRs. ought to have been received in FMG before the cheques were issued and delivered to the Grindlays Bank. As discussed above,

since accused No. 1, being in charge of FMG and he was assisted by Suresh Babu [PW2], it was their joint responsibility to see that the securities were received as and when the cheques were handed over. It is immaterial as to who handed over the cheque and who received the securities. The evidence in that regard it would have been adduced by the prosecution that would have helped the prosecution in positively establishing that fact. Non production of such evidence, however, does not help the defence at all. Ravi Kumar [Accused No. 1] being in charge of the FMG ought to have ensured the receipt of physical securities purchased or at least BRs in lieu of physical securities in the purchase transaction. It was also the joint responsibility of accused No.1 and accused No.2 to ensure the same. However, the cheques were issued, written by Accused No.2 or Sivaraman [PW24] and duly signed by accused No.1 and other authorised second signatory and actually delivered and that were received in the Grindlays Bank and the credit of that amount has been given to the Grindlays Bank's account with the RBI. Therefore, unless there is connivance between both the accused No.1 and 2, such cheques could not have gone out of NHB without receipt of the physical securities or BRs. When no such securities or BRs are found with the NHB that clearly indicates that it was to the knowledge of accused No.1 and 2 that the cheques had gone without receipt of the purchased securities or BRs in lieu thereof. As such, I do not find any merit in the



submission made on behalf of accused No.1 and 2 FUR that matter.

37. Much was also made about evidence that is brought forth in the deposition of Rakshit [PW1] and others that accused No.1 had signed first. A submission that is advanced on behalf of accused No.1 is that there are no written Rules or Regulations prescribing as to who should sign the cheque first and as to what were the duties of first and second signatories. However, in this regard, Rakshit [PW1] has stated that an officer working in the department from which the cheque is issued, is required to sign the cheque first. Even otherwise, there could be no doubt that the second signatory would require the person responsible for entering into the transaction to sign the cheque first and then alone the second signatory would put his signature. It is true that by simply looking at the cheque, it can not be made as to which ^{out} _A of the two signatories had put his signature first. Despite this, as discussed above, it was the accused No.1, who was in-charge of FMG, the transaction of purchase of securities or sale of securities for that matter were concerning FMG, therefore, there could be no manner of doubt that the accused No.1 had sign the cheque first and then the second signatory. Jambukeswaran [PW23] has, however, made a statement in his cross examination that the cheques concerning any department was required to be signed first by Ravi Kumar [Accused No.1] as he was in- charge of the FMG,



this statement however, takes the case of defence nowhere. This is so because, as stated above, so far as purchase transactions of securities are concerned, they are concerning with the FMG and accused No.1 was in-charge of FMG and, therefore, it was for him to sign the cheque first as it is he who had entered into the transaction of purchase of securities.

38. This discussion establishes the fact that all the purchase transactions and call money transactions dated 25.3.1992 of lending of Rs.15 crores to Grindlays Bank were fake transactions. No securities had been exchanged either physical or BRs although the purchase amount was transferred to Grindlays Bank's account with RBI and debited to NHB's account with RBI. The question then would be as to who had done this and why it was done so? As discussed above, it was obviously done by accused No.1 with the connivance, aid and assistance of accused No.2. The answer to the question as to why this was done would be found in the evidence of the amounts of the cheques which were credited to the Grindlays Bank's account with RBI were subsequently transferred to the account of Harshad S. Mehta [deceased accused]. Therefore, the fake transactions were shown with obvious intention of transferring the funds to the account of Harshad S. Mehta for affording him pecuniary benefit.

39. The question then would be as to who was responsible for transferring these amounts of the

cheques to the Harshad S. Mehta's account for his benefit. In this regard there is definite evidence of Allwyn Roche [PW25]. He was working as the Second Officer in the Clearing Department of Grindlays Bank, M.G. Road Branch, Mumbai. His function was to process inward clearing as well as outward clearing. He was receiving in his department inter bank cheques along with slips for clearing. He used to receive inter bank cheques in his bank. After receiving the cheques, he used to bifurcate the cheques and the slips and then make the total of the cheques and tally them and then all the cheques were forwarded to the RBI for clearance. He further states that if the ~~v ✓~~ inter bank cheque is received along with credit slip filled up by the customer then he used to refer that cheque and the slip to the respective Accounts Manager or the officer in control of that particular account. He further states that during the relevant period, he had come across inter bank cheques having been received with credit slips filled in by the customers. Such cheques used to come from the concerned office where Accused No.6 and accused No.7 were working at the relevant time. Accused No.6 was the Asstt. Manager and accused No.7 was working as Marketing Officer. He further states that accused No.6 was in charge of Harshad Mehta's account. He further states that there were occasions when accused No.6 or accused N.7 had come to him with the cheque and orally instructed him to credit the amount of the cheque to the Harshad Mehta's account and these cheques used to



be RBI cheques. It is thereafter that the cheques used to be sent to the RBI along with pay-in-slip by making entry in the pay-in-slip book along with the counterfoil. After receipt of the counterfoil from the RBI with a stamp from the RBI, the RBI account with the Grindlays Bank used to be debited and the account of the customer used to be credited. This credit to the customer's account used to be given as per the instructions of the concerned Manager namely accused No.6. Dhage [PW26] is in-charge of Clearing Department of Grindlays Bank, M.G. Road Branch, Mumbai. He corroborates the evidence of Allwyn Roche [PW25]. He further states that the RBI cheque used to come to the Clearing Department with or without covering letter. If the cheque was accompanied by a covering letter disclosing the name of the beneficiary party, then such cheques used to be sent along with pay in slip to the RBI and after receiving counterfoil the credit voucher used to be prepared in the Clearing Department and the same used to be sent to the posting department for giving credit. If the RBI cheque is received without covering letter, then the cheque used to be referred to the Accounts Manager to note the beneficiary and with the instructions of the Accounts Manager, the credit voucher is used to be prepared in his department for the purpose of posting after the cheque has been deposited with the RBI and the counter foil is received back. It is not in dispute that in this case no RBI cheque issued by NHB in favour of Grindlays Bank with regard to aforesaid purchase

transaction and call money transaction was accompanied by any covering letter. The evidence of these two witnesses, therefore, makes it clear that the credit vouchers for giving credits of these cheques to the account of Harshad Mehta [deceased accused] were prepared as per the instructions of the Accounts Manager during the relevant period. Allwyn Roche [PW25], however, states that the credit vouchers were prepared showing credit to be given to the Harshad S. Mehta's [deceased accused] account with regard to the aforesaid cheques on oral instructions. He states that these oral instructions were given to him either by Accused No.6 or by accused No.7. This shows that he, however, definitely did not remember as to which of these accused had given oral instructions. Therefore it becomes necessary to consider the position of accused No.6 and 7. Considering the position of accused No.6 and 7, it is not in dispute that accused No.6 was working as Accounts Manager and was concerned with the customer's accounts particularly Harshad Mehta's account. Ravi Shekhar [PW33] is the Senior Manager, Retail Banking, working in ANZ Grindlays Bank, Main Branch, Mumbai. As a Senior Manager, he was looking after the branch administration, retail bank activities etc. He states that he knew Harshad S. Mehta [deceased accused] had an account with Grindlays Bank. He happened to meet Harshad S. Mehta [deceased accused] on two occasions and as the Asstt. Manager [Customer Relations] i.e. accused No.6 had come to meet Harshad Mehta [deceased accused] some where in

1980 after he took over the charge as Senior Manager [Retail Banking]. It is undisputed that Harshad Mehta [deceased accused] was an important customer of Grindlays Bank. On second occasion he had gone to Harshad Mehta [deceased accused] with accused No.6 in his office to discuss some services he required from the bank. He confirms that the accused No.6 was concerned with the account of Harshad S. Mehta [deceased accused] in her capacity as Asstt. Manager [Customer Relations]. It was, therefore, obvious that accused No.6 would be giving instructions with regard to the cheques brought to her on behalf of Harshad S. Mehta [deceased accused]. So far as accused No.7 is concerned, it is undisputed that at the relevant time, she was working under accused No.6 as a Trainee Officer. It is, therefore, obvious that even if she had given any instructions, as Allwyn Roche [PW25] wants to state, though not definitely, they would be only as per the instructions of accused No.6, who was in charge of Customer Relation's and was looking after Harshad Mehta's account. Moreover, there is positive evidence against accused No.6 having given such instructions for crediting the amount of the cheques to the Harshad Mehta's account. There is no dispute, as discussed above, that in respect of all the cheques received from ANZ Grindlays Bank, credit vouchers were prepared in Clearing Department and on the basis of those credit vouchers, the amounts of the cheques were credited to the Harshad Mehta's account. Positive evidence with regard to the credit vouchers (Exhibit - A)

232] which concerns the transaction dated 24.3.1992 concerning the cheque at Exhibit - 118. Allwyn Roche [PW25] has positively stated that he got this voucher [Exhibit - 232] prepared as per the instructions of accused No.6 and forwarded the same to the posting department for making posting i.e. for giving credit of the amount of the cheque to the Harshad Mehta's account. This evidence has not been challenged by even putting a suggestion to this witness that what he was ~~saying~~ ^{stating} was false or incorrect.

40. Apart from this, more cogent evidence connecting accused No.6 to the preparing of credit voucher is the evidence in the form of counterfoils [Exhibit - 166(1), Exhibit - 168(1)] of pay in slips [Exhibit - 166 and 168 respectively]. It is undisputed that under these pay in slips, the cheques at Exhibit - 20 and Exhibit - 32 respectively were sent to the RBI and the amounts ~~were~~ ^{Exhibit 3168,} credited to the ANZ Grindlays Bank's account with the RBI. There is also no dispute that the counterfoils [Exhibit - 166(1) and 168(1)] are in respect of pay in slip [at Exhibit - 166 and 168 respectively]. What is required to be noted is that, on the back of these counter foils, there is writing in red ink as "CREDIT HSM". These counterfoils bearing the aforesaid writing were sent to the Government Hand Writing Expert along with admitted writing of Accused NO.6. The evidence of Gavli, Dy. Superintendent of Police, CBI [PW31] and Merchant [PW37], the Panch witness shows that on 15.7.1993,



during the course of investigation, this specimen writing as "CREDIT HSM" and "Cr. HSM" were taken and they are at Exhibit - 298 [collly] and also the signature of accused No.6 marked Exhibit - 299 [collly]. The evidence of Gevli [PW31] and I.O. Mr. Jacob [PW40] shows that this counterfoil bearing the disputed writing in red ink encircle with red pencil were sent along with the specimen writing of accused No.6[Exhibit - 298] and the specimen signature [Exhibit - 299(collly)] to the Government Examiner of Questioned Documents, Shimla. They were received by Mr. Sharma along with a letter dated 26.8.1993.
According to Mr. Sharma [PW38], he had examined the disputed writing on the counterfoil [Exhibit - 166 (i) and Exhibit - 168(1)] and the specimen writing [Exhibit - 298 (collly)]. He had marked the specimen writing as S-370, S-371, and S-372. He compared the disputed hand writing on the two counterfoils with the specimen hand writing and the signature supplied by I.O. and marked S-370 to S-375 and examined them in the laboratory using various equipments like lenses of different signatures, stereo microscope and saw their inter-consistency. He further states that thereafter he noted similarities and dissimilarities in the general writing habits such as movements, skill, slant, relative size and proportion of characters, spacing, nature of commencing and terminating scopes, combination of various strokes, alignment, simplification, etc. He repeated the same procedure in respect of disputed hand writing and their



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comparison, their analysis and evaluation of the characters together with the absence of any fundamental diversions which led to him to the opinion that these two writings i.e. disputed writings as well as specimen hand writings were written by one and the same person i.e. accused No.6.

41. The evidence of Hand Writing Expert Mr. Sharma [PW363], has been challenged on behalf of accused No.6 mainly on the ground that Mr. Sharma [PW38] had prepared the pencil notes on the basis of which he prepared the final notes. These pencil notes were prepared in the course of examination of the documents following the aforesaid procedure. Mr. Sharma [PW38] had stated that said pencil notes were destroyed. It is, therefore, vehemently submitted on behalf of accused NO.6 that the primary evidence is not before the Court and, therefore, defence has been seriously prejudiced in its ability to examine the expert to determine the veracity of his opinion. However, I do not find any merit in this submission. The pencil notes were prepared in the course of examination of the documents following aforesaid procedure, then the reasons were prepared ~~for~~ giving the silent features and thereafter the pencil notes were destroyed. In fact, pencil notes are the rough notes and the reasons for the opinion are final. Therefore, it can not be said that the pencil notes were primary evidence and not the reasons for opinion which are furnished by Mr. Sharma [PW38]. It is also submitted that Mr. Sharma



had made an improvement by stating for the first time in his evidence that he had also noted dissimilarities. However, I do not find any merit in this submission as while noting similarities, dissimilarities are bound to be noted so far as general writing habits and other things are concerned. There is no question of any prejudice having been caused to the defence on account of destroying the pencil notes as the reasons for the opinion are available and they are already on record at Exhibit - 303. It is further submitted on behalf of accused No.6 that only on the basis of the evidence of Hand Writing Expert no conviction could be based. There is no dispute about this proposition. However, in this case, there is evidence by Roche [PW25] and other witnesses to state that accused NO.6 was working as the Asstt. Manager [Customer Relations] and looking after the account of Harshad Mehta [deceased accused]. He has also specifically stated that credit of the cheques issued by NHB was given to the account of Harshad Mehta [deceased accused] as per the oral instructions of Accused No.6 and / or accused No.7. So far as accused No.7 is concerned, she was only a Trainee Officer and could not have taken any decision on her own unless she was guided and instructed by accused No.6. Therefore, there should be no doubt that the credit vouchers for the purpose of giving credit to the account of Harshad S. Mehta [deceased accused] were prepared in the Clearing Department on the oral instructors of accused No.6 alone and no one else.



The fact that accused No.6 was working as Asstt. Manager [Customer Relations] is not in dispute. Much, however, was made on the aspect that making posting on the basis of credit vouchers was dealt with in operations department. However, it is of no consequences because the Operations Department acts only on the basis of the voucher. No other document comes to the Operations Department, not even a cheque. Therefore, unless the credit voucher goes to the Operations Department, no credit would be given. So far as Clearing Department is concerned, the working of Clearing Department was only to receive the cheque for clearance i.e. for sending the cheques to the RBI for getting the credit to the Grindlays Bank's account with RBI. The persons working in the Clearing Department obviously did not have any customer contact. The cheques were coming to the Clearing Department, as could be seen from the evidence of various witnesses from the Grindlays Bank as also other documents, only for the purpose of clearing. Taking all these factors into consideration, there should be no doubt that it was accused No.6 who was the person responsible for giving credit of the amount of the cheques to the account of Harshad Mehta [deceased accused] and no one else.

42. As regards accused No.7, besides there being no positive evidence of she having given instructions, there is evidence in the form of issuance of pay orders as per the request made by or on behalf of

Harshad Mehta [deceased accused]. The two pay orders [Exhibit - 275 and Exhibit - 276] are signed by accused No.7 as per the request made by Harshad Mehta [deceased accused] as per letters at Exhibit - 196 and Exhibit - 200. On both these letters, there is signature of accused No.7. These letters show that Harshad Mehta [deceased accused] had made request for issuance of BRs for the amount mentioned in the letters and accordingly accused No.7 had issued two cheques [Exhibit - 275 and Exhibit - 276] for the said amounts on 13.4.1992. It is, therefore, vehemently submitted on behalf of prosecution that the accused No. 7 had issued these two cheques knowing fully well that these cheques of huge amounts having been credited first to the ANZ Grindlays Bank's account and then to be transferred to the Harshad S. Mehta's account, permitted the huge amounts to be withdrawn by two cheques signed by her as per statement of account of Harshad Mehta [deceased accused]. However, this submission is not acceptable as there is nothing to indicate that accused No.7 was having knowledge of the transfer of the amounts of the cheques issued by NHB being credited to the Harshad Mehta's account and it is from that amount that the Harshad Mehta [deceased accused] was allowed to withdraw these amounts by the BRI cheques [Exhibit - 275 and Exhibit - 276]. The cheque [at Exhibit - 275] is for Rs.716403786.20/- and cheque at Exhibit - 276 is for Rs.243186500/-. The amounts of these cheques have been debited to Harshad Mehta's account on 13.4.1992. However, as stated



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above, there is no evidence to indicate that the accused No.7 had knowledge of credit of the amount of the cheques issued by NHR in favour of Grindlays Bank being given to the account of Harshad S. Mehta [deceased accused]. She can not be said to have connived with the other officers and the accused No.6 or Harshad S. Mehta [deceased accused]. She was only a Trainee Officer and was performing her duties as per the instructions given to her by the officer she was working under, and that officer obviously was accused No.6. therefore, the aforesaid evidence does not prove that accused No.7 was a member of the alleged conspiracy. There is, however, more than sufficient evidence against accused No.6 being the member of the conspiracy having played an important role of crediting the amount of the cheque to the Harshad S. Mehta's account with the Grindlays Bank.

43. At this juncture we shall consider the sale transaction also. Normally the sale transaction and purchase transactions are independent transactions. In this case, however there is link between them. The same securities which were purchased, were sold to different financial institutions on the same day and almost for the same consideration. In respect to the sale transaction, BR at Exhibit- 189, 190, 191, 28, 36, 51, 59, 55, 63, 79, 75, 77 and 81 were issued under the signature of accused No.1 in favour of the banks which had purchased the respective securities. With regard to the sale transaction dated 20.4.1992,

the BR is signed by accused No.2. It is at Exhibit - 94. The cost memos in respect of the sale transactions have been initialled by accused No.1 except with regard to the transaction dated 20.4.1992 which is in the hand writing of accused No.2. On 20.4.1992 the accused No.1 was on leave and, therefore, the cost memo [Exhibit - 93] and the BR [Exhibit - 94] were issued by accused No.2. As already discussed earlier, only two officers namely accused No.1 and 2 were working in the FMG with the assistance of Sivaraman [PW24] who was a temporary employee, employed after the retirement from Accountants General's office. It is, therefore, clear that accused Nos. 1 and 2 were knowing all the transactions of purchase as well as sale of securities having taken place on the respective dates. It is, therefore, also clear that both of them knew that although there were purchase transactions, the securities or BRs in lieu thereof, had not been received on the respective dates. It was also to their knowledge that although they had entered into the transaction of sale of same securities, that were purchased from the different banks and financial institutions, they knew that the securities were ~~not~~ not in their custody nor the BRs, in lieu thereof were, in their custody. It is, therefore, clear that both the accused No.1 and 2 had acted in collusion and connivance with each other for entering into not only the purchase transactions but also the sale transactions with full knowledge that the securities in purchase

transactions were received and they were not possessing the securities when they issued the BRs in sale transactions.

44. It is vehemently submitted on behalf of the accused No.1 that Rakshit [PW1] admitted that all the sale transactions were reversed by NHB and that all the BRs were issued by the authorised officers of the NHB. Therefore, it is not the case that the BRs were issued without any authority by NHB and, therefore, the BRs. can not be said to be forged documents. However, there is no merit in this submission. The authority in accused No.1 and 2 for issuing BRs presupposes that the BRs. were backed by the physicals and while issuing BRs. the physicals were available. Neither accused No.1 or accused No.2 had any authority to issue BR which were not backed by physicals. Though accused No.1st had an authority to issue BR. that authority was to be exercised when the BRs. were back by the physicals. The accused No.1&2 did not have an authority to issue BR without being back by the physical security.

45. It is also submitted on behalf of accused No.1 that the prosecution has failed to show any legal provision, Rule, Regulation, Notification, Circular or any other prescribed mandate applicable to the NHB requiring the availability of physical securities while issuing BRs. It is also submitted that the BRs issued in this case are only bank receipts of money by

NHB. It is further submitted that it is admitted by Hosangadi [PW29] that the BRs. could be issued even in expectation of receipt of securities. He further pointed out that in the present case when the BRs. were issued in sale transactions, the physical securities or the BRs in lieu thereof were expected to be received from the Grindlays Bank in purchase transactions. I do not find any merit in this submission also. It was clear that no BR was received in the purchase transaction nor the physical securities were received in the purchase transactions. Therefore, in the first place, the BRs. issued in the sale transaction were neither backed by the physical securities nor by BRs. in lieu of the physical securities. Even, if it is taken that the first sale transaction had taken place and then the purchase transaction. Even then, it was to the knowledge of the accused No.1 and 2 that no physicals or BRs. in lieu thereof were received in purchase transaction on that day, as all the purchase transactions were fake transactions. Therefore, it is immaterial whether the purchase transaction took place first and then sale transaction or sale transaction took place first and then the purchase transaction. The fact remains that in neither of the transactions, there was existence of physical securities or the BRs in lieu of the physical securities. It is fallacious to say that the BRs. are only bank receipts in respect of money. Perusal of BRs. would show that in the first paragraph, there is receipt of money but in the second paragraph there

"The units / bonds of the face value of Rs...../- will be delivered as soon as they are ready in exchange for this receipt duly discharged and in the mean time the same will be held on a/c of [Name of the Bank]."

This makes it clear that while issuing BRs. the accused No.1 should have ^{- been} _A in a position to discharge the under -taking or liability arising out of this paragraph. It was to the knowledge of accused No.1 that he could not have discharged this undertaking or liability when he issued the BR, as the physical securities were not available with him nor were likely to be received later-on during the course of the day or even subsequent thereto. It is, therefore, clear that even with regard to the sale transaction, the accused No.1 and 2 had acted in connivance with each other.

46. As far as accused No. 3,4 and 5 are concerned, it is undisputed that both accused No. 3 and 4 were the employees of Harshad Mehta's firm. At the relevant time, they were working in the office of Harshad Mehta [deceased accused]. The evidence of Nayan Thakkar [PW21] and Dhumal [PW28] shows that both these witnesses were working as Delivery Boys in the Harshad Mehta's office. They were doing the work of collecting cheques from one bank and deliver it to the another bank. One Shivraj was head of the delivery boys, who was also an employee in the office of Harshad Mehta [deceased accused]. The name of the

company of Harshad Mehta [deceased accused] was Growmore Research. They state that the company of Harshad Mehta [deceased accused] was managed by Harshad Mehta [deceased accused], Atulbhai [Accused No.3], Pankajbhai [Accused No.4] and Hitem Dalal. Nayan Thakkar [PW21] specifically states that in the Grindlays Bank, he used to meet Subramaniam i.e. Accused No.6. As regards procedure followed, he states that he used to take the delivery order, go to the bank with that delivery order and deliver the delivery order at the bank and used to collect from that bank BRs, or physicals i.e. certificates. Then he used to go to the bank, the name of which used to be written on the BR. Then he used to go to first bank and deliver BR to that bank and collect cheque from that bank and carry and deliver that cheque to the bank from which he received the BR. They further state that the contract note used to be issued from the Harshad Mehta's company which was issued from the front office. Harshad Mehta [deceased accused], Ashwinbhai, Atulbhai [Accused NO.3], Pankajbhai [Accused No.4] and others were working in the concerned office. Sudhir Mehta [Accused No.5] was not working in the concerned office but was working in the office on the 15th Floor, Room No.18 situate in the same building where the Harshad Mehta's office situate. They have stated that accused No.3 and 4 were looking after the management of the Harshad Mehta's company with Harshad Mehta [deceased accused]. Nayan Thakkar [PW21] had identified the signature of Atul Parikh

[PW3] and Sudhir Mehta [deceased accused] [PW5] on the contract notes at Exhibit - 159, 161, 163 , 183, 184 and 185 and delivery order Exhibit - 164. Concerning the sale transactions dated 24.3.1992, 13.4.1992 and 20.4.1992. It has to be noted that the same securities which were shown to have been purchased on these dates were sold to other financial institutes like Syndicate Bank, State Bank of Patiala and other institutions, which I have already dealt with while considering the sale transactions. Suffice it to say at this stage that it shows the involvement of these three accused i.e. accused Nos. 3, 4 and 5 in getting the pecuniary advantage to Harshad Mehta's account as also in cheating other financial institutions to whom the non-existent securities were shown to have been sold by accused Nos. 1 and 2 working in the NHB for generating funds. The witness Nayan Thakkar [PW21] had also identified the signatures on the letters requesting for issuance of the pay order which are produced at Exhibit - 201, 201, 203, 204, 205, 206, 210. All these letters are signed by Sudhir Mehta [Accused NO.5]. The letters at Exhibit - 201 to 205 are dated 20.4.1992. By these letters the request was made by accused No.5 for issuance of Bankers Cheque for Rs.125 crores, Rs. 35 crores, Rs.7.96 & odd crores and Rs. 14.76 & odd crores and Rs.20.28 & odd crores. The letters at Exhibit - 206 and 210 are dated 24th March, 1992 and 25th March, 1992 respectively. By these two letters the request was made for issuance of Bankers Cheque

for Rs. 22.75 crores and Rs. 16 crores respectively. Then there are three cheques at Exhibit - 211, 213 and 214 for Rs. 1.18 crores, Rs. 21.50 crores and Rs. 25 lakhs respectively. These cheques were issued by Accused No.5 for and on behalf of Harshad Mehta [deceased accused] in favour of Velvet Holding Pvt. Ltd., Jyoti H. Mehta [widow of deceased accused] and Divine Holding Pvt. Ltd. This evidence clearly shows that accused No.5 was very much concerned with the affairs of Harshad Mehta [deceased accused] & Company. Accused No.5 has stated in his statement recorded under section 313 of the Criminal Procedure Code that he was not concerned with the Harshad Mehta's firm and that he was independently working in the Stock Market. He, however, further states that he was only holding a Power of Attorney from Harshad Mehta [deceased accused] and used to work in the business of Harshad Mehta [deceased accused]. Accused No.5 is the younger brother of Harshad Mehta [deceased accused]. We do not know what was coming under the Power of Attorney which the accused No.5 was holding from the Harshad Mehta [deceased accused]. However, the aforesaid letters issued under his signature for and on behalf of Harshad Mehta & Co. to the Bank requesting them to issue RBI cheques do indicate that he was very much concerned with the affairs of the Harshad Mehta's company. Further, issuance of three cheques under his signature or and on behalf of M/s. Harshad Mehta also clearly indicates that he was very much concerned with the affairs of Harshad Mehta's firm and was aware of

the position of Harshad Mehta's account with Bank.

47. The contract note at Exhibit - 159 is dated 13.4.1992, the contract note at Exhibit - 161 is dated 20.4.1992, the contract note at Exhibit - 163 is dated 20.4.1992 and the contract notes at Exhibit - 183, Exhibit - 184, Exhibit - 185 are dated 24.3.1992 are signed by Atul Parikh [Accused No.3] and Sudhir Mehta [Accused No.5]. Similarly, the delivery order dated 20.4.1992 at Exhibit - 164 is signed by Atul Parikh [Accused No.3]. As I have stated that it concerned with the Sale Transaction. This clearly indicates that accused No. 3 and 5 were not merely working as an employees or as holder of power of attorney but they were taking part in the business of Harshad Mehta's firm.

48. With this evidence it would be necessary to see whether the accused Nos. 3, 4 and 5 were the part of the conspiracy which had two objects, one of getting pecuniary advantage to Harshad Mehta and of cheating the financial institutions with regard to the sale transactions in respect of the securities without them being backed by the physicals. As discussed above, there is only evidence of issuance of contract notes under the signature of accused No. 5 and signature/initials of accused No.3. The defence of accused No.3 is that he was merely an employee. The defence of accused No.5 is of only holding Power of Attorney from Harshad Mehta. It is submitted on behalf of these accused

that there is no evidence that either of these two accused or even accused no.4 for that matter had participated in finalisation of the sale transaction, it is true that there is no evidence in that regard. It is true that there is also no evidence about involvement of any of these three accused in purchase transaction. However, since accused No.3 and 5 have signed the contract notes, their participation in the transaction of sale of securities which were purchased on the very day is clear. The perusal of contract note would show that the signatories thereof had intimated to the purchasing bank of the securities that they, as per the order of the bank, entered into the transaction indicated in the contract note and the transaction indicated in the contract note is of buying by them for the bank, the securities mentioned and the securities which were ready for delivery. This obviously makes it clear that the accused No.3 and 5 had entered into a contract of purchase of securities obviously from NHB for and on behalf of banks namely the Syndicate Bank, State Bank of Patiala and Grindlays Bank. So far as other transactions of purchase of securities of Syndicate Bank, Canbank Mutual Fund, Deutsche Bank, Bank of India Mutual Fund and Andhra Bank Financial Services Limited are concerned, the brokers were different and not the firm of Harshad Mehta [deceased accused]. We, therefore, need not consider those transactions. However, with regard to the other transactions of sale of securities by NHB having taken place on 24.3.1992, 13.4.1992 and

20.4.1992, there is involvement of accused No.3 and 5 by issuance of contract note. In respect of the transaction of sale of security which took place on 20.4.1992, the accused No.3 had also issued delivery order addressed to State Bank of Patiala requiring them to receive from NHB, the sold securities namely 17% NTPC bonds. This evidence, therefore, shows the knowledge on the part of the accused No.3 and 5 about the transaction of sale of securities by NHB to different banks and in totality of the transaction it can be inferred that they also knew that the purchase transactions were fake transactions without the existence of the securities and when the same securities were sold on the same day, it could be inferred that they knew that these securities were not available and the BRs issued by the accused No.1 and 2 were not backed by the securities. Therefore, the involvement of accused Nos. 3 and 5 in these transactions is quite clear. Therefore, they could be said to be the member of the conspiracy hatched between accused No.1 and 2, accuse No.6 and accused No.3 and 5.

49. As regards, accused No.5 there is additional evidence in the form of cheques having been issued by him for making payment to Jyoti H. Mehta from the account of Harshad S. Mehta [deceased accused]. That shows direct involvement of accused No.5.

50. As regards accused No.4, the evidence in the form

of deposition of Nayan Thakkar [PW21] that accused No.3 and accused No.4 were also looking after the management of the company is only of general nature. The deposition of Nayan Thakkar [PW21] to the effect that accused No.4 was also giving instructions to him for collecting cheque was also of general nature. In fact, his evidence indicates that mostly the instructions were given to him by Shivraj, the head delivery boy. There is further evidence of Mr. Jindal [PW16], who was working with the State Bank of Patiala. He states that for giving offers from the office of brokers M/s. Harshad S. and accused No.4 and others used to contact him on telephone for that purpose. He also states that mostly accused No.4 used to contact him. These are all general statements. There is no specific evidence showing involvement of accused No.4 in any of the transactions of sale or of purchase for that matter, involved in this case. Therefore, the benefit of doubt shall have to be given to the accused No.4, the doubt being in respect of whether the accused No.4 was or was not a member of the aforesaid conspiracy.

51. Under these circumstances, accused No.4 and 7 shall have to be acquitted.

52. Now we shall have to deal with the nature of offence, accused No.1, 2, 3, 5 and 6 have committed.

53. So far as the general charge under section 120B

of the Indian Penal Code is concerned that is established against all these accused. It is clear that the accused No.1 and 2 have committed illegal acts namely of entering into the transaction of purchase of securities from the Grindlays Bank and issuing cheques and thereby transferring the funds of NHB to the Grindlays Bank when there were no securities at all. There is involvement of accused NO. 3 and 5 in selling some of these securities, knowing or having reason to believe that these securities were not in existence ~~in~~ ^{with} NHB for selling them to the other banks. There is involvement of accused No.6 in transferring the funds to the account of Harshad S. Mehta by requiring Roche [PW25] to make credit voucher in favour of Harshad S. Mehta [deceased accused], after the amount of the cheque issued by NHB having been credited to the account of Grindlays Bank with RBI.

54. The charges Nos. 2 to 8 are against the accused Nos. 1 and 2 for the offences punishable under section 409 r/w section 120B of the Indian Penal Code. It is undisputed that both the accused Nos. 1 and 2 were public servants working as Asstt. General Manager and Asstt. Manager respectively in the FMG of NHB, which is the subsidiary of the RBI.

55. At this stage, it would be necessary to consider the sanction accorded against the prosecution of the accused Nos. 1 and 2. In this regard, there is



evidence of R.V. Gupta [PW36]. The sanction orders are produced at Exhibit - 285 and 286. They are dated 16th March, 1994. Mr. Gupta then was the Special Secretary in the Ministry of Finance in the Banking Division and was also the Chairman of the NHB. He states that in the month of February, 1994, he received a report from the CBI along with all the documents. The report and the documents were examined in legal cell of the NHB and thereafter the report and the documents were placed before him. He went through the report and the documents and was satisfied therefrom that there was *prima facie* case against both the accused Nos. 1 and 2. Therefore, he accorded sanction for prosecuting both the accused Nos. 1 and 2. He states that the sanction was prepared in the office in the required format and then was put up before him for his signature. He signed the sanction after reading the sanction order and finding it to be correct. He clarifies that since he was the Chairman of the NHB and accused No.1 and 2 were the employees of the NHB, he was having an authority to remove both of them and, therefore, had authority to accord sanction for prosecution of both the accused Nos. 1 and 2.

56. This sanction order is challenged by both accused No.1 and 2 on the ground of lack of authority and non-application of mind by Mr. R.V. Gupta [PW36]. As already discussed above, it is not in dispute that accused No.1 was brought to NHB from the RBI in 1988

and was thereafter confirmed in the NHB. So far as accused No.2 is concerned, he was also brought to NHB from outside and was subsequently confirmed in NHB. It is undisputed position that no independent Staff Regulations for NHB's employees were made till, 1995. Therefore, at the time when sanction was accorded by Mr. Gupta [PW36], both the accused Nos. 1 and 2 were governed by the RBI Staff Regulations. It is further undisputed that NHB was a hundred percent subsidiary of RBI. It is submitted that as per Regulation No. 47 of the RBI Staff Regulation [Exhibit - A1(8)], the penalty of dismissal could be imposed only on orders in writing signed by the Governor in the case of an officer other than an officer in Grade - "A". There is no dispute that accused No.1 and 2 are Grade-A officers. It is, therefore, vehemently submitted that sanction could be accorded only by the authority who had power to remove accused Nos. 1 and 2 from the service and as per the Regulation No. 47 of the RBI Staff Regulations that authority was only the Governor of RBI and none else. The sanction accorded by Mr. Gupta [PW36], who was only the Chairman of the NHB did not have any authority to remove accused Nos. 1 and 2 and, therefore, could not accord sanction to prosecute them. However, I do not find any merit in this submission. It has to be noted in the first place that both the accused No.1 and 2 were absorbed in NHB which was an independent institution though was a subsidiary of RBI. When it is said that the employees of NHB were governed by RBI Staff Regulations that

only means that till the independent Staff Regulations for the employees of the NHB are made the RBI Staff Regulations would be applicable to them. That does not mean that the NHB employees were continued to be the employees of the RBI and would be governed by RBI Regulations. For the conditions of the services of the staff of the RBI, the RBI Staff Regulation would be made applicable. It is, therefore, beyond apprehension that as per Regulation No. 47, the RBI Governor would be the authority to remove the NHB employees, who does not work under the control of Governor. Since the NHB became an independent institution, the staff working in the NHB would be regulated by the top officers of the NHB only and not by the RBI Governor. In absence of any regulation, the Chairman being the highest authority of NHB obviously had an authority to remove accused Nos. 1 and 2 from the service. The RBI Staff Regulation No. 47 speaks that the heights authority of the RBI has the authority to pass an order of dismissal against the RBI Grade -A officer. Therefore, synonym will have to be drawn therefrom meaning thereby that the highest authority of NHB would be having those powers of dismissal or removal of any officer of Grade -A working in National Housing Bank. It is under these circumstances, that Mr. Gupta [PW36] being the highest ranking officer working with NHB had an authority to dismiss or remove accused No.1 and 2 from the NHB's services and therefore, he had an authority to accord sanction for their prosecution.

57. With regard to non application of mind, it has been submitted on behalf of accused Nos. 1 and 2 that Mr. Gupta [PW36] had accorded sanction mechanically without application of mind as he does not remember whether the statements of the witnesses were sent to him, whether there were any registers being maintained by FMG. Mr. Gupta [PW36] had admitted not having seen any register, cost memos, BRs. etc. having been falsified. He also did not know who had signed the impugned documents. He also did not know that the accused No.1 was on leave in April, 1992. He did not know who had signed the cheque dated 20.4.1992. He had also not dictated the sanction order. On the basis of this, it is vehemently submitted that the sanction accorded by Mr. Gupta [PW36] as against accused No.1 and 2 was accorded without application of mind. However, I do not find any merit in this submission also. Although it is excepted of the sanctioning authority to apply its mind to the record placed before him for getting himself satisfied that *prima facie* case is made out, it is, however, not expected of the sanctioning authority to investigate and to scrutinise the evidence critically for coming to the said satisfaction, as is required to be done for arriving at a conclusion that the offence is committed by accused No.1³². The sanctioning authority is required to see only *prima facie* case having made out and for that purpose the sanctioning authority would peruse the documents and the report placed



before him. In the present case, the report of the Investigating Officer along with documents were placed before Him and having considered the same, he was satisfied that there was *prima facie* case against accused No.1 and 2 and then he accorded sanction. This was quite sufficient to show his application of mind while according sanction. As such, I do not find any merit in the contention raised on behalf of the accused No.1 and 2 that the sanction is bad.

58. Coming back to the nature of offence committed by accused No.1 and 2 with regard to the charge Nos. 2 to 8, accused No.1 and 2 were the public servants working in the NHB. Accused No.1 was in-charge of FMG. The job of FMG was to enter into the transaction of purchase of securities and enter into ready forward transaction with a view to lending money directly to the banks and not any private party. The NHB was authorised to lend money only and not borrow money. As such, the NHB's fund were entrusted to accused No.1. The accused No.1 had dominion over the fund of the NHB. The accused No.1 and 2 pursuant to the fulfilment of the object of the conspiracy had shown to have entered into transactions of purchase of securities and the accused No.1 issued the RBI cheques ~~as~~ a purchase price of the securities when there was, ^{- purchase ? -} in fact, no transaction of securities at all and thus, disposed off the funds of the NHB in violation of the object of the NHB of lending money by entering into the transaction of purchase of securities and thus,

committed criminal breach of trust pursuant to the conspiracy in respect of the purchase transaction as indicated above. It is established that accused No.2 had entered into criminal conspiracy with accused No.1 and others in doing this illegal act. Thus, both the accused No.1 and 2 have committed an offence punishable under section 409 r/w section 120(B) of the Indian Penal Code in respect of the purchase transactions.

59. With regard to the transaction dated 20.4.1992, as discussed above, the transaction of purchase of securities was finalised by accused No.1 as represented to Jambukeshwaran [PW23] by accused No.2. Thus, even with regard to that transaction, both the accused have committed offence punishable under section 409 r/w section 120(B).

60. The charge Nos. 9 to 15 are against accused Nos. 6 and 7 for abatement of the breach of trust in relation to seven cheques committed by accused No.1 and 2. As discussed above, there is no evidence as against accused No.7. However, as against accused No.6, there is ample evidence to show that she abated accused No.1 and 2 in committing the aforesaid criminal breach of trust by entering into fake transaction of purchase of securities by Grindlays Bank and issuance of seven cheques in respect thereof, which were issued under the signature of accused NO.1 in favour of Grindlays Bank. As a part of conspiracy

accused No.6 got the amounts of the cheques crediged to Harshad Mehta's account with Grindlays Bank and thus abetted accused No.1 and 2 to complete *** the act of committing criminal breach of trust. Therefore, the offence committed by accused No.6 is under section 409 r/w section 109 and 120B of the Indian Penal Code.

61. The charge No. 16 to 22 are against accused Nos. 3 to 7 and 1 and 2 for abating in committing the offence of misappropriating the amount by transferring the same to the account of Harshad Mehta [deceased accused]. This offence is punishable under section 403 r/w section 109 r/w section 120[B] of the Indian Penal Code. So far as accused No.4 and 7 are concerned, as discussed above, there is no evidence against them for having committed this offence or even of conspiracy under section 120B of the Indian Penal Code. However, as against accused No.6, there is sufficient evidence that accused No.6 had got the amount of seven cheques credited to the account of Harshad Mehta [deceased accused] by giving instructions in that regard and abated accused No.1 and 2 to dishonestly misappropriate those funds. So far as accused No.3 and 5 are concerned, there is evidence of their involvement in the conspiracy only with regard to second part and not with regard to the first part, therefore, they can not be found guilty of offence punishable under section 403 r/w section 109 r/w section 120[B] of the Indian Penal Code.

Therefore, these charges are established only as against accused Nos. 1, 2 and 6.

62. The charges Nos. 23 to 37 are in respect of fifteen BRs issued by accused No. 1 and 2 and they having forged these BRs having knowledge that they were not backed by the securities. Therefore, the offence committed by accused Nos. 1 and 2 is punishable under section 467 r/w section 120(B) of the Indian Penal Code. Section 467 is a penal section in respect of "Forgery of Valuable Security". Section 463 is about "Forgery" - which reads as under :

"Section 463- Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

It is clear that accused No. 1 and 2 in furtherance of the aforesaid conspiracy had prepared fifteen BRs in respect of sale transactions and when those BRs were not backed by securities, shown them to have been sold in the sale transactions and with clear intention that the banks which have entered into the sale transaction with NHB would part with the money and, in fact, they had issued various cheques in favour of NHB and those cheques were deposited with the NHB's account with the RBI. Therefore, the offence punishable under section 467 r/w section 120B is established against both the accused Nos. 1 and 2.

63. The charge Nos. 38 to 52 are with regard to fifteen forged BRs and the offence is punishable under

section 471 r/w section 467 r/w section 120B of the Indian Penal Code. This offence has also been proved against accused No.1 and 2 as they had used the forged fifteen BRs. in sale transactions as genuine documents knowing that the BRs were not backed by the securities. It is, however, submitted on behalf of accused No.1 and 2 that the evidence that is led by the prosecution is to the effect that these BRs. were not backed by the physical securities. However, this aspect had not been mentioned in any of the aforesaid charges Nos. 23 to 37 and charges Nos. 38 to 52. What is, however, mentioned in the charges is that the BRs. were made by accused No. 1 and 2 without authority of NHB. Therefore, it is submitted that there is no evidence to show that BRs. were issued without authority of NHB. So far as accused No.2 is concerned, it is admitted position that he had no authority to issue BRs. but there is evidence to show that one BR was issued by the accused No.2. Using of word "authority", as discussed above, meant that the person having authority could only issue BRs and the "authority" means that while issuing BR, it was backed by the physical securities. The authorised officer could not issue BRs. just to exercise his authority to issue the BR without holding a physical security in lieu thereof and fulfil the undertaking given in the BR that-

... the security will be delivered as soon as they are ready in exchange for this

'receipt duly discharged' and in the mean time the same will be held on a/c of [Name of the Bank]."

The later part that "it will be held on a/c of.... [Name of the Bank]" clearly indicates that the physical securities must be available when the BR is issued. It is only when the physical securities are available then the authorised officer had authority from the NHB to issue BR and not otherwise. Therefore, there is no merit in the submission made on behalf of accused No.1 and 2. This aspect has been well considered hereinabove. Therefore, the offence punishable under section 471 r/w section 467 r/w section 120B si also established against accused Nos. 1 and 2.

64. The charges No. 53 to 66 are against accused No.1 and 2 for falsification of fourteen purchase transactions punishable under section 477A r/w section 120B of the Indian Penal Code. To be specific, these charges are with regard to falsifying the investment register, deal diary and voucher in respect of purchase transactions. This charge is also established against accused No.1 and 2 as they had falsified these documents by making entries in the investment register and deal diary in respect of a fake transactionof purchase and they were made with an intention to defraud the NHB. As such, the offence punishable under section 477A r/w section 120B is also



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established against accused Nos. 1 and 2.

65. The next charges Nos. 67 to 81 are against accused Nos. 1 and 2 for falsification of the records of the NHB in relation to the fifteen sale transactions of NHB punishable under section 477A r/w section 120B of the Indian Penal Code. This charge is also established against accused Nos. 1 and 2 as they had entered into transaction of sale of securities and issued forged and fabricated BRs. with intent to defraud the banks with whom the sale transactions were entered into as the BRs. were not backed by the physical securities and they were not in a position to delivery^r the same to the purchasing banks.

66. Charges No. 82 to 88 are also against accused Nos. 1 and 2 for the offences punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act with regard to the issuance of seven cheques in purchase transactions. It is established that the accused Nos. 1, 2 and 6 had entered into aforesaid conspiracy. Accused NO.1 and 2 were the public servants working in the NHB. They, by illegal means, obtained valuable things or pecuniary advantage to Harshad Mehta [deceased accused] by issuing cheques in favour of Grindlays Bank in respect of fake purchase transactions of securities, forwarded those cheques to Grindlays Bank, where accused No.6 got the credit vouchers issued in respect of those cheques and get the credit of the amount of these cheques credited

to the Harshad Mehta's account. As such, offence under section 13[1](d) [ii] and [iii] of the Prevention of Corruption Act have been established against both the accused Nos. 1 and 2. Therefore, they have committed offence punishable under section 13 [2] r/w section 13[1](d) of the Prevention of Corruption Act r/w section 120[B] of the Indian Penal Code.

67. The charges No. 89 to 103 are in respect of accused No.1 and 2 for the offences punishable under section 420 r/w section 120 [B] of the Indian Penal Code in respect of 15 sale transactions. It is established that the accused No.1 and 2 have entered into transactions of sale of securities in favour of various banks as indicated above and issued BRs in lieu of physicals without holding the physical securities in their possession. It is established that these securities were the same securities which were purchased and the purchase transactions were fake transactions without involving any physical securities or BRs in lieu thereof. As such, sale transactions were in respect of non-existing securities and accused No.1 and 2 had issued forged BRs without holding physical securities in lieu thereof. It is by these transactions that the purchasing banks were dishonestly and fraudulently induced by accused Nos. 1 and 2 for parting with the funds of their bank in the form of cheques issued by them in favour of NHB towards the price of the securities purported to have ^{"those"} been purchased by ~~other~~ banks. Therefore, the offence

under section 420 r/w section 120B of the Indian Penal Code has been established against accused Nos.1 and 2.

68. In this regard, it is submitted on behalf of the accused No.1 and 2 that the charges do not mention anything about the BRs not being backed by the physicals and also about the false representation having been made by any of accused No.1 and accused No.2. The charges also do not state that the BRs falsely stated that they were backed by securities. It is also submitted that no witness ~~had~~ said that the banks were given to believe that the BRs were backed by the physicals or that they were induced to part with funds due to any false representation made in the BRs. Therefore, it is submitted that this evidence has not been established. However, I do not find any merit in this submission also. It is necessary to see the manner in which the transactions of sale and purchase of securities are entered into between the two banks. Such transactions are always inter - bank transactions. It is not necessary that there should be direct evidence with regard to false representation or with regard to the BRs being backed by the physicals. The manner in which such transactions take place is that the deal is finalised on telephone or with the intervention of the broker. The broker issues the contract note in favour of his client, in this case the purchasing banks, and after negotiations with the officer working in the NHB the transaction is finalised. Once the transaction is

finalised, there is always an understanding that the physical securities or BRs in lieu thereof would be delivered against the cheque. There is underlying understanding and confidence that the BRs would be backed by the securities. It is, under these circumstances, that the transactions of sale of securities by one bank to another bank takes place. In this case, there is evidence to show that the cheques issued by purchasing banks were delivered against the BRs. This act itself is indicative of the fact that the representation was made to the purchasing bank that the BRs were backed by the securities and it is, therefore, the cheques were delivered by the purchasing bank. When the BRs were delivered against the cheque, it was represented to that bank that the BRs were backed by the securities but to the knowledge of accused Nos. 1 and 2 these BRs. were not backed by the securities and, therefore, when the BRs were issued by them in completing the transaction of sale, they had made a false representation to the purchasing bank for parting with the amount of the price of the securities in the form of cheques. It is, under these circumstances, that the cheating of the purchasing bank has taken place due to dishonest and fraudulent inducement by the accused No.1 and 2 made to the purchasing bank. The knowledge that the securities were not available at all was, however, exclusively with the accused Nos. 1 and 2 but the representation that was made to the purchasing bank in the form of

BRs was a false representation that the BR was backed by security. Therefore, this offence has been established against accused Nos. 1 and 2.

69. The charge Nos. 104 to 118 as against accused Nos. 1 and 2 for offences punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act with regard to fifteen BRs having been issued by accused No.1 and 2 in respect of sale transactions. In the sale transaction, accused No.1 and 2 being holding the office of the public servant in NHB abusing their positions as public servants obtained valuable things i.e., BRs in favour of Bank with whom the transaction of sale of securities was entered into without any public interest when to the knowledge of accused Nos. 1 and 2 the BRs were not backed by the physical securities and thus, they have committed an offence punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act and r/w section 120[B] of the Indian Penal Code.

70. The charges Nos. 119 to 125 are in respect of accused Accused No. 1 and 2 for allowing Harshad Mehta (deceased accused) to misappropriate seven cheques issued by NHB in purchase transactions having committed offence punishable under section 13[2] r/w section 13[1][c] of the Prevention of Corruption Act and section 120B of the Indian Penal Code. The accused Nos. 1 and 2 being public servants, being employee of the NHB had dishonestly and fraudulently

issued the cheques in favour of Grindlays Bank in respect of fake purchase transactions and in collusion with accused No.6 got the amount of the cheque, which was the property of the NHB, to be credited to the account of Harshad Mehta [deceased accused]. Therefore it is established that accused Nos. 1 and 2 have committed offence punishable under section 13[2] r/w section 13[1][c] of the Prevention of Corruption Act and section 120B of the Indian Penal Code.

71. As such I hold that the Accused No.1, 2, 3, 5 and 6 are guilty of the offences punishable under section 120-B of the Indian Penal Code.

72. Accused No.1 and 2 are also guilty of offences punishable under section 409 r/w section 120[B], 403 r/w section 120[B], 467 r/w section 120[B], 471 r/w section 467 and 120[B], 477[A] r/w section 120[B], 13[2] r/w section 13[1] [d] of the Prevention of Corruption Act and section 120[B] of the Indian Penal Code, 420 r/w section 120[B] and section 13 [2] r/w section 13[1][c] of the Prevention of Corruption Act and 120[B] of the Indian Penal Code.

73. Accused No. 6 is found guilty of the offences punishable under section 409 r/w section 109 r/w section 120[B] of the Indian Penal Code and 403 r/w section 109 r/w section 120[B] of the Indian Penal code.

74. No offence is established against accused Nos. 4 and 7. Therefore, they are entitled to be acquitted for the charges levelled against them.

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75. With regard to the quantum of sentence, Learned Counsel for the CBI submits that this being an economic offence and more than 500 crores of rupees having been siphoned out of NHB to the account of Harshad S. Mehta [deceased accused], serious and deterrent view is necessary to be taken and harsh punishment should be imposed on the accused persons. He also pointed out the observations made by the Apex Court in the case of RAM NARAYAN POPLI VS. CBI, reported in 2003 SUPREME COURT CASES [CRI] 869 known as "Maruti Udyog Case" in support of his submissions.

76. As against this, the learned Counsel for the accused Nos. 1 and 2 submitted that both the accused have lost their jobs. They are out of jobs for more than thirteen years and facing this trial. None of the accused Nos. 1 and 2 has been personally benefited and that is not even the allegation of the prosecution. No loss has also been caused to the Bank as the entire amount which was transferred out of NHB in the form of cheques issued by accused No.1 have been fully repaid with interest by the Grindlays Bank, though after litigation, by way of Consent Terms filed in the Hon'ble Supreme Court. Families of both the accused are shattered. Therefore, they submit that lenient view should be taken by adopting reformative

theory. On behalf of accused No.2 it is submitted that taking into consideration, the role played by him in the commission of offence, it is clear that he was authorised either to finalise the deal nor to issue the cheques or BRs and, therefore, he should be shown leniency. It is also submitted that the accused No.2 had no alternative but to act upon the instructions of the accused No.1.

77. On behalf of accused No.3 and 5 it is submitted that considering the role played by accused No. 3 and 5 and they having been held for committing offence only punishable under section 120B of the Indian Penal Code, they were not directly involved in any of the purchase transactions. They have not got any personal gain in the matter and both of them were working for and on behalf of Harshad S. Mehta (deceased accused). As such, it is submitted that penalty only of fine may be imposed on them.

78. On behalf of accused No.6, it is submitted that accused No.6 had only acted as per the practice followed in the Grindlays Bank of depositing the amount of the RBI cheques in the account of the constituent, [herein Harshad S. Mehta (deceased accused)], who had presented the cheques. This was not considered to be illegal or irregular and the practice was approved by the Bank. The accused No.6 was not removed from the service even after filing of the charge-sheet in this case. On the contrary she was

regularly promoted from time to time and because of her family needs now she has taken voluntary retirement. She has to look after her seven months old grand-daughter. She is also suffering from Hypothyroid and needs regular medication. She has not got any personal gain in the aforesaid transactions. Under these circumstances, it is vehemently submitted on behalf of the accused No.6 that minimum sentence should be imposed on her taking into consideration the fact that the offence that is held to be proved against her is only abatement.

above
78. I have considered all the aspects above as also the observations by the Apex Court made in the case of [1] MADHAV HAYAWADANRAO HOSKOT VS. STATE OF MAHARASHTRA reported in 1978 (3) SUPREME COURT CASES 544 ; [2] ADU RAM VS. MUKNA & ORS. reported in 2004 CRIMINAL LAW JOURNAL 46/4 SUPREME COURT, and other citations in which the Hon'ble Supreme Court has consistently taken a view that the sentence should be awarded on the basis of the principles of proportionality. In the case of RAM NARAYAN POPLI VS. CBI [supra] the Apex Court has made following observations:

"The Funds of the public bodies were utilised as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL [Maruti Lidyog Ltd.], a government company, were diverted and all the accused persons concerned A-1, A-3 and A-5 played dubious roles in these illegitimate transactions. Their acts had serious repercussions on the economic system of the country, and the magnitude of financial

impact involved in the present appeal is only the tip of the iceberg. There were several connected cases and interestingly some of the prosecution witnesses in the present case are stated to be accused in those cases. Those itself explains the thread of self - perseverance running through their testimony. Therefore, the need to pierce the facadial smoke-screen to unravel the truth to lift the veil so that the apparent, which is not real, can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even - handed manner without fear of criticism from the quarters which view white - collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in *State of Gujarat V. Mohanlal Jitamalji Porwal*.

Unfortunately in the last few years, the country has seen an alarming rise in white - collar crimes which has affected the figure of the country's economic structure. These cases are nothing but private gain at the cost of the public and lead to economic disaster.

.... While fixing the quantum of sentence, we have duly considered the fact that in the instant case the amounts have been paid back, which as noted above, learned counsel for the prosecution conceded was a factor for fixing the quantum of sentence. The fine amounts imposed remain unaltered with the default sentence. Appeals by A-1, A-3 and A-5 are dismissed subject to modification of sentence...."

In this case after having confirmed the order of conviction the sentence was modified by reducing it to the period already undergone.

80. In this particular case, the large amounts that is around Rs. 506 crores were siphoned out ~~of~~ NHB and, through Grindlays Bank, they were transferred to the account of deceased Harshad S. Mehta, who was the beneficiary of the entire conspiracy. This was obviously done in connivance with the accused Nos. 1 and 2 who were working in the NHB. Accused No.1 being in - charge of FMG of NHB. Although accused No.2 was working under accused No.1, as discussed above, he was a public servant and was expected to see that the transactions are carried out legally and properly. Both the accused failed to secured the securities or the BRs in respect of the purchase transactions and both the accused had issued BRs. in respect of the sale transactions when no security was in existence either in sale or purchase transaction. This was sufficient to indicate the deliberate and calculated act on the part of the accused No.1 and 2 and that was done obviously to benefit the deceased accused Harshad S. Mehta. It is true that there is no allegation made by the prosecution that both these accused were personally benefited but when such large funds were transferred to the account of Harshad S. Mehta having full knowledge thereof, it is needless to say that they must have been benefited. Therefore, in my view

both these accused do not deserve leniency as tried to be put forth on their behalf.

81. So far as accused No. 3 and 5 are concerned, their role was only of signing the contract notes. Accused No.5 had withdrawn certain amounts from the account of Harshad S. Mehta [deceased accused] having got the Power of Attorney from the Harshad S. Mehta. The accused No.3 was only an employee. Accused No.5 did not have direct dealings in the securities but was dealing in Stock Market and was acting on behalf of the Harshad S. Mehta [deceased accused] in the absence of Harshad S. Mehta [deceased accused]. Considering these aspects, accused No.3 deserves to be shown leniency to some extent.

82. So far as accused No.6 is concerned, she is a lady, aged 55 years. She acted only as per the then established banking practice of giving credit of RBI cheques to the constituent's accounts when the cheque is presented by the constituent or the constituent's representative. At the same time, it has to be noted that when such cheques of large amounts were received in the Grindlays Bank, which were drawn in favour of Grindlays Bank, it was necessary to have some written mandate for crediting the amounts of those cheques to the constituent's account and that was not looked into as probably there was a practice. The evidence does disclose that the cheques used to be brought by the constituents and the bank's employees were acting on

the oral instructions of the constituents for crediting the amount of the cheque drawn in favour of Grindlays Bank to the constituent's account. Accused No.6 being a lady and acted only as per the practice of the bank, she also deserves leniency.

83. After having considered all these aspects, I proceed to pass following order, which in my opinion, would meet the ends of justice :

ORDER

1. Accused No. 4- Pankaj Vrajlal Shah and Accused No.7- Ms. Jeroo Dalal are not found guilty of any of the charges levelled against both of them. Therefore, both the accused No. 4 and accused No.7 named above are acquitted of all the charges levelled against them. Their bail bonds stand cancelled. Sureties, if any, stand discharged.
2. Accused No. 1- C. Ravi Kumar, Accused No. 2- Suresh Babu, Accused No. 3- Atul M. Parikh, Accused No.5- Sudhir Mehta and Accused No.6 - Smt. Montana Subramaniam are convicted of offence punishable under section 120B of the Indian Penal Code.
3. Accused No.1 and 2 are found guilty of offences punishable under section 409 r/w section 120[B], 403 r/w section 109 and section 120[B], 467 r/w section 120[B], 471 r/w section 467 and 120[B], 477[A] r/w

section 120(B) of the Indian Penal Code, under section 13(2) r/w section 13(1) (c) of the Prevention of Corruption Act and section 120(B) of the Indian Penal Code, 420 r/w section 120(B) and section 13 (2) r/w section 13(1)(c) of the Prevention of Corruption Act and 120(B) of the Indian Penal Code.

4. Accused No. 6 - Smt. Mohana Subramaniam is found guilty of the offences punishable under section 409 r/w section 109 r/w section 120(B) of the Indian Penal Code and 403 r/w section 109 r/w section 120(B) of the Indian Penal code.

5. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for two years and pay fine of Rs. 10000/- [Rupees Ten thousand only] in default to suffer R.I. for six month, for an offence punishable under section 409 r/w section 120B of the Indian Penal Code.

6. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for one year and to pay fine of Rs. 3000/- [Rupees three thousand only] in default to suffer R.I. for one month for an offence punishable under section 403 r/w section 109 and 120B of the Indian Penal Code.

7. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for one year and pay fine of Rs.3000/- [Rupees three thousand only] in default to suffer R.I. for

- one month for an offence punishable under section 467 r/w section 120B of the Indian Penal Code.
8. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for one year and pay fine of Rs.3000/- [Rupees three thousand only] in default to suffer R.I. for one month for an offence punishable under section 471 r/w section 467 r/w section 120B of the Indian Penal Code.
9. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for one year and pay fine of Rs.3000/- [Rupees three thousand only] in default to suffer R.I. for one month for an offence punishable under section 477A r/w section 120B of the Indian Penal Code.
10. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for two years and pay fine of Rs.5000/- [Rupees five thousand only] in default to suffer R.I. for three month for an offence punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act and section 120B of the Indian Penal Code.
11. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for two years and pay fine of Rs.5000/- [Rupees five thousand only] in default to suffer R.I. for three month for an offence punishable under section 420 r/w section 120B of the Indian Penal Code.

12. Accused No.1- C. Ravi Kumar is sentenced to suffer R.I. for two years and pay fine of Rs.5000/- [Rupees five thousand only] in default to suffer R.I. for three month for an offence punishable under section 13[2] r/w section 13[1][c] of the Prevention of Corruption Act and section 120B of the Indian Penal Code.
13. Accused No.2- Suresh Babu is sentenced to suffer R.I. for one year- six months and to pay a fine of Rs. 5000/- [Rupees five thousand only] in default to suffer R.I. for three months for an offence punishable under section 409 r/w section 120B of the Indian Penal Code.
14. Accused No.2- Suresh Babu is sentenced to suffer R.I. for six months and to pay a fine of Rs.2000/- [Rupees two thousand only] in default to suffer R.I. for fifteen days in respect of each of the offences punishable under section 403 r/w section 109 and 120B of the Indian Penal Code, 467 r/w section 120B, 471 r/w section 467 and Section 120B, and section 477A r/w section 120B of the Indian Penal Code.
15. Accused No.2- Suresh Babu is sentenced to suffer R.I. for one year and to pay a fine of Rs. 5000/- [Rupees five thousand only] in default to suffer R.I. for three months for each of the offences punishable under section 13[2] r/w section 13[1][d] of the Prevention of Corruption Act and 120B of the Indian

Penal Code, Section 420 r/w section 120B of the Indian Penal Code, section 13[2] r/w section 13[1](c) of the Prevention of Corruption Act and section 120B of the Indian Penal Code.

16. No separate sentence is passed against accused No.1 - C. Ravi Kumar and accused No.2 - Suresh Babu in respect of offence punishable under section 120B of the Indian Penal Code.
17. Accused No.3 - Atul M. Parikh is sentenced to suffer S.I. till rising of the Court and to pay fine of Rs.10000 [Rupees ten thousand only] in default to suffer R.I. for six months for an offence punishable under Section 120B of the Indian Penal Code.
18. Accused No. 5 - Sudhir S. Mehta is sentenced to suffer S.I. till rising of the Court and to pay fine of Rs. 25000/- [Rupees Twenty five thousand only] in default to suffer R.I. for nine months for offence punishable under section 120B of the Indian Penal Code.
19. Accused No. 6 - Smt. Mohana S Subramaniam is sentenced to suffer S.I. till rising of the Court and to pay fine of Rs. 15000/- [Rupees fifteen thousand] in default to suffer R.I. for nine month for each of the offences punishable under section 409 r/w section 109 and 120B, section 403 r/w section 109 and 120B of the Indian Penal Code.

20. All the sentences to run concurrently.

S.S.K. SHAH, S.I.

JUDGE

SPECIAL COURT