

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) AT MUMBAI.

SPECIAL CASE NO. 1 OF 1998
IN
RC NO. 4(BSC)/93-BOM

CENTRAL BUREAU OF INVESTIGATION ... COMPLAINANT
Vs.

1. R.Dhankumar
2. S.P.Kamat
3. Hiten P. Dalal
4. Vishnu Deuskar (since discharged)
5. Akash Rukhaiyar (since discharged)
6. Girija Shankar Sahoo (since discharged). ... ACCUSED

Mr. V.C.Gupte a/w Mr. R.S.Mhamane, Spl. P.Ps. for CBI. present.

Mr. Parvez Ubhare, Advocate for accused Nos. 1 & 2. present.

Mr. Sunil Kale, Advocate for accused No.3 present.

Accused Nos. 1, 2 and 3 present on bail.

Mr. Sanjay Sareen, CBI Officer present.

**CORAM: J.H.BHATIA,J.
JUDGE, SPECIAL COURT**

**Judgment reserved on : 19.11.2010.
Judgment pronounced : 26.11.2010 .**

JUDGMENT:

1. The accused Nos. 1, 2 and 3 face this trial for the offences of breach of trust and misappropriation of amount of the Bank, forgery, falsification of accounts, omission to give information of the offences committed, abusing the official position of accused Nos. 1 and 2 for obtaining undue pecuniary advantage to accused No.3 and conspiracy to commit all these offences punishable under Sections 409, 411, 465, 477A, 202 of IPC, under Section 13(1)(c) and 13(1)(d) read with section 13(2) of Prevention of Corruption Act read with Section 120B of IPC. In the alternative, they are charged for these offences with help of Section 34 of IPC.

2. Prosecution case, in brief, is that accused Nos. 1 and 2 were working as Manager and Officer respectively at Funds Department of Fort Branch, Mumbai of Andhra Bank during the period from the year 1990 to 1992. Accused No.3 was the Shares and Stock Broker operating from Mumbai. Andhra Bank is a Nationalised Bank and the accused Nos. 1 and 2, being employees of Andhra Bank, were public servants. The Head Office of Andhra Bank had permitted the Manager - Funds at Mumbai to undertake the purchase and sale of securities for and on behalf of accused No.3 Hiten Dalai on the commission of Rs.400/- per one crore. On 20.11.1991, ANZ Grindlays Bank had purchased certain securities

worth about Rs.200 crore through accused No.3 Hiten Dalal from Andhra Bank, Canbank Mutual Fund and Standard Chartered Bank. The securities sold through Andhra Bank were in fact the securities of accused No.3 Hiten Dalal and as per the permission granted by the Head Office, even though Hiten Dalal was shown broker, Andhra Bank had entered into transaction of sale of those securities for and on behalf of Hiten Dalal. On 26.12.1991, accused No.3 Hiten Dalal was to repurchase certain securities worth Rs.1,29,02,29,400.69 from Grindlays Bank. It was also necessary for Grindlays Bank to sell the securities and to raise money to maintain Cash Reserve Ratio (CRR) as per the directions of Reserve Bank of India (RBI). However, on that day, for want of sufficient funds, accused No.3 could not fulfill his commitment to repurchase the said securities from Grindlays Bank and, therefore, Grindlays Bank was in difficulty to maintain its CRR. As per the directions given by RBI, Nationalised and Scheduled Banks had to maintain CRR by keeping certain percentage of their funds in deposit with RBI. If there would be deficit in the said deposit, the Bank could borrow money at a short notice known as "Call Money" and keep that amount in their account with Reserve Bank of India and in case the amount of the Bank in deposit with RBI would be in excess of the CRR limit, it could advance or lend the said excess money by issuing the cheques against Reserve Bank and thus earn profit. No Bank could borrow call money except for the purpose of maintaining CRR and in no case it

could be for the purpose of any customer or broker nor any broker could be involved in call money borrowing or lending transactions. As per the funds position of Andhra Bank, the head office of Andhra Bank at Hyderabad had instructed the Manager-Funds, Fort Branch at Mumbai to borrow amount of Rs.50 crore on 26.12.1991 to maintain the CRR and accordingly, the Mumbai Branch of Andhra Bank had borrowed amount of Rs.40 crore from Bank of India and Rs.10 crore from Canbank Mutual Fund with interest at 8% per annum. The decisions for borrowing or lending call money could be taken only by the Chairman and Managing Director of Andhra Bank and in his absence, by the next senior-most officer and only after communication of such decisions, the action could be taken by the Manager - Funds at Mumbai to borrow or lend call money. Without such instructions from the head office, the officers at Mumbai could not borrow or lend any call money. However, in this case, when on 26.12.1991, the accused No.3 was unable to arrange funds to purchase securities from Grindlays Bank, to help him accused Nos. 1 and 2 borrowed amount of Rs.130 crore as call money from Canara Bank and immediately transferred the said funds to Grindlays Bank by issuing a pay order without any instructions or authorisation from the Head Office. For the whole day on 26.12.1991, the officers of the Grindlays Bank were trying to materialise the transaction of sale of securities, but it could not be. On 27.12.1991, the amount of Rs.130 crore received from Andhra Bank on

26.12.1991 was treated as call money borrowing and on the same day, the said amount was repaid to Andhra Bank. In the documents prepared by the accused Nos. 1 and 2, about call money lent to Grindlays Bank, the rate of interest was shown to be 14%. However, Grindlays Bank had never agreed to pay interest at the rate of 14%. It issued the Call Money Bank Receipt on 27.12.1991 showing the rate of interest to be paid at 10% per annum. Grindlays Bank repaid the amount of Rs.130 crore to Andhra Bank on 27.12.1991 along with interest at 10% per annum. In view of this, the accused persons made changes in their books about rate of interest from 14% to 10% and balance amount of 4% was debited to the account of accused No.3. However, false debit note was prepared to indicate that the amount was received as commission on the transaction of sale of securities for accused No.3. According to prosecution, the transaction of borrowing of Rs.130 crore call money from Canara Bank by accused Nos. 1 and 2 was without any authority from the head office and as it was not necessary for the purpose of maintenance of CRR of Andhra Bank, it was illegal and irregular. Similarly, advancing of that money immediately to Grindlays Bank to help accused No.3, a stock broker, in fulfillment of his commitment with Grindlays Bank, was also illegal and against the policy of borrowing or lending call money and again it was without any authority or permission or instruction from the head office of Andhra Bank. As these transactions were entered into by accused Nos. 1

and 2 to help the accused No.3, and to obtain pecuniary advantage to him, it amounted to misuse of their office as public servants with the Nationalised Bank and, therefore, they committed these offences.

3. During the year 1992, it had come to the notice of the Government of India and Reserve Bank that several irregularities and illegalities were committed in the Banks and the Financial Institutions. Therefore, Jankiraman Committee was constituted. Jankiraman Committee looked into the transactions of different Banks and wherever there were any suspicious transactions, investigations were made . For this purpose, Banks Securities Cell was constituted in the CBI. Later on, its nomenclature was changed as Banks Securities and Fraud Cell. After the preliminary enquiry of the transactions pertaining to the present case, S.P. Paladia, the then Superintendent of Police with Bank scam and Fraud Cell of CBI at Mumbai, registered FIR N. RC-4/BSC/1993/BOM. and the matter was handed over to the Inspector Satyapalsingh for further investigation. After transfer of Inspector Satyapalsingh, the investigation was entrusted to Inspector Sanjay K.Sareen. A final report for closure was prepared by Inspector Satyapalsingh and same report was signed by the Inspector Sareen and was submitted to the Special court. However, that report was not accepted by the learned Special Judge Mr. Justice Variava (as His Lordship then was) and he directed further investigation.

After further investigation, Inspector Sareen came to conclusion that offences were committed by the accused persons. After obtaining necessary sanction for prosecution of accused Nos. 1 and 2, he filed charge-sheet. Initially, charge-sheet was filed against six persons. Accused Nos. 4, 5 and 6 were the concerned officers and staff members of ANZ Grindlays Bank. However, later on, accused Nos. 4, 5 and 6 were discharged as no material was found against them.

4. Against accused Nos. 1, 2 and 3, charges vide Exhibit 1 were framed as stated above. Each of them pleaded not guilty. The plea of the accused persons is that accused No.3 was to repurchase the securities from Grindlays Bank on 26.12.1991. However, on that day, sufficient funds were not available in his account and, therefore, the said transactions could not be materialised. As Grindlays Bank was in need of the amount to maintain its CRR, it was badly in need of Rs.130 crore and, therefore, on the request of Grindlays Bank, Andhra Bank lent amount of Rs.130 crore as call money. For this purpose, accused Nos. 1 and 2 were orally instructed by the head office at Hyderabad to borrow Rs.130 crore as call money and to lend the same to Grindlays Bank. Therefore, accused Nos. 1 and 2 borrowed Rs.130 crore call money from Canara Bank on interest at the rate of 11% per annum and lent the same to Grindlays Bank at 14% per annum. However, as Grindlays Bank was not willing to pay 14% and paid only

10% per annum interest, balance amount of interest at the rate of 4% per annum was debited to the account of accused No.3. In these transactions, Andhra Bank earned profit. Accused No.3 did not earn anything. In fact, he had to pay difference of interest at 4% per annum because he had agreed to compensate Grindlays Bank as he could not fulfill the commitment of purchasing the securities on that day.

5. On behalf of prosecution, in all 18 witnesses were examined and large number of documents were placed on record.

6. Heard the learned Counsel for the parties.

7. Following points arise for my determination and I record my findings against them for the reasons given below :-

<u>POINTS</u>	<u>FINDINGS</u>
(1) Does prosecution prove that accused Nos.1 to 3 had entered into a criminal conspiracy to cause undue pecuniary advantage to accused No.3 by committing criminal breach of trust by accused Nos.1 & 2 being the public servants and Bankers, and by committing forgery and falsification of accounts?	Yes

- (2) Does prosecution prove that as a result of the said conspiracy, accused Nos.1 and 2 , in furtherance of their common intention,without any authorisation, instruction or permission from the head office of Andhra Bank, borrowed Rs.130 crore as call money from Canara Bank and thus being entrusted with the dominion over the said money, without permission, authorization or instruction from the head office, advanced that amount to ANZ Grindlays Bank, as accused No.3 did not have funds in his own account to fulfill his commitment to repurchase securities from Grindlays Bank and thus committed the offence punishable under Section 409 r/w S.34 of IPC? Yes
- (3) Does prosecution prove that as a result of the said conspiracy, the accused Nos. 1 & 2 in furtherance of their common intention, dishonestly and fraudulently forged the documents for the purpose of borrowing Rs.130 crore call money from Canara Bank and for lending the said amount as call money to Grindlays Bank, knowing that they had no authority from their head office to make, sign or execute any such documents for borrowing or lending the amount of Rs.130 crore and thus, committed offence punishable under Section 465 r/w Section 34 of IPC.? Yes
- (4) Does prosecution prove that as a result of said conspiracy, the accused Nos. 1 & 2, in furtherance of their common intention, being the officers employed with Andhra Bank, altered, mutilated or falsified certain documents in respect of the interest to be received from Andhra Bank on the said call money with intent to defraud made false entries in the accounts and thus committed offence of falsification of accounts punishable under Section 477A r/w Section 34 of IPC ? Yes

- | | | |
|-----|---|---|
| (5) | Does prosecution prove that accused Nos.1 & 2, being public servants, committed criminal misconduct, by dishonestly and fraudulently misappropriating the amount of Rs.130 crore by transferring the same to ANZ Grindlays Bank at the instance of accused No.3 and committed offence under Section 13(1)(c) read with Section 13(2) of Prevention of Corruption Act ? | Yes |
| (6) | Does prosecution prove that accused Nos. 1 & 2, being public servants, committed offence of criminal misconduct by abusing their position as public servants and obtaining pecuniary advantage for accused No.3 by borrowing Rs.130 crore as call money from Canara Bank and by transferring that amount to ANZ Grindlays Bank at the instance of the accused No.3 and committed offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act ? | Yes |
| (7) | Does prosecution prove that accused Nos.1,2 or 3 knowing or having reason to believe that an offence had been committed, intentionally omitted to give information respecting that offence and thus committed offence punishable under Section 202 of IPC ? | No |
| (8) | Does prosecution prove that as a result of the conspiracy, accused Nos. 1 and 2, in furtherance of their common intention, received any stolen property ? | No |
| (9) | Whether the accused No.3 is liable to be convicted and if yes, for what offence. | He is liable to be convicted for the offences punishable under Sections 409, 465, 477A of IPC and under |

Sections 13(1)(c) and
13(1)(d) read with
Section 13(2) of
Prevention of Corruption
Act read with Section
120B of IPC.

(10) What sentence and order ?

As per final order.

R E A S O N S

8. It is proved by the prosecution evidence and it is also an admitted fact that Andhra Bank having its head office at Hyderabad is a Nationalized Bank. It has branches at different places, including at Fort, Mumbai. Accused No.1 R.Dhankumar was the Manager, Funds Department at the Fort Branch, Mumbai of Andhra Bank and accused No.2 S.P.Kamath was working as Department Officer in the Funds Department at the Fort Branch. Accused No.3 - Hiten Dalal was the share and stock broker and he also used to enter into his own securities transactions. The evidence of PW-1 J.Sambasiva Sastry, who was working as Chief Officer, Central Accounts Department at the Head Office, Andhra Bank, shows that Reserve Bank of India had prescribed Cash Reserve Ratio (CRR) for Scheduled Commercial Banks under Section 42 of the Reserve Bank of India Act, 1934 and Statutory Liquidity Ratio (SLR) under Section 24 of the Banking

Regulation Act, 1949. CRR may be varying from 3% to 15%. CRR is a statutory deposit or reserve to be maintained with RBI at a certain percentage of the total demand and time liability of the Bank as on the last Friday of 2nd preceding fortnight. SLR may vary from 25% to 40% as may be prescribed by RBI from time to time on net demand and time liability of the Bank as on last Friday of the 2nd preceding fortnight. SLR is in addition to CRR and it means total securities in the form of gold, cash and unencumbered approved securities. The Departmental Officer attached to the Funds and Investment Department of Central accounts Department at Head Office of Andhra Bank collects the balances maintained at RBI branches and prepares a daily statement indicating consolidated position of funds maintained at the RBI, the requirement of CRR to be maintained as per RBI guidelines and to arrive at the position of deficit or surplus for the concerned fortnight. The data is collected from all the RBI branches all over India where Andhra Bank is maintaining the account with RBI. The Departmental Officer submits the statement so prepared to the Deputy Chief Officer of the Funds department and after scrutiny by the Deputy Chief Officer, the statement is to be submitted to the Chief Officer, Central accounts and thereafter it is forwarded to the Assistant General Manager for approval. After obtaining approval from the competent authority, the instructions for borrowing or lending in call money are to be communicated by the Deputy Chief Officer,

Funds Department to the Funds Manager at different centers, including Mumbai. During the relevant period, PW-1 Sambasiva Sastry was the only Chief Officer and PW-2 N. Ramesh was the Deputy Chief Officer, Central Accounts department at Hyderabad. PW-1 Samasiva Sastry further explained that deficit in CRR means shortage in deposits with RBI than the prescribed limit of CRR and surplus means the reserves with RBI exceed the prescribed CRR. If there is deficit, the head office would communicate the same to the Manager, Funds Bombay and direct him to borrow call money and then such borrowed call money is kept with RBI to maintain the prescribed CRR. Call money is borrowed only for overnight and next day that amount has to be repaid from the funds generated by deposits or from receipts from the debtors of the Bank. Call money may be borrowed from other Scheduled commercial Banks or Financial Institutions and not from private parties. When the reserves of the Bank with RBI exceed the CRR limit, the surplus or the excess money may be lent in the market to generate profits for the Bank. He also deposed that for the purpose of borrowing or lending call money, instructions were required to be taken from the Chairman and Managing Director of the Bank and only if he would not be available, instructions could be obtained from the next higher authority then available. There was no delegation of powers to any officer in the Bank for borrowing and lending call money. Thus, all the decisions about borrowing or lending call money were taken at the head office at

Hyderabad and the decisions of the head office for borrowing or lending were communicated by the Deputy Chief Officer to the Manager Funds and the Deputy Chief Officer also ensured compliance on telephone. The record of such communication from Deputy Chief Officer to the Manager Funds or from Manager Funds to the Deputy Chief Officer was maintained. On next day, the debit or credit vouchers would be received by the Deputy Chief Officer by courier service. The Manager Funds at Bombay was required to submit daily statement indicating the call money borrowed or lent and the transactions undertaken on behalf of the clients' accounts. The evidence about the above facts is not disputed. In fact, this procedure is admitted by the accused Nos. 1 and 2...

9. From the evidence on record, it appears that PW-1 Sambasiva Sastry was on leave from 26th to 28th December, 1991. PW-2 N. Ramesh, who was the Deputy Chief Officer in the Central Accounts Department at the head office of Andhra Bank, was on duty during that period. Evidence of PW-2 N. Ramesh shows that the daily position of CRR as on 26th December, 1991, indicated a deficit in CRR to the extent of Rs.49.99 crore. Exhibit 27 shows daily position of CRR of 26th December 1991. On this endorsement was made showing that Bombay Office was advised to borrow Rs.50 crore. This document is signed by PW-2 N. Ramesh. Exhibit 28 is the statement dated 27.12.1991 showing daily

position of CRR . It shows that Rs.10 crore was borrowed from Canbank Mutual fund and Rs.40 crore was borrowed from Bank of India as call money on 26.12.1991. Thus, it shows that the instructions given on 26.12.1991 were complied and same was noted in the statement dated 27.12.1991. The statement dated 27.12.1991 also shows that there was surplus of Rs.10 crore and the Bombay Office was advised to lend the amount of Rs.10 crore under BRS to British Bank of M.East. Exhibits 36 to 54 and Exhibits 59 to 63 are the documents about borrowing amount of Rs.40 crore from Bank of India and Rs.10 crore from Canbank Mutual Fund as call money on 26.12.1991 and repayment of the same to them with interest on 27.12.1991. Entries of these two transactions of borrowing call money of Rs.10 crore and Rs.40 crore from Canbank Mutual Fund and Bank of India are also noted in the kuchha register Exhibit 58 maintained at the Bombay Office and those entries are proved by PW-4 Hemlata Nair, who was working in the Funds Department of Andhra Bank at Fort Branch, Mumbai. Most of these documents are admitted by the accused persons in response to notice under Section 294 of Cr.P.C. and some documents are proved by PW-3 Arun Dixit, who was working with Bank of India and by PW-4 Hemlata Nair.

10. PW-8 Ganesh Kamath was working with Grindlays Bank during the relevant period. His evidence shows that Grindlays Bank had purchased securities



of nine different companies from Andhra Bank, Canbank Mutual Fund and Standard Chartered bank through accused No.3 Hiten Dalal vide his contract note dated 20.11.1991. The value of these securities was about Rs.200 crore. Exhibits 126 to 153 are the documents pertaining to purchase of the securities by Grindlays Bank from Andhra Bank on 20.11.1991. These documents are proved by PW-8 Ganesh Kamath and that part of evidence has gone unchallenged. Admittedly, the said securities were actually of accused No.3 Hiten Dalal and though as per the contract note and other documents, Andhra Bank was selling the securities and Hiten Dalal was the broker, in fact, Hiten Dalal himself was owner of those securities and Andhra Bank had entered into the said transactions for Hiten Dalal. It is an admitted fact that Andhra Bank Head Office had issued instructions for operation of security transactions for constituents at Fort Branch Mumbai on 5.12.1990. Exhibit 8 are the said instructions As per clause 17 of the same , the transactions in case of Hiten Dalal be carried out. However, in case other clients , the Bombay Branch had to obtain prior permission from the Zonal manager, Bombay under intimation to Central Office. It clearly indicated that the Bombay Branch Office could enter into transactions of securities on behalf of Hiten Dalal without any permission from the Zonal Office or from the Head Office. As per clause 11 of the Instructions, the branch could collect commission of Rs.400/- per one crore towards purchase/sale transaction. The accused No.3 Hiten Dalal

was maintaining his account No.4819 with the Fort Branch of Andhra Bank. In view of this, there is no dispute that the transactions could be entered into by the Fort Branch of Andhra Bank on behalf of accused No.3 Hiten Dalal and for such transactions the Bank could collect commission at the rate of Rs.400/- per one crore.

11. Evidence on record reveals and it is admitted by accused No.3 that on 26.12.1991, he was to repurchase certain securities from Grindlays Bank. The value of said securities was to be Rs.1,29,02,29,400.69. The evidence shows that Grindlays Bank was in immediate need of that amount too maintain its CRR on that day. Evidence of PW-7 Akash Rukhaiyar, PW-8 Ganesh Kamath and PW-11 Sriker Rao Khambadkone reveals that on 26.12.1991, Grindlays Bank was to enter into transaction for sale of the securities to Andhra Bank through broker Hiten Dalal and for that purpose, Deal Slips were prepared by the front office and were transmitted to the back office and on the basis of the instructions given from front office, the back office also prepared Deal Slips for this purpose. However, the transactions for sale of those securities could not be materialised on that day. Exhibits 93 to 125, 160 to 180 and Exhibits 186 to 192 are the Deal Slips and other documents about the said transactions. The documents at Exhibits 160 to 180 reveal that such Deal Slips were first prepared from 11.01 to 11.51 hrs.

and they were cancelled. Again security Deal Slips Exhibits 115 to 120 reveal that these Deal Slips were prepared/generated from 11.51 to 12.21 hrs. Exhibits 93 and 94 are about the same transaction. Exhibit 93 Deal Slip was prepared by the front office and Exhibit 94 Deal Slip was prepared by back office. Exhibits 94, 97, 99, 101, 102, 104, 106, 109, 112, 121 and 123 are the Deal Slips prepared or generated between 17.40 hours to 18.48 hrs. on that day. On Deal Slip Ex.94, there is an endorsement "Please reverse as on 26/12" and on the remaining deal slips, there is endorsement "Please reverse". It indicates that all these Deal Slips from Exhibits 93 to 112 and 121 to 123 were required to be reversed. However, the words "Please reverse as of 26/12" indicates that the order for reversal must not have been passed on 26.12.1991, but on some later date. The evidence reveals that such instructions must have been given on the next day i.e. 27.12.91. All this record shows that on 26.12.91, from 11 a.m. to 6.48 p.m. several times the deal slips about the sale of these securities were prepared in the office of Grindlays Bank. The evidence shows that the transaction could not be materialised and finally the said transaction about purchase of securities from Grindlays Bank was called off.

12. Admittedly, accused No.3 could not manage the funds needed for the deal. Admittedly, in his account maintained with Andhra Bank on that day, the

amount was not sufficient to make payment for those securities to be purchased from Grindlays Bank. The accused Nos. 1, 2 and 3 must have been fully aware in the beginning of 26.12.91 itself that the amount was not sufficient in his account.

Evidence of PW-5 K.D.Prabhu and PW-6 Kuppuswamy Baskar, who were the officers working with Canara Bank reveals that on 26.12.1991 Canara Bank lent amount of Rs.130 crore to Andhra bank as call money. As per their evidence, firstly, at 1 p.m. amount of Rs.100 crore was lent and at 2 p.m. further amount of Rs.30 crore was lent to Andhra Bank. About these two transactions of lending call money, deal slips Exhibits 84 and 85 respectively were prepared showing that call money was being lent to Andhra Bank at the rate of 11% per annum interest. Canara Bank issued the cheques Exhibits 86 and 87 for said two amounts. Exhibit 88 is the debit slip issued by Canara Bank to Andhra Bank in respect of the call money of Rs.130 crore lent to Andhra Bank. There is no dispute that the said amount of Rs.130 crore was lent by Canara Bank to Andhra Bank on that day.

PW-4 Hemlata Nair has proved the relevant documents Exhibits 65 to 70 prepared and issued by Andhra Bank to Canara Bank. Exhibit 65 is the debit voucher of Andhra Bank in respect of the said amount, which was prepared and signed by accused No.2 S.P.Kamat. Exhibit 66 is the credit voucher dated 26.12.1991 of Andhra Bank in favour of Canara Bank about same amount. Exhibit 67 is another credit voucher showing the amount of Rs.130 crore as call money

borrowed from Canara Bank. PW-4 Hemlata Nair proved that Exhibit 67 is in her handwriting and it bears signatures of accused No.1 Dhankumar and accused No.2 Kamath. Andhra Bank issued call money receipt Exhibit 68 in favour of Canara Bank. It is also prepared by PW-4 Hemlata and she deposed that this call money receipt is also signed by accused Nos. 1 and 2. These documents show that rate of interest on this call money was 11% per annum. PW-4 Hemlata deposed that on 27.12.1991, the said amount with interest was repaid to Canara Bank as per the Pay Order Exhibit 69. The said Pay Order is also in the handwriting of PW-4 Hemlata and she deposed that this document is also signed by accused Nos. 1 and 2. Evidence of PW-4 Hemlata in respect of these documents is not disputed by the accused persons. Exhibit 70 is the debit voucher about repayment of call money. It consisted of the amount of Rs.10 crore borrowed from Canbank Mutual Fund and Rs.40 crore borrowed from Bank of India and Rs.130 crore from Canara Bank. This document is also in the handwriting of PW-4 Hemlata and, according to her, it bears signature of PW-2 Kamath.

13. Evidence of PW-4 Hemlata also shows that on 26.12.1991, Andhra Bank, Fort Branch, lent amount of Rs.130 crore as call money to Grindlays Bank. Exhibit 71 is the first credit note. Exhibit 72 is the debit note about two different amounts, including amount of Rs.130 crore to be lent to Grindlays Bank. Exhibit

73 is the pay order dated 26.12.1991 of Andhra Bank in favour of Grindlays Bank for the amount of Rs.130 crore. Exhibit 71 is in the handwriting of PW-4 Hemlata and it bears signature of accused No.1 Dhankumar. Exhibit 72 is signed by accused No.2 Kamath. The pay order Exhibit 73 is in the handwriting of accused No.2 Kamath and it bears signature of accused Nos. 1 and 2 both and on the same day this pay order was cleared showing that amount was received by Grindlays Bank on the same day. Even though as noted earlier, on 26.12.1991, from 11.01 hrs. to 18.48 hrs. several times deal slips and other documents were prepared, cancelled and again prepared and as per the evidence, the transaction of sale of the said securities by Grindlays Bank could not be materialised and finally, the said transactions were called off, evidence of PW-4 Hemlata, PW-5 K.D.Prabhu and PW-6 Kuppuswamy Basker shows that amount of Rs.100 crore was advanced by Canara Bank to Andhra Bank at 1 p.m. and further amount of Rs.30 crore was advanced by Canara Bank to Andhra Bank at 2 p.m. on that day. That amount was received by Andhra Bank on the same day and as per the evidence of PW-4 Hemlata the amount of Rs.130 crore was lent by Andhra Bank to Grindlays Bank as call money. Evidence of PW-13 Rahul Ghate, who was in service of Grindlays Bank at Mumbai, proved that on 26.12.1991, he had received pay order of Rs.130 crore from Andhra Bank in favour of Grindlays Bank, however, on 26.12.91, no receipt about the call money of Rs.130 crore received from Andhra Bank was

issued by Grindlays Bank on 26.12.1991 in favour of Andhra Bank. The receipt Ex.74A about the amount of Rs.130 crore as call money borrowed was issued by Grindlays Bank on 27.12.1991 and that receipt appears to have been generated at 13.58 hours.

14. Evidence of PW-13 Rahul Ghaté shows that the pay order Ex.73 was not supported or accompanied by any other document. According to him, in view of this, he contacted PW-9 Girija Sahoo the Asst. Funds Manager and enquired as to how that amount of Rs.130 crore was to be appropriated. According to him, he made that query in the afternoon of 26.12.1991 itself when the pay order was received. He was told by PW-9 Girija Sahoo that he would be getting the details of the transaction within 10-15 minutes and he should hold the pay order. As the time for clearing the pay order was upto 2.15 p.m. and as time was running out, PW-13 Rahul Ghaté again contacted PW-9 Girija Sahoo and then PW-13 Rahul Ghaté was asked to send the cheque for clearing. As there was no instruction as to how the amount was to be appropriated, PW-13 Rahul Ghaté prepared a suspense voucher Ex.195 and sent the pay order for clearance. The pay order was cleared and the amount of Rs.130 crore was credited to the suspense account. Exhibit 196 is the statement of suspense account dated 26.12.91 showing receipt of Rs.130 crore from Andhra Bank. According to him, till the end of the day i.e. 26.12.91,

PW-9 Sahoo did not tell him about the nature of transaction in connection with which the amount of Rs.130 crore was received from Andhra Bank. According to him, in the morning of 27th December, PW-9 Sahoo asked him to take that money as call money borrowed. PW-13 Rahul Ghate asked PW-9 Sahoo to send the deal slip from the front office and accordingly, the deal slip Ex.156 was issued. According to him, on the basis of the deal slip Ex.156, he prepared the call money receipt Ex.174A. Exhibit 156 appears to have been generated on 27.12.91 at 13.55 hrs. and on that basis the back office of Grindlays Bank generated the money market deal slip Ex.157 at 13.58 hrs. and at the same time the deposit receipt Ex. 74A was also generated by PW-13 Rahul Ghate. As per the evidence of PW-13 Rahul Ghate, the amount was to be repaid on the same day with interest and therefore, he prepared the cheque Ex.76 for the amount of Rs.1,30,03,56,164/- in favour of Andhra Bank. It included the principal amount of Rs.130 crore and interest thereon at the rate of 10% per annum for one day. Exhibit 77 was the debit note prepared by PW-4 Hemlata about this amount. According to her, the debit note also bears signature of accused No.2 Kamat. Exhibit 74 is the endorsement on back of deposit receipt Exhibit 74A, by which said deposit receipt was released by Andhra Bank and it bears signature of accused Nos. 1 and 2 both.

15. From the evidence of the officers from Grindlays Bank and the documents noted above, it is clear that initially on 26.12.1991, from 11 a.m. itself a deal for sale of securities by Andhra Bank to Grindlays Bank was in the offing. Even though the securities were to be purchased by accused No.3 Hiten Dalal, on the deal slips prepared by Grindlays Bank, naturally, as per instructions and talk with the officers of Andhra Bank, Andhra Bank was shown to be purchaser of those securities, while accused No.3 Hiten Dalal was shown only as a broker. There would be no illegality in that transaction even though undertaken in the name of Andhra Bank because there were standing instructions from the head office that the Fort Branch, Mumbai could undertake the securities transactions of accused No.3 Hiten Dalal, for which Andhra Bank was to charge commission. However, at the same time, it was also known to the accused persons that on 26.12.1991, sufficient funds were not available in the account of accused No.3 maintained with Andhra Bank and therefore he was not in a position to make payment and to purchase the securities. It appears that taking into consideration this position, accused Nos. 1 and 2 borrowed amount of Rs.130 crore as call money from Canara Bank and the amount was also paid by them to Grindlays Bank by about 2 p.m. on that day. From the evidence noted above, it is also established that the pay order issued by the accused Nos. 1 and 2 on behalf of Andhra Bank and in favour of Grindlays Bank was also submitted for realisation.

at or before 2.15 p.m. as that was the time before which the cheques and pay orders could be submitted for realisation. As per the evidence of PW-13 Rahul Ghate, the pay order from Andhra Bank was not accompanied or supported by any document and, therefore, it was not clear for what purpose and on what account amount of Rs.130 crore was paid by Andhra Bank to Grindlays Bank. In the given circumstances, there remains no doubt that this amount of Rs.130 crore was paid by Andhra Bank to Grindlays Bank towards the deal of purchase of securities on behalf of accused No.3 Hiten Dalal from Grindlays Bank. However, it is mysterious and not clear why the deal of these securities could not be finally materialised on that day inspite of the fact that amount of Rs.130 crore was already paid by Andhra Bank to Grindlays Bank.

16. As per the funds position as proved by PW-1 Sambasiva Sastry and PW-2 N. Ramesh, with the help of documents Exhibits 27, 28 and 29, the head office of Andhra Bank had directed the Funds Manager, Fort Branch at Mumbai to borrow amount of Rs.50 crore as call money to maintain CRR and these directions were actually noted in the statement of daily position of CRR Ex. 27 and compliance thereof is also noted in the daily position of CRR as on 26.12.1991 vide Exh.28. These statements of daily position of CRR were maintained in the Central Office of Andhra Bank. On 26.12.1991, after borrowing



amount of Rs.10 crore from Canbank Mutual Fund and Rs.40 crore from Bank of India for maintenance of CRR, in view of certain other deposits with and non-payment by Andhra Bank, Andhra Bank was in excess of funds and, therefore, on 27.12.1991, the Central Office of Andhra Bank advised the Bombay Office to lend amount of Rs.10 crore to the British Bank. This is also noted in Exhibit 28. On 27.12.1991, amount of Rs.10 crore was lent to the British Bank of Middle East and amount of Rs.20 crore was lent to Hongkong Bank as per the funds position register for the period from 14.12.1991 to 27.12.1991 vide Exhibit 29. Exhibit 30 is the statement of interest of call money paid. There are entries dated 26.12.1991 to show that amount of Rs.40 crore was borrowed from Bank of India and Rs.10 crore was borrowed from Canbank Mutual Fund at the rate of 8% per annum interest and the interest credited to the accounts of those Banks are also mentioned in Exhibit 30. The evidence of PW-1 Sambasiva Sastry and PW-2 N. Ramesh clearly goes to prove that there were instructions to the Fort Branch, Mumbai to borrow only amount of Rs.50 crore as call money on 26.12.1991 to maintain the CRR. According to them, there were no instructions to the Fort Branch, Mumbai to borrow Rs.130 crore as call money from Canara Bank or to lend or advance the same to Grindlays Bank. In the kuchha register Ex.58 maintained by PW-4 Hemlata Nair at Fort Office, there were two entries of call money borrowed from Canbank Mutual Fund and Bank of India and below that amount total was carried

as Rs.50 crore. However, later on, the total "50 Cr" was struck off and then there was an addition of following words "Canara 11% 130 cr" indicating that amount of Rs.130 crore was borrowed from Canara Bank as call money at 11% per annum interest and below that entry total was again drawn as 180 Crore. In front of these entries, the interests were also calculated and shown on the said borrowings. Below these entries and at the bottom, there was endorsement "Call Money Lent Grindlays Bank @ 14% Rs.130 crs" showing that amount of Rs.130 crore was lent to Grindlays Bank as call money and the interest rate was 14% per annum. These entries were taken in the kuchha register Article "B" (Exhibit 58). These entries were taken by PW-4 Hemlata Nair as per instructions given by accused No.2 S.P.Kamath as per her evidence.

17. It has come in the evidence of PW-2 N. Ramesh that he also used to maintain a kuchha register on which whatever information was received on telephone used to be noted down by him so that he would not forget the information received on phone. On 27.12.1991, in the kuchha register Article "A" maintained by him, there were notings indicating that amount of Rs.130 crore at 11% was repaid and same amount which was lent was recalled. This entry pertains to the transaction of amount borrowed from Canara bank at 11% and lent to Grindlays Bank at 14%. This entry indicates that the amount lent to Grindlays

Bank was recalled and was repaid to Canara Bank. This noting is marked Exhibit 32. It is material to note that this kuchha register was not officially maintained by N. Ramesh as a record of any instructions. In fact, according to him, he only used to note down the compliances and this indicated that on 27.12.1991, the transaction of repayment to Canara Bank and recalling the amount from Grindlays Bank was completed and this was informed to him on telephone and therefore he had noted it. The learned Counsel for the accused vehemently contended that this entry Exhibit 32 indicates that the amount of Rs.130 crore was borrowed from Canara Bank and lent to Grindlays Bank and then it was recalled from Grindlays Bank and repaid to Canara Bank as per instructions given from the head office and, therefore, the accused persons had reported compliance on 27.12.1991. This is denied by PW-2 N.Ramesh. According to him, there was instruction only to borrow Rs.50 crore as call money to maintain CRR and this is duly supported by several documents noted above. There is no document maintained at the head office of Andhra Bank to show that any instructions were given to the Fund Manager, Fort Branch to borrow Rs.130 crore as call money from Canara Bank and to lend it to Grindlays Bank. It has been proved by PW-1 Sambasiva Sastry and PW-2 N.Ramesh that call money could be borrowed only to maintain the CRR and such money was kept in their account maintained with RBI to bring the CRR at the prescribed limit. Their evidence also clearly show that

call money could not be borrowed for any other purpose. Therefore, it must be held that Rs.130 crore could not be borrowed as call money because the purpose of maintaining CRR was served by borrowing amount of Rs.50 crore as per instructions given by the head office. Admittedly, amount of Rs.130 crore was not required to maintain the CRR nor that amount was kept in Andhra Bank account maintained with RBI for such purpose.

18. From the record, it is proved that Canara Bank lent Rs.100 crore to Andhra Bank at 1 p.m. and further lent amount of Rs.30 crore to Andhra Bank by 2 p.m. Thus, by 2 p.m., Andhra Bank had received amount of Rs.130 crore as call money and immediately that amount was paid to Grindlays Bank by pay order without any document to show for what purpose that amount was paid by Andhra Bank to Grindlays Bank. From this evidence, it is clearly established that amount of Rs.130 crore was borrowed by accused Nos. 1 and 2 from Canara Bank as call money without any instructions from the head office and certainly not for the purpose of maintaining the CRR and thus there was violation of the directions not only from Reserve Bank but also from the head office of Andhra Bank. The said amount of Rs.130 crore having been borrowed from Canara Bank as call money was advanced to Grindlays Bank clearly to meet the liability of accused No.3 as he had a commitment with Grindlays Bank to purchase the securities on that day,

though the transaction was to be in the name of Andhra Bank and he was to be shown only as a broker. The evidence on record clearly show that talks about the deal of these securities continued till late in the evening of 26.12.1991 and, therefore, number of times the deal slips were prepared and cancelled and last deal slips were prepared at 18.48 hrs. indicating that the transaction was to take effect. However, it was not finalised. PW-13 Rahul Ghatre from Grindlays Bank deposed that till in the evening he had repeatedly asked PW-14 Pankaj Kazi as to what was to be done to the deal, but he was asked to wait. He clearly deposed that on 27.12.1991, he was instructed by PW-14 Pankaj Kazi that the deal was called off and the amount of Rs.130 crore received from Andhra Bank be treated as call money borrowed and that is how the first document generated in the Grindlays Bank about the call money borrowing of Rs.130 crore was at 13.55 hrs. on 27.12.1991 vide Exhibits 156 and 157. On these two deal slips of call money borrowing, deal date is shown as 27.12.1991, but the value date is 26.12.1991. PW-13 Rahul Ghatre explained that the value date indicates the date of actual receipt of money, while the deal date shows the actual date of deal. Thus, as per Exhibits 156 and 157, the deal of call money borrowing had taken place on 27.12.1991 at 13.55 hrs. but the value date was 26.12.1991 which shows that the amount of Rs.130 crore was received by Grindlays Bank from Andhra Bank on 26.12.1991. It means that on 26.12.1991 and till at about 13.55 hrs. on

27.12.1991, Grindlays Bank was not aware that the amount was lent to it as a call money borrowing though the amount was received by it on 26.12.1991 itself. During that period, the amount was lying in a suspense account with Grindlays Bank and after call money deal was entered into, the amount was treated as call money borrowing and within a short time i.e. 16.28 hrs. this amount was repaid to Andhra Bank as per deal slips Exhibits 158 and 159. All these documents clearly go to show that on 26.12.1991, the accused Nos. 1 and 2 issued the pay order of Rs.130 crore in favour of Grindlays Bank not as call money lent but apparently towards the value of the securities transaction of accused No.3 Hiten Dalal. However, it is not clear why inspite of having made payment to Grindlays Bank, the security transactions were not finalised till late in the evening or till the next day morning itself and why the said deal of securities transactions was called off. It is possible that the accused No.3, who was a big broker and whose transactions were running into hundreds of crores every day, did not find it profitable to finalise the deal and the security transaction was, therefore, called off and thus the amount of Rs.130 crore paid by Andhra Bank to Grindlays Bank was treated as call money lent.

19. Thus having received the amount of Rs.130 crore as call money from Canara Bank and having dominion over the same, which should be deemed to

have been entrusted to them, the accused Nos. 1 and 2, as the officers of Andhra Bank, illegally and without any authority, deviated that amount towards the payment to Grindlays Bank on account of the deal of securities transactions of **Hiten Dalal**. This amounted to criminal breach of trust. The said criminal breach of trust was temporary for one day because that amount was received back by Andhra Bank and also repaid by Andhra Bank to Canara Bank on the next day. This was done fraudulently and dishonestly for the advantage of the accused No.3 because accused No.3, who was a big broker and also dealer in securities transactions running into hundreds of crores, had to maintain his own standing and credibility in the market and if the amount would not have been paid to Grindlays Bank on that day inspite of the commitment by him, he would lose the credibility and standing in the market which could adversely affect his business in future and, therefore, even though no apparent financial gain or advantage was received by him out of this transaction, it would give him financial advantage in the long run in running the business.

20. It is clearly established that there were no instructions from the head office of Andhra Bank to the Fort Branch to borrow Rs.130 crore as call money from the Canara Bank nor there was any authority to lend the said amount as call money to Grindlays Bank. Therefore, the accused Nos. 1 and 2 had no authority

to execute any document for and on behalf of Andhra Bank. Under Section 463 of IPC, whoever makes any false 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. Making of false document is defined in Section 464. A person is said to make a false document if he dishonestly or fraudulently makes, signs, seals, executes a document or part of a document with the intention of causing it to be believed that such document or part of document was made, signed, sealed, executed, by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. Whoever commits forgery is liable to be punished under Section 465. From the evidence of PW-4 Hemlata Nair, PW-5 K.D.Prabhu and PW-6 Kuppuswamy Baskar, it is proved that on 26.12.1991 at about 1 p.m. on request of Andhra Bank, Canara Bank lent amount of Rs.100 crore as call money. Again at 2 p.m. Canara Bank lent amount of Rs.30 crore to Andhra Bank. For this the deal slips Exhs. 84 and 85 were prepared by the office of Canara Bank and the Canara Bank issued two Bankers cheques Exhs. 86 and 87. Ex.88 is the debit slip of Canara Bank for the amount of Rs.130 crore lent to Andhra Bank. From the side of Andhra Bank, Fort Branch, Mumbai, a debit voucher Exhibit 65 was prepared in respect of the cheque of Rs.130 crore received

from Canara Bank. It was signed by accused No.2 S.P.Kamath. Exhibit 66 is a credit voucher in favour of Andhra Bank for the said amount. P.W.4 Hemlata Nair deposed that because the signature on Exh.66 is below the stamp of Andhra Bank, she was unable to state whose signature it was. However, if the signature on Exh. 66 is carefully seen, it appears to be of accused No.2 S.P. Kamath which is similar to his signature on Exhibit 65 and several other signatures which are proved to be of accused No.2. Exhibit 68 is a call money receipt of Rs.130 crore which bears signatures of accused Nos. 1 and 2 both. It was issued to Canara Bank against the amount received. As the accused Nos. 1 and 2 had no authority to borrow the amount as call money, they also did not have authority from Andhra Bank or from superior officers at head office of Andhra Bank to prepare and execute any of these documents. By executing these documents, they represented to Canara Bank that they had an authority from Andhra Bank or the head office of Andhra Bank to borrow call money to the tune of Rs.130 crore and thus fraudulently they made Canara Bank officers to enter into the contract to lend Rs.130 crore as call money. This was the false representation and false documents were prepared by them without any authority and, therefore, they committed forgery. Similarly, credit voucher Ex.71 about the amount of Rs.130 crore as call money lent to Grindlays Bank, indicating that the cheque was issued to Grindlays Bank as call money lent, was signed by accused Nos. 1 and 2 both. This document was also executed by

accused Nos. 1 and 2 falsely and without any authority from Andhra Bank or the head office of Andhra Bank to lend amount of Rs.130 crore. It appears that though this credit voucher bears the date 26.12.1991, this document must have been created on 27.12.1991 because till late in the evening on 26.12.1991, the staff of Grindlays Bank was not aware that the amount of Rs.130 crore received from Andhra Bank was towards call money lent by Andhra Bank and borrowed by Grindlays Bank. On 27.12.1991, at about 1.55 p.m., PW-13 Rahul Ghate, for the first time, got instructions that the amount received was to be treated as call money borrowed and accordingly, he generated the deal tickets. It means just shortly before that the credit voucher Exh.71 must have been prepared in Andhra Bank. Though this document indicated that the document was executed by accused Nos. 1 and 2 on behalf of and under the authority of Canara Bank, they had no such authority to lend the money. It is also material to note that the cheque of Rs.130 crore was delivered by Andhra Bank to Grindlays Bank on 26.12.1991 without obtaining any call money receipt. On 27.12.1991, at 13.58 hrs., Grindlays Bank issued Money Market Deposit Receipt for Rs.130 crore which clearly shows that amount was received on 26.12.91. Execution of these documents clearly show that the offence of forgery punishable under Sec. 465 of IPC was committed by the accused Nos. 1 and 2.

accused Nos. 1 and 2 falsely and without any authority from Andhra Bank or the head office of Andhra Bank to lend amount of Rs.130 crore. It appears that though this credit voucher bears the date 26.12.1991, this document must have been created on 27.12.1991 because till late in the evening on 26.12.1991, the staff of Grindlays Bank was not aware that the amount of Rs.130 crore received from Andhra Bank was towards call money lent by Andhra Bank and borrowed by Grindlays Bank. On 27.12.1991, at about 1.55 p.m., PW-13 Rahul Ghate, for the first time, got instructions that the amount received was to be treated as call money borrowed and accordingly, he generated the deal tickets. It means just shortly before that the credit voucher Exh.71 must have been prepared in Andhra Bank. Though this document indicated that the document was executed by accused Nos. 1 and 2 on behalf of and under the authority of Canara Bank, they had no such authority to lend the money. It is also material to note that the cheque of Rs.130 crore was delivered by Andhra Bank to Grindlays Bank on 26.12.1991 without obtaining any call money receipt. On 27.12.1991, at 13.58 hrs., Grindlays Bank issued Money Market Deposit Receipt for Rs.130 crore which clearly shows that amount was received on 26.12.91. Execution of these documents clearly show that the offence of forgery punishable under Sec. 465 of IPC was committed by the accused Nos. 1 and 2.

21. It is clear from the evidence, that on 26.12.1991, there was no deal with Grindlays Bank to lend the amount as call money. On 27.12.1991, documents about the same were prepared. Exhibit 71 is the credit voucher for the call money lent to Grindlays Bank. It shows that rate of interest was to be 14% per annum. However, it appears that Grindlays Bank did not agree with interest at 14% and issued the call money deposit receipt Ex.74A in which the rate of interest was shown to be 10%. In the kuchha register Ex.58, PW-4 Hemlata Nair had noted about amount of Rs.130 crore as call money lent to Grindlays Bank at 14% per annum interest. It was noted by her at the bottom of the page for 26.12.1991. In the statement of Current Account showing the call money lent, there is one entry dated 26.12.1991 which shows that amount of Rs.130 crore was lent to Grindlays Bank as call money and rate of interest was initially 14%, but it appears to have been changed to 10%. Similarly, there is next entry on 27.12.91 which shows that call money lent to Grindlays Bank was received back. Here also initially the interest rate was mentioned as 14%, but then it was changed to 10% and in the product column showing total amount of interest received, there appears some overwriting or correction. It appears that accused Nos. 1 and 2 had agreed to advance amount of Rs.130 crore under the impression that Andhra Bank would be getting interest at the rate of 14% per annum and accordingly the credit voucher was issued, but Grindlays Bank refused to pay 14% and therefore these documents

were changed. Grindlays Bank paid interest at the rate of 10%. In view of this, there was a difference of 4% per annum. Towards the difference of the said 4% per annum, amount of Rs.1,42,466/- was debited to the account of accused No.3 Hiten Dalal maintained with Andhra Bank for which debit voucher Ex.9A was prepared by PW-4 Hemlata and signed by accused Nos. 1 and 2. It is material to note that in the said debit voucher, it was shown to be amount of commission on sale and purchase of securities. There is also a debit entry in the Account No.4819 of accused No.3 Hiten Dalal vide Exhibit 11. In that account also amount is debited as commission on sale. In fact, this could not have been a commission on sale. As stated earlier, as per standing instructions from the head office on securities transactions of Hiten Dalal and other brokers, commission of Rs.400/- per crore was to be charged. In fact, in the present case, the transaction of purchase of securities of Rs.130 crores was not materialised. Had the said deal materialised, Andhra Bank could have charged maximum amount of Rs.52,000/- towards commission from Hiten Dalal. The commission could not be Rs.1,42,466/-. PW-4 Hemlata Nair, after calculation, deposed on oath that this amount was equivalent to 4% per annum interest on the amount of Rs.130 crore. Finally, it is conceded by the accused Nos. 1 and 2 that this amount was recovered as difference in the interest from accused No.3. Firstly, the above referred documents were falsified by making modifications and corrections in the

statement of account and documents. Secondly, the entry in the statement of account of the accused showing the amount of Rs.1,42,466/- as commission on sale and similarly the debit voucher Ex.9A to the same effect amounted to preparing false documents and it also amounts to forgery. Thus, the offences punishable under Sections 465 and 477A of IPC are also proved as against accused Nos. 1 and 2.

22. I do not find any material to hold the accused persons guilty for the offence punishable under Sec. 411 of IPC nor the accused persons can be held guilty for the offence punishable under Section 202 of IPC. At the time of arguments, the learned Senior P.P. conceded that the accused were not bound to give any information about the offence allegedly committed by themselves as it would amount to confession against themselves. Section 202 is applicable only when a person, who is legally bound to give information, has got information of commission of certain offence and intentionally omits to give such information to the concerned authorities. Section 202 of IPC cannot be applicable to the accused persons who have committed the substantive offences.

23. Taking the prosecution evidence in its totality, it becomes clear that accused No.3 had a commitment with Grindlays Bank to purchase certain

securities for the amount of Rs. 1,29,02,29,400.69 from Grindlays Bank. As Grindlays Bank was in need of the money to maintain the CRR, it was necessary for accused No.3 to fulfill that commitment to maintain his standing and credibility in the market. However, he did not have money on that day. Therefore, even though the Fort Branch of Andhra Bank had neither any instructions nor any authority from the head office to borrow amount of Rs.130 crore as call money, accused Nos. 1 and 2 borrowed that amount as call money from Canara Bank on 26.12.1991 and immediately made payment to Grindlays Bank without informing them for what purpose the amount was paid. Finally the deal about purchase of securities could not be materialised and it was called off, most probably on 27.12.1991 and on that day, the amount which was already paid by accused Nos. 1 and 2 on behalf of Andhra Bank to Grindlays Bank was treated as call money lent to Grindlays Bank and on that day, the officers of Grindlays Bank prepared documents to show that call money was borrowed from Andhra Bank. There is no material to show that there were any instructions from the head office to accused Nos. 1 and 2 to borrow the amount of Rs.130 crore as call money and then to lend the same to Grindlays Bank. They did it at their own level and in all probability, at the behest of accused no.3 Hiten Dalal. When Grindlays Bank refused to pay interest at 14% and paid interest at the rate of 10%, Andhra Bank recovered the difference of 4% per annum interest from accused No.3 Hiten Dalal.

by debiting the amount to his account.

24. Mr. Kale, learned Counsel for accused No.3 contended that accused No.3 had only assured Grindlays Bank to compensate them with interest at 4%. However, it is difficult to accept this contention. If the accused No.3 was to compensate Grindlays Bank, it would have paid the difference of interest to Grindlays Bank and Grindlays Bank would have paid full 14% to Andhra Bank. On the other hand, Grindlays Bank refused to pay 14% interest and paid only at the rate of 10%. Andhra Bank recovered 4% from accused No.3. If accused No.3 would not be involved in this transaction, Andhra Bank could not have debited the said amount of interest at 4% per annum to his account. From this, it is clear that there was criminal conspiracy among accused Nos. 1, 2 and 3 and accordingly, all these offences are committed.

25. It is contended by the learned Counsel for the accused that no economic loss was caused either to Grindlays Bank or to Andhra Bank in this whole transaction because Grindlays Bank had admittedly repaid another loan taken at the rate of 12% and secured the amount as a loan at the rate of 10% per annum from Andhra Bank and saved interest at 2% per annum. At the same time, Andhra Bank had secured loan at 11% per annum from Canara Bank and received

14% interest on that money and thus earned a profit of 3% and thus Andhra Bank was also benefited. Andhra Bank received 10% interest from Grindlays Bank and accused No.3 paid 4% per annum on the said amount to Andhra Bank and thus to the extent of 4% interest, which amounted to Rs.1,42,466/-, accused No.3 was put to loss and therefore, it is contended that it cannot be said that any pecuniary advantage was caused to the accused No.3. It is true that no financial loss was caused to Andhra Bank or to Grindlays Bank. In a way Andhra Bank earned profit at 3% per annum in this transaction. It is also true that accused NO.3 was required to pay amount of Rs.1,42,466/- to Andhra Bank in this whole transaction even though the amount of loan was not actually enjoyed by him. However, the amount of Rs.1,42,466/- was a small amount for accused No.3, who had big deals and transactions running into hundreds of crores of rupees and, therefore, it was necessary for him to fulfill his commitment to the Banks and Financial Institutions. On that day, he was not in a position to fulfill the commitment and had he failed to provide the money to Grindlays Bank, his standing and credibility among the Banks and Financial Institutions would have been damaged and it would have adversely affected his business in the long run. Payment of Rs. 1,42,466/- was a small amount for him and even though it was a gain for Andhra Bank, still the gain was at the cost of maintenance of high standards of the Banking principles, rules, regulations and directives issued by Reserve Bank of

India under the R.B.I. Act. Therefore, I do not find any force in the contention of the learned Counsel for the accused that no offence was committed.

26. Taking into consideration all the material on record, I find that prosecution has proved beyond reasonable doubt that the accused Nos. 1 to 3 had entered into conspiracy and as a result of that conspiracy, accused Nos. 1 and 2, in furtherance of their common intention, committed the offences punishable under Sections 409, 465 and 477A of IPC. Both of them were working as employees of Andhra Bank and as such they were the public servants. By dishonestly and fraudulently misappropriating the amount even though temporarily, they committed the offence of criminal misconduct under Section 13(1)(c) of Prevention of Corruption Act and similarly while holding the said office as public servants, they obtained for accused No.3 a pecuniary advantage without any public interest by violation the laws, rules, regulations and directives and therefore they committed the offence of criminal misconduct under Section 13(1)(d) also. The said offence is punishable under Section 13(2) of the Prevention of Corruption Act. As all these offences were committed by the accused Nos. 1 and 2 in furtherance of the conspiracy with accused No.3, he is also liable to be convicted for all these offences with the help of Section 120B of IPC.

27. Evidence of PW-17 Sanjay Sareen, who was investigating the case and filed charged sheet, shows that after investigation, he submitted the relevant record to the concerned officers of Andhra Bank for according sanction for prosecution of the accused Nos.1 and 2. Evidence of PW-10 S. Koteswara Rao goes to show that during the year 1997, he was Deputy General Manager, Head Office as in-charge of Human Resources Development Department and he was competent to accord sanction for prosecution of Junior Management Scale I Officers. Accused No.2 S.P.Kamat was the officer in that group. His evidence shows that after perusal of the complete record and after being satisfied that offences were committed, he accorded sanction for prosecution of the accused No. 2 vide the sanction order Exhibit 183. Evidence of PW-15 P.V.Jogarao shows that during the year 1997, he was posted as Personnel Officer at the Head Office of Andhra Bank. Mr. Venkatraman was the General manager of the Personnel Department and he was the sanctioning authority for Scale III Officers. Accused No.1 Dhankumar was the Scale III Officer. His evidence shows that the proposal for prosecution of the accused No.1 Dhankumar was received. It was properly processed by P.V.Jogarao and A.S.Chami, who were the Deputy Chief Officers in the Personnel Department and then after consideration of all the material, Mr. Venkatraman had accorded sanction for prosecution of the accused No.1. Exhibit

184 is the sanction order which bears signature of Mr. V.R.Venkatraman. Mr. Venkatraman, Jogarao and A.S.Chari are unfortunately no more alive and none of them could be examined. I have no reason to disbelieve the evidence of PW-15 P.V.Jogarao, which goes to establish that all the material was placed before the sanctioning authority Mr. Venkatraman and he, after consideration of the material, accorded the sanction for prosecution of the accused No.1 Dhankumar.

28. Heard the accused persons, their Counsel as well as the learned Special P.P. on the point of sentence.

29. Each of the accused claims that he had suffered a lot because of this case because none of them had gained any pecuniary advantage from this matter. According to the accused No.1, he was dismissed from service and he has no income. Accused No.2 claims that he was removed from service. According to accused No.3, even though the offences are said to have been committed for his pecuniary advantage, money had never come to his hands and the money was always with one or the other Bank, each of whom got some benefits, but not the accused and, therefore, the accused persons claim leniency.

30. On the other hand, the learned Spl. P.P. contends that in such cases,

leniency is misplaced and the punishment should be proportionate to the offence committed by them.

31. Even though the offences under Sections 409, 465, 477A IPC as well as the offence under the Prevention of Corruption Act have been committed, fact remains that it was a temporary misappropriation of the money, unlawfully and wrongly borrowed as call money from Canara Bank and then paid to Grindlays Bank. The amount was received back from Grindlays Bank on the next day and also was paid back to Canara Bank with interest. In view of the facts noted above, none of the Banks actually suffered any financial loss in the matter. However, fact remains that the said transactions were carried out against the directions given by Reserve Bank of India under the statutory provisions of RBI Act as well as against the standing instructions of the Head Office of Andhra Bank. There were illegalities and irregularities in operations in violation of the Banking rules, regulations, directions and ethics, and thus the Banking system was subverted for the benefit of a private share/stock broker or dealer i.e. accused No.3. In such circumstances, even though none of them had apparently received any financial gain nor any of the Bank had suffered any financial loss, still, it will be necessary to impose sentence of imprisonment with fine against each of the accused.

31. In view of the facts and circumstances, I pass the following order :-

- (i) Accused Nos. 1, 2 and 3 are convicted for the offence punishable under Section 120-B of IPC and are sentenced to undergo R.I. for two years and to pay fine of Rs.10,000/- each and in default to pay fine, to undergo R.I. for three months.
- (ii) Accused Nos. 1 and 2 are also convicted for the offence punishable under Section 409 read with Section 34 of IPC and are sentenced to undergo R.I. for two years and to pay fine of Rs.10,000/- each and in default to pay fine, to undergo R.I. for three months.
- (iii) Accused Nos. 1 and 2 are also convicted for the offence punishable under Section 465 read with Section 34 of IPC and are sentenced to undergo R.I. for one year.
- (iv) Accused Nos. 1 and 2 are also convicted for the offence punishable under Section 477A r/w Section 34 of IPC and are sentenced to undergo R.I. for one year.

(v) Accused Nos. 1 and 2 are also convicted for the offence punishable under Section 13(1)(c) and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and are sentenced to undergo R.I. for two years and also to pay fine of Rs.10,000/- each and in default to undergo R.I. for three months.

(vi) The accused No.3 is convicted for the offences under Sections 409, 465, 477A of IPC and Section 13(2) of the Prevention of Corruption Act read with Section 120B of IPC and is sentenced to undergo R.I. for two years and to pay fine of Rs.25,000/- and in default to pay fine, to undergo R.I. for six months.

(vii) The substantive sentences of imprisonment on all the counts shall run concurrently.

(viii) If any of the accused has been in custody for any period in this case, pending the trial, the said period shall be set off against the substantive sentence of imprisonment as per Section 428 of Criminal Procedure Code.

(J.H.BHATIA,J.)
JUDGE, SPECIAL COURT