

C B I vs B. C. Dalal And Ors on 30 January, 2019

Dixit

Presented on : 16.06.1995
Decided on : 30.01.2019
Duration : 23 Y 07 M 14

IN THE SPECIAL COURT AT BOMBAY

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

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

SPECIAL CASE NO.4 OF 1995

Central Bureau of Investigation,
Mumbai.

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Versus

1. Bhupendra Champaklal Dalal,
S/o. Late Champaklal Dalal
R/o. Chitrakoot, Altamount Road, Mumbai]
2. Jagdish Pannalal Gandhi (Dead)
S/o. Late Pannalal Mohanlal Gandhi,
R/o. B-1102, Wallace Apartment,
Opp. Grant Road Railway Station, Mumbai]
3. Hiten Prasan Dalal
S/o. Prasan Dalal,
R/o. 201, Shanti Towers, Military Road,
Marol, Andheri (East), Mumbai - 400059]
4. Abhay Dharamsingh Narottam (Dead)
S/o. Dharamsingh Madhavsingh Narottam]

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] (Abated on 1

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] (Abated on 2

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R/o. 186, Walkeshwar Road, 1st Floor,
Near Teen Batti, Malbar Hill, Mumbai]

]

5. Hemant Bhanushankar Vyas]

]

(Discharged in view of

S/o. Bhanushankar J. Vyas,]

]

the 'Closure Report'

R/o. 61, Iris Building, Cuffe Parade,]

]

dated 18 th Nov. 1999)

Mumbai.]

]

6. Kishan Kantilal Kapadia]

]

S/o. Late Chunilal Kapadia,]

]

R/o. 30, Neeraj, 71, Walkeshwar Road,]

]

- Mumbai.]
7. Arvind Mohanlal]
S/o. Narendra Mohanlal,]
R/o. 502, Surya, 79, Hill Road,]
Bandra (West), Mumbai.]
8. Jaideep Jagdish Pathak (Dead)] (Abated on 13/08/2015)
S/o. Jagdish Pathak,]
R/o. 56-A, Surya Kiran, 5th Floor,]
Bhaidas Maganlal Peth, A.K. Marg,]
Mumbai.]
9. Tej Kumar Balkrishna Ruia]
S/o. Balkrishna Ruia,]
R/o. 6-A, Samudra Gaurav Apartment,]
Worli Sea Face, Mumbai.]
10. Sudhakar Appu Ail]
S/o. Appu Badhe,]
R/o. Flat No.4, Deep Stambh,]

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Opp. Bhagshala Ground, Vishnu Nagar,]
Dombivili (West), Dist. Thane.]
11. Chandra Sekhar Sitaram Raje]
S/o. Sitaram Nathaji Raje,]
R/o. Plot No.16, Shivganga Nagar,]
Shiv Mandir Road, Ambernath (East),]
Dist. Thane.]
12. Vinod Chandulal Desai] (Discharged in view of
S/o. Late Chandulal N. Desai,] the 'Closure Report'
R/o. Geeta Bhavan - C, Flat No.25,] dated 18 th Nov. 1999)
93, Warden Road, Mumbai.]
13. S. Ramaswamy Shankar Narayan]
S/o. Shankar Narayan,]
R/o. Shreeji Krupa, 4th Floor, Room No.9,]
K.N. Zaveri Marg, Mumbai - 400 004.]
14. Krishankant Mul Shankar Vyas]
S/o. Mul Shankar Vyas,]
R/o. Prithvi Apartment, H/7,]
Altamount Road, Mumbai - 400 026]
15. Naresh K. Aggarwala]
S/o. Chandrakant Aggarwala,]
R/o. Sainik Farms, New Delhi]
16. G.N. Hegde]
S/o. Nagappa Hegde,]
R/o. Garden Queen, 3rd Floor, 16th Road,]
Santacruz (West), Mumbai.]
17. Santosh Mulgaonkar]

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  S/o. Shriram B. Mulgaonkar,          ]
R/o. 06/14, Rang Udyan, Sitadevi Temple ]
Road, Mahim, Mumbai - 400 016.         ] ... Accused

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Advocate Mr. P.G. Sabnis for Accused Nos.16 and 17.

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2. This particular scam pertains to the 'Securities Transactions', entered into by the Standard Chartered Bank, through its Broker - Accused No.3 Hiten Dalal, with various other counter-party Banks like Bank of Karad, Metropolitan Co-operative Bank and HSBC Bank.

3. The case is registered on the complaint of Mr. P.S. Nat, the then Chief Executive Officer - India of the Standard Chartered Bank, Mumbai. It was lodged on 20th June 1992 and addressed to the D.I.G., C.B.I., Mumbai.

4. The allegations set out in the 'Complaint' are as under;

The Division of the 'Standard Chartered Bank' (SCB) in India, known as 'Investment Banking Division', was situate at M.G. Road, Mumbai, within which there was a 'Money and Investment SPSC-4-95-Judgment.doc Unit' (MIU) , consisting of 'Front-Office' and 'Back-Office'. The transactions in securities were concluded by the 'Dealers' in the 'Front-Office' and they were executed by the Officers in the 'Back- Office'. Since March, 1989, Accused No.3 - Hiten Dalal was operating as the 'Broker' in respect of the 'Securities Transactions' of this Bank; whereas, Accused No.7 - Arvind Mohanlal was functioning as the 'Manager' of 'MIU Front-Office', under whose supervision, there were four different 'Dealers'. Accused No.8 - Jaideep Pathak (Since Deceased) was working in the 'Back-Office' as 'Processing Officer' and, therefore, designated as 'Manager' of the 'Back-Office'. Accused No.17 - Santosh Mulgaonkar was working as a 'Staff Officer' in the Back-Office.

5. During the relevant period, Accused No.1-Bhupendra Dalal and Accused No.4-A.D. Narottam were the 'Brokers' and the 'Directors' of BOK. Accused No.13-Ramaswamy was the 'Broker' of BOK and also the 'Proprietor' of M/s. Excel & Co. Accused No.15- Naresh Agarwal was the 'Broker' of HSBC Bank and Accused No.16- G.N. Hegde was working as 'Share and Stock Broker'.

6. Accused No.6-Kapadia was working as 'Vice-Chairman' SPSC-4-95-Judgment.doc and Accused No.14-Vyas was working as 'Director' of M/s. Metropolitan Co-operative Bank Ltd., Mumbai (MCB)

7. Accused No.9-Ruia was the 'Broker' and also the 'Director' of M/s. Dhanraj Mills (P) Ltd., Mumbai.

8. Accused No.10-Sudhakar and Accused No.11-Raje were working as 'Clerk' and 'Manager', respectively, in the Bank of Karad Limited, Securities Division, Fort Branch, Mumbai (BOK) .

9. As per prosecution case, as set out in the 'Complaint' [Exhibit-471] of PW-28 P.S. Nat, the Chief Executive Officer - India of SCB, on 30th April 1992, Accused No.7-Arvind Mohanlal had approached Mr. Ravi Iyer, the then Director, Local Currency Group of the Bank, and made some startling revelations to the effect that, in a series of transactions put through by the Bank, through Broker - Hiten P. Dalal, stocks worth about Rs.300 crores remained unaccounted for. It was so, as the Bank had neither received the securities, nor received Bank Receipts regarding purchase thereof from the counter-party Banks, even though the Bank had paid for the same.

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10. In this background, the matter was taken up by the Bank with Accused No.3-Hiten P. Dalal, who promised that whilst the Bank was enduring to establish its exact position, he would handover Bank Receipts for the shortfalls already identified. He further delivered to the Bank, Shares, Debentures and Securities held by him. He also promised to deliver further such stocks. This fact was also confirmed by him in his letter dated 11 th May 1992, addressed to the Bank. According to the Complainant - Mr. Nat, in the meeting held between the Officers of SCB, arranged by Accused No.3-Hiten, with other accused, namely, Accused No.1-Bhupendra, Accused No.4-Narottam and Accused No.9-Ruia, Accused No.9-Ruia admitted having received a sum of Rs.90 to Rs.125 crores from A.D. Narottam, out of the proceeds of defrauded money. It was also revealed that, substantial part of defrauded money obtained in the account of Accused No.4-Narottam with BOK was transferred to the account of Accused No.3-Hiten with Andhra Bank.

11. In the subsequent meeting dated 30th May 1992, it was further disclosed by Accused No.3-Hiten that, Accused No.2-J.P. Gandhi (since deceased) had received a sum of Rs.600 crores, out of the funds diverted to BOK. Accused No.6-Kapadia, in his capacity as SPSC-4-95-Judgment.doc the 'Vice-President' of MCB, has issued two BRs of Rs.19.89 crores and four BRs of Rs.10 Lakhs, without backing of genuine securities. Accused No.7-Arvind, the 'Chief Dealer' of SCB, and Accused No.8-Pathak, 'Manager' of SCB, were also found to be involved in the said conspiracy. Accused No.1-Bhupendra and Accused No.4-Narottam were 'Directors' of BOK and all fraudulent transactions of SCB were made in the Account of Accused No.4-Narottam. BOK was maintaining its 'Securities Account' in the name of Accused No.4- A.D. Narottam. Accused No.11-C.S. Raje, the 'Manager' of BOK, had signed these BRs/SGL Transfer Forms. Accused No.10-Sudhakar Ail, the staff of BOK, has issued Cost Memos, Delivery Orders, SGL Transfer Forms, Vouchers and other documents, without back-up of genuine securities, for transferring the amount in the account of Accused No.4-A.D. Narottam. Accused No.3-Hiten was maintaining his 'Securities Account' with Andhra Bank, where funds fraudulently obtained from SCB were credited.

12. Accordingly, the offence in this case came to be registered on the basis of the 'Complaint' dated 20th June, 1992, lodged by Mr. P.S. Nat, the then Chief Executive Officer - India of SCB, alleging that the accused, in pursuance of the criminal conspiracy, SPSC-4-95-Judgment.doc had defrauded SCB to the tune of Rs.1,239 crores in the matter of transactions in securities. On internal investigation by the Bank, total fraud worked out to Rs.890 crores after deducting the securities transferred/sold to SCB by Accused No.3-Hiten Dalal of Rs.205 crores and securities worth Rs.145 crores handed over by him to the SCB.

13. As per the 'Complaint' of Mr. P.S. Nat from SCB, the break-up of the shortfalls in securities is categorized as follows;

| Sr. | Particulars | Amount |
|-----|-------------|-----------------|
| No. | | [Rs. In Crores] |

BR/SGL of BOK, without backing of

| | | |
|---|---|--------|
| 1 | genuine securities BR/SGL of MCB, without backing of | 355=93 |
| 2 | genuine securities. BR/SGL, securities not available with SCB, despite making payment and | 19=89 |
| 3 | dishonestly / fraudulently issued BR/SGL of MCB were placed in SCB records. | 507=50 |
| 4 | Payments made by SCB in favour of other Banks, for which no securities received from Banks. Amount due to SCB from Hiten P. Dalal, for which he delivered | 308=00 |
| 5 | dishonestly/fraudulently issued BR of MCB. | 48=50 |

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The case, as set out in the 'Charge-Sheet' :-

14. Under these five different categories, various transactions have been set out, in detail, in the 'Charge-Sheet'. According to the prosecution, all these transactions were put through Accused No.3-Hiten. During the internal investigation by the SCB, it was also disclosed that substantial part of the funds was transferred to the Account of Accused No.4-A.D. Narottam (since deceased) with BOK.

15. Thus, as per prosecution case, these accused have, during the relevant period from April, 1991 to May 1992, by entering into several ostensible securities transactions, through Accused No.3-Hiten Dalal, by exploiting his position as 'Broker' with SCB on one hand and with different Banks, including BOK, MCB and Andhra Bank on the other hand, siphoned-off large amount of funds from the SCB. It was done;

either against the delivery of the 'Bank Receipts' (BRs) , or against the delivery of the 'SGL Transfer Forms' (SGLs) , which SPSC-4-95-Judgment.doc were not backed-up with the physical securities of the counter-party Banks, or, by the securities being delivered by the counter-party Banks, not caused to be delivered to SCB, or, those securities being misappropriated by the Officers of the SCB, namely; Accused No.8-Pathak (Since Deceased) and Accused No.17-Mulgaonkar, subsequent to the receipt of concerned securities or stock from the counter party Banks, without recording the same properly in SCB records and parting with the same without consideration;

by fabricating/forging or causing to be fabricated/forged the documents such as BRs of MCB and BOK, SPSC-4-95-Judgment.doc as also by forging or causing to be forged SGLs of BOK, by using as genuine such forged or fabricated valuable securities and by parting with the funds against acceptance of such BRs / SGLs, knowing or having reason to believe that the same were not backed-up by the physicals and thereby siphoning-off funds from SCB by Pay Orders and making the said funds and 16.

16. As per prosecution case, these acts of the accused constituted the offences of criminal breach of trust; criminal misappropriation of property; forging of valuable securities and using the said forged valuable securities as genuine; falsification of Accounts and receiving the stolen property. Thus, as per prosecution case, the accused persons have committed the offences SPSC-4-95-Judgment.doc punishable under Sections 409, 403, 467, 471 and 477A, 411 of IPC, read with Section 120-B of IPC, as these offences were committed pursuant to the conspiracy hatched by them.

17. Prosecution has, in the 'Charge-Sheet', cited various instances of the manner, in which these offences were committed by the accused persons. In all, 17 transactions are relied upon by the prosecution against these various accused persons.

18. It is also the case of prosecution that, during investigation, reliable information came-forth to the effect that the funds fraudulently obtained from the SCB were siphoned-out to United Kingdom, Channel Islands and Isle of Man by Accused No.1- Bhupendra and Accused No.9-Ruia, where the same were invested in their different associate firms / associates. For conducting investigations in these places, this Hon'ble Court was moved to issue Letter Rogatories to the Competent Authorities in these places. However, it has not resulted into fruitful outcomes.

19. Accordingly, after a prolonged period of investigation for three years, the 'Charge-Sheet' came to be filed in the Court on 16 th SPSC-4-95-Judgment.doc June 1995 and though the offence was registered against in all 17 Accused, 'Charge-Sheet' was filed only against 14 Accused, with 'Closure Report' against 3 Accused viz. Accused Nos.5, 9 and 12 for want of sufficient evidence against them. The 'Closure Report' was accepted by this Court against Accused Nos.5 and 12, but came to be rejected against Accused No.9.

20. This Court [Shri S.N. Variava, J.] being not satisfied with the investigation conducted so far, was also pleased to direct further investigation vide its orders dated 7/8th October, 1996, 13th November 1997 and 15th June 1998. These reports of further re- investigation are submitted by the CBI on 30th June 1997, 9th June 1998 and third report in two volumes dated 15th September 1998 and 9th November 1998.

21. However, no further incriminating material is brought on record in these reports against any of the Accused, including Accused No.9.

22. As a result, as per the 'Charge-Sheet', Accused Nos.1, 2, 4, 6 to 8, 10, 11 and 13 to 17 are charged for the offences punishable SPSC-4-95-Judgment.doc under Section 409 r/w. 120-B of IPC; whereas, Accused Nos.7, 8 (Since Deceased) and 17 are charged for substantive offence punishable

under Section 409 of IPC. Accused Nos.1, 3, 4, 13, 15 and 16 are further charged for the substantive offence punishable under Section 403 of IPC.

23. The total transactions impinged in the 'Charge-Sheet', as stated above, are "17". The number of witnesses, whose statements were recorded by CBI in the course of investigation, is "104"; whereas, documents collected are more than "2000".

24. After filing of the 'Charge-Sheet' and during the pendency of the case, Accused No.2 - J.P. Gandhi, Accused No.4 - A.D. Narottam and Accused No.8 - Jaideep J. Pathak have expired. Hence, the prosecution case stands abated against all the three of them.

25. I have framed 'Charge' against the remaining 12 Accused, including Accused No.9-Ruia, as per 'Exhibit-2' on 24 th August 2017. In addition to the charges levelled in the 'Charge-Sheet', charges are also framed for the offences punishable u/s. 467, 471, 477-A, 411, SPSC-4-95-Judgment.doc 414 r/w. 120-B of IPC. Total 'Charge', thus, consists of about "128 Heads". The 'Charge' was read over and explained to the Accused. Accused pleaded not guilty and claimed to be tried, raising the defence of denial and false implication.

26. In order to prove it's case against the Accused, the Prosecution has examined in all 28 witnesses and through their evidence, proved totally 480 documents. Out of these 28 witnesses, majority of the witnesses, viz. almost 10 witnesses, are from the SCB and they are; PW-28 Chief Executive Officer Mr.P.S. Nat [Exhibit- 470], who has lodged the 'Complaint' (Exhibit-471); PW-1 the 'Staff Officer' in the Back-Office Mr. Sanjay Prabhakar Pandit [Exhibit-18]; PW-2 Manoj Dattatray Rane, the 'Dealer' in the Front-Office [Exhibit- 93]; PW-3 Kiran Dinanath Umrootkar, the 'Head' of the 'Treasury Division' [Exhibit-104]; PW-4 Vijay Charanjeet Saigal, the 'Manager (Operations)' in 'India Treasury Division' [Exhibit-105]; whereas, PW-5 Jaydeep Subhash Jayakar [Exhibit-106], PW-6 Ganesh Atmaram Hatkar [Exhibit-107]; PW-19 Mrs. Susanne Venita Gomes [Exhibit-416]; PW-20 Srikant Harmant Sheth [Exhibit-417] and; PW- 24 Sanjay Natwarlal Shah [Exhibit-445] are from the clerical staff working in the said Division.

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27. PW-11Abhay Gopal Palnitkar [Exhibit-362]; PW-12 Sameer Shrikant Ranjit [Exhibit-379] and; PW-13 Yogesh Vishwanath Kapur [Exhibit-391] are from the HSBC Bank.

28. Whereas, PW-7 Ramesh V. Shenoy [Exhibit-111] and PW- 23 R. Kalyan Raman [Exhibit-434] are from Andhra Bank and Andhra Bank Financial Services Ltd., respectively.

29. PW-10 Mohan Dattatray Kokane [Exhibit-196] and PW- 26 Mahavir Bhavarlal Meghawar [Exhibit-457] are the 'Dealers' from the Bank of America.

30. The only witness from the Bank of Karad is PW-9 Mukund Krishnaji Kher [Exhibit-154] and from the Metropolitan Co-operative Bank is PW-27 Dilip Pratapray Gandhi [Exhibit-460].

31. The other two relevant witnesses are PW-22 Rajiv Pal Satyapal Sekhri from M/s. Naresh K. Agarwalla & Co. [Exhibit-430] and PW-25 Mr. Bhupinder Kumar, the Investigating Officer [Exhibit-452].

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32. Though there are some other witnesses examined by the prosecution, nothing worthwhile has come in their evidence.

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

34. At the end of this long pending trial, which was initiated with filing of the 'Charge-Sheet' in 1995, commenced with framing of 'Charge' in August, 2017, proceeded with recording of evidence in October, 2017 and concluded hearing in 2019, I have heard at length the oral submissions advanced by learned Special P.P. Mr.Mhamane and learned counsel for the respective Accused. All of them, including learned Special P.P., except Accused No.10- Sudhakar Ail and Accused No.11-C.S. Raje, have also placed on record their written submissions, which are in two volumes and in short and concise notes, respectively, prepared meticulously and SPSC-4-95-Judgment.doc rendering great assistance. They are proved to be quite useful for delivering this 'Judgment', considering the voluminous oral and documentary evidence relied upon by the prosecution.

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

Sr. No. Points Findings 1 Whether prosecution proves that, accused-persons had hatched the criminal conspiracy to commit various illegal acts, like Yes misappropriation and/or of criminal Against Accused Nos.3, breach of trust, forgery, receiving of 6, 10, 11, 13 and 17 stolen property etc. with the common object of siphoning-off the funds of the Standard Chartered Bank (SCB) ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings Transaction-I, dated 22 nd February 1992 2 Whether prosecution proves that, in furtherance of the said criminal conspiracy, on 22nd February 1992, Accused No.3-Hiten Dalal has caused SCB to enter into two transactions of Yes purchase of "11% IDBI 2002 Bonds"

of the face-value of Rs.10 Crores each for total consideration of Rs.19.89 Crores against two Cost Memos of counter-party MCB ?

3 Whether prosecution proves that, in Yes furtherance of the said criminal Against Accused No.17 conspiracy and in the course of the same transaction, Accused Nos.7 and 17, in their capacity, respectively, as 'Dealer' and as 'Staff Officer' of Back-Office of SCB and, thus, being entrusted with

the property or dominion over the property of SCB, committed the offence of criminal breach of trust, authorizing the change of counter-

party Bank from Citi Bank to MCB on the Cost Memos, knowing or having reason to believe that SCB SPSC-4-95-Judgment.doc Sr. No. Points Findings Transaction-I, dated 22 nd February 1992 could not have entered into securities transactions with MCB for want of exposure limit and by issuing the Pay Order of Rs.19.89 Crores in favour of MCB, knowing or having reason to believe that those two BRs issued by MCB were not backed with the physical securities and by not taking any steps to procure the physical securities and thereby committed the offence u/s.

409 of IPC ?

4 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the and 14 aided and abetted Accused Yes Nos.7 and 17, by causing the Cost Against Accused Nos.3 Memos and BRs to be issued, and 6 knowing or having reason to believe the same to be false/forged and thereby committed the offence punishable under Section 409, r/w.

120-B, of IPC ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings 5 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused Nos.6 and 14, being the 'Vice-Chairman' and 'Director' of MCB, respectively, made false documents, i.e. Yes the Cost Memos and BRs, purported to Against Accused have been issued by MCB, with a No.6 dishonest and fraudulent intention to believe that the said BRs were backed by physical securities and thereby committed the offence punishable under Section 467, r/w. Section 120-B, of IPC ?

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|---|--|
| 6 | Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused Nos.3, 6 and 14, dishonestly or fraudulently, used or caused to be used as genuine the said BRs, which they knew or had reason to believe to be false/forged documents and thereby committed the offence punishable under |
|---|--|

Against
Nos.3 a

Section 471, r/w. Section 467, r/w. Section 120-B, of IPC ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings 7 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused No.17 falsified the accounts of SCB by dishonestly and fraudulently No omitting to record the receipt of the above-said BRs and thereby committed the offence punishable under Section 477-A, r/w. 120-B, of IPC ?

8 Whether the prosecution proves that, in furtherance of the said criminal conspiracy, in the course of the same transaction, Accused No.13 received the funds of SCB, knowing or having reason to believe it to be a Yes stolen property, i.e. the property in respect of which criminal breach of trust

has been committed and thereby committed the offence punishable u/s. 411 of IPC ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings 9 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused Nos.6 and 14 assisted Accused No.13 in concealing the stolen property, namely, the proceeds of Pay Order of Yes Rs.19.89 Crores approximately, Against Accused Nos.3, which were credited into the account 6 and 13 of M/s. Excel & Co., by issuing or causing to be issued a Pay Order for the said amount in favour of BOK and thereby committed the offence punishable under Section 414, r/w.

120-B, of IPC ?

Transaction-II, dated 20 th April 1991 10 Whether prosecution proves that, in Yes furtherance of the said criminal conspiracy, on 20th April 1991, In four purchase transactions of "IDBI Bonds", Accused No.17, in his capacity as the 'Staff Officer' of Back-

Office of SCB, being entrusted with the property or dominion over the property of SCB, committed the offence of criminal breach of trust, SPSC-4-95-Judgment.doc Sr. No. Points Findings by issuing the pay order for Rs.22,64,55,222=56 in favour of BOK, knowing or having reason to believe that those BRs were not backed-up with physical securities and omitted to take the steps and procure the physical stock from BOK and thereby committed the offences punishable under Section 409 of IPC ?

11 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the and 11, aided and abetted Accused No.17 in the offence of criminal Yes breach of trust by causing the BRs to be issued, knowing or having reason to believe the same to be false/forged and thereby committed the offence punishable u/s. 409, r/w. Section 120-B, of IPC ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings 12 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused Nos.10 and 11, being in the employment of BOK, made false documents, namely, the four BRs, purported to have been issued by BOK, with the intention of Yes causing it to be believed that the BRs were backed by physical securities, though knowing or having reason to believe that they were not backed by the physical securities and thereby committed the offence punishable under Section 467 of IPC ?

13 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the and 11 have used these forged BRs Yes as genuine and thereby committed the offence punishable u/s. 471, r/w.

Section 467, r/w. Section 120-B of IPC ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings 14 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused No.17 falsified the account of SCB by endorsing and authenticating the No 'BR Held Register' of SCB, in the 'Remark' column, to the effect that all these BRs were exchanged on or about 12th June 1991 and

thereby committed the offence punishable u/s. 477-A, r/w. 120-B, of IPC ?

15 Whether prosecution proves that, in furtherance of the said criminal conspiracy and in the course of the same transaction, Accused Nos.10 and 11 committed the offence Yes punishable u/s. 411, r/w. Section 120-B, of IPC, by crediting the amount of the said BRs in the account of Accused No.4-A.D. Narottam (Since Deceased) ?

SPSC-4-95-Judgment.doc Sr. No. Points Findings Transaction-III, dated 16 th December 1991 16 Whether prosecution proves that, in furtherance of the said criminal conspiracy, on 16th December 1991, Accused No.3 caused SCB to enter into purchase transaction of "13% NPCL Bonds" with HSBC, through Accused No.15 and during the course of the same transaction, Accused No.17, being entrusted with the No property or dominion over the property of SCB, parted with consideration thereof by Pay Order, without the receipt of the stock or BR and thereafter omitted to take steps to procure physicals and thereby committed the offence of criminal breach of trust punishable u/s. 409 of IPC ?

17 Whether prosecution proves that, in No furtherance of the said criminal conspiracy and in the course of the same transaction, Accused No.17, willfully and with an intent to defraud, falsified the 'BR Held Register' by recording receipt of SPSC-4-95-Judgment.doc Sr. No. Points Findings photocopies of the Bonds and omitting to record the receipt of original allotment letters and handing them over to Accused No.3 and Accused No.3 sold the original allotment letter to CBMF in a separate transaction and, thus, Accused Nos.3 and 17 committed the offence punishable u/s. 409 and 477- A, r/w. Section 120-B, of IPC ?

Remaining 14 Transactions 18 (i) Whether prosecution has succeeded in proving the remaining 14 transactions?;

(ii) whether prosecution has succeeded in proving its charge of receiving stolen property against Accused Nos.1, 9, 15 and 16 ?

(iii) If yes, whether prosecution has succeeded in proving involvement of any of these Accused in the said transactions ?

19 What Order ?

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" Reasons "

36. At the outset itself, it can be stated that, though the prosecution has examined as many as 28 witnesses, the evidence of 7 witnesses, out of them, is not of any help to the prosecution or at- least the prosecution has not established relevancy of their evidence. Those witnesses are PW-14 Takle, PW-15 Chaturvedi, PW- 16 Parmar, PW-17 Matani, PW-18 Jain, PW-19 Gomes and PW-21 Kayan.

37. Out of them, PW-15 Chaturvedi, PW-17 Matani PW-18 Jain and PW-21 Kayan, are the 'Stock and Share Brokers', but the prosecution has failed to connect their evidence to any of the transactions and also failed to explain how their evidence is relevant. Same is the case in respect of the evidence of PW-14 Takle, who is an employee of Mid-India Oils & Export (Pvt.) Ltd. or PW-19 Gomes, who is the employee of SCB. The prosecution has again not shown its relevancy or connection with the other evidence on record.

SPSC-4-95-Judgment.doc Evidence of PW-28 Complainant Mr. P.S. Nat

38. Thus, the only evidence, which is relevant and is required to be considered, is of the remaining 21 witnesses. Out of them, PW-25 Bhupinder Kumar is the Investigating Officer, whereas, PW-28 P.S. Nat is the Chief Executive Officer of SCB, who has lodged the complaint. His evidence is only of a formal nature, as, in his evidence, he has categorically admitted that, he has no personal knowledge about any of these transactions. He has further admitted that, even after it was reported to him that there was shortfall of securities, he had not personally verified any of the transactions or the figures of the losses mentioned in the Books of Accounts. He has further admitted that, in his statement recorded by the CBI on 12 th October 1993, he has categorically stated that, "the complaint was signed by him as prepared, vetted / settled by the counsels of the Bank. It included both the Lawyers from the local Bar Council as well as Legal Officer of the Bank, who had come from U.K." In his evidence before the Court, he has admitted that the said statement is correct.

39. Further, he has admitted in his evidence that, he was not SPSC-4-95-Judgment.doc directly involved in any of these securities transactions and his source of information was Accused No.7-Mohanlal, Mr. Ravi Iyer and Mr. Kannan. Neither the CBI has recorded the statement of Mr. Ravi Iyer or of Mr. Kannan, even though their evidence was recorded in the Special Suit, nor they are examined in this case as witnesses for the prosecution, though they were aware of these transactions.

40. Perusal of the 'Judgment' passed by this Court in Special Suit No.17 of 1994, filed by SCB against Accused No.3-Hiten Dalal for recovery of Rs.889 Crores, goes to show as to how his evidence was discussed thread-bare therein and was not believed upon. In the said evidence, he has stated that he did not independently verify and hence, cannot state whether the facts stated in the Special Suit were correct. He has also admitted that, he had cursorily read the complaint before signing it, though he was aware that making a complaint is a serious matter. He has volunteered that, as the complaint was vetted by whole battery of lawyers, who had made themselves aware of the facts before preparing it, he had signed the said complaint without verifying its contents. Further, he has admitted that he does not know on what basis the Lawyers had SPSC-4-95-Judgment.doc

incorporated certain statements in the complaint. He did not try to find out from where the Lawyers learnt these facts. He even did not check-up the correctness of the statements made in the complaint. He accepted what they drafted and presuming that whatever the Lawyers had prepared was correct, he has signed the complaint.

41. According to him, he was not at all consulted before preparing the complaint. He was only asked to sign, so he signed on the complaint. According to him, complaint was to be signed by Mr.Kannan, the Executive Director of the Investment Banking Division. However, CBI has instructed that, it should be signed by the Chief Executive Officer - India; therefore, it was brought to him at the last minute and he signed it.

42. In his evidence before this Court, he has admitted all these admissions given in his 'Deposition' in Special Suit No.17 of 1994 as true and correct. His evidence is, therefore, not of any help to the prosecution to prove its case.

43. This brings me to the evidence of the nine other witnesses, who are examined from SCB. Their evidence is of SPSC-4-95-Judgment.doc relevance and is required to be considered in detail to consider, 'whether prosecution case, as alleged against the Accused, is proved or not ?' Crux of Prosecution Case

44. However, before adverting to their evidence, it will be necessary to understand the prosecution case, as alleged against the Accused. The crux of the prosecution case is that, there were number of transactions, purportedly entered into by SCB with counter-parties, in which the payments were made by the SCB in favour of the counter-parties; however, physical securities or BRs were not received by SCB from those counter-parties. In the alternate, it is alleged that, when the BRs were received, those were not backed up with physical securities. A consequential allegation is that, in some transactions, though the securities were delivered by the counter-party Banks, they were misappropriated in between by the Brokers and were not delivered to SCB. If delivered, they were not recorded in the 'Registers' by the staff of SCB or has parted with the same without consideration. As per the case of the prosecution, the cheques issued by SCB towards these securities transactions SPSC-4-95-Judgment.doc were credited into the third Party Accounts by counter party Banks for the benefit of Accused No.3-Hiten Dalal, who has acted as 'Broker' in these transactions.

45. Thus, in nut shell, the case of the prosecution is that, by parting with the funds against the acceptance of such BRs / SGLs, knowing or having reason to believe that the same were not backed up by the physicals, the accused have siphoned-off the funds of SCB and for doing so, they have conspired together and abetted one another.

46. Hence, the first and foremost 'Charge' levelled against Accused No.7 - Arvind Mohanlal, the 'Dealer', and Accused No.17 - Santosh Mulgaonkar, the 'Staff Officer' of SCB, is that, "they had advanced the funds of SCB, in some cases, even without BRs/SGLs and, in some cases, against the BRs/SGLs, knowing fully well or having reason to believe that, those BRs or SGLs were not backed-up with securities." The charge levelled against other Accused is of abetment, being the members of criminal conspiracy. SPSC-4-95-Judgment.doc Effect of 'Judgment' in Special Suit

No.17 of 1994

47. According to learned counsel for the Accused, however, this entire case of the prosecution needs to be thrown overboard, in view of the decision in the earlier Special Suit in respect of these very transactions. According to them, it is a matter of record that SCB had filed a Special Suit No.17 of 1994 against Accused No.3 - Hiten Dalal for recovery of the amounts in respect of the transactions, which are subject matter of this case. The said Special Suit was tried and after detail analysis of evidence, this Court in its 'Judgment', dated 24th December 1998, had made certain scathing observations as regards the nature of these transactions and those observations go to the root of the matter. It is submitted that, it was categorically held therein that, "These transactions were, though claimed to be securities transactions, they were not so. The Bank was using these transactions only to earn the fixed returns and was not at all interested in the actual purchase or sale of the securities."

[Emphasis Supplied]

48. It was observed in paragraph No.68 of the said 'Judgment' that, SPSC-4-95-Judgment.doc "The Bank had entered into an arrangement with Accused No.3-Hiten Dalal, whereby he used to provide assured 15% returns in respect of the transactions entered into by the Bank. Though the Plaintiff, i.e. the Bank, was not admitting the said arrangement, as probably it was contrary to and in breach of RBI Regulations and/or against Prudent Banking Practices, undoubtedly, the arrangement was entered into out of greed to make larger profits, than it was possible to make by following RBI Regulations and Prudent Banking Practices. The Bank would hardly admit that they had knowingly breached the RBI Regulations and/or not following Prudent Banking Practices. However, it was impossible to believe that, after coming to learn of such an arrangement, the Bank had not even tried to stop such arrangement."

49. It was further held that, "The Bank was using these transactions only to earn the fixed returns and was not interested in actual purchase or sale of the securities. The arrangement was approved by and was within the knowledge of the Senior Management of the Bank and various senior level committees of the Bank." SPSC-4-95-Judgment.doc

50. It was held that, "It was impossible to believe that this arrangement was going on for many years, without the knowledge of the Senior Management of the Bank."

51. This Court was also pleased to observe that, "By following such practices, the Bank was actively trying to deceive the RBI and has, thus, by creating false record, as admitted by the witnesses of the Bank, showing complete lack of morals or the principles."

52. In paragraph No.69 of the said 'Judgment', it was held that, "In greed for profit, the Bank was flouting rules and regulations of the RBI. They were playing fast and loose. They were preparing false records and all this was to the knowledge of the higher- ups i.e. PW-28 Mr. Nat, the CEO of the Bank, Mr. Kannan and Mr. Iyer."

53. This Court has, in paragraph No.71 of the said 'Judgment', also held that, "The Bank was playing fast and loose, is also clear from the report of Mr. Yardi, produced in the Suit SPSC-4-95-Judgment.doc at 'Exhibit-20', which points out that Mr. Kannan, who was in-charge of 'Portfolio Management Scheme', was playing fast and loose. Because of these practices, the Bank had been potentially exposed to unapproved financial risk and a possible charge of willful infringement by RBI."

54. It was further observed that, "The warning given by Mr. Yardi has come true. It does appear that Plaintiff-Bank continued to let its Officers undertake higher risk prone transactions. As a result, as prophesied by Mr.Yardi, the Bank had suffered loss. This was to be expected. When greed for profit overrides prudence and caution; when rules and regulations are flouted in the long run, the only result can be that loss will be suffered. For the loss suffered by them, the Plaintiffs (SCB) have only themselves to blame."

[Emphasis Supplied]

55. In paragraph No.72 thereof, it was further observed that, "This admitted conduct of higher-ups in the Bank that of PW-28 Mr. Nat, Mr. Kannan and others also indicate that, they were aware of what was happening and these transactions were conducted with their knowledge and their acquiescence."

SPSC-4-95-Judgment.doc

56. In paragraph No.74 thereof, it was held that, "The Bank was not really interested in securities, but in the return of 15%. Probably, all officers knew that the Plaintiff Bank was merely entering into transactions in securities with the understanding that they would get a fixed return of 15% on those transactions. The Plaintiff-Bank, therefore, was not interested in receiving securities, but was interested only in receiving 15% returns."

[Emphasis Supplied]

57. In paragraph No.77 of the said 'Judgment', this Court was constrained to observe that, "The witnesses examined by the Plaintiff-Bank, namely, Mr. Nat, Mr. Iyer and Mr. Kannan, have been shown to have lied in their attempt to deny knowledge of the real nature of the transactions on many aspects. Their evidence is unbelievable."

[Emphasis Supplied]

58. In the ultimate analysis, in paragraph No.80 of the said 'Judgment', this Court was constrained to observe that, SPSC-4-95-Judgment.doc "Except for proving the loss in respect of a single transaction that of Item No.1 pertaining to the 15 Crore Units, no attempt was made by the Bank to prove any of the other transactions, as the Bank was aware that it would have been impossible to prove them."

59. It was also held that, "As regards the remaining transactions, it has been positively proved that, there was no such loss, as claimed by the Plaintiff-Bank."

60. These observations made by this Court, according to learned counsel for the Accused, are self-eloquent to demolish the entire case of the prosecution as such.

61. It is submitted that, these observations and the findings recorded by this Court in its 'Judgment' in the Special Suit were confirmed and upheld by the Hon'ble Apex Court in Civil Appeal Nos.762 of 1999, along with Civil Appeal No.1878 of 1999, dated 18 th April 2000, preferred against the said 'Judgment' by the Plaintiff- SCB. The Hon'ble Apex Court has, in this 'Judgment' in the case of SPSC-4-95-Judgment.doc Standard Chartered Bank and Another Vs. Custodian and Another, AIR 2000 SC 1488, even refused to accede to the request made by the Officers of the Plaintiff-SCB "to expunge the observations made against the Bank and its Officers that they had indulged in creating false record and further that in the greed of profit, the Bank was flouting rules and regulations of the RBI." It was held by the Hon'ble Apex Court that, "These and the other observations made by the Special Court in its 'Judgment', though harsh, appear to be amply justified. In making these observations, this Court took note of the fact that, according to the Appellant-Bank's own witnesses, false records were created in the case of 9% IRFC Bonds to hide a hole from the RBI."

62. Learned counsels for the Accused have, therefore, placed strong reliance on the 'Judgment' of this Court in Special Suit No.17 of 1994 and of the Hon'ble Apex Court in Appeal against the said 'Judgment' for advancing their submission that, these observations totally demolish the entire case put up by the prosecution. It is submitted that, if the transactions were only money making transactions and not of actual sale and purchase of the securities, there was no question of receipt of any BRs or physical securities. SPSC-4-95-Judgment.doc The Bank was only interested in advancing the funds through Accused No.3-Hiten Dalal to the counter-parties, as it was getting 15% returns. Therefore, according to learned counsels for the Accused, the very foundation of the prosecution case stands exposed and the case built-up on such foundation collapses on its own.

63. According to learned Special P.P., however, the 'Judgment' in the Special Suit cannot be a conclusive proof, so as to throw out the entire prosecution case at the threshold itself. By placing reliance on the 'Judgment' of the Hon'ble Apex Court in the case of K.G. Premshanker Vs. Inspector of Police and Another, (2002) 8 SCC 87, it is submitted by learned Special P.P. that, the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Therefore, according to him, this criminal prosecution is required to be decided on its own merits and evidence, which is brought by the prosecution.

64. Learned counsels for the Accused have controverted this submission by emphasizing that, this Court cannot overlook or ignore the 'Judgment' passed by this Court and confirmed by the SPSC-4-95-Judgment.doc Hon'ble Apex Court in the civil litigation in respect of these very transactions. It is urged that, under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, only one Court is established to decide both the Civil and Criminal cases. The only object for doing so was to ensure that the said Court has a complete picture. It was found necessary, as the 'Legislature' envisaged that there may be certain aspects, which might not have

come to the attention of the Investigating Agency, but which may come to the attention of the Court. Thus, this Court may, in civil litigation, come across certain facts, which it may be able to point out to the Investigating Agency and direct further enquiry; otherwise, it would defeat the object of the Special Court. Therefore, very wide powers have been given to this Court in Section 9(4) of the Special Court Act.

65. It is urged that, when this very Court has made certain observations in the 'Judgment' of Special Suit No.17 of 1994, casting serious aspersions on the veracity of the transactions alleged to be entered into by SCB, which are the subject matter of this prosecution case, this Court cannot close its eyes to ignore those observations or the findings. Those findings and observations are SPSC-4-95-Judgment.doc very much relevant for the purpose of deciding this case, especially when those findings and observations are made in a civil litigation, wherein the standard of proof is much lower, as it is only on the test of probability; whereas in criminal matters, the case has to be proved beyond reasonable doubt. It is urged that, if the SCB has failed to prove its case in the civil litigation, that too, on the test of probability, that these transactions were, in real effect, of the securities and as the BRs were accepted without being backed-up by the securities and the funds were advanced at times even without the BRs, therefore, SCB has suffered the loss, as claimed, then it follows that in criminal case, prosecution cannot pass the test of proving these allegations beyond reasonable doubt.

66. According to learned counsel for the accused, the Judgment of Civil Court is binding on the Criminal Court and if in Special Suit No.17 of 1994, SCB failed to prove the total loss caused to it to the tune of Rs.1,239 crores, then, it follows that in this case also, when the SCB is claiming the loss of Rs.890 crores, SCB cannot prove the same. In this respect, reliance is placed by Accused No.1-Bhupendra, who appears in person, on the Judgment of the Hon'ble Apex Court in the case of Shanti Kumar Panda Vs. Shakuntala Devi, SPSC-4-95-Judgment.doc in Appeal (Civil) No.10906 of 1996 , wherein it was held that, "it is well-settled that a decision of the Criminal Court does not bind the Civil Court, while a decision by the Civil Court binds the Criminal Court".

67. However, it needs to be stated that this Judgment in the case of Shanti Kumar Panda (supra) was considered by the Hon'ble Apex Court in the case of Seth Ramdayal Jat Vs. Laxmi Prasad, in Civil Appeal No.2543 of 2009, and in paragraph No.16 thereof, it was held that the ratio laid down therein may not be entirely correct, being in conflict with a Three-Judge Bench decision of the Hon'ble Apex Court in the case of K.G. Premshanker Vs. Inspector of Police and Anr., (2002) 8 SCC 87. It was held that, "As both civil proceedings and criminal proceedings may go on simultaneously and no Statute puts an embargo in relation thereto, there cannot be any question of the Judgment of one proceeding being binding on another".

68. It was further held that, "In regard to the possibility of conflict in decisions, the law envisages such an eventuality SPSC-4-95-Judgment.doc when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages".

69. Learned Special P.P. has also relied upon the landmark decision of the Hon'ble Apex Court in the case of Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 , wherein it was specifically held as follows :-

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision, nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section SPSC-4-95-Judgment.doc 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff Vs. State of Madras, AIR 1954 SC 397, give a complete answer to the problem posed : (AIR p. 399, paras 15-16) "15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down, but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment."

[Emphasis Supplied]

70. In the subsequent decision of Rukmini Narvekar Vs. Vijaya Satardekar and Others, (2008) 14 SCC 1, also, in paragraph SPSC-4-95-Judgment.doc No.12, after referring to its decision in Iqbal Singh Marwah (supra), it was held by the Hon'ble Supreme Court that, "The findings in a Civil Suit are binding in a criminal case on the same facts, but not vice- versa, this view appears to have been watered down somewhat in the subsequent decisions of the Larger Benches of this Court in Iqbal Singh Marwah (supra) as well as the decision of the Three-Judge Bench in K.G. Premshanker (supra)."

71. It may be stated that in this decision of Rukmini Narvekar (supra), the reliance was placed by the High Court on the evidence adduced in the Special Suit, for the purpose of quashing the criminal case and the Hon'ble Apex Court found it to be not a correct or legal approach and set aside the order of the High Court quashing the criminal case.

72. In view of this legal position, in my considered opinion, the submission advanced by learned counsel for the accused that, in view of the 'Judgment' in Special Suit No.17 of 1994, the prosecution case against the Accused can no more survive, cannot be accepted. The proof or evidence required to

be adduced in both the civil and SPSC-4-95-Judgment.doc criminal proceedings is of different standards and there being no embargo on both the proceedings being conducted simultaneously, it has to be held that, the 'Judgment' in Special Suit No.17 of 1994 being not binding on the Criminal Court, the evidence adduced in this Criminal Case has to be assessed independently on its own intrinsic merit. In my considered opinion, therefore, the contention of the Accused that, in view of the 'Judgment' in Special Suit No.17 of 1994, this case stands totally demolished, cannot be accepted.

73. Even otherwise also, in the said 'Judgment' of Special Suit No.17 of 1994 also, the liability of Accused No.3-Hiten Dalal to the extent of loss of Rs.280.80 Crores suffered by SCB was held to be established. Therefore, the said 'Judgment' does not in any way demolish the case of the prosecution, far remain to render it as wholly absurd, preposterous or concocted, so as to throw the prosecution case overboard.

74. Now the question, 'whether the decision or the Judgment in the Special Suit can be relied upon in the criminal matter and, if yes, to what extent ?' is also no more res-integra. The Hon'ble Apex Court has, in the 'Judgment' of K.G. Premshanker (Supra), after SPSC-4-95-Judgment.doc taking note of all its earlier decisions, summarized the legal position on this aspect in paragraph Nos.30 and 31 of its 'Judgment', as follows :-

"30. What emerges from the aforesaid discussion is - (1) the previous judgment, which is final, can be relied upon, as provided under Sections 40 to 43 of the Evidence Act; (2) in Civil Suits between the same parties, principle of res judicata may apply; (3) in a Criminal Case, Section 300 Cr.P.C. makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence, if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the Civil Court would be relevant, if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except, as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act, then, in each case, the Court has to decide to SPSC-4-95-Judgment.doc what extent it is binding or conclusive with regard to the matters decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a Suit for declaration of its title and to recover possession from A and Suit is decreed. Thereafter, in a criminal prosecution by against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the Court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42, which is quoted above, makes the position clear. Hence, in each and every case, the first question, which would require consideration, is - whether judgment, order or decree is relevant, if relevant - its effect. It may be relevant for a limited purpose, such as,

motive or as a fact in issue. This would depend upon the fact of each case."

75. In view of this legal position, it necessarily has to be held that, the 'Judgment' of this Court and the Hon'ble Apex Court in Special Suit No.17 of 1994, being in respect of these very transactions, which are cited in this case as incriminating, the said SPSC-4-95-Judgment.doc 'Judgments' are very much relevant. Though they may not be conclusive proof, their relevancy cannot be disputed in any way. Just as in view of the said 'Judgment', the prosecution case cannot be held as proved beyond reasonable doubt or be shut at the threshold itself; at the same time, having regard to the object of establishing the Special Court for deciding both the Civil and Criminal Cases under one forum and the said 'Judgment' being passed by this very Court itself, in respect of the same transactions, this Court has to bear in mind the observations made by this Court in the said 'Judgment' while appreciating the evidence on record adduced in this case; otherwise, the very object of conferring both the civil and criminal jurisdiction on the same Court would be defeated. Whatever facts, which came to the notice of this Court in civil proceedings and in respect of which the critical observations were made in the said 'Judgment', hence, cannot be ignored. Conversely, they need to be considered while appreciating the evidence on record in this case, as submitted by learned counsel for the Accused.

76. However, reality is that, the observations made in the said 'Judgment', instead of supporting the case of Accused, they go SPSC-4-95-Judgment.doc to support the prosecution case. It was categorically held in the said 'Judgment' that, "These transactions were not genuine transactions of sale and purchase of securities, but they were 'dummy deals'. The officers of the Bank were preparing false record. The Bank was using these transactions only to earn the fixed returns and was not at all interested in physical securities."

On this aspect, evidence in this case

77. It is this specific case of the prosecution also that, the funds of the Bank were advanced in these ostensible deals of the securities, without insisting for physicals or knowing and having reason to believe that the BRs / SGLs were not backed-up with securities. The observations made by this Court and confirmed by the Hon'ble Apex Court in civil litigation, thus, support the prosecution case and do not demolish it.

78. It is the very case of prosecution that, there was such arrangement of 15% return by Accused No.3-Hiten Dalal on the transactions entered into by the SCB. In the 'Charge-Sheet' itself, on page No.6, it is stated that, SPSC-4-95-Judgment.doc "As regards Accused No.3-Hiten Dalal, there was an uncodified contract, vide which the accused provided 15% return in SLR securities and of 2% or 3% + funding costs in case of non-SLR securities."

79. Therefore, the fact that there was such arrangement or agreement between SCB and Accused No.3-Hiten Dalal of 15% return is not disputed by the prosecution itself. Conversely, according to prosecution case, this very arrangement has resulted into advancing the funds of the Bank "in the greed to earn the profits" by flouting the Rules and Regulations of RBI, preparing false record in the name of securities transactions. As observed by this Court in the 'Judgment' in Special Suit, the SCB

was not interested in getting the securities, though the transactions were titled as sale and purchase of securities. According to prosecution case also, on account of this arrangement of fixed return entered into by SCB with Accused No.3- Hiten Dalal, the funds were advanced on BRs or SGLs or without them, knowing or having reason to believe that BRs / SGLs were not backed-up with securities. This knowledge needs to be inferred, as no one was interested in physical securities, but was interested only in fixed return to earn the profit, which could not have been earned SPSC-4-95-Judgment.doc otherwise. The observations, therefore, made in the Special Suit by this Court fortify the prosecution case.

80. In this case also, the evidence of PW-1 Sanjay Pandit, who was working as 'Staff Officer' in SCB during the relevant period, is relevant in this context. In paragraph No.91 of his 'Deposition', he has categorically admitted that, "In most of the deals in the year 1991-92, Hiten Dalal was the Broker and when he was Broker, in the Deal-Slip, the word 'Direct' used to be mentioned, meaning thereby that Bank was dealing with Hiten Dalal and not with the counter- party. It was the practice during those days that, in case of direct deals with the Broker, we were not receiving Bank Receipts or the physical securities simultaneously. This practice might have been within the knowledge of the Senior Management of the Bank. Even in case Mr. Santosh Mulgaonkar was on leave, the same practice used to be followed and it has got nothing to do with him. It was also the common practice during that period to accept the third-party Bank Receipts or SGLs. No 'Register' was maintained for third-party Bank Receipts or SGLs."

81. PW-2 Manoj Rane, who was working in SCB as 'Dealer' in SPSC-4-95-Judgment.doc the 'Treasury Department' of the Bank, has also admitted in paragraph No.2 of his 'Deposition' that, "One type of transaction was where he himself as a 'Dealer' or Mr. Srinivasan or Mr. Arvind Mohan Lal or Mr. B. Sivakumar as 'Dealer', were either dealing with other Banks or other Brokers. Mr. Arvind Mohan Lal was the Chief or Head-Dealer. The second type of transactions were those which were dealt with via Broker Hiten Dalal. There was some arrangement which Bank had with Hiten Dalal. I do not know when the said arrangement started, but it was there since prior to his joining the Bank. As per the said arrangement, Hiten Dalal has committed to pay certain interest or yield to the Bank on certain amount of securities or portfolio, which he was deploying on behalf of the Bank. Those were the third type of transactions."

[Emphasis Supplied]

82. In para No.6 of his Deposition, he has further admitted that, "As per the arrangement arrived at between the Bank and Hiten Dalal, there was 15% committed return in case of transactions entered through Hiten Dalal. This arrangement was documented in 'Internal Asset Liability Committee Minutes'. SPSC-4-95-Judgment.doc Very Senior Officers of the Bank were part of that Committee and also the minutes of the meeting."

[Emphasis Supplied]

83. In paragraph No.30 of his evidence, he has further confirmed that, "The Assets and Liabilities Committee consisted of the Chief Executive Officer, the Finance Controller of the Bank, the

Treasurer and several Senior Officers of the Bank. At the relevant time, the market rate of 'return' was around 11%. In transaction with Hiten Dalal, the Bank's objective was to earn the yield at the rate of 15% and not the actual sale and purchase of the securities."

[Emphasis Supplied]

84. The evidence of these two witnesses, who are from the very Bank, thus, clearly establishes that there was such arrangement of 15% committed return by Accused No.3 - Hiten on the investment made by the Bank and that arrangement was to earn the yield and not the actual sale and purchase of the securities.

85. The evidence of PW-1 Sanjay Pandit shows that, the top officers of the Bank, namely Mr. Ravi Iyer and Mr. Kannan, were SPSC-4-95-Judgment.doc aware of the transactions that were taking place in the Bank. At the time when the transactions were entered into, they were considered by the staff as a genuine deal; however, subsequently, they realized that some of those transactions were dummy deals. According to him, those dummy deals did not have any financial implications on the affairs of the Company. They were basically to generate notional profit or notional loss. In categorical terms, he has admitted that, "It can be said that those deals were basically amounting to falsification of Accounts. These kinds of deals were done regularly. The falsification of Accounts was the regular practice of SCB during those days." [Emphasis Supplied]

86. In the considered opinion of this Court, these admissions given by the witnesses of the prosecution, who were very much working in the Bank and conducting these transactions, instead of going in favour of the Accused, are proving damaging to them, as they support the case of the prosecution that these transactions were not genuine, but were bogus and dummy ones. Hence, these observations made by this Court in earlier 'Judgment' and the evidence of the prosecution witnesses recorded in this case, is more than sufficient to prove the prosecution case. SPSC-4-95-Judgment.doc

87. If the transactions were merely paper transactions or the "dummy deals", in the words of PW-1 Sanjay Pandit, executed with the clear intention of gaining the profit in the form of 15% committed return from Accused No.3 - Hiten Dalal, it follows that the BRs were being received without the back-up of securities. The evidence of the prosecution witnesses in this case, thus, conclusively establishes that, these transactions were not at all of the sale or purchase of the securities, but these transactions were very much for earning the profits on 15% of the funds advanced to Accused No.3-Hiten Dalal. Hence, exchange of securities was not contemplated at all.

88. Otherwise, if these transactions were genuine transactions of sale and purchase of securities, the fact that the BRs were received without back-up of securities or not received at all, would have come to the knowledge of the senior officers of the Bank. As admitted by PW-1 Sanjay Pandit, they had 'Internal Auditors' Committee' for supervising all the deals entered into by the Bank. There used to be three teams of the Auditors, namely, Internal Auditors, External Auditors and Statutory Auditors. All these three SPSC-4-95-Judgment.doc teams used to supervise the transactions entered into by the Bank. There were daily, weekly, fortnightly, monthly, quarterly, half yearly and yearly audits

conducted by these teams of Auditors of the transactions entered into by the Bank. According to him, the Monthly Audit was necessary for reconciliation of both the Accounts and also for reconciliation of the assets, namely, the securities. Hence, it follows that, in case there was any illegality in respect of any of the transactions entered into by the Bank, it would have been pointed out by any of the Auditors' Committee. The fact that there is no evidence produced on record in this case to show that the Auditors have pointed out such illegalities, makes it necessary to infer that, not only the higher-ups in the Bank, but the Auditors were also aware about the nature of these transactions and hence they did not find anything wrong in non-receipt of the BR or physicals in respect of these transactions.

89. As admitted by PW-3 Kiran Umrootkar, who was working as 'Head' of the 'Treasury Department', after the deals were struck and money was received or paid, he used to report about it to his immediate Boss i.e. PW-28 P.S. Nat. In the Funds Committee Meeting, every fortnight, all these transactions were discussed; SPSC-4-95-Judgment.doc however, he has not come across any irregularities in any of these transactions.

90. Even the evidence of PW-4 Vijay Saigal, who was in- charge of the Back-Office, goes to show that, there was continuous audit of the transactions conducted by the Bank on daily basis. There was a separate Section of the Auditors, consisting of Mr. Apanna and Mrs. Sheshadri. They used to audit the transactions on daily basis. Therefore, it needs to be reiterated that, if there was any irregularity in the transactions, Auditors would have come to know about it. According to him, in April, 1992 also, while he was working as 'Manager' of the Back-Office, no irregularities were reported to him.

91. Thus, it is clear that, despite there being several audits and internal controls in the Bank on a regular basis, none of the Auditor has ever raised any objection with respect to non-receipt of securities / BRs by the Bank. Hence, it has to be necessarily inferred that, it was so, because it was within the knowledge of all concerned that the Bank was never interested in the securities. The Bank was SPSC-4-95-Judgment.doc only interested in the fixed returns, which it was getting on account of deployment of funds through Accused No.3-Hiten Dalal.

92. The submission of learned counsel for the Accused is that, if the Bank had consciously entered into this arrangement, as it was earning substantially higher returns than the market rate of returns and this arrangement was approved by the Senior Management of the Bank and various senior level committees of the Bank, despite the alarming bails raised by Mr. P. Yardi, then, if at all anyone is responsible for this internal arrangement, which has resulted into alleged losses to the Bank, it was only the higher-ups in the Bank, who had, as observed by this Court in the 'Judgment' of the Special Suit, "in the greed of earning the profits, has thrown to the wind the requisite cautions, the RBI Rules and Regulations and the Prudent Banking Practices." It is submitted that, that is the reason why the Bank could not prove its alleged losses in the Special Suit filed in this Court and had to categorically admit that, it was not in a position to prove those losses. According to learned counsel, Accused No.3-Hiten Dalal, the 'Broker', Accused No.7-Arvind Mohanlal, the 'Dealer', and Accused No.17-Santosh Mulgaonkar, the SPSC-4-95-Judgment.doc 'Staff Officer', cannot be held criminally liable for implementing the decisions taken by the higher-ups.

93. It is submitted that, at the time of acceptance of the 'Charge-Sheet', this Court has specifically held that, the role of the higher-ups, who were apparently involved in this case, was required to be investigated and hence, the direction was also given to the Investigating Officer to investigate their role. However, despite further re-investigation, the Investigating Officer has not collected any material against them. Hence, according to learned counsel for the Accused, unless the higher-ups like Mr. Kannan, Mr. Ravi Iyer or Mr. P.S. Nat were implicated, who have approved such arrangement with Accused No.3-Hiten Dalal, the present Accused cannot be held guilty.

94. In my considered opinion, however, merely because higher-ups are not implicated, may be for want of sufficient material against them, as they have not personally executed these transactions, the liability of Accused No.3-Hiten Dalal, Accused No.7- Arvind Mohanlal and Accused No.17-Santosh Mulgaonkar cannot be diminished or wiped out. It is these Accused, who have actually SPSC-4-95-Judgment.doc executed the transactions and created the record to show that they were the transactions of sale and purchase of securities, knowing fully well that they were not so, but they were only the "dummy deals". As deposed by PW-1 Sanjay Pandit, these deals were basically amounting to falsification of accounts and this falsification or execution of these dummy deals is done by these Accused. Falsification of accounts being criminal offence, the defence raised by the Accused, that they have done so at the instance of their higher-ups, is not available to them. Hence, so far as the basic crux of the prosecution case that Accused have committed the offence of advancing the funds of SCB against the delivery of BRs or the SGL Transfer Forms, which were, to their own knowledge, not backed-up with the physical securities of the counter-party Banks, is required to be held as proved.

95. As regards rest of the case of the prosecution, it has to be stated that, though, in all, 17 transactions are impugned in this case, the prosecution could bring on record documentary evidence in respect of only 3 transactions dated 22nd February 1992, 20th April 1991 and 16th December 1991. In respect of the rest of the SPSC-4-95-Judgment.doc transactions, it has to be stated that, there is no sufficient evidence to prove them.

Evidence of Prosecution Witnesses - as to working of SCB

96. Now before adverting to these three transactions, in support of which, documentary evidence is produced on record, it would be necessary to understand the working of the SCB as regards the execution of the sale and purchase of securities transactions.

97. The material evidence in this respect is that of PW-1 Sanjay Pandit, who has explained in detail the procedure, which used to be adopted for the purpose of executing securities transactions. He was working as 'Staff Officer', like Accused No.17- Mulgaonkar, in the Back-Office of the Treasury Wing of the Bank. It is his evidence that the function of the Back-Office was to process the transactions as appearing on the Deal Slips, which were prepared by the Front-Office. Back-Office used to get these Deal Slips from the Front-Office. Manager of the Back-Office, who, at the relevant time, was Accused No.8 - Jaideep Pathak (Since Deceased), was handing over these Deal-Slips to the Staff Officer of the Back-Office viz. either SPSC-4-95-Judgment.doc to him or to Accused No.17-Mulgaonkar. As per the Deal-Slips, the clerical staff in the Back-Office used to prepare the

documents viz. Cost Memos, Bank Receipts, part of the Vouchers etc.

98. According to him, in case of purchase of securities, the Back-Office used to receive Cost Memos from the counter-party Bank, along with the Bank Receipts or SGL Transfer Forms, as the case may be; whereas, in case of sale of the securities by the Bank, the Back-Office used to prepare Cost Memos. As per the instructions of the Manager of the Back-Office, the staff used to prepare either Bank Receipts or SGL Transfer Forms. They used to pay or receive the amounts in the form of inter-bank pay orders. While issuing the pay orders, they were making the note thereof in the Register called "Pay Order Issue Register". However, when they were receiving the pay orders, there was no such Register to make the noting.

99. According to his evidence, the Bank Receipts, which were received, were noted in the 'Bank Receipt Held Register'; whereas, in respect of the Bank Receipts issued, the notings were made in the 'Bank Receipt Issue Register'. 'Pay Order Issue Register' used to be signed by the two officers, namely, either of the Staff SPSC-4-95-Judgment.doc Officer and the other signatory was invariably the Manager of the Back-Office i.e. Accused No.8 - Jaideep Pathak. The entries in the 'Pay Order Issue Register' and the 'Bank Receipt Issue Register' used to be made either by him or by Accused No.17 - Mulgaonkar and verified by the Back-Office Manager Accused No.8-Jaideep Pathak. Whenever the security was made available, they used to inform the counter-party Bank and then the Bank Receipt was discharged by the counter-party Bank. Whenever the counter-party Bank was giving the security, the Back-Office Manager used to discharge the Bank Receipt.

100. According to his evidence, in case of purchase of Government Securities, along with the Cost Memo, they used to get either the Bank Receipt or the SGL Transfer Form and make entry thereof in 'Bank Receipt Held Register'; whereas, in case of SGL Transfer Form, they used to deposit it in the RBI in the Bank's Account of Government Securities. SGL Transfer Forms used to be signed by the Manager of the Back-Office and another National Officer. However, no separate 'Register' was maintained for SGL Transfer Forms; its copies were retained. When they were receiving physical bonds or physical securities, those were kept in one cabinet, SPSC-4-95-Judgment.doc the key of which, used to be with Accused No.17 - Mulgaonkar and another key with Accused No.8-Pathak. No other Officer or the Clerk has access to that cabinet.

101. He has further elaborated the procedure by deposing that, Accused No.3 - Hiten Dalal was the Broker of their Bank during that time. Hiten Dalal had never interacted with anyone in the Back-Office. Runner Boys of Hiten Dalal used to collect or handover cheques on his behalf to the Banks. No specific noting was made by the Bank as to when those cheques were handed over. They were delivering pay orders to the Runner Boys in case of purchase transactions, as per the Deal-Slips. It is his evidence that once the Runner Boy of Hiten Dalal was bringing the Cost Memo or the Bank Receipt, then the Manager of the Back-Office was instructing them to prepare the pay order and give the same to the Runner Boy. In case of sale of securities, when they were receiving the Deal-Slip through the Manager of the Back-Office, as per his instructions, they were preparing Cost Memo and Bank Receipt or SGL Transfer Form. He has categorically deposed that, in most of the cases, they were receiving Bank Receipts only.

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102. In his cross-examination, PW-1 Sanjay Pandit has further clarified that, all the securities transactions were entered into by the 'Dealers' in the Front-Office and the role of the Back-Office was limited only to the documentation of the transactions entered into in the Front-Office. In his words, "it was the job of the Front-Office to strike a deal and for that purpose, Front-Office used to employ services of the specialized Brokers." The Bank was having the list of those specialized Brokers, with whom they could deal. The names of the Brokers used to be featured in the list only after the proper scrutiny of their credentials and work experience was carried out. Once the Front-Office has struck the deal, then the job of the Back- Office was to execute it as per the Deal-Slip.

103. According to him, it was the job of the Manager of the Back-Office Jaideep Pathak (Accused No.8) to evaluate the validity of the deal, before giving instructions to the Staff Officer and the Clerk for preparing further documentation. Only if the Back-Office Manager - Accused No.8 Jaideep Pathak had found the deal to be valid and in accordance with law, he was giving instructions to the Staff Officer and Clerk. It was also for the Back-Office Manager to ascertain whether the Deal-Slip was in accordance with the internal SPSC-4-95-Judgment.doc guidelines of the Bank Operations. The Manager of the Back-Office had the power and authority to stop the deal, if he found it to be not valid at this stage. This power was exercised by the Manager of the Back-Office in few instances.

104. According to him, the Deal-Slip was the document, based on which Back-Office was executing the deal. Hence, if there were any changes in the transactions, those changes have to be made in the Deal-Slip. The Back-Office was bound by the mandate given in the Deal-Slip and could not go beyond it. Even the name of the counter- party in the Deal-Slip could not be changed by the Back-Office.

105. In his further evidence, it was not the responsibility of the Staff Officer like him or Accused No.17-Santosh Mulgaonkar to ensure whether the physical securities or Bank Receipts were received from the counter-party. It was also not their responsibility to follow-up the outstanding Bank Receipts or securities, as it was the responsibility of the Manager of the Back-Office. Their liability was only to ensure that the calculations made on the Deal-Slips were correct. They were not to check the correctness of the transactions. SPSC-4-95-Judgment.doc

106. Further, in his cross-examination, he has stated that the direct deals with Accused No.3 - Hiten Dalal were of a temporary category and hence those securities were not mentioned in the 'In and Out Register'. Moreover, when they were receiving Bank Receipts from the counter-parties, it was neither required, nor possible to verify whether counter-parties had physical securities or not.

107. PW-2 Manoj Rane was, at the relevant time, working as 'Dealer' in the Front-Office, like other three Dealers, including Accused No.7-Arvind Mohanlal. He has explained the procedure, which used to be followed in the Front-Office of the Bank. According to him, as a 'Dealer', they used to strike the transactions directly, by contacting the counter-party Bank or by contacting the Broker, who would bring the two Banks together. Accused No.3 - Hiten Dalal used to give them instructions

like the name of the counter party, the amount of the security etc. and the transaction was thereafter executed on the basis of those instructions. Then he used to prepare the Deal-Slip, giving the details of the name of the counter-party, amount, name of the securities etc. and make entry thereof in the Diary. In case of purchase transactions, information was given on SPSC-4-95-Judgment.doc the telephone, which was entered into the Diary and on that basis, the Deal-Slip was prepared. The Deal-Slip was then sent to the Back- Office and thereafter the job of the Front-Office was complete. Further documentation was to be done by the Back-Office. It was for the Back-Office to contact the Broker or the counter-party and collect the documents.

108. According to him, during that period, Accused No.8- Jaideep Pathak was the 'Manager' of the Back-Office; whereas, Accused No.7-Arvind Mohanlal was the 'Dealer' like him and playing the same role in the Front-Office.

109. In his cross-examination, he has confirmed that, as per the RBI Guidelines, complete segregation of the work of the Front- Office and Back-Office was necessary and it was strictly enforced in their Bank. The segregation of the work was for the purpose of dual control, as it minimizes the possibility of any wrong doing or any collusion. The intention was also to ensure that the person, who contacts with external counter- parties, is not responsible for collecting the securities and for documentation. According to him, in the Front-Office the work was divided among all the four Dealers. SPSC-4-95-Judgment.doc During that period, there was practice to exchange Bank Receipts for consideration and as a Dealer, he was not expected to ascertain the capacity of the counter-party to fulfill the transactions.

110. PW-3 Umrootkar, who was working as the 'Head' of the 'Treasury Department', has also deposed about the bifurcation of the said Department in Front-Office and Back-Office. According to him, after the deals were struck and money was received or paid, he used to report about it to his immediate Boss PW-28 P.S. Nat. In the 'Funds Committee Meeting', every fortnight, all these transactions were discussed and confirmed.

111. PW-4 Vijay Saigal, who was working as 'Manager (Operations)' in the 'India Treasury Division', has confirmed the same procedure of striking of the deals in the Front-Office and its processing and settling of transactions in the Back-Office on the basis of the Deal-Slip. According to him, Mr. Ravi Iyer was the in- charge of 'Dealing Group'. During that period, all the Dealers were reporting to him and to Khush Colabawalla, who was the 'Director (Operations)' and 'in-charge' of the Back-Office. At the relevant time, there were four Dealers sitting in the Front-Office, striking the deals SPSC-4-95-Judgment.doc independent of each other. Each one was responsible for his own deal and was not knowing about the deal struck by other Dealers.

112. The evidence of this witness is relevant, as he has, for the first time, introduced in his examination-in-chief itself, the existence of the Mid-Office in the said Department, which, according to him, used to verify whether there was any breach of exposure limit. According to him, the Manager of the Mid-Office was responsible for scrutinizing the deal to ascertain whether there was breach of the exposure limit. The role of the Back-Office was only to process the deal documents and follow the securities. Any exception to the exposure limit was to be reported by the Mid-Office to the

Senior Management. It is his evidence that, in case of breach of the exposure limit also, the deal was to be processed and completed. Only the necessary action of warning or giving understanding to the Dealer was taken by the Senior Management. Further the limit of exposure was internal one and hence, it was not informed to the counter-parties.

113. The evidence of PW-20 Srikant Sheth and PW-24 Sanjay Shah, who were working in the SCB at the relevant time as clerical SPSC-4-95-Judgment.doc staff, is also to the similar effect that, after the deal was struck, the Deal-Slip was sent to the Senior Management, then to the Manager and then to them to prepare the requisite documentation. According to them also, Front-Office used to take decisions in respect of purchase or sale of the securities and the Back-Office used to implement the said decisions.

114. Thus, the evidence on record in this respect is categorical that, striking of the deal was the job of the Front-Office, where Accused No.7-Arvind Mohanlal was working as a 'Dealer', along with PW-2 Manoj Rane, another Dealer; whereas, the documentation of the said deal, like issuance of Cost Memos, Vouchers, collection of BRs or physical securities, was the job of the Back-Office, where Accused No.8-Jaideep Pathak was working as 'Manager' and Accused No.17-Santosh Mulgaonkar was working as 'Staff Officer', along with PW-1 Sanjay Pandit, PW-20 Srikant Sheth and PW-24 Sanjay Shah, who were working there as the clerical staff. Thus, the responsibility of the Front-Office and the Back-Office was totally segregated and, as stated by the witnesses, this segregation was strictly enforced in their Bank. SPSC-4-95-Judgment.doc

115. In this backdrop, the evidence relating to the three transactions pressed into submission by learned Special P.P. needs to be considered and discussed.

Transaction-I, dated 22 nd February 1992 :-

116. First transaction assailed by the prosecution is dated 22nd February 1992. Charges, bearing Nos.31 to 39, are framed in respect of this transaction, in which Accused Nos.3, 6, 7, 13, 14 and 17 are implicated. It is pertaining to purchases of 11% IDBI 2002 Bonds of the face-value of Rs.10 Crores each by SCB from the Citi Bank. According to prosecution, Accused No.7-Arvind Mohanlal has entered into these two deals with Citi Bank. However, subsequently, he has changed the name of the counter-party from Citi Bank to Metropolitan Co-operative Bank. This allegation is made on the basis that, BRs and Cost Memos of these two transactions are issued by MCB and signed by Accused No.6-Kapadia and Accused No.14-Vyas. These BRs were without back-up of physical securities and on the basis of these BRs, the cheque for the amount of Rs.19.89 Crores was issued by Accused No.17-Santosh Mulgaonkar, which came to be deposited in the account of M/s. Excel & Co., of which Accused SPSC-4-95-Judgment.doc No.13-Ramaswamy is the 'Proprietor'. According to the prosecution, the said funds were, thus, transferred and utilized for the benefit of Accused No.13-Ramaswamy.

117. To prove this transaction, prosecution has relied on the evidence of PW-24 Sanjay Shah. He has deposed that the face-value of these Bonds was Rs.10 Crores each. The calculation appearing on the Deal-Slip is in the handwriting of Accused No.17-Santosh Mulgaonkar, who has made the remark of

'Entry Passed' thereon. The said Deal-Slip is produced on record at Exhibit-446. Another Deal-Slip towards the purchase of 11% IDBI Bonds of the face value of Rs.10 crores each is produced at Exhibit-447. The remark 'Entry Passed' thereon is also signed by Accused No.17-Santosh Mulgaonkar and he has made the calculation thereon. On the basis thereof, the two Debit Vouchers were prepared by PW-24 Sanjay Shah and they are produced on record at Exhibits 448 and 449. These Debit Vouchers were "authorized" by Accused No.17-Santosh Mulgaonkar and Accused No.8-Jaideep Pathak (Since Deceased) proving that, the amount of Rs.9.60 crores each was debited from the Account of SCB. Another Debit Voucher in respect of the interest SPSC-4-95-Judgment.doc on the purchase of these Bonds is produced at Exhibit-450 and it is also authorized and signed by Accused No.17-Santosh Mulgaonkar.

118. The prosecution has then placed reliance on the Credit Voucher (Exhibit-451) in respect of Cheque No.960011 issued in favour of MCB for the amount of Rs.19,89,92,211=89. It was prepared by PW-24 Sanjay Shah, but signed and "authorized" by Accused No.8-Jaideep Pathak (Since Deceased) and Accused No.17- Santosh Mulgaonkar. It is deposed by PW-24 Sanjay Shah that, the amount mentioned in the said Credit Voucher corresponds with the amount and other details mentioned in the Debit Vouchers (Exhibits 448, 449 and 450). It also tallies with the Deal-Slips (Exhibits 446 and 447), except for the name of the counter-party. PW-24 Sanjay Shah has admitted that, though as per the Deal Slips (Exhibits 446 and 447), the purchase was made from Citi Bank, he cannot say why the Credit Voucher (Exhibit-451) and the RBI Cheque No.960011 was issued in respect of the said deal in the name of MCB.

119. PW-27 Dilip Gandhi, who was working in the 'Clearing Department' of MCB, has proved on record the BRs (Exhibits 461 and 463) and the Cost Memos (Exhibits 462 and 464) signed by SPSC-4-95-Judgment.doc Accused No.6-Kishan Kapadia. He has prepared the Debit Voucher (Exhibit 465) and Credit Voucher (Exhibit-466). The Debit Voucher (Exhibit-467) issued in the name of M/s. Excel & Co. Further Pay Order issued in the name of BOK and signed by Accused No.6- Kapadia is produced at Exhibit-468, by which the amount was credited into the account of M/s. Excel & Co. PW-24 Sanjay Shah has then proved on record the Debit Voucher (Exhibit-469), by which the amount of Rs.49,750/- was debited from the account of M/s. Excel & Co. towards the commission.

120. According to learned Special P.P., this documentary evidence is more than sufficient to prove on record that, Accused No.3 - Hiten Dalal, the Broker of SCB, has caused the Bank to enter into these two transactions of purchase of 11% IDBI 2002 Bonds of the face-value of Rs.10 Crores each for total consideration of Rs.19.89 Crores. Though the transactions were with Citi Bank, Accused No.7-Arvind Mohanlal authorized the change of counter- party Bank from Citi Bank to MCB, knowing fully well that SCB could not have entered into the transactions with MCB. Accused No.17-Santosh Mulgaonkar has made calculation on the Deal-Slips and further made the remark of the 'Entry Passed'. Both he and Accused SPSC-4-95-Judgment.doc No.8 - Jaideep Pathak (Since Deceased), the Manager of the Back- Office, were knowing fully well that the BRs issued by the MCB for these transactions were without backing of physical securities. In spite of that, they issued the Pay Order of SCB for the amount of Rs.19.89 crores in favour of MCB.

121. According to the prosecution, Accused No.17-Santosh Mulgaonkar and Accused No.8-Jaideep Pathak (since deceased) have also falsified the Accounts of SCB, by dishonestly and fraudulently omitting to record receipt of the aforesaid BRs issued by MCB at Exhibits-461 and 463 in the 'BR Held Register'. Whereas, Accused Nos.6-Kishan Kapadia and Accused No.14-Krishnakant Vyas prepared and issued the Bank Receipts (Exhibits 461 and 493) for this transaction, knowing fully well that these Bank Receipts were not backed-up by the physical securities. Accused No.6- Kapadia issued the Cost Memos, showing it to be a genuine transaction, which he was knowing was not genuine and Accused No.13 - Ramaswamy, the Proprietor of M/s. Excel & Co., dishonestly received the credit of the Pay Order, knowing it to be a stolen property.

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122. According to learned Special P.P., therefore, Accused No.3-Hiten Dalal, Accused No.6-Kapadia, Accused No.7-Mohanlal, Accused No.13-Ramaswamy and Accused No.17-Mulgaonkar are involved in this transaction and the charges levelled against them are proved by the prosecution on the basis of the documentary and oral evidence referred above.

123. Now coming specifically to the charge levelled against each of the Accused. The charge against Accused No.7-Arvind Mohanlal is that, he has struck these deals with Citi Bank and has thereafter changed the name of the counter-party in this transaction from Citi Bank to MCB, knowing fully well that SCB could not enter into transaction with MCB for want of exposure limits. However, as rightly submitted by learned counsel for Accused No.7-Arvind Mohanlal, in order to bring home this charge, the first and foremost fact the prosecution was required to prove is that, it was Accused No.7-Arvind Mohanlal, who has entered into these two transactions and has made or authorized the change in the name of counter-party. However, not a single witness, either PW-1 Sanjay Pandit or PW-2 Manoj Rane, has deposed that Accused No.7-Arvind Mohanlal has acted as a 'Dealer' in this transaction. The 'Deal-Slips' SPSC-4-95-Judgment.doc (Exhibits 446 and 447) were also not shown to them to prove that they were signed by Accused No.7-Arvind Mohanlal or are in his handwriting. Though PW-24 Sanjay Shah has proved the contents of the Deal-Slips, as he has prepared the Credit Voucher on that basis, and further deposed that, the entries therein tallies with the entries in the Debit Vouchers and the Credit Voucher and has also deposed that, as per the Deal-Slip, the name of the counter-party was Citi Bank, he has not identified signature of Accused No.7-Arvind Mohanlal thereon, nor he has deposed that Accused No.7-Arvind Mohanlal has entered into that deal. Thus, this most important, crucial and basic fact that Accused No.7-Arvind Mohanlal has entered into these deals, is not proved. Hence, the benefit of doubt thereof is required to be extended to Accused No.7-Arvind Mohanlal.

124. Moreover, as deposed by the witnesses, the role of the Front-Office, where Accused No.7-Arvind Mohanlal was working, was over, after the Deal-Slips were sent to the Back-Office and then it was the job of the Back-Office to collect the BRs or physical securities of the said transaction from the counter-parties. None of the witness has deposed that, the change in the name of the counter-party was made by Accused No.7-Arvind Mohanlal or at his behest. Hence, on SPSC-4-95-Judgment.doc this score, the benefit of doubt cannot be withheld from Accused No.7-Arvind Mohanlal.

125. As regards the role of Accused No.17-Santosh Mulgaonkar, it is submitted by learned counsel that, though Accused No.17-Santosh Mulgaonkar has made the calculation part on the Deal-Slips, his role was merely that of a clerical nature, being at the lowest level in the hierarchy and to act as per the contents of the Deal-Slips. It is submitted that, the evidence of PW-4 Vijay Saigal is more than sufficient to show that, it was the job of the Mid-Office to verify whether there was any breach of the exposure limit and it was not the job of the Back-Office to scrutinize the said aspect.

126. It is further submitted by learned counsel for Accused No.17-Santosh Mulgaonkar that, there is no evidence to show that SCB did not receive physical securities in respect of these BRs. None of the witness from the Bank has deposed that such physical securities were not received. According to him, entries in the 'BR received Register' are not at all proved by the prosecution, though such right was reserved. It is submitted that, there is also no evidence to prove that these BRs were received by Accused No.17- SPSC-4-95-Judgment.doc Santosh Mulgaonkar himself. Further, it is submitted that, the documents like Cost Memos (Exhibits 462 and 464), Bank Receipts (Exhibits 461 and 463), Cost Memos (Exhibits 462 and 464), Debit Vouchers (Exhibits 465 and 467) , Credit Voucher (Exhibit-466), Pay Order (Exhibit-468), are not proved properly. Only the signature portion thereon is proved and marked as exhibit, but the contents thereof are not proved; hence, cannot be read in evidence.

127. To substantiate this submission, learned counsel for the Accused has relied upon the 'Judgments' of the Hon'ble Apex Court in the case of Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, (1981) 1 SCC 80, and in the case of Om Prakash Berlia and Another Vs. Unit Trust of India and Others, 1983 Mh.L.J. 339 , wherein the Hon'ble Apex Court was pleased to reiterate the well settled legal principle that, "Merely because the document is admitted in evidence, that does not prove the contents thereof. For proving the contents of the documents, the person, who has knowledge of the contents, must give evidence about it".

128. Even in respect of the role attributed to Accused No.17- Santosh Mulgaonkar of issuing the Debit Vouchers, it is submitted by SPSC-4-95-Judgment.doc learned counsel for the Accused that, the evidence of PW-1 Sanjay Pandit shows that, the role of Accused No.17-Santosh Mulgaonkar was limited to checking only arithmetical correctness of amounts. Although the format of the Voucher mentioned, "authorized by", PW- 1 Sanjay Pandit, who has himself done the same role, has categorically stated that the said job involved only to check the arithmetical corrections of the calculation. The funds of the Bank were not released on the basis of the vouchers or the calculations on the Deal-Slip. The funds were released by way of a cheque, which has not been exhibited at all. The signatory of the cheque has not been made an accused. Thus, according to learned counsel for the Accused, on factual aspect itself, the prosecution has failed to prove the alleged incriminating documents.

129. In my considered opinion, even if the witnesses may not speak or may speak the lie, the documents speak for themselves and the documents do not lie. As is well said, 'men may lie, but not the documents'. Here in the case, the documents speak for themselves and when they speak, they being contemporaneous, no one can controvert them.

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130. In the present case, the transactions were, admittedly, entered into by the 'Broker', namely, Accused No.3-Hiten Dalal. The Deal-Slips state the word 'DIR', which, as deposed by the witnesses, means, 'through Broker - viz. - Accused No.3-Hiten Dalal'. It can hardly be accepted that the upper portion of the Deal-Slips is not proved, when lower portion is proved. Evidence of PW-24 Sanjay Shah on this aspect needs to be considered. He has proved the contents thereon. He has prepared the Credit Voucher (Exhibit-451) and has deposed that the entries therein tally with the Debit Vouchers and the Deal-Slips. He has further deposed that, the name of the Citi Bank was mentioned as 'counter-party' in both the Deal-Slips. It belies that Accused No.17-Santosh Mulgaonkar had made calculations, without reading the contents in the upper portion. Accused No.17-Santosh Mulgaonkar has not disputed this calculation part on the Deal-Slips, which is in his handwriting. His contention that, he was merely doing a clerical job of calculation, also cannot be accepted. He was a 'Staff-Officer', next to the Back- Office Manager; hence, was in a responsible position. The transaction and the 'Entry Passed' remark thereon was "authored" by him. It is too late in a day for him to contend that, though the Deal-Slips bear his signature with a remark 'authored by him', he has not actually SPSC-4-95-Judgment.doc authored the same or not processed these Deal-Slips. The 'Entry Passed' remark on both the Deal-Slips is very much in his handwriting and signed by him and it categorically proves that, he has authorized the payment of these two Deal-Slips.

131. Admittedly, as MCB was a small-time Bank and hence, no exposure limit was fixed, it follows and is not disputed also that SCB could not have entered into transaction with MCB. Therefore, in the Deal-Slips, the name of Citi Bank is mentioned as 'counter-party'. It is proved on record that, BRs were, however, received from MCB. The Credit Voucher (Exhibit-451) in respect of Cheque No.960011 was issued in favour of MCB for the amount of Rs.19,89,92,211=89. The Credit Voucher (Exhibit-451) was prepared by PW-24 Sanjay Shah. Hence, its contents are proved. He has also identified signature of Accused No.17-Santosh Mulgaonkar on the same, who has also "authored" it. As deposed by him, the entries made in the Credit Voucher (Exhibit-451) corresponds to the entries made in the Debit Vouchers (Exhibits 448 and 449) and the Deal-Slips (Exhibits 446 and 447). It is admitted by PW-24 Sanjay Shah that, as per the Deal-Slips (Exhibits 446 and 447), the purchase was made from the Citi Bank, but he cannot say why RBI Cheque and Credit Voucher SPSC-4-95-Judgment.doc was issued in the name of MCB. Though the cheque is not produced, its No.960011 is mentioned in the Credit Voucher. Otherwise also, Credit Voucher (Exhibit-451), proved properly through the evidence of PW-24 Sanjay Shah, is sufficient to prove the diversion of the funds of this transaction to MCB, though, as per the Deal-Slips, as deposed by PW-24 Sanjay Shah, the purchase was made from Citi Bank. It proves the change in the name of the counter-party. As deposed by PW-1 Sanjay Pandit, the Back-Office could not make any such change in the name of the counter-party. In his words, "If there were any changes in the transactions, those changes have to be made in the Deal-Slip. The Back-Office was bound by the mandate given in the Deal-Slip and could not go beyond it. Even the name of the counter-party in the Deal-Slip could not be changed by the Back-Office."

132. Here in the case, however, as deposed by PW-24 Sanjay Shah, though the Deal-Slip mentions the name of "Citi Bank" as 'counter-party' and it was not changed by the Dealer to "MCB", Accused

No.-17 Santosh Mulgaonkar has issued the Credit Voucher in the name of MCB, thereby making the payment to a totally different party. Accused No.17-Santosh Mulgaonkar has not SPSC-4-95-Judgment.doc explained through cross-examination of prosecution witnesses or in any other manner, under which authority or at whose instance, he has made this change and diverted the funds to MCB, instead of the Citi Bank.

133. Not only that, the BRs for this transaction were also accepted by Accused No.17-Mulgaonkar from MCB. When day-to-day, Accused No.17-Santosh Mulgaonkar was executing these transactions, it has to be held that, he was aware that there was no exposure limit for MCB. Hence, the acceptance of the BRs was with the knowledge that they were not backed-up with securities. Thus, the criminality in falsification of the documents and record of SCB is writ large on the face of it in the acts committed by Accused No.17- Santosh Mulgaonkar. He cannot shift the entire guilt for the same on Accused No.8-Jaideep Pathak, the Manager, by taking advantage of the fact that he is no more. All these documents are signed and authored by him.

134. As deposed by PW-1 Sanjay Pandit, Accused No.17- Santosh Mulgaonkar was signatory to the cheques, along with Accused No.8-Jaideep Pathak (Since Deceased). Hence, he was SPSC-4-95-Judgment.doc equally responsible for diversion of the funds of SCB. As deposed by PW-1 Sanjay Pandit, Accused No.17-Santosh Mulgaonkar was also having one of the key of cabinet; second key being with Accused No.8-Jaideep Pathak (Since Deceased), in which the physical securities, were kept. Thus, Accused No.17-Santosh Mulgaonkar was not a mere Clerk, but a 'Staff-Officer', a person in responsible position. Hence, for the acts committed by him, he has to bear the equal liability like Accused No.8-Jaideep Pathak, who is no more. Therefore, Accused No.17-Santosh Mulgaonkar cannot escape from the criminal liability of diverting the funds of this transaction to MCB and having done so, with knowledge and reason to believe that the BRs issued by MCB were without backing of physical securities. Hence, offence punishable under Section 409 of IPC stands proved against Accused No.17-Santosh Mulgaonkar.

135. As Accused No.3-Hiten Dalal has acted as 'Broker' in this transaction, the charge of abatement for the offence punishable under Section 409, r/w. 120-B, of IPC stands proved against him, as without his knowledge and without his involvement, this offence could not have taken place.

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136. As to the role of Accused No.6-Kishan Kapadia, the evidence of PW-27 Dilip Gandhi from MCB categorically proves that, the Cost Memos in this case (Exhibits 462 and 464) are issued and signed by Accused No.6-Kishan Kapadia. It may be true that, he has identified signature portion only, but then Accused No.6-Kishan Kapadia himself is the author of these documents. Hence, there is no other way for prosecution to prove the contents thereof in any other manner. Accused No.6-Kishan Kapadia has not denied his signature thereon. Hence, it follows that, he has signed thereon, knowing fully well contents thereof. These BRs are otherwise also proved on record, if read in connection with other documents. It is proved on record that, on the basis of these BRs, Accused No.6-Kishan Kapadia has issued BRs also (Exhibits 461 and 463). As held earlier, the documents speak for themselves. Not only that, the Credit Voucher (Exhibit-466) is also issued on the basis of

these BRs in the name of M/s. Excel & Co.

137. The manner in which these BRs and Cost Memos were issued, is sufficient to prove that they were issued with knowledge and reason to believe that they were not backed by physical securities. Evidence of PW-27 Dilip Gandhi from MCB in this respect SPSC-4-95-Judgment.doc is clinching. According to him, the capital of their Bank was only around Rs. 1 Crore and their Bank was not dealing in securities transactions. This evidence is not challenged in his cross- examination. Hence, if MCB was not having sufficient capital also and was not dealing in securities transactions, it follows that Accused No.6-Kishan Kapadia, who was the Vice-Chairman of the Bank, was fully aware that the BRs issued by him for the transaction amount of Rs.19.89 Crores were not backed by securities and he was not authorized to issue the same.

138. The evidence of PW-27 Dilip Gandhi further proves that, Accused No.6-Kishan Kapadia has also issued the Credit Voucher (Exhibit-466) in the name of M/s. Excel & Co. and Debit Voucher (Exhibit-467) and Pay Order (Exhibit-468) for the said amount in the name of BOK. By the Debit Voucher (Exhibit-469), the amount of Rs.49,750/- therefrom was debited from the account of M/s. Excel & Co. towards the commission. Accused No.13-Ramaswamy was the 'Proprietor' of M/s. Excel & Co. Therefore, it follows that, Accused No.13-Ramaswamy has received the said amount, knowing fully that he was not concerned therewith.

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139. Thus, as regards charge under Section 409 of IPC is concerned, it is required to be held as proved against Accused No.17- Santosh Mulgaonkar. Accused No.3-Hiten Dalal and Accused No.6-Kishan Kapadia are required to be held guilty for abetment of the said offence. Accused No.6-Kishan Kapadia is further liable for the offence punishable under Section 467 of IPC for making false documents i.e. the Cost Memos and BRs purported to have been issued by MCB with a dishonest and fraudulent intention to believe that the said BRs are backed by physical securities. He has also used them or caused to be used them as genuine and hence, he is also liable for the offence punishable under Section 471, r/w. Section 467 of IPC. Accused No.3-Hiten Dalal, being the 'Broker' of SCB in this transaction, is liable for the offence punishable under Section 471, r/w. Section 120-B of IPC for abetment.

140. As regards Accused No.17-Santosh Mulgaonkar, however, the charge under Section 477-A of IPC is not proved by the prosecution beyond reasonable doubt, as entries in the 'BR Held Register' are not proved.

141. The charge under Section 411 of IPC is required to be SPSC-4-95-Judgment.doc held as proved against Accused No.13-Ramaswamy, as he has received the funds, in respect of which the offence of criminal breach of trust was committed, Accused No.3-Hiten Dalal and Accused No.6- Kishan Kapadia are liable for the offence punishable under Section 414, r/w. Section 120-B, of IPC. It goes without saying that, unless, in this transaction, these Accused No.3-Hiten Dalal, Accused No.6-Kishan Kapadia and Accused No.13-Ramaswamy had acted in connivance with each other and abated each other, the funds of SCB would not have been diverted. Though the Deal-Slip was in the

name of Citi Bank, Accused No.17-Santosh Mulgaonkar issued Credit Vouchers in the name of MCB, on the basis of the BRs issued by Accused No.6-Kishan Kapadia, when both of them were knowing that MCB could not have entered into securities transactions and hence, these BRs were without back-up. Accused No.6-Kishan Kapadia thereafter diverted these funds to the account of Accused No.13-Ramaswamy, who has no concern therewith. Hence, the chain of circumstances, in which the funds of SCB were diverted, is more than sufficiently established in the present case, so as to hold the charge of criminal conspiracy as proved against these three Accused, namely, Accused No.6-Kishan Kapadia, Accused No.13- Ramaswamy and Accused No.17-Santosh Mulgaonkar. SPSC-4-95-Judgment.doc

142. Though it is contended by learned counsel for Accused No.6-Kishan Kapadia that, the SCB has unconditionally withdrawn the Miscellaneous Petition No.88 of 1994 and Suit No.29 of 1994, which were filed against Accused No.13-Ramaswamy and other Respondents for recovery of the amount of Rs.19.89 crores, being illegally diverted from the account of SCB, by paying the costs of Rs.10,000/-, which was imposed by this Court and, therefore, it follows that the SCB has indirectly admitted the fact that there was no loss caused to it on account of this transaction, it need not be stated that, the reasons for withdrawal of Civil Suit may be several. What is important is, those were independent proceedings. What is relevant is that, the documents produced in the case, like the Credit Voucher (Exhibit-466) issued by Accused No.6-Kishan Kapadia, proves the diversion of SCB funds to the account of M/s. Excel & Co. and the commission for this transaction being paid by Accused No.13-Ramaswamy of M/s. Excel & Co., without having any concern with this transaction. Hence, Accused No.6-Kishan Kapadia cannot escape from the criminal liability.

143. As regards Accused No.14-Krishnakant Vyas, though it is alleged by the prosecution that, along with Accused No.6-Kishan SPSC-4-95-Judgment.doc Kapadia, he has issued two BRs, learned Special P.P. has fairly conceded that, signature of Accused No.14-Vyas is not appearing on these BRs. There is also no other oral evidence proving his involvement and except for this allegation, no other allegation is made against him. Hence, he has to be acquitted. Transaction-II, dated 20 th April 1991 :-

144. Now coming to transaction dated 20th April 1991, for the amount of Rs.22,64,55,222=56. It pertains to the purchase of the following securities by SCB from BOK :-

9% IDBI Bonds of 1999 of the face-value of Rs.5 Crores.

9% IDBI Bonds of 1999 of the face-value of Rs.10 Crores.

8.75% IDBI Bonds of 2000 of the face-value of Rs.5 Crores.

8.75% IDBI Bonds of 2000 of the face-value of Rs.5 Crores.

145. According to the prosecution, all these transactions were entered into by Accused No.7-Arvind Mohanlal. The Deal-Slips thereof are produced on record at Exhibits 73, 74, 75 and 76; whereas, BRs, which were prepared by Accused No.10-Sudhakar Ail SPSC-4-95-Judgment.doc and signed by

Accused No.11-C.S. Raje of BOK, are produced on record at Exhibits 180, 182, 184, 186. The entries thereof are made in the 'BR Held Register' of SCB. Those 'Registers' are produced at Exhibits 61 and 188. The Pay Order for the same was issued by Accused No.8-Pathak (Since Deceased) and Accused No.17- Mulgaonkar vide Exhibit-78. The Credit Voucher for the same is produced at Exhibit-77. Credit Voucher of BOK for the amount of Rs.9,06,02,200/- is produced at Exhibit-181, by which the said amount was credited in the Account of Accused No.4-A.D. Narottam (Since Deceased). The said Credit Voucher was signed by Accused No.11-C.S. Raje and was prepared by Accused No.10-Sudhakar Ail of BOK. Another Credit Voucher, crediting the amount of Rs.4,61,76,172/- to the Account of Accused No.4-A.D. Narottam (Since Deceased), is produced at Exhibit-183. It is signed by Accused No.11-C.S. Raje and prepared by Accused No.10-Sudhakar Ail. Credit Voucher for the amount of Rs.4,43,32,332/-, crediting the amount to the Account of Accused No.4-A.D. Narottam (Since Deceased), is produced at Exhibit-185. It is also prepared by Accused No.10-Sudhakar Ail and signed by Accused No.11-C.S. Raje. Exhibit-187 is the Credit Voucher for the amount of Rs.4,53,38,612=55, crediting the amount to the Account of Accused No.4-A.D. Narottam (Since SPSC-4-95-Judgment.doc Deceased), which is signed by Accused No.11-C.S. Raje and prepared by Accused No.10-Sudhakar Ail.

146. According to the prosecution, in all these transactions, Accused No.3-Hiten Dalal was the Broker. The Deal-Slips were prepared and signed by Accused No.7-Arvind Mohanlal, who was knowing that SCB cannot enter into transaction with BOK, as the exposure limit for the securities transactions with BOK was Rs.20 crores. Accused No.7-Arvind Mohanlal has, thus, grossly exceeded the exposure limit in these four transactions by issuing the Deal- Slips.

147. Accused No.17-Santosh Mulgaonkar and Accused No.8- Jaideep Pathak prepared and signed the Credit Vouchers and the Pay Orders in favour of BOK, knowing fully well that SCB has not received physical securities and, therefore, the BRs were not backed- up by the physical securities. Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje made false documents, i.e. BRs, knowing fully well that these BRs were not backed-up by the physical stock and thus, prosecution has implicated Accused No.7-Arvind SPSC-4-95-Judgment.doc Mohanlal, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje and Accused No.17-Santosh Mulgaonkar in this transaction.

148. However, as regards Accused No.7-Arvind Mohanlal, no specific charge is alleged in the 'Charge-Sheet' or is framed against him in respect of this transaction. In the absence of any charge framed against accused in respect of these transactions; especially about the issuance of these Deal-Slips (Exhibits 73 to 76), the allegations against him, which he did not get an opportunity to defend, cannot be considered.

149. As regards Accused No.17-Santosh Mulgaonkar, the allegation against him is that, he has prepared the Pay Order (Exhibit-78) and the Credit Voucher (Exhibit-77), for the amount of Rs.22,64,55,222=56 in favour of the BOK. According to learned counsel, Accused No.17-Santosh Mulgaonkar was the second signatory and as such, he was expected to see only the arithmetical correctness of the figures mentioned in the Pay Order with the other documents. It is submitted that, PW-1 Sanjay Pandit, who was working there as 'Staff Officer', like Accused No.17-Santosh Mulgaonkar, has deposed that, while putting the initials on the SPSC-4-95-Judgment.doc Credit

Voucher or the Debit Voucher, he himself or Accused No.17- Santosh Mulgaonkar were not expected to make enquiry about the underlying transactions. He has also clarified that, when he has stated that Credit Voucher (Exhibit-20) was "authorized by"

Accused No.17-Santosh Mulgaonkar, he meant to state that, it was "checked" by Accused No.17-Santosh Mulgaonkar and "not authorized" by him. According to him, he and Santosh Mulgaonkar had no authority to sign the Pay Order singly. The decision making authority to release the Pay Order was that of the Manager of the Back-Office. It was not their responsibility to ensure whether physical securities or BRs were received from the counter-parties. It was also not their direct responsibility to follow-up the outstanding Bank Receipts or Securities, as it was the responsibility of the Manager of the Back-Office. It was also not the responsibility of the Back-Office to ensure that exposure limits were not breached. In such situation, it is contended by learned counsel for Accused, on facts, that, prosecution has failed to prove this allegation also.

According to his evidence, before the Bank had filed complaint in respect of this case with CBI, a detailed internal investigation was conducted by the Bank and thereafter the complaint was filed.

Santosh Mulgaonkar was not named as an Accused in the said SPSC-4-95-Judgment.doc complaint. In the Departmental Enquiry held against Santosh Mulgaonkar also, no fraudulent act was found to be done by him.

This fact is admitted by PW-25 Investigating Officer Bhupinder Kumar also. It is submitted that, there is also no evidence produced on record by the prosecution to show that SCB did not receive physical securities in respect of these transactions.

150. However, it is difficult to accept the submission advanced by learned counsel for the Accused. Admittedly, Accused No.17- Santosh Mulgaonkar has issued the Pay Order on the basis of the BRs, which were issued by the BOK, knowing that the said BRs were not backed-up with the physical securities. It becomes difficult to accept that, when he was day-to-day dealing with the securities transactions, he was not aware about the exposure limit of the BOK, which was only upto Rs.20 Crores. Here in the case, the transaction was for the amount of Rs.22,64,55,222/-. Except for PW-4 Vijay Saigal, who has, for the first time, introduced the concept of Mid- Office, which, according to him, was to look after the breach of the exposure limit, it was done obviously to help this Accused No.17- Santosh Mulgaonkar, who was working with him. No other witness has stated anything about the Mid-Office or who was working in the SPSC-4-95-Judgment.doc Mid-Office. Since beginning, the case of the prosecution, as deposed by the witnesses, which is not challenged in the cross-examination, is that, there were only two Offices; the 'Front-Office', where the Dealers were striking the deals, and the 'Back-Office', where documentation of the deals was done. Just as it was responsibility of the Dealer to ensure that the exposure limit was not breached, it was the responsibility of the Back-Office also to ensure that the said exposure limit was not breached.

151. Moreover, it is not only the case of breach of the exposure limit, but here Accused No.17-Santosh Mulgaonkar has accepted the BRs from the BOK, which were without back-up of the physical securities and without making any attempt to procure the physical securities. The Pay order and the Credit Voucher is issued with the signature of Accused No.17-Santosh Mulgaonkar. It cannot be accepted that, being a second signatory, he was not having any liability or dominion over the funds of the Bank and his role was limited only to check arithmetical calculations. Needless to state that, for the said role, there was sufficient clerical staff. Accused No.17-Santosh Mulgaonkar was working as 'Staff Officer'. He was the SPSC-4-95-Judgment.doc 'Authorized Signatory' of the Pay Order, Credit Voucher and Cheque. Thus, he was holding a responsible position.

152. Even if PW-1 Sanjay Pandit has, in the cross- examination, made an attempt to save Accused No.17-Santosh Mulgaonkar by submitting that, "when he has stated that Credit Voucher was authorized by Accused No.17-Santosh Mulgaonkar, he mean to state that, it was checked by Accused No.17-Santosh Mulgaonkar and not authorized by him", this clarification is also against the documents on record. The Credit Voucher and the Pay Order clearly holds a printed endorsement as "Authorized By", above the signature of Accused No.17-Santosh Mulgaonkar.

153. It can hardly be accepted that the second signatory has no dominion over the funds of the Bank. The very fact that a person holding responsible position like Staff Officer, who was next to the Manager of the Back-Office, was given authority to sign the Pay Order, Credit Voucher or Cheque, necessarily implies that, he has to, not only, check the arithmetical calculations, but also to ensure that the funds of the Bank are dispensed legally and properly. Here in the case, issuance of the Credit Voucher and the Pay Order by Accused SPSC-4-95-Judgment.doc No.17-Santosh Mulgaonkar in favour of BOK, which resulted into diversion of the funds of SCB on the basis of mere BRs, without back- up of the physical securities, does amount to offence of criminal breach of trust. The knowledge on the part of this Accused that the BRs issued by BOK were not backed by the securities, can easily be inferred, having regard to the fact that the exposure limit of BOK was only Rs.20 Crores, which fact cannot be said to be not within his knowledge. Hence, as regards Accused No.17-Santosh Mulgaonkar, it has to be held that, prosecution has sufficiently proved the charge levelled against him beyond reasonable doubt. It is totally irrelevant whether he was held guilty in the Departmental Enquiry or not and whether his name was cited in the complaint or not. The 'Charge- Sheet' elaborates his role and the prosecution has produced on record the evidence to prove the said role. The entire attempt appears to take advantage of the death of Accused No.8-Jaideep Pathak, the Manager of the Back-Office, to put the entire blame on him and to get escaped from the liability. The documentation part of the deal was definitely the liability of Accused No.17-Santosh Mulgaonkar and it was for him to execute the said deal as per the contents thereof in favour of Citi Bank. As he has not done so and issued the Pay Order and the Credit Voucher by accepting the BRs, SPSC-4-95-Judgment.doc which, to his knowledge, were not backed-up by the securities, he is liable for the offence, with which prosecution has charged him.

154. Now coming to the role of Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje. Accused No.10-Sudhakar Ail was working as the 'Clerk' and Accused No.11-C.S. Raje was working as the 'Manager' in the BOK. PW-9 Mukund Kher, the Officer from BOK, has proved on record that the BRs in this case were prepared by Accused No.10-Sudhakar Ail and issued and signed by Accused

No.11-C.S. Raje. These BRs were for the amount of Rs.22,64,55,222/- Crores. When the exposure limit of the BOK was only upto Rs.20 Crores and then these BRs were issued for the amount of Rs.22,64,55,222/- Crores, the dishonest intention on the part of these Accused, while issuing these BRs, can easily be inferred. Merely saying that they had no such dishonest or fraudulent intention, is not sufficient. It is the very issuance of these BRs, which has resulted into the diversion of funds, as, against these BRs, the Credit Voucher and the Pay Order were issued by SCB.

155. The role attributed to them is not only of issuance of BRs to their own knowledge, without backing of physical securities, but SPSC-4-95-Judgment.doc also of diversion of funds received from SCB to the account of Accused No.4-A.D. Narottam (Since Deceased). These Credit Vouchers (Exhibits 181, 183, 185 and 187), were prepared by Accused No.10-Sudhakar Ail and issued and signed by Accused No.11-C.S. Raje. They are sufficiently proved on record through the evidence of PW-9 Mukund Kher. By these Credit Vouchers, the amount of Rs.9,06,02,200/-, Rs.4,61,76,172/-, Rs.4,43,32,332/- and Rs.4,53,38,612/- was transferred to the account of Accused No.4- A.D. Narottam (Since Deceased). This conduct of the Accused No.10- Sudhakar Ail and Accused No.11-C.S. Raje of issuing the BRs, having the knowledge that they were not backed with securities, and thereafter diverting the funds to the account of Accused No.4-A.D. Narottam (Since Deceased), proves the charges levelled against them by the prosecution for the offence punishable u/s. 409, 467 and 471, r/w. Section 120-B, of IPC and also for the offence punishable u/s. 411, r/w. Section 120-B, of IPC.

156. As in all these transactions, it was Accused No.3-Hiten Dalal, who has acted as 'Broker' of SCB and caused SCB to enter into these transactions with BOK against the BRs, which, to his knowledge, were not backed-up with the securities, Accused No.3- SPSC-4-95-Judgment.doc Hiten Dalal is also required to be held liable for the offence punishable under Sections 409, 467, 471 and 411, r/w. Section 120- B, of IPC.

157. It is needless to state that, this entire transaction could not have taken place unless these Accused had acted in collusion with each other and in furtherance of the common object of divesting the SCB from its funds against the BRs, which were, to their knowledge, not backed-up with the securities and thereafter to further divert those funds to the account of Accused No.4-A.D. Narottam (Since Deceased). These Accused could not have done their part without the assistance, abetment and aid of the other co- accused. Hence, the charge of criminal conspiracy is sufficiently proved in respect of this transaction also. Transaction-III, dated 16 th December 1991 :-

158. The third transaction is in respect of purchase of NPLC and CIL Bonds. It is dated 16th December 1991. Prosecution case in respect of this transaction is described in Charges bearing Nos.93 to

96. According to these Charges, on 16th December 1991, Accused SPSC-4-95-Judgment.doc No.3-Hiten Dalal, being the 'Broker' of SCB, caused SCB to enter into purchase transaction of 13% NPCL Bonds of the face-value of Rs.16.50 crores, approximately, from Hong Kong and Shanghai Banking Corporation (HSBC) , through Accused No.15-Naresh Agarwal, who has acted as 'Broker' of HSBC. Accused No.8-Jaideep Pathak (Since Deceased) and Accused No.17-Santosh Mulgaonkar had

issued the Pay Order for this transaction, without receipt of the stock of BR and thereafter, omitted to take steps to procure the physicals and thereby committed the offence of criminal breach of trust.

159. According to the prosecution, in the course of some other transaction, Accused No.15-Naresh Agarwal was entrusted with BR No.2751 of CANBANK Mutual Fund in favour of HSBC for the face-value of Rs.16.5 crores in respect of the said stock of 13% NPCL Bonds by HSBC for onward delivery to SCB. Accused No.15-Naresh Agarwal, however, dishonestly misappropriated the said BR, instead of delivering the same to SCB. He has done it in collusion with Accused No.17-Santosh Mulgaonkar and has thus committed further offence under Section 409 r/w. 120-B of IPC. SPSC-4-95-Judgment.doc

160. In order to prove this charge against Accused No.3-Hiten Dalal, Accused No.15-Naresh Agarwal and Accused No.17-Santosh Mulgaonkar, the prosecution has relied upon the evidence of PW-1 Sanjay Pandit to prove the Deal-Slip dated 16th December 1991 (Exhibit-85) for the purchase of these 13% NPCL Bonds, for which BR of 13% CIL Bonds was delivered by HSBC. The prosecution has further produced on record the Pay Order at Exhibit-79, issued by SCB, favouring HSBC.

161. However, it has to be observed that, though, according to the prosecution case and the charge, this Pay Order (Exhibit-79) was alleged to be issued by Accused No.17-Santosh Mulgaonkar, PW- 1 Sanjay Pandit, in his evidence in examination-in-chief itself, has stated that this Pay Order was issued by him. Thus, the role of Accused No.17-Santosh Mulgaonkar of issuing the Pay Order, without securing or procuring the physicals or BR against the said transaction falls on the ground.

162. As regards the 'Charge' against Accused No.15-Naresh Agarwal, the Pay Order (Exhibit-79), issued by SCB, is for an amount of Rs.27.89 crores, which is not tallying with the amount SPSC-4-95-Judgment.doc mentioned in the Deal-Slip (Exhibit-85), which is for the purchase of 13% NPCL Bonds for the face-value of Rs.16.50 crores. No explanation is offered by the prosecution to co-relate these two documents or to show that the amount of the Pay Order at Exhibit 79 was towards the purchase of 13% NPCL Bonds.

163. As to the non-receipt of the BR for the said transaction, again no evidence is adduced by the prosecution to that effect. Though the 'BR Held Register' and the 'Securities In and Out Register' are produced on record at Exhibits 61 and 63, the entries therein have not been exhibited. Therefore, in the absence of any evidence proving the entries, it has to be held that there is no evidence to show whether BRs or Securities were actually received by SCB or not towards this transaction.

164. Further, there is also no evidence to show that BR No.2751 was in existence or was in the custody of HSBC and the same was handed over to Accused No.15-Naresh Agarwal or to M/s. N.K. Agarwal & Co. There is also no evidence to show the manner in which BR No.2751 came into custody of HSBC. Moreover, as per the Charge-Sheet itself, CANBANK Mutual Fund delivered physical SPSC-4-95-Judgment.doc Bonds of the face-value of Rs.15 crores and fresh BR No.2764 in favour of CANFINA to HSBC on 12th February 1992 to redeem the original BR No.2751. Hence, it cannot be accepted that BR No.2751 was entrusted to Accused No.15-Naresh Agarwal for onward delivery to SCB.

165. There is also no evidence on record to show that BR No.2751 is relatable to Rs.15 crores face-value of physical bonds and BR No.2764, which is supposed to have been sold by Accused No.3-Hiten Dalal to M/s. C. Mackertich & Co. There is no evidence to that effect, as PW-21 Ajay Kayan, who is 'Partner' of M/s. C. Mackertich & Co., has not deposed anything as regards this transaction.

166. There is, thus, no evidence on record to prove the involvement of Accused No.15-Naresh Agarwal in this transaction. Neither there is any Deal-Slip nor Delivery Order, Contract Note or letter to indicate the involvement of Accused No.15-Naresh Agarwal or of M/s. N.K. Agarwal & Co. in this transaction. Thus, the prosecution has failed to prove the substratum of the charge and also the necessary facts for proving the involvement of Accused No.15-Naresh Agarwal or of M/s.N.K. Agarwal and Co. There is also SPSC-4-95-Judgment.doc no evidence to show that Accused No.3-Hiten Dalal has aided or abetted Accused No.15-Naresh Agarwal in committing the offence of criminal breach of misappropriating BR No.2751.

167. As regards the purchase transaction of 13% CIL Bonds by SCB from HSBC, the charge framed against Accused No.15-Naresh Agarwal is under "Head 102". According to the prosecution, on 16 th March 1992, Accused No.3-Hiten Dalal caused SCB to enter into a transaction for the purchase of 13% CIL Bonds of the face-value of Rs.13.5 crores from HSBC. Accused No.15-Naresh Agarwal was the 'Broker' for HSBC and Accused No.8-Jaideep Pathak (Since Deceased) and Accused No.17-Santosh Mulgaonkar, being the employees of SCB, parted with the Pay Order for consideration towards purchase of securities, without receiving stock of the BR. Accused No.15-Naresh Agarwal took delivery of the CBMF BR from HSBC and misappropriated the same by not giving it to SCB, but sold the same back to HSBC. The amount received towards the sale consideration from HSBC was credited to the Account of Accused No.3-Hiten Dalal by way of a Ledger entry and thus, according to prosecution case, Accused No.3-Hiten Dalal, Accused No.8-Jaideep Pathak (Since Deceased), Accused No.15-Naresh Agarwal and SPSC-4-95-Judgment.doc Accused No.17-Santosh Mulgaonkar had committed the offence of criminal breach of trust.

168. The prosecution has, in order to prove this charge, examined PW-11 Abhay Palnitkar, the Officer from HSBC, who has proved the Delivery Order of HSBC to SCB (Exhibit-366) and the Pay Order of SCB (Exhibit-370). However, no evidence is led to co-relate these two documents. This witness has only identified the signature on Exhibit-366, without explaining or giving any evidence to prove this transaction. He has categorically admitted that, he has not been personally involved or connected to the transaction, in respect of which he has given evidence. He has no first-hand information about the same.

169. The prosecution has not proved the entries in the 'BR Held Register' and the 'Securities In and Out Register' to show that the relevant security was not received by SCB. The Deal-Slip is also not proved on record. There is also no evidence to show that HSBC has entrusted these Bonds to Accused No.15-Naresh Agarwal vide BR No.2491 from CBMF. The Delivery Order (Exhibit-372) is from M/s. N.K. Agarwalla & Co. to HSBC. There is no evidence to show SPSC-4-95-Judgment.doc that this document is signed by Accused No.15-Naresh Agarwal or he was, in any way, concerned with the transaction. PW-13 Yogesh Kapur and PW-22 Rajiv Sekhri, both from the said Bank, have

deposed that M/s. N.K. Agarwalla & Co. was managed by full time Managing Director and there were other Dealers dealing in Money Market Operations. As regards Accused No.15-Naresh Agarwal, they have deposed that, his transactions were restricted only to the shares, which were traded on the floor of the Stock Exchange.

170. Thus, there is no oral or documentary evidence on record to show that BR No.2491 was ever entrusted to Accused No.15-Naresh Agarwal. The only document on record is the Delivery Order of M/s. N.K. Agarwalla & Co. to HSBC, directing it to deliver the security of SCB. There is also no evidence to show that Accused No.15-Naresh Agarwal had received the sum of Rs.12.27 crores from HSBC. Learned Special P.P. has fairly conceded that, for want of sufficient evidence, the prosecution is not in a position to prove outflow of the funds.

171. Though the prosecution has led the evidence of PW-8 Matharu to show that, he has carried out some interior decoration SPSC-4-95-Judgment.doc work in the office premises of Accused No.15-Naresh Agarwal, at the instance of Accused No.3-Hiten Dalal, and Accused No.3-Hiten Dalal has paid for those charges, the finding recorded in the Miscellaneous Application No.196 of 2004 is clear to the effect that, the said premises in the Bootawalla Building belong to Mrs. Leena Dalal, the wife of Accused No.3-Hiten Dalal. There is no documentary evidence to prove the payment of the amount towards these charges by Accused No.3-Hiten Dalal. The original Ledger of the Account of the Firm of PW-8 Matharu, the Interior Decorator, is not produced. PW- 25 Investigating Officer Bhupinder Kumar is unable to confirm, if he had checked the original Ledgers. In the light of this quality of evidence brought on record by the prosecution, learned counsel for Accused No.15-Naresh Agarwal has rightly submitted that, the prosecution has failed to prove its case against Accused No.15- Naresh Agarwal for the charges levelled against him. Remaining 14 Transactions

172. In respect of all other remaining transactions, for which the charge is framed against the Accused, there is absolutely no evidence on record. The necessary documents are not at all proved SPSC-4-95-Judgment.doc by the prosecution and that may be the reason why in the written notes of arguments, learned Special P.P. has not given the details of the documents proved on record in support of the other transactions.

Charge of Criminal Conspiracy

173. Coming to the umbrella charge of "criminal conspiracy", under which all the Accused are implicated, according to learned counsel for Accused, to prove such charge, the prosecution has to establish various ingredients of the said offence, as laid down by the Hon'ble Apex Court in the case of State of Kerala Vs. P. Sugathan and Another, AIR 2000 SC 3323, as under :-

"(1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy;

(2) If the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;

(3) Anything said, done or written by him should SPSC-4-95-Judgment.doc have been said, done or written by him after the intention was formed by any one of them;

(4) It would also be relevant for the said purpose against another, who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it;

and (5) It can only be used against a co-conspirator and not in his favour."

174. According to learned counsel for the Accused, none of these ingredients are fulfilled in this case.

175. In my considered opinion, in the facts of the present case, it would be useful to refer to the landmark decision of the Hon'ble Apex Court in the case of Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748, wherein the Hon'ble Apex Court has, at length, dealt with the charge of criminal conspiracy, in the backdrop of the similar allegations, in a case arising out of the decision of this Court in the matter of Harshad Mehta and others. While dealing with the essential ingredients of the offence of criminal conspiracy, punishable u/s. 120B IPC, the Hon'ble Apex SPSC-4-95-Judgment.doc Court was, in paragraph No.349 of its Judgment, pleased to hold that, "349. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."

[Emphasis Supplied]

176. In paragraph No.345 of the said Judgment, while dealing with the ingredients of the offence of criminal conspiracy, the Hon'ble Apex Court was further pleased to hold that, "345. There should be an agreement between the persons who are alleged to have conspired and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may SPSC-4-95-Judgment.doc not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

[Emphasis Supplied]

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

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, SPSC-4-95-Judgment.doc that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." [See State of Kerala v. P. Sugathan, (2000) 8 SCC 203, SCC p. 212, para 14]." [Emphasis Supplied]

178. While dealing with the offence of criminal conspiracy in respect of the financial frauds, the Hon'ble Apex Court in the case of Ram Narain Poply (supra), in paragraph No.344, was pleased to observe that, "344. The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

[Emphasis Supplied]

179. In the context of Section 10 of the Indian Evidence Act, it was held by the Hon'ble Apex Court, in paragraph No.348, that, the SPSC-4-95-Judgment.doc expression "in furtherance to their common intention" in Section 10 is very comprehensive and appears to have been designedly used to give it a wider scope than the words "in furtherance of" used in the English Law : with the result anything said, done or written by co- conspirator after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

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

381. Funds of public bodies were utilized as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL a Government Company, were diverted and all the concerned accused persons A1, A3 and A5 played dubious roles in these illegitimate transactions. Their acts had serious SPSC-4-95-Judgment.doc repercussions on the economic system of the country and the magnitude of financial impact involved in the present appeal is only tip of the iceberg. There were several connected cases and interestingly some of the

prosecution witnesses in the present case are stated to be accused in those cases. That itself explains the thread of self-perseverance running through their testimony. Therefore, the need to pierce the facadial smoke screen to unravel the truth to lift the veil so that the apparent, which is not real can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

[Emphasis Supplied]

181. In the instant case, the evidence on record, as discussed above, clearly goes to prove that, without the active connivance and collusion of Officers in SCB viz. Accused No.17-Santosh Mulgaonkar, Officers of MCB viz. Accused No.6-Kishan Kapadia from MCB and Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje from BOK and the Brokers viz. Accused No.3-Hiten Dalal and Accused No.13- Ramaswamy, the crores of funds of the SCB could not have been diverted to the accounts of the Brokers.

182. The evidence on record also goes to prove that, there was SPSC-4-95-Judgment.doc blatant violation of the Rules and Regulations of the RBI. Apart from the judicial finding of fact recorded by this Court itself in the civil litigation that, "in the greed for profit, the Bank was flouting Rules and Regulations of the RBI. They were playing fast and loose and preparing false records", there is evidence of the witnesses in this case also like that of PW-1 Sanjay Pandit, who has categorically admitted that, "the Bank's objective was only to earn the profit at the rate of 15% p.a. and not the actual sale and purchase of the securities", and that, "these deals were basically amounting to falsification of accounts and these kinds of deals were done regularly", it is clear that, these securities transactions were entered into only ostensibly, as even the Officers of SCB, MCB and BOK were aware that they were not the genuine transactions. The funds of SCB were diverted by Accused No.3-Hiten Dalal and Accused No.17-Santosh Mulgaonkar against the BRs, which, to their own knowledge, were not backed-up by the securities.

183. Thus, when as per the own knowledge of the Accused- persons, these transactions were never intended to be as securities, it is clear that all these Accused have acted hand-in-gloves in these transactions. The criminality on the part of these Accused No.6- SPSC-4-95-Judgment.doc Kapadia, Accused No.10-Ail, Accused No.11-Raje and Accused No.17- Mulgaonkar of issuing the Credit Vouchers and the Cheques, without there being securities or BRs, and the criminality on the part of Accused No.3-Hiten Dalal of causing SCB to enter into these deals and Accused No.13-G. Ramaswamy of receiving the proceeds of these transactions, could not have taken place, unless all these Accused had played their individual parts in tandem, which parts were supplementary and complimentary to each other.

184. At the cost of repetition, it has to be stated that, these transactions could not have taken place, if these Accused-persons had not acted in collusion with each other. The entire sequence of transactions clearly proves that, these Accused had acted in collusion; everyone playing his part towards achieving the common object of criminal conspiracy.

185. The Hon'ble Apex Court has occasion to deal with similar such submissions, as advanced by learned counsel for Accused, in this case in respect of the charge of criminal conspiracy, in the

decision of R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SC 737. It was an appeal against the decision of this SPSC-4-95-Judgment.doc Special Court, pertaining to the 'Call Money Transaction' between NHB and UCO Bank. While dealing with the offence of criminal conspiracy in the said case, the Hon'ble Apex Court has quoted with approval the above referred paragraph No.344 in the case of Ram Narain Poply (Supra) to reiterate that, "The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible, which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment."

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

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187. Here in the case, Accused No.6-Kishan Kapadia, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje and Accused No.17- Santosh Mulgaonkar cannot also say that the decisions were taken at higher level by the Officers. They also cannot shift the blame on their superiors, when they themselves have entered into these transactions, which, to their own knowledge, were not securities transactions and which ultimately ended into diversion of crores of the funds of the SCB for the benefit of the Brokers. These illegalities could not have taken place without there being some active connivance between these two sets of Accused. It was only due to encouragement and support, which the co-conspirators, in this case, extended to each other, that the diversion of the funds of the Bank was possible, which, if left to individual effort, would have been impossible and, therefore, it furnishes the ground for proving the charge of criminal conspiracy.

188. To sum-up, therefore, as regards Accused No.3-Hiten Dalal, Accused No.6-Kishan Kapadia, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje, Accused No.13-Ramaswamy and Accused No.17-Santosh Mulgaonkar, I have no hesitation in holding that SPSC-4-95-Judgment.doc prosecution has brought on record sufficient evidence to prove the charge for the offence punishable under Sections 120-B of IPC. Charge for the Offence of Criminal Breach of Trust

189. As regards the charge under Section 409 of IPC, which pertains to criminal breach of trust, again this conduct on the part of Accused No.17-Santosh Mulgaonkar of diverting the funds of the SCB, over which he was having the dominion, Accused No.6-Kapadia, Accused No.10-Ail and Accused No.11-Raje of further diverting the funds of MCB and BOK, respectively, on which they had the dominion, clearly amounts to criminal breach of trust. Though it is the defence of Accused No.17-Santosh Mulgaonkar that these transactions were entered into, to the knowledge of the superiors and in view of the decision taken in the 'Internal Assets and Liabilities Committee Meeting' of 15% return from Accused No.3- Hiten Dalal, this argument cannot be accepted, as, ultimately, the funds were deployed with the Credit Voucher and the Cheques signed by Accused

No.17-Santosh Mulgaonkar and Accused No.8- Jaideep Pathak, who is no more.

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190. Moreover, this argument is a sort of a game of shifting the blame, which, as observed by the Hon'ble Apex Court in the case of Ram Narain Poply (Supra), is the outcome of the thread of self-preservation running through their defences. Moreover, if something is illegal, then, it cannot be justified even on the ground that it was done at the instance of the superiors. It also cannot be accepted that, as deposed by PW-1 Sanjay Pandit, these kinds of deals were done regularly and the falsification of accounts was the regular practice of SCB during those days. The Hon'ble Apex Court had, in the case of Ram Narain Poply (Supra), which also pertains to the 'securities scam', occasion to deal with such practices, under which the Accused-persons in the present case are taking the shelter and while rejecting the same, it was held in paragraph No.377, as follows :-

"377. The accused persons have tried to take shelter behind what they have described as "market practices". Such practices even if existing, cannot take the place of statutory and regulatory functions. There is no public interest involved in such practices and they cannot be a substitute for compliance with the regulatory or statutory prescriptions. An attempt was made to show that there was subsequent disapproval of the market SPSC-4-95-Judgment.doc practices : at the point of time when the transactions took place there was no embargo. It is their stand that the practices were a part of accepted norms. We do not find anything plausible in these explanations. A practice even if was prevailing, if wrong, is not to be approved. The subsequent clarifications do not in any way put seal the approval of the practices adopted on their part; on the other hand, it contemns it."

[Emphasis Supplied]

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

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

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

194. The next contention that, even the Auditors have not pointed out to these irregularities or alleged illegalities, needless to state that, this was the practice adopted by the Bank itself and, therefore, there was no question of Auditors pointing out any illegalities therein; but that does not mean that irregularities or illegalities were not there. They are bound to be noticed only when the diversion of the funds resulted into the losses in crores to the Bank.

195. As to the submission that SCB has failed to prove the alleged losses in the Special Suit and has unconditionally withdrawn some of the proceedings, the list of which is given by Accused No.3-SPSC-4-95-Judgment.doc Hiten Dalal and Accused No.6-Kishan Kapadia, this argument also cannot be of any help. While rejecting the similar contention raised by the Accused outrightly in the case of R. Venkatakrishnan Vs. Central Bureau of Investigation, AIR 2010 SC 1812, in the similar set of the facts proving diversion of the funds in the securities scam, the Hon'ble Apex Court has held that, "if the transaction was illegal, as a result whereof, a private person, who was not meant to be expected to reap the fruit of "call money", was allowed to retain the same for a period to make an unlawful gain therefrom, then, the offence of criminal breach of trust must be held to have been made out. It is for the same reason, the submission that as nobody ultimately suffered any loss, an offence under Section 409 of IPC was not made out, cannot be accepted."

196. In paragraph No.153 of the said Judgment, the Hon'ble Apex Court was further pleased to affirm that;

"153. A Bank or Financial Institution may not suffer ultimate loss, but if the money has been allowed to be used by another person illegally for illegal purposes, the ingredients of Section 405 of the Penal Code would get attracted. A case involving temporary embezzlement also SPSC-4-95-Judgment.doc attracts the ingredients of Section 405 of the Penal Code".

[Emphasis Supplied]

197. In the present case, admittedly, the funds, which were meant to be used for purchase of the securities, were diverted for the benefit of the Brokers. When Accused No.6-Kapadia, Accused No.11- Raje, Accused No.12-Desai and Accused No.17-Mulgaonkar had dominion over the funds of their respective Banks and they were expected to use those funds for particular purpose, then the conduct of the Accused, as held in the above-said 'Judgment' of the Hon'ble Apex Court, clearly amounts to criminal breach of trust. Hence, the argument that, SCB has failed to prove the loss caused to it in Special Suit, hence the charge under Section 409 of IPC cannot be held to be proved, cannot be accepted.

198. Though learned counsel for Accused No.17-Santosh Mulgaonkar has in this respect relied upon the Judgments of the Hon'ble Apex Court in the case of Common Cause, a registered Society Vs. Union of India and Others, (1999) 6 SCC 667 , and in the case of Sunilkumar S/o. Gayaprasad Mishra Vs. State of SPSC-4-95-Judgment.doc Maharashtra, through Police Station Officer, 2009 (3) Bom.L.R. 1074, to submit that, mere power to do something does not amount to entrustment, unless there is actual handing over of the property and the term 'property', as defined in Section 405 of

IPC, only includes "transferable, consumable or expendable property and not tangible property", in my considered opinion, in the light of the observations made by the Hon'ble Apex Court in the above-referred Judgments, which were arising out of the similar set of facts, as involved in the present case, the 'Judgments' relied upon by learned counsel for the Accused cannot be of much assistance.

199. Learned counsel for Accused No.17-Santosh Mulgaonkar has relied upon the 'Judgment' of the Hon'ble Apex Court in the case of S. Mohan Vs. Central Bureau of Investigation, (2008) 7 SCC 1, to submit that, the offence of criminal breach of trust is not maintainable, if the alleged victim of the offence has no grievance or complaints against the Accused. However, this 'Judgment' also cannot be made applicable to the facts of the present case, having regard to the fact that the victim of the offence in this case, namely, the Standard Chartered Bank, is very much still aggrieved and that SPSC-4-95-Judgment.doc is the reason why its Chief Executive Officer PW-28 Mr. P.S. Nat has come before the Court to give evidence.

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

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

The positive part deals with criminal
misappropriation or conversion of the

property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust."

[Emphasis Supplied] SPSC-4-95-Judgment.doc

201. In this decision, the Hon'ble Apex Court has quoted with approval its earlier decision in Jaswantrai Manilal Akhaney Vs. The State of Bombay, AIR 1956 SC 575, to the following effect, "If the Managing Director of the Bank entrusted with securities owned by the pledger disposes of their securities against the stipulated terms of the contract entered into by the parties with an intent to cause wrongful loss to the pledger and wrongful gain to the bank, there can be no question but that the Managing Director has necessarily mens rea required by Section 405."

202. In this decision, the Hon'ble Apex Court has further categorically held that, "When a person misappropriates to his own use the property that does not belong to him, the misappropriation is dishonest even though there was an intention to restore it at some future point of time".

203. According to the Hon'ble Apex Court, "To establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or SPSC-4-95-Judgment.doc misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion, which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion." [Emphasis Supplied]

204. In this case, therefore, in the face of gross and blatant violation of various Rules and Regulations of the RBI, when the funds were diverted, the mere fact that in civil litigation, SCB has failed to prove its losses, does not dilute in any way the criminality in the act.

205. As regards the contention of Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje or for that matter of Accused No.17- Santosh Mulgaonkar, that they have not received any benefit out of these transactions, this contention is also squarely met with the observations made by the Hon'ble Apex Court in the case of Vinayak Narayan Deosthali Vs. Central Bureau of Investigation, (2015) 2 SCC 553, wherein it was held as follows :-

SPSC-4-95-Judgment.doc "It was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorized conversion of public funds to private funds of an individual. Issuing of Bank Receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual. Patent illegality cannot be defended in the name of practice or direction of higher authorities. Mens rea is established from the fact that false Bank Receipts were issued for non-existent securities."

[Emphasis Supplied]

206. By holding thus in the said case, the offences of conspiracy, forgery, misappropriation and of corruption were held established against the Accused, some of whom were also the Bank Officials, like in this case.

207. Learned counsel for Accused No.17-Santosh Mulgaonkar has relied upon the 'Judgment' of the Gujarat High Court in the case of Motisinh Gambhirsinh Vs. The State of Gujarat, AIR 1961 Guj. 117; as also the 'Judgment' of the Division Bench of this Court in the case of State Government, Madhya Pradesh Vs. Hifzul Rahman and Others, AIR 1952 Nag 12; the 'Judgment' of the Special Court in the SPSC-4-95-Judgment.doc case of Central Bureau of Investigation Vs. Raghunath L. Wadhwa and Ors., in Special Case No.4 of 1997; decided on 30 th November 2007, [Coram : S.R. Sathe, J.], and the 'Judgment' of the Hon'ble Supreme Court in the case of Mir Nagvi Askari Vs. Central Bureau of Investigation, (2009) 15 SCC 643, to submit that, the essential ingredients of the forgery pertaining to making false documents, are not made in the present case. It is submitted that, merely because a false representation is made, it does not amount to making of a false document. However, in my

considered opinion, in the light of the 'Judgment' of the Hon'ble Apex Court in Ram Narain Poply (Supra) and considering the facts of the present case, when the BRs are issued, having full knowledge that they were not backed by the securities and it was done with a fraudulent and dishonest intention to believe that the said BRs were backed by the securities, then, definitely, the offence under Sections 467 and 471 of IPC stands made out in the present case.

208. In the instant case also, this contention raised by the Accused that they had no dishonest intention or they had not received any individual benefit, cannot be accepted. As a matter of fact, all these arguments were advanced by similar such Accused in SPSC-4-95-Judgment.doc other cases of financial scam, that took place during the said period, and those arguments were rejected by the Hon'ble Apex Court. Hence, there is no question of this Court accepting the similar arguments in the backdrop of the facts of the present case, wherein the illegalities alleged are more or less the same. Prosecution Case against remaining Accused Accused No.9-Tej Kumar Ruia

209. As regards Accused No.9-Ruia, PW-25 Bhupinder Kumar, the Investigating Officer, has admitted that, there was no material to show that he was either involved in the fraudulent transactions for obtaining the funds of the Bank or in the dishonest intention for misappropriation thereof. In the 'Charge-Sheet', there is a clear statement made to this effect and he was recommended to be discharged for want of sufficient evidence against him. Though the 'Closure Report' given against him was not accepted by this Court, despite the sufficient opportunities given to the prosecution for re- investigation, no material is gathered against him.

210. The only charge framed against Accused No.9-Ruia is SPSC-4-95-Judgment.doc under "Head 127", according to which, he has admitted in the meeting dated 23rd May 1992, held with the officers of the SCB, having received Rs.90 to Rs.125 crores from the account of Accused No.4-A.D. Narottam, out of the proceeds of the cheques and other securities issued by SCB in favour of BOK for the purchase of the securities. However, none of the witness has deposed anything about this meeting or about the admission given by Accused No.9-Ruia, of receipt of this amount of Rs.90 to Rs.125 crores. The alleged admission is, thus, not proved, nor any evidence is produced to show that he has actually received such a huge amount. The Investigating Officer PW-25 Bhupinder Kumar has categorically admitted that, even after further investigation, he did not find any sufficient evidence against Accused No.9-Ruia.

211. Moreover, Miscellaneous Civil Petition No.269 of 1995 was filed by the SCB against Accused No.9-Ruia for recovery of Rs.75 crores, together with interest @ 20% p.a. This Suit was filed relying on the alleged admissions given by Accused No.9-Ruia in the meeting dated 23rd May 1992 and 3rd June 1992. However, the said Petition has been unconditionally withdrawn by the SCB on 31 st August 1996 and this Court was pleased to impose the costs of Rs.5,000/- on SCB SPSC-4-95-Judgment.doc for the same. The certified copy of the said order is produced by Accused No.9-Ruia in his written statement recorded under Section 313 of Cr.P.C.

212. It is also pertinent to note that, SCB has also filed Miscellaneous Petition No.29 of 1995 against the Official Liquidator of Metropolitan Co-operative Bank and others, wherein M/s. Dhanraj Mills Private Limited was made party-Defendant No.8. The said Petition was filed for recovery of the

amount of Rs.3,75,000/-, along with the interest thereon. However, the said Petition is also unconditionally withdrawn by the Bank on 9th October 1997, subject to costs of Rs.10,000/- payable by the Bank to each of the Defendants. The certified copy of the said order is also filed by Accused No.9-Ruia in his statement recorded under Section 313 of the Cr.P.C.

213. Thus, by unconditional withdrawal of both these Petitions, the Bank has admitted that Accused No.9-Ruia is not having any liability towards the Bank. Otherwise also, not a single piece of evidence is produced on record by the prosecution to show that any such statement was made by Accused No.9-Ruia, admitting SPSC-4-95-Judgment.doc his liability to the Bank. As a matter of fact, PW-28 P.S. Nat, the Complainant in the case, had also admitted that he does not have any document to show that the meeting was held at Taj Hotel, where this admission was allegedly given by Accused No.9-Ruia. As stated above, the Investigating Officer has to admit that, even after further re-investigation, he did not find any sufficient evidence against this Accused No.9-Ruia. That may be the reason why the prosecution has also not pressed its case against Accused No.9-Ruia. In view thereof, sans any evidence on record, Accused No.9-Ruia is required to be acquitted of the specific charge levelled against him under "Head 127" of receiving the stolen property. As regards the other charges, r/w. Section 120-B of IPC, none of the witnesses have stated anything against him. Hence, he deserves to be acquitted of both the charges levelled against him.

Accused No.16-G.N. Hegde

214. Even as regards Accused No.16-Hegde, the only charge alleged against him is under "Head 126", for the offence punishable under Section 411 r/w. Section 120-B of IPC. It is alleged that, Accused No.16-Hegde, being the Broker of Bank of America, utilized SPSC-4-95-Judgment.doc the funds, which were fraudulently siphoned-off from SCB through the BRs dated 31st October 1991 and 1st November 1991. However, again as regards this charge also, the prosecution has not led any evidence whatsoever to prove these two transactions. As stated above, the prosecution has pressed into submission only three transactions, which are dated 16th December 1991, 20th April 1991 and 22nd February 1992. In the entire evidence on record, there is no document proved by the prosecution, which is either signed, initialed, written or containing the name or in any manner related to Accused No.16-Hegde. There is also no oral evidence to prove these transactions. It is also not explained as to how these monies were siphoned-off to the account of Accused No.16-Hegde. The prosecution has fairly conceded that, there is no evidence to prove the outflow of the funds. In view thereof, case against Accused No.16-Hegde is also required to be held as "not proved" and he also deserves to be acquitted.

Accused No.1-Bhupendra Dalal

215. As regards Accused No.1-Bhupendra Dalal, the allegation against him is that, some of the funds of SCB went to his SPSC-4-95-Judgment.doc account. Therefore, the allegation against him is of receipt of the outflow of the funds from SCB. However, prosecution has not adduced any evidence on this aspect. Conversely, learned Special P.P. has fairly conceded that, as regards the outflow of the funds, the prosecution is not having sufficient evidence. Hence, again Accused No.1-Bhupendra Dalal needs to be acquitted of all the charges levelled against him.

216. The net result of the discussion, therefore, is that, in the absence of incriminating evidence on record, Accused No.1- Bhupendra Dalal, Accused No.7-Arvind Mohanlal, Accused No.9-Tej Kumar Ruia, Accused No.14-Krishnakant Vyas, Accused No.15- Naresh Aggarwala and Accused No.16-G.N. Hegde deserve to be acquitted of all the offences levelled against them.

217. To sum up, therefore, I have no hesitation in holding Accused No.3-Hiten Dalal, Accused No.6-Kishan Kapadia, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje, Accused No.13-S. Ramaswamy and Accused No.17-Santosh Mulgaonkar guilty for the offence punishable under Section 120-B of IPC; SPSC-4-95-Judgment.doc (A) In respect of the first transaction, dated 22 nd February 1992, the prosecution has succeeded in proving its case against;

(i) Accused No.17 - Santosh Mulgaonkar for the offence punishable under Section 409 of IPC;

(ii) Accused No.3-Hiten Dalal and Accused No.6-Kishan Kapadia for the offence punishable under Section 409, r/w. Section 120-B, of IPC;

(iii) Accused No.6-Kishan Kapadia for the offence punishable under Section 467 of IPC;

(iv) Accused No.3-Hiten Dalal and Accused No.6-Kishan Kapadia for the offence punishable under Section 471, r/w. Section 467, r/w. 120-B, of IPC;

(v) Accused No.3-Hiten Dalal and Accused No.6-Kishan Kapadia for

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the offence punishable under Section 414, r/w. Section 120-B, of IPC;

(vi) Accused No.13-S. Ramaswamy for the offence punishable under Section 411, r/w. Section 120-B, of

IPC;

(B) In respect of the second transaction, dated 20th April 1991, the prosecution has succeeded in proving its case against;

(i) Accused No.17-Santosh Mulgaonkar for the offence punishable under Section 409 of IPC;

(ii) Accused No.3-Hiten Dalal, Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje for the offence punishable under Section 409, r/w. 120-B, of IPC;

(iii) Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje for the offence punishable under Sections 467 and 471, r/w. 120-B, of IPC;

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(iv) Accused No.3-Hiten Dalal for the offence punishable under Section 471, r/w. Section 120-B, of IPC;

(v) Accused No.3-Hiten Dalal, Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje for the offence punishable under Section 414, r/w. Section 120-B, of IPC and Accused No.13-Ramaswamy for the offence punishable under Section 411 of IPC.

218. As regards rest of the transactions and the charges, prosecution has failed to prove its case against all the Accused. Hence, Accused No.1-Bhupendra Dalal, Accused No.7-Arvind Mohanlal, Accused No.9-Tej Kumar Ruia, Accused No.14- Krishnakant Vyas, Accused No.15-Naresh Aggarwala and Accused No.16-G.N. Hegde, deserve to be acquitted of all the charges levelled against him.

219. To sum up, therefore, Accused No.3-Hiten Dalal, Accused No.6-Kishan Kapadia, Accused No.10-Sudhakar Ail, Accused No.11- SPSC-4-95-Judgment.doc C.S. Raje, Accused No.13-Ramaswamy and Accused No.17-Santosh Mulgaonkar, stand convicted for the offence

punishable under Section 409, r/w. 120-B, of IPC.

220. Accused No.3-Hiten Dalal, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje and Accused No.17-Santosh Mulgaonkar, are further convicted for the offence punishable under Section 471, r/w. Section 467, r/w. Section 120-B, of IPC.

221. Accused No.3-Hiten Dalal, Accused No.6-Kishan Kapadia, Accused No.10-Sudhakar Ail and Accused No.11-C.S. Raje, are further convicted for offence punishable under Section 414, r/w. Section 120-B, of IPC.

222. Accused No.13-Ramaswamy is further convicted for the offence punishable under Section 411 of IPC.

223. At this stage, I stopped my dictation, in order to hear these Accused on the question of sentence.

224. Accused No.3-Hiten Dalal, who is present in person, has SPSC-4-95-Judgment.doc submitted that, he is now running the age of around 60 years. He has already undergone the imprisonment in similar other cases to the extent of 5 ½ years and in this case, for a period of more than 3 ½ years as under-trial prisoner. It is urged that, considering that the offence had taken place in the year 1992, at this stage, sentencing him to any further imprisonment would be really harsh on him and hence, a lenient view be taken.

225. As regards Accused No.6-Kishan Kapadia, the application for exemption is filed on his behalf by his learned counsel by submitting that, Accused No.6-Kishan Kapadia is admitted in the hospital on 5th January 2019 at Surat and has undergone the operation on 6th January 2019 for 'Right Hip Uncemented Heriarthroplasty'. Though he is discharged on 9th January 2019, on account of his old age and the nature of the injury, he is advised complete bed rest for two months. Along with the application for exemption, the photocopies of his Medical Certificate and the treatment are also produced on record. Learned counsel for Accused No.6-Kishan Kapadia, therefore, submits that, his presence may kindly be exempted.

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226. Learned Special P.P., in this respect, draws attention of this Court to the provisions of Section 353(6) of Cr.P.C. and especially to its 'Proviso', which lays down that, "Where there are more Accused than one and one or more of them do not attend the Court on the date, on which the 'Judgment' is to be pronounced, the Presiding Officer may, in order to avoid undue delay in the disposal of the case, pronounce the 'Judgment', notwithstanding their absence."

227. Here in the case, in all, 12 Accused are involved. Hence, taking into consideration that the offence has taken place in the year 1992 and the trial has been dragged for more than two decades, there is no point in further adjourning the matter for pronouncement of the 'Judgment'; especially, in view of the Medical Certificate tendered by learned counsel for Accused No.6-Kishan Kapadia,

showing that Accused No.6-Kishan Kapadia is advised bed rest for a period of two months. Hence, the 'Judgment' is pronounced in his absence. However, the submissions as regards the question of sentence to be passed against Accused No.6-Kishan Kapadia, are heard from the learned counsel for Accused No.6-Kishan Kapadia. SPSC-4-95-Judgment.doc

228. It is submitted by learned counsel for Accused No.6- Kishan Kapadia that, at present, Accused No.6-Kishan Kapadia is running the age of 84 years and he is suffering from various ailments. It is urged that, he is unable even to move around and, therefore, in his submission, this is a fit case, where a lenient view is justified.

229. Accused No.10-Sudhakar Ail has submitted that, he is also running the age of 73 years and suffering from various physical ailments. He has already undergone the sentence in one of the case, in which he was convicted and the Appeal preferred against it has been disposed off, maintaining the conviction, but reducing the sentence to the period already undergone. He has undergone the sentence of 14 days in this case and 30 days in the earlier case and hence, it is urged that, a lenient view is justified in his case also.

230. Accused No.11-C.S. Raje has submitted that, he is running the age of about 78 years. He has also undergone the sentence of about 16 months in the earlier case and 30 days in this case. Therefore, it is requested that, a lenient view is required to be taken in his case also, having regard to the role played by him. SPSC-4-95-Judgment.doc

231. Accused No.13-S. Ramaswamy has submitted that, he has been convicted and undergone the sentence in Special Case No.7 of 1993. The Appeal against the said 'Judgment' is disposed off, reducing the sentence to the period already undergone. It is urged that, he is running the age of 84 years and hence, taking into consideration the fact that, in this case also, he has undergone one month's imprisonment, the same sentence be considered as sufficient.

232. Accused No.17-Santosh Mulgaonkar has submitted that, he has already suffered a lot, both, in his professional and personal life. He has lost his wife at an early age and now he is looking after his children. Physically also he is not capable to withstand any further rigors of the punishment and, therefore, it is urged that, a lenient view may be taken in respect of the punishment to be imposed on him also.

233. It is the submission of learned counsel for all these Accused that, the trial of this case has dragged for a period of more than 23 years. The offence has taken place in the year 1992. These SPSC-4-95-Judgment.doc Accused have undergone mental and physical agony during all this period of not less than 23 years. They have suffered in their personal lives also. Some of them have lost their jobs, some of them have lost their loving family members. Hence, the Hon'ble Supreme Court had also, being aware of these aspects, all along, taken a very lenient view and though conviction of some of these Accused was maintained in the Appeals, the sentence was modified to the period already undergone.

234. Learned counsel for Accused No.17-Santosh Mulgaonkar has, in support of this submission, relied upon various orders passed by the Hon'ble Supreme Court in several Appeals preferred by the Accused against conviction in similar such cases. According to learned counsel for Accused No.17-Santosh Mulgaonkar, the message that Hon'ble Supreme Court wants to send to this Court also is that, these Accused, who are small flies in the entire scam, that had taken place, have already suffered; though the offences may be economic, they have, as such, not gained any pecuniary benefit out of these transactions and, therefore, in some of the cases, even though the period undergone was very short or Accused was not arrested at all, the Appeals were disposed off, by maintaining the SPSC-4-95-Judgment.doc conviction, but reducing the sentence to the period already undergone in Jail. Hence, it is urged that, this Court should also, taking the note of the same message, release these Accused on the punishment, which they have already undergone; either as an under-trial prisoner in this case or other cases.

235. Learned counsel for Accused No.17-Santosh Mulgaonkar has also relied upon the 'Judgment' of the Hon'ble Supreme Court in the case of Dr. Jacob George Vs. State of Kerala, (1994) 3 SCC 430 , to submit that, The deterrence need not always be in the form of imprisonment or the punishment in the Jail. It can be in several other aspects also; like in the present case, where the sword of punishment and the outcome of this trial was all along hanging on the heads of the Accused. According to learned counsel for these Accused, therefore, this is a fit case where this Court should adopt a lenient approach.

236. Per contra, learned Special P.P. has strongly controverted the submissions made by learned counsel for the Accused. It is submitted by him that, the offences in this case are of serious nature. They have resulted into affecting the economy of the SPSC-4-95-Judgment.doc country as such. It is the role played by these Accused, which has resulted into these bogus transactions taking place on the basis of only the BRs, which were also not received at times and if received, they were not backed by the physical securities. Therefore, in his opinion, leniency is not at all justified.

237. In support of his submission, learned Special P.P. has relied upon the 'Judgments' of the Hon'ble Supreme Court in the case of State of Punjab Vs. Bawa Singh, (2015) 3 SCC 441; Shanti Lal Meena Vs. State of NCT of Delhi, CBI, AIR 2015 SC 2678; Devchand Kalyan Tandel and Ors. Vs. State of Gujarat and Ors., AIR 1996 SC 2787, holding that, "Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats."

238. It is submitted by learned Special P.P. that, this Court has to send a strong message to the Society that, such financial scam, which occurred on account of the collusion and connivance of the Officers of the Banks and the Brokers, should not be repeated again. SPSC-4-95-Judgment.doc In his submission, therefore, this Court should take a deterrent view.

239. I have given my thoughtful consideration to the submissions advanced by learned counsel for the Accused and learned Special P.P.

240. It is true that this case has dragged for a period of more than 20 years and during all this time, Accused have suffered mentally and physically in their professional and also in their personal lives. To some extent, these sufferings can be considered as deterrent also for others not to undertake or to repeat such acts, which has serious impact on the economy of the Nation. It is also true that these Accused are, at this advanced age of their lives, suffering from various physical ailments. It may further be true that some of the Accused were in that respect not in a position of authority as such, but working as clerical staff or only at managerial level and as submitted by them, they were implementing the decisions taken by the Superiors. All these factors need to be weighed before arriving at a proper sentence.

241. At the same time, the submissions advanced by learned SPSC-4-95-Judgment.doc Special P.P. also cannot be ignored, that these transactions, in which the roles of these Accused stand proved, have really affected the economy of the Nation and also resulted into the loss of public confidence in the Banking System.

242. Therefore, an attempt is required to do the balancing act between the submissions of the Accused, which are upheld, as per learned counsel for the Accused, by the Hon'ble Supreme Court also, by releasing them on the punishment already undergone and also to the submissions made by learned Special P.P. that inadequate sentence does more harm to the Justice Delivery System, than it is expected.

243. In this case, except for Accused No.3-Hiten Dalal, other Accused have not undergone more than 30 days imprisonment in this case and to release the Accused on such a meager sentence, would not be justified. Therefore, I proceed to pass the following order :-

"O R D E R"

(i) Accused No.3-Hiten Dalal, Accused No.6-

Kishan Kapadia, Accused No.10- SPSC-4-95-Judgment.doc Sudhakar Ail, Accused No.11-C.S. Raje, Accused No.13-S. Ramaswamy and Accused No.17-Santosh Mulgaonkar, are convicted for the offence punishable under Section 409, read with Section 120-B, of IPC and sentenced to suffer Rigorous Imprisonment for one year and to pay the fine of Rs.30,000/- each;

in default, to suffer Rigorous Imprisonment for three months.

(ii) Accused No.3-Hiten Dalal, Accused No.6-

Kishan Kapadia, Accused No.10- Sudhakar Ail, Accused No.11-C.S. Raje and Accused No.17-Santosh Mulgaonkar are further convicted for the offence punishable under Section 471, read with Section 467, read with Section 120-B, of IPC and sentenced to suffer Rigorous Imprisonment for two years and to pay the fine of Rs.25,000/- each; in default, SPSC-4-95-Judgment.doc to suffer Rigorous Imprisonment for two months.

(iii) Accused No.3-Hiten Dalal, Accused No.6-

Kishan Kapadia, Accused No.10- Sudhakar Ail and Accused No.11-C.S. Raje are further convicted for the offence punishable under Section 414, read with Section 120-B, of IPC and sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.10,000/- each; in default, to suffer Rigorous Imprisonment for one month.

(iv) Accused No.13-S. Ramaswamy is further convicted for the offence punishable under Section 411 of IPC and sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.20,000/-; in default, to suffer SPSC-4-95-Judgment.doc Rigorous Imprisonment for two months.

(v) All the substantive sentences of imprisonment to run concurrently. Each of these Accused are entitled to set-off for the period already undergone in Jail in this case.

(vi) As regards Accused No.3-Hiten Dalal, it is submitted that, in this case also, he has undergone 3 years imprisonment.

Office of the Special Court to verify and if it is so, then he need not undergo further sentence, as he is entitled for the set-off.

(vii) Accused No.1-Bhupendra Dalal, Accused No.7-Arvind Mohanlal, Accused No.9-Tej Kumar Ruia, Accused No.14-

Krishnakant Vyas, Accused No.15- Naresh Aggarwala and Accused No.16- SPSC-4-95-Judgment.doc G.N. Hegde, are acquitted of all the charges levelled against them.

244. At this stage, learned counsel for the Accused prefer the applications for suspension of sentence, in order to enable them to approach the Hon'ble Supreme Court against the 'Judgment and Order' of this Court.

245. Considering that none of the Accused is sentenced to suffer imprisonment above three years and during pendency of the trial, they were released on bail, in view of Section 389(3) of the Cr.P.C., their substantive sentences of imprisonment are suspended till the Appeal period, which is of 30 days, as per Section 10 of the Special Court Act, from the date of 'Judgment' of this Court.

246. Accordingly, Accused No.3-Hiten Dalal, Accused No.6- Kishan Kapadia, Accused No.10-Sudhakar Ail, Accused No.11-C.S. Raje, Accused No.13-S. Ramaswamy and Accused No.17-Santosh Mulgaonkar, are released on fresh P.R. and Surety Bonds of the same amount, on which they were released on bail. SPSC-4-95-Judgment.doc

247. On the request of learned counsel for the Accused, the time of two weeks is granted for payment of the fine amount.

248. On behalf of Accused No.6-Kishan Kapadia, who is not present before the Court, his learned counsel submits that, he will communicate this 'Judgment' and sentence to Accused No.6-Kishan Kapadia and ensure that the fresh P.R. Bond is to be executed with furnishing fresh Surety Bond and also the fine amount will be deposited within a period of two weeks from today. The statement is accepted.

249. Time is granted to Accused No.6-Kishan Kapadia for furnishing fresh P.R. Bonds with Surety within a period of two weeks from today.

250. As regards the Accused, who stand acquitted, i.e. Accused No.1-Bhupendra Dalal, Accused No.7-Arvind Mohanlal, Accused No.9-Tej Kumar Ruia, Accused No.14-Krishnakant Vyas, Accused No.15-Naresh Aggarwala and Accused No.16-G.N. Hegde, their Bail Bonds stand cancelled.

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251. However, as per Section 437-A of the Cr.P.C., they are directed to execute the P.R. Bonds of the amount of Rs.50,000/- each, with Surety Bond in the like amount, to appear before the Hon'ble Supreme Court, as and when such Court issues notice in respect of any Appeal or Petition, that may be filed against the 'Judgment' of this Court, and such Bail Bonds shall be in force for a period of six months.

252. They have to execute the fresh P.R. Bonds today itself, i.e. 30th January 2019; however, for furnishing the Sureties, on their requests, time of two weeks is granted.

253. With this, the 'Judgment' stands concluded.

[DR. SHALINI PHANSALKAR-JOSHI, J.] SPSC-4-95-Judgment.doc