

IN THE SPECIAL COURT AT BOMBAY
(*Constituted under the Special Court [Trial of Offences Relating to
Transactions in Securities] Act, 1992*)

**SPECIAL CASE NO.2 OF 1994
IN
C.B.I. CASE NO.R.C.52/A/92-BOM**

Central Bureau of Investigation] ... Complainant

Versus

1. Coodli Ravikumar]
S/o. Shri C. Chandrasekhar,]
Assistant General Manager,]
National Housing Bank,]
Bombay Life Buildings,]
IIIrd Floor, 45, Veer Nariman Road,]
Bombay – 400 023.]
Resident of A1/186, Snehadhara]
Co-operative Society, Dadabhai]
Cross Road No.3, Vile Parle (W),]
Bombay – 400 056.]
Permanent Resident of House]
No.648, Shilpa, 14th Cross, 14th Main,]
J. P. Nagar, IInd Phase,]
Bangalore – 400 078.]
2. Seetapathy Suresh Babu,]
S/o. Shri R. Seethapathy,]
Assistant Manager,]
National Housing Bank,]
Bombay Life Buildings,]
IIIrd Floor, Veer Nariman Road,]
Bombay – 400 023.]
Resident of B-9. Shaakya Vihar]
Co-operative Housing Society,]
Behind Usha Apartments,]
90 Ft Road, Mulund (E),]
Bombay – 400 081.]

- Permanent Resident of No.1,
Tagore Street, Ayyappa Nagar,
Thiruchirappally, Tamil Nadu.
3. R. Sitaraman,
S/o. Late K. Ramasubramaniam,
Officer, JMG-I, Securities Division,
State Bank of India,
Bombay Main Branch, Bombay.
- Resident of 11, Shantiniketan,
Lallubhai Park, Andheri (West),
Bombay – 400 058.
4. Harshad S. Mehta,
S/o. Late Shantilal M. Mehta
Proprietor M/s Harshad S.Mehta,
Stock, Securities & Finance Broker,
1205/6/1518, Maker Chambers,
V-221, Nariman Point,
Bombay – 400 021.
- Resident of Madhuli, 3rd Floor,
A. B. Road, Worli, Bombay–400 018.
5. Atul M. Parekh,
S/o. Late Manubhai Parekh,
Assistant Vice-President,
M/s. Harsh Estates Ltd.,
1518, Maker Chambers,
V. Nariman Point, Bombay-400 021.
- R/of 705/6, Prabhu Apartments,
Near Rajawadi Hospital,
Ghatkopar (East), Bombay - 400 077.
6. Pankaj B. Shah,
S/o. Shri. Vrijlal C. Shah,
Assistant Vice President,
M/s. Growmore Research & Assets
Management Ltd.,
1205-6, Maker Chambers,
- (**Abated / 23.4.2002**)

- V. Nariman Point, Bombay – 400 021.]
R/of 16, Rajshree Kutir, 37, Jagdusha]
Nagar, Ghatkopar (West), Bombay 86.]
]
7. Sudhir S. Mehta,]
S/o. Late Shantilal M. Mehta,]
Authorized signatory for]
M/s Harshad S Mehta, 1205-6,]
Maker Chambers, V. Nariman Point,]
Bombay – 400 021.]
]
- R/o Madhuli, 3rd Floor, Dr. A. B. Road,]
Worli, Bombay.]
]
8. Hiten B. Mehta,]
S/o. Late Bhupatrai Mehta,]
Treasury Dealer,]
M/s. Harshad S. Mehta,]
12th Floor, Maker Chambers,]
V. Nariman Point, Bombay – 400 021.]
]
- R/o. 6B Baria Apartments, Marwari]
Chawl, Opp. Telephone Exchange,]
S.V. Road, Malad (West),]
Bombay – 400 064.]
]
9. Deepak B. Mehta,]
S/o. Late Bhupatrai M. Mehta,]
Partner of M/s Extol Investments]
& Proprietor of M/s. D. M. Investments,]
6B Baria Apartments, Marwari Chawl,]
Opp. Telephone Exchange,]
S.V. Road, Malad (West),]
Bombay – 400 064.]
]
- Resident of 6B, Baria Apartment,]
Marwari Chawl, Opposite Telephone]
Exchange, S.V. Road, Malad (W),]
Bombay – 400 064.]
]
10. Virendra D. Damani,]
S/o. Shri. Dulerai K. Damani,]

M/s Extol Investments, S. V. Road,]
Malad (West), Bombay – 400 064.]
R/of Plot No.103, Ashirwad,]
Room No.2, Liberty Garden,]
Road No.2, Malad (West), Bombay.] Accused

Shri. Limosin, Senior P.P., for the Complainant-CBI.

Shri. R. Satyanarayanan for Accused No.1-Ravikumar.

Accused No.2-Suresh Babu and Accused No.3-Sitaraman are present-in-person.

Accused No.4-Harshad S. Mehta dead.

Shri. Ajay Kandhar for Accused No.5-Atul and Accused No.6-Pankaj.

Shri. Vivek Sharma for Accused No.7-Sudhir.

Shri. D.U. Mirajkar for Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra.

CORAM : **DR. SHALINI PHANSALKAR-JOSHI, J.**
RESERVED ON : **23RD SEPTEMBER 2016.**
PRONOUNCED ON : **25TH NOVEMBER 2016.**

JUDGMENT :

1. This Special Case is pertaining to the offences relating to transactions in securities, which popularly came to be known as '*Securities Scam of the Year - 1992*' and which has rocked the economy of the country. Accused No.4-Harshad S. Mehta, since deceased, (*for short*, "*Accused No.4-HSM*"), is said to be the kingpin of the said scam, who

has, according to the prosecution case, in connivance with the Officers of National Housing Bank, State Bank of India and various other Banks and Financial Institutions, illegally siphoned-off crores of funds of the Banks and Financial Institutions for speculative returns by systemic and deliberate abuse of the system.

2. Accused No.1-Ravikumar and Accused No.2-Suresh Babu in this case, at the relevant time of incident, were Assistant General Manager and Assistant Manager, respectively, of the National Housing Bank, (*for short, "NHB"*), established under the National Housing Bank Act, 1987, (*for short, "the NHB Act"*). Accused No.1-Ravikumar was in-charge of the Fund Management Group, (*for short, "FMG"*), which was established to deal with the transactions of the securities for deployment of the funds of the NHB.

3. Accused No.3-Sitaraman was the Officer of the State Bank of India, (*for short, "SBI"*), who, at the relevant time, was handling these securities transactions with various other Banks and Brokers.

4. Accused No.4-HSM, since deceased and hence case being abated against him on 23rd April 2002, was the kingpin and the main culprit for the entire security scam that broke out in the wake of the early months of 1992.

5. Accused No.5-Atul and Accused No.6-Pankaj were the Assistant Vice Presidents of M/s. Harish Private Limited and M/s. Growmore Research and Asset Management Limited, which were the Partnership Firms of Accused No.4-HSM.

6. Accused No.7-Sudhir is the brother of Accused No.4-HSM and, like Accused No.8-.Hiten, Accused No.9-Deepak and Accused No.10-Virendra, he was also dealing in the business of Broker.

7. The gravamen of the charge levelled against all these Accused is of entering into criminal conspiracy with an object to commit criminal breach of trust by misappropriating the funds of NHB with an intention to obtain valuables, securities and pecuniary advantage to Accused No.4-HSM without any public interest.

8. As per prosecution case, Accused No.1-Ravikumar and Accused No.2-Suresh Babu, being the Officers of NHB and having dominion over the funds of NHB, and Accused No.3-Sitaraman, being in-charge of the securities transactions at SBI, have committed this criminal breach of trust by misappropriating the funds of NHB, by transferring the said funds to the accounts of Accused No.4-HSM by showing fake transactions of purchase of securities from SBI, by preparing forged documents to substantiate the

said transactions with the aid and abatement of Accused No.5-Atul and Accused No.6-Pankaj, who were working with Accused No.4-HSM, and in abatement with the Brokers, namely, Accused No.7-Sudhir, Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra, who were dealing with the securities.

9. It is also the prosecution case that Accused No.1-Ravikumar and Accused No.2-Suresh Babu have also committed the offence of cheating other Financial Institutions by entering into the transactions of purchase and sale of securities by issuing the Bank Receipts, (*for short, "BRs"*), without those receipts being backed by the securities, which were not in existence at all, and inducing these Financial Institutions to part with large amounts in favour of NHB and also by preparing forged and fabricated documents to substantiate these transactions of sale and purchase.

10. Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are further charged and tried for the offences punishable under Sections 409 r/w. 120B of IPC and Sections 13(1)(c) and 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988.

11. Accused No.1-Ravikumar and Accused No.2-Suresh Babu are also charged further for the offence punishable under Section 477A r/w. Section 120B of IPC.

12. Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir are specifically charged for the offence punishable under Section 409 r/w. Section 109 r/w. Section 120B of IPC.

13. Accused No.8-Hiten and Accused No.9-Deepak are specifically charged for the offences punishable under Sections 467 and 471 r/w. Section 120B of IPC.

14. Accused No.9-Deepak and Accused No.10-Virendra are tried with a specific charge for the offences punishable under Sections 403, 467 and 471 r/w. Section 120B of IPC.

15. All these accused, thus, stand charge-sheeted and being tried for the offence punishable under Section 120B of IPC, which is referred as “umbrella” charge and for various other offences punishable under Sections 403, 409, 411, 420, 467, 471, 477 r/w. Sections 120B, 467 and 477A of IPC.

16. Before adverting to the facts of this particular case, for better understanding of the case against these accused, it would be necessary to take overview of the short history, which acts as background to this case.

BACKGROUND FACTS

17. During the period April-1992 and June-1992, certain large scale irregularities and mal-practices were detected in transactions of, both, the Government and other Securities, committed by some Brokers in collusion with the employees of various Banks and Financial Institutions. In the first week of April-1992, Reserve Bank of India, (*for short, "RBI"*), advised SBI to furnish Statement of Investments held by them upto 31st January 1992. SBI could not furnish the details and found that there is a huge short fall in the securities. When news-report to that effect appeared in the 'Times of India' on 23rd April 1992, RBI appointed a five-member Committee headed by the then Deputy Governor of RBI Mr. R. Janakiraman on 30th April 1992 for inquiring into the alleged irregularities in the Securities Scam. The Committee altogether submitted five Interim Reports and the sixth and Final Report in April 1993. In August 1992, a Joint Parliamentary Committee was also constituted to inquire into the Securities Scam with Mr. Ram Niwas Mirdha as its Chairman. The Committee had given its Report in December 1993. Both these Committees examined the reasons and causes for the Securities Scam and found large scale irregularities committed by the Banks, Financial Institutions and Brokers. It was also noticed that there was blatant violation of RBI Guidelines by misuse of the BRs, which was the result of unholy nexus between some of the Bankers

and the Brokers. It was revealed that huge money of Public Sector Undertakings was pumped into the Stock Market, which overheated the Stock Market, the benefit of which ultimately went to the Brokers.

18. The aftermath of the Securities Scam was so devastating that at least two Banks, namely, Bank of Karad and Metropolitan Co-operative Bank Limited went into liquidation. Millions of investors lost their hard earned savings and it took nearly three years for the market to recover from the Scam.

19. On the basis of the Reports of these two Committees and to deal with the situation, as also to ensure the speedy recovery of the huge amount involved, the Parliament enacted the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, for establishing the Special Court for trial of the offences relating to the Securities Scam. As stated above, the instant case pertains to one of such offences relating to the Securities Scam, for the trial of which this Special Court is established.

BRIEF FACTS OF THIS CASE

20. In this backdrop of the events, brief conspectus of the facts of this case can be stated as follows :-

21. Somewhere in the Year-1988, by an enactment called National Housing Bank Act, 1987, the 'National Housing Bank' was established on 9th July 1988, as a subsidiary of RBI, to operate as a Principal Agency to promote Housing Finance Institutions at local regional levels and to provide financial and other supports to such Institutions and for matters connected therewith or incidental thereto. Under Section 14 of the NHB Act, the NHB was authorized to invest its funds and enter into certain types of transactions, like, the investment of funds by way of Ready-Forward Transactions in Public Sector Bonds, Units of UTIs and the Securities of various Financial Institutions.

22. The FMG was constituted, somewhere in the Year-1989, to take care of the funds of NHB. The funds of NHB were in the form of Share Capital as well as in the form of Loan from RBI called '*National Long Term Operational Fund*'. The FMG was involved in the transactions relating to investment of funds available with NHB. In February-1989, the RBI accorded permission to NHB for operating in the Deals Discounting Market and in October-1990, the permission was granted to invest its Short Term Surplus Funds by way of Call Money.

23. Accused No.1-Ravikumar joined NHB as 'Regional Manager' in August-1988, on deputation from RBI and, later on, he was absorbed in

NHB with effect from 1st July 1989 and thereafter promoted as 'Assistant General Manager' from 1st January 1992. He was in-charge of FMG from the said date. The services of Accused No.2-Suresh Babu were adopted from other Financial Institution by the NHB and, at the relevant time, he was working as 'Assistant Manager' and assisting Accused No.1-Ravikumar for carrying out operations of the FMG.

24. By the Office Order dated 31st May 1991, the then General Manager of the NHB appointed Mr. B. Murlidharan as 'Manager' of FMG in place of Accused No.1-Ravikumar. However, Accused No.1-Ravikumar was directed to continue to oversee the working of FMG till completion of the audit for the year 1991. It is a matter of record that, despite Office Order dated 31st May 1991, Mr. B. Murlidharan never took charge of FMG and Accused No.1-Ravikumar continued to be in-charge of FMG, even after completion of the work of audit for the year 1991.

25. By Office Order issued on 21st September 1991, under the signature of Mr. M.J. Pherwani, the then Chairman of NHB, the then General Manager Mr. S.D. Hosangadi, the Assistant General Manager Mr. Baliga, four Regional Managers, namely, PW-17 Vivek Katre, Accused No.1-Ravikumar; Late Mr. P. Jambukeshwaran and Mr. Rakesh Bhalla were authorized to operate Current Account No.7382 of NHB with RBI. By this

Office Order, the General Manager Mr. Hosangadi was authorized to operate the Current Account singly; whereas, the other Officers were authorized to operate the same jointly, by any two Officers. All the transactions in respect of either purchase or sale of securities were carried out by the Officers in the FMG; especially, by Accused No.1-Ravikumar being in-charge of the FMG. As per the procedure, the Deal Slip used to be prepared with regard to the sale transaction; then an entry used to be made in the Deal Diary; thereafter entries connected to the transactions used to be made in the Investment Register and RBI Scroll, after preparing the sale and purchase vouchers. In case of purchase transaction, RBI cheque used to be issued, signed by Accused No.1-Ravikumar and any other authorized Officer. The same used to be handed over against the physical securities or BRs in lieu of physical security. In case of sale transaction, Accused No.1-Ravikumar was to issue the BR in lieu of physical securities and the same used to be delivered against the cheque from the counter party Bank.

26. The NHB was authorized to enter into Call Money Market only as a lender with effect from 28th October 1990 in accordance with the permission of the RBI and since then the NHB started participating in the Call Money Market and the said function used to be carried out in the FMG, which was headed by Accused No.1-Ravikumar. The NHB was

entering into the transaction of buying and selling the securities in exercise of the powers conferred upon it by clause (e) of Section 14 of the said Act with the Scheduled Banks, Financial Institutions, Mutual Funds and Financial Services, Companies sponsored by Public Sector Banks. These transactions used to be carried out at the NHB's Office, situate at Fort, Mumbai, by the FMG directly with the aforesaid Agencies. As deposed by PW-1 Manojkumar Rakshit, the Deputy General Manager, NHB was not authorized to enter into the transactions of buying and selling the securities through any Broker. However, the NHB was authorized to enter into such transactions with the aforesaid Financial Institutions or their Brokers. The nature of transaction used to be on outright basis or on a ready-forward basis. Most of the ready-forward deals used to be on back-to-back basis i.e. forward purchase deal with one agency. There used to be corresponding ready-forward sale deal with another agency. The conduct of this business was entrusted to FMG. FMG consisted of only two Officers, namely, Accused No.1-Ravikumar as 'Regional Manager', subsequently as 'Assistant General Manager' and Accused No.2-Suresh Babu as 'Assistant Manager'.

27. Thus, the NHB's dealing in securities always used to be with Financial Institutions directly or through their Broker, but NHB never purchased or sold the securities from or to the Broker on a principal-to-

principal basis. The cheques drawn by NHB always used to be crossed Account Payee Cheques drawn on RBI in favour of the counter party Institutions. These cheques used to be handed over to the representatives of the concerned Institutions or its Brokers acting on behalf of the counter party Bank.

28. After the Security Scam broke out, the team of four Officers of NHB, namely, Mr. Hosangadi, the then Chief General Manager of NHB, PW-1 Manojkumar Rakshit, the then Deputy General Manager of NHB and other two Officers, with the help of Mr. P. Jambukeshwaran, carried out investigation in respect of the transactions of NHB with Grindlays Bank, SBI and other Banks. The investigation so carried out revealed that Accused No.1-Ravikumar and Accused No.2-Suresh Babu had, during the period from October, 1991 to April, 1992, by corrupt or illegal means or by abusing their official position as public servants, issued cheques totaling several crores of rupees in favour of the Grindlays Bank and SBI for Ready-Forward Transactions, but without obtaining concerned securities or BRs therefor, and thereby caused wrongful loss to the NHB and that they handed over the cheques to Accused No.4-HSM or his representatives or Accused No.3-Sitaraman of SBI, who manipulated to get the said cheques to be credited to the Current Account of Accused No.4-HSM with SBI, causing wrongful gain to Accused No.4-HSM.

29. With regard to the present case, the investigation revealed that ten cheques for aggregated amount of Rs.707.76 crores were issued during the period between November 1991 and April 1992 by Accused No.1- Ravikumar and Accused No.2-Suresh Babu in favour of SBI in respect of ten Ready-Forward Transactions with SBI without obtaining the Sale Memos or Securities or BRs from Accused No.4-HSM, who had acted as a Broker of SBI or from SBI, which was the counter party Bank. The investigation also revealed that the transactions were recorded in the Books of Accounts of NHB despite the Securities / BRs. not being received.

30. At this stage, it may be stated that, though the case pertains to issuance of totally ten cheques and charge is also framed accordingly, as regards cheque dated 25th October 1991 for Rs.76,03,07,123=00, it has been included in Special Case No.1 of 1996, which has already been disposed off. Hence, prosecution has dropped the charge in respect of the said transaction in this case. This case, therefore, pertains to issuance of nine cheques only.

31. It was also revealed in their investigation that Accused No.1- Ravikumar and Accused No.2-Suresh Babu had dishonestly and fraudulently falsified NHB's Books of Accounts, Deal Diaries, Investment

Registers, RBI Registers and Vouchers, showing that NHB purchased these Securities even though SBI did not sell the said Securities on the given dates. They had also handed over the Account Payee RBI Cheques to the delivery boys of M/s. HSM as per the instructions of Accused No.4-HSM, Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir, without collecting the Securities.

32. These cheques were, in turn, handed over to Accused No.3-Sitaraman, who had, at the request, by letter dated 10th January 1992, of Accused No.5-Atul, made on behalf of M/s. HSM, unauthorizedly extended the Single Window Clearance Facility to M/s. HSM, much before the formal request of M/s. HSM was received in the Bank. Accused No.3-Sitaraman had then arranged to deposit the said cheques, even though SBI did not have any securities transactions with NHB and prepared false vouchers. He also arranged to credit the said cheques in the Account No.4/8710 of Accused No.4-HSM in Personal Banking Division of SBI for his use, even though there was no advice to that effect from NHB or State Bank of Patiala.

33. In view of this material on record, PW-1 Manojkumar Rakshit, the Deputy General Manager of NHB, on 10th July 1992, lodged written complaint with the CBI against Accused No.1-Ravikumar, Accused No.2-

Suresh Babu, Accused No.3-Sitaraman, Accused No.4-HSM, Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir for the alleged loss of Rs.1,214.30 crore caused to NHB in the securities transactions during the period 1991-92. This complaint was addressed to DIG, CBI, Mumbai. It was given to PW-68 P.K. Jacob – the then Superintendent of Police, who registered the case as Crime No.RC-52[A]/92-ACB-BOM vide F.I.R. on 13th July 1992.

34. As per the complaint, out of the said amount, cheques aggregating Rs.506.54 crore were issued in favour of Grindlays Bank for fourteen Ready Forward Transactions and cheques aggregating Rs.707.76 crore were issued in favour of SBI towards ten Ready Forward Transactions. Complaint also disclosed the fact that an amount of Rs.707,56,39,000/- was paid by SBI to NHB on 13th June 1992 under protest.

35. After registration of the offences, PW-68 P.K. Jacob – the then Superintendent of Police himself took over the investigation and carried out the same with the assistance of two Inspectors of Police, namely, PW-65 Satish Gavali and PW-67 Satyapal Singh.

36. During the investigation, it was found that the allegations about issuance of cheques in favour of Grindlays Bank constitute separate conspiracy and hence separate charge-sheet has been filed against

accused persons for the transactions with ANZ Grindlays Bank. The said case was numbered as Special Case No.4 of 1994, which is already decided by this Court, ending into conviction of Accused Nos.1 to 3 herein. Hon'ble Supreme Court has also disposed of the Appeals against Order bearing Nos.796 and 797 of 2005, preferred by Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, by the Judgment passed on 4th March 2016, confirming their conviction and reducing the sentence to the period already undergone in Jail.

37. As regards this case, PW-68 P.K. Jacob has, during the course of investigation of this case, recorded further statement of PW-1 Manojkumar Rakshit on 18th July 1992 and also statements of various other witnesses from time to time. He also seized various documents, like, Deal Diary, Cheques, Investment Register, RBI Scroll, Purchase and Sale Voucher, Pay-in-Slips, Counterfoils of Pay-in-Slips, Statement of Account of NHB with RBI, Statement of Account of SBI with RBI, then RBI Agency Account with SBI etc.

38. In the course of investigation, it was also transpired that in order to divert the funds of NHB cheques, Accused No.3-Sitaraman introduced Accused No.9-Deepak to the Personal Banking Division of SBI, Main Branch, to get S.B. Account No.5660 opened in his name. Accused No.8-

Hiten and Accused No.9-Deepak got possession of three cheques. Accused No.8-Hiten then prepared a false credit advice for crediting the proceeds of those cheques in the account of Accused No.9-Deepak. The amounts of those three cheques of NHB were got transferred to the account of M/s. Extol Investments, of which Accused No.9-Deepak and Accused No.10-Virendra were Partners. These three Accused, namely, Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra then falsified Books of Accounts of M/s. Extol Investments to show that they had purchased 500 Shares of M/s. Mazda Packaging Enterprises Ltd., 9,700 Shares of M/s. Gujarat Cycles Ltd. and 5,700 Shares of M/s. Apollo Tyres Ltd. for Late Mr. M.J. Pherwani, former Chairman of NHB. Hence, these three accused persons also came to be implicated and arrested in this case along with other accused.

39. During the course of investigation, the specimen signatures and hand-writing of mostly all the accused were collected and forwarded to the Government Examiner of Questioned Documents [GEQD], Shimla, by PW-67 Satyapal Singh. The Report of the Handwriting Expert PW-64 Madhusudanlal Sharma is produced on record of the case at Exhibit-613. On completion of the investigation, it was revealed that the moneys had been transferred to the accounts of Accused No.4-HSM in SBI and there was conspiracy between the aforesaid accused and Accused No.4-HSM

for diverting the funds of NHB to the account of Accused No.4-HSM with SBI. PW-68 P.K. Jacob, the Investigation Officer, also found that Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, being the public servants, working with the NHB and SBI respectively, had misused their authority and got the moneys of the NHB transferred to the account of Accused No.4-HSM in the SBI, pursuant to the criminal conspiracy and with the aid and abatement of Accused No.4-HSM and Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir working in his office. PW-68 P.K. Jacob, therefore, made a report to the Sanctioning Authority for getting the sanction to prosecute Accused No.1-Ravikumar and Accused No.2-Suresh Babu. Accordingly, PW-56 Ravi Gupta, who was the Chairman of the NHB, having authority to accord sanction, on examining the documents and the C.B.I. Report placed before him, found prima facie case having been made out against, both, Accused No.1-Ravikumar and Accused No.2-Suresh Babu, accorded sanction vide Exhibit-545 and Exhibit-546. For prosecution of Accused No.3-Sitaraman, papers were placed before PW-60 Govardhan Kathuria, the Chief General Manager of SBI, Local Head Office, Mumbai. He has, on examining the papers, found prima facie case against Accused No.3-Sitaraman and accorded sanction for his prosecution vide Exhibit-568.

40. In this way, on completion of the investigation, on 19th April 1994, PW-68 P.K. Jacob submitted charge-sheet against aforesaid ten accused, including Accused No.4-HSM, in this Special Court.

41. As Accused No.4-HSM died during the pendency of this case, on 23rd April 2002, the case against him stands abated.

42. As regards remaining accused, my learned predecessor was pleased to frame Charge against them vide Exhibit-1 on 1st October 2010, for the various offences referred above. All the accused pleaded not guilty to the charge and claimed trial, raising the defence of denial and false implication.

43. Defence of Accused No.1-Ravikumar is that he has not flouted any rules, regulations or guidelines issued by RBI in conduct of these transactions. He has followed the market practice and, that too, in good faith, on the advice of his superiors. He has not gained any financial benefits, but has suffered a lot. He has been made a scapegoat by the top Management of NHB to save their own skin. Thus, according to him, he has not committed any offence.

44. The defence of Accused No.2-Suresh Babu is that he was the last person in the hierarchical organization of NHB. His post though called as

‘Assistant Manager’, it was actually a post of ‘glorified clerk’, having no authority to finalize the transaction or to sign any cheque. His duty was only to prepare the cheques, vouchers and make entries in the record after the deal was finalized. He is also, thus, made a scapegoat by his superiors, though he is innocent.

45. The defence of Accused No.3-Sitaraman is that he has followed the market practice and allowed the facility of Single Point Clearance to Accused No.4-HSM, as sought by him, on the recommendation of the Committee headed by late Shri. Goiporia, the then Chairman of the SBI. He has, therefore, not done anything illegal or irregular. Moreover, NHB has received entire funds from SBI, which were allegedly gone to the account of Accused No.4-HSM. Thus, now nothing remains in the case and it deserves to be quashed.

46. The defence of Accused No.5-Atul is that he was merely an employee of Accused No.4-HSM. He had never taken part in any deal or transaction. He has merely made initials on the Contract Notes in a normal course of business, after the deals were completed. He has not gained any pecuniary benefits from any of these transactions. It is submitted that he was made prosecution witness in many other cases by C.B.I. for the similar role.

47. Accused No.6-Pankaj has also raised the same defence of being merely an employee of Accused No.4-HSM. According to him, he has signed and handed over the letter Exhibit-154 to SBI only as per the instructions of Accused No.4-HSM. Except that, he has not played any other role. Hence, he needs to be acquitted from this case.

48. The defence of Accused No.7-Sudhir is also similar to the effect that he was working in another office. However, as Constituted Attorney of Accused No.4-HSM, he has signed on the Contract Notes in the absence of Accused No.4-HSM. He has nothing to do with any of these transactions.

49. The defence of Accused No.8-Hiten is that he was only 19 years old at the relevant time and working on meager salary of Rs.600/- p.m. with Accused No.4-HSM. However, as he was cousin brother of Accused No.4-HSM, C.B.I. has falsely implicated him for the same role, for which he is made witness by C.B.I. in five cases, and already acquitted in two other cases, in which he was arraigned as Accused.

50. According to Accused No.9-Deepak, he has received three cheques for purchase of shares for Mr. Pherwani. Since the balance amount was not received, he has kept those shares with him and when the scam broke out, he himself went to C.B.I. and voluntarily surrendered those shares. As

a result, he has suffered a great loss. He also, thus, claims to be innocent.

51. Lastly, according to the defence of Accused No.10-Virendra, he has nothing to do with any of the transactions. Some of the shares were only transferred in the name of his family members as Book Closure Date was arriving. He is, thus, implicated in this case merely because he was Partner of Accused No.9-Deepak in M/s. Extol Investments.

52. On these facts of the case and in view of the submissions advanced by learned Senior P.P. Shri. Limosin and learned counsel for various accused, it can be said that the main charge levelled against the accused persons is of hatching criminal conspiracy to siphon off the funds of NHB, which were transferred to SBI through various cheques issued towards the purported sale and purchase of securities transactions, by diverting the same to the accounts of Accused No.4-HSM. Hence, the charge of criminal conspiracy under Section 120B IPC, as rightly submitted by learned counsel for the accused, is the 'umbrella' charge. Other charges for the various offences are like that of forgery, falsification of account, cheating, misappropriation etc., which are committed in prosecution of the common object of criminal conspiracy. Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman being the public servants, they are specifically charged for the offence of criminal breach of

trust, punishable under Section 409 IPC and of misusing and taking advantage of their position as public servants, which are punishable under Section 13(2) r/w. Section 13(1)(c) and Section 13(d) of the Prevention of Corruption Act, 1988. Hence, though there are as many as twenty-one charges levelled against these accused for different transactions, the following points, which cover those charges, arise for my determination and I record my findings thereon for the reasons stated below :-

Sr. No.	Points	Findings
1	Whether it is proved by the prosecution that between 1 st October 1991 to 2 nd April 1992, or, thereabout, Accused No.1 to Accused No.10, or, any of them, have entered into criminal conspiracy to commit criminal breach of trust by misappropriating the funds of the NHB to the tune of Rs.707,84,75,626=76 with an object to obtain pecuniary advantage to Accused No.4-HSM and Accused Nos.9 and 10, without any public interest, by crediting those funds to the account of Accused No.4-HSM and to the account of Accused Nos.9 and 10 with the SBI and thereby committed an offence punishable under Section 120B of I.P.C.?	Yes Only against Accused Nos.1, 2, 3, 5, 7 and 9

2	Whether it is established by the prosecution that, in furtherance of the aforesaid criminal conspiracy, Accused No.1, Accused No.2 and Accused No.3, or, any of them, committed criminal breach of trust by diverting the funds of the cheques issued in favour of SBI in respect of purported purchase of securities, when there was no such transaction at all, by dishonestly and fraudulently getting the amounts of those cheques credited to the account of Accused No.4-HSM with the SBI and thereby committed an offence punishable under Section 409 r/w. Section 120B of IPC?	Yes Against all the three Accused viz. Accused No.1, Accused No.2 and Accused No.3 in respect of all the transactions
3	Whether it is proved by the prosecution that Accused Nos.1 and 2, or, any of them, being in the employment of the NHB, and Accused No.3, being in the employment of SBI, and as such being the public servants and having been entrusted in such capacity with the funds of the said Banks, dishonestly misappropriated, or, converted to their own use, or, allowed Accused No.4-HSM to misappropriate the amounts of nine cheques and thereby committed	Yes Against Accused Nos.1, 2 and 3

	offence punishable under Section 13(1)(2) r/w. Section 13(1)(c) of Prevention of Corruption Act and Section 120B of IPC?	
4	Whether it is established by the prosecution that Accused Nos.1 and 2, or, any of them, made or caused to be made false BRs purported to have been issued by the NHB, dishonestly and fraudulently with intention of causing it to be believed that these BRs were made by the authority of NHB, by which authority Accused Nos.1 and 2 knew that they were not made and thereby committed an offence of forgery of valuable security punishable under Section 467 r/w. Section 120B of IPC?	Yes Against, both, Accused Nos.1 and 2
5	Whether it is proved by the prosecution that, in furtherance of the aforesaid criminal conspiracy, Accused Nos.1 and 2 dishonestly and fraudulently used as genuine the aforesaid BRs, which they knew or had reason to believe to be forged documents and thereby committed an offence punishable under Section 471 r/w. Section 120B of IPC?	Yes Against, both, Accused Nos.1 and 2

6	<p>Whether it is proved by the prosecution that, in furtherance of the aforesaid criminal conspiracy, Accused Nos.1 and 2, or, any of them, being in the employment of the NHB and while holding the positions as an Officer of the NHB, acting in that capacity willfully and, with intent to defraud, falsified and caused to be falsified Deal Diary, BRs, Cost Memos and relevant Vouchers in respect of the purported transactions of sale of securities, as indicated by the aforesaid BRs with the respective Financial Institutions, and made the false entries with regard to those transactions and committed the offence punishable under Section 477A r/w. Section 120B of IPC?</p>	<p>Yes Against, both, Accused Nos.1 and 2</p>
7	<p>Whether it is proved by the prosecution that, in furtherance of the aforesaid criminal conspiracy and in the course of same transaction, Accused Nos.1 and 2, being in the employment of NHB and being the public servants, dishonestly and fraudulently induced counter-Banks and Financial Institutions to part with their funds by falsely representing that the NHB had</p>	<p>Yes Against, both, Accused Nos.1 and 2</p>

	entered into securities transactions, for which forged Bank Receipts were issued and thereby committed offence punishable under Section 420 r/w. Section 120B of IPC?	
8	Whether it is proved by the prosecution that, in furtherance of the aforesaid criminal conspiracy, Accused Nos.1 and 2, or, any of them, being in the employment of NHB, as such, being the public servants, dishonestly and fraudulently issued or caused to be issued the cheques for respective amounts in favour of SBI in relation to the purported securities transactions which NHB, purportedly, had with the respective Financial Institutions, which, in fact, had never taken place with an intention to aid and abet Accused No.4-HSM to misappropriate the amounts of the cheques and Accused No.3 actively assisted in the same by abusing his position as public servant, without any public interest, and thereby committed an offence of criminal misconduct punishable under Section 13(2) r/w. Section 13(1)(d) of Prevention of Corruption Act and Section 120B of IPC?	Yes Against, both, Accused Nos.1, 2 and 3

9	Whether prosecution proves that, during the above-said period, in furtherance of the aforesaid criminal conspiracy, Accused Nos.5, 6 and 7, acting dishonestly for and on behalf of Accused No.4-HSM, engaged themselves in the said conspiracy and dishonestly arranged and accepted the credit of the various amounts in connivance with Accused No.3, who, at the relevant time, was Officer in the Security Division of SBI, where account of Accused No.4-HSM was operated, actively assisted them in doing so and thereby Accused Nos.5, 6 and 7 acted, instigated and facilitated by Accused Nos.1 and 2, as also aided and abated by Accused No.3 in committing the offence of criminal breach of trust and thereby committed the offence punishable under Section 409 r/w. Section 109 r/w. Section 120B of IPC.	Yes Against Accused Nos.5 and 7
10	Whether prosecution further proves that, in furtherance of the aforesaid criminal conspiracy, Accused No.9, being the Partner of M/s. Extol Investments, and Accused No.8, acting dishonestly for and on behalf of Accused No.9, dishonestly arranged and accepted the credit of the amounts of Rs.2,50,000/- and	Yes Against Accused Nos.1, 2, 3 and 9

	Rs.13,00,000/- and Rs.8,98,912/- and Accused Nos.1 to 3 actively assisted, instigated and facilitated them and thereby committed the offence punishable under Section 409 r/w. 109 r/w. 120B of IPC.	
11	Whether prosecution proves that, in furtherance of aforesaid conspiracy, Accused Nos.1 and 2, being the Officers of NHB, Accused No.3, being the Officer of SBI, Accused Nos.9 and 10, being the Partners of M/s. Extol Investments, dishonestly misappropriated, on or about 21 st February 1992, a sum of Rs.2,50,000/- and, on 22 nd February 1992, a sum of Rs.13,00,000/-, being the proceeds of the cheques issued at the instance of Accused Nos.1 and 2 for and on behalf of NHB drawn on the RBI and payable to the SBI, by causing the same to be ultimately credited in the account of Accused No.9, knowing or having reason to believe that they did not have transactions with the NHB and also knowing that the said amounts did not belong to them and thereby committed an offence punishable under Section 403 r/w. Section 120B of IPC?	Yes Against Accused Nos.1, 2, 3 and 9

12	Whether prosecution further proves that, in furtherance of aforesaid criminal conspiracy, Accused Nos.1 and 2, being the Officers of NHB, and Accused No.3, being the Officer of SBI, and Accused Nos.9 and 10, being the Partners of M/s. Extol Investments, committed the offence of criminal misconduct by causing the above mentioned cheques to be credited into the Personal Account of Accused No.9 illegally and which was ultimately misappropriated by them and thereby committed the offence punishable under Sections 13(1)(c), 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act r/w. Sections 109 and 120B of IPC.	Yes Against Accused Nos.1, 2, 3 and 9
13	Whether the prosecution further proves that, Accused No.9, in furtherance of aforesaid criminal conspiracy, dishonestly received the sum of Rs.2,50,000/-, Rs.13,00,000/- and Rs.8,98,912/-, being the amounts purportedly payable to the SBI vide cheques drawn on the RBI and ultimately credited to his own account No.5660 with the SBI, knowing or having reason to believe the same to be stolen	Yes

	property, being the property in respect of which the criminal breach of trust had been committed and thereby committed an offence punishable under Section 411 r/w. Section 120B of IPC.	
14	Whether the prosecution further proves that, in furtherance of aforesaid criminal conspiracy, Accused No.8 made or caused to be made a false document, namely, a letter dated 1 st February 1992 addressed by NHB to SBI for causing the credit of Rs.8,98,912/- into the Savings Bank Account No.5660 of Accused No.10 with SBI, which letter was purported to have been issued by NHB, which was dishonestly or fraudulently made with the intention of causing it to be believed that the said letter was made and signed by the Assistant Manager / Manager of the NHB, knowing that it was not so made and thereby committed an offence of forgery of valuable security punishable under Section 467 r/w. Section 120B of IPC.	No
15	Whether the prosecution further proves that, in furtherance of aforesaid criminal conspiracy, Accused No.9 made or caused	Yes

	to be made false documents, namely, the letters dated 21 st February 1992 and 22 nd February 1992, addressed by NHB to SBI, for causing the credit of Rs.2,50,000/- and Rs.13,00,000/- given to his Savings Bank Account No.5660 with SBI, which letters were purported to have been issued by NHB and which were dishonestly or fraudulently made with the intention of causing it to be believed that the said letters were made and signed by the Assistant Manager / Manager of the NHB, knowing that they were not so made and thereby committed an offence of forgery of valuable securities punishable under Section 467 r/w. Section 120B of IPC.	
16	Whether the prosecution further proves that, in furtherance of aforesaid criminal conspiracy, Accused Nos.8 and 9 dishonestly and fraudulently used as genuine the letter dated 1 st February 1992, which they knew or had reason to believe to be a forged document and thereby committed an offence punishable under Section 471 r/w. Section 120B of IPC.	Yes Against Accused No.9 only
17	What order?	As per final order

REASONS

53. As can be seen from perusal of the Charge-Sheet and the prosecution evidence, the prosecution case pertains to two different sets of transactions involving two different sets of Accused. Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are common in both the sets of transactions. Similarly, charge of criminal conspiracy and other offences, like criminal breach of trust, forgery, falsification accounts etc., are also common in both the sets of transactions. However, the nature of transactions differs. The first set of transactions consists of purchase and sale of securities by Accused No.1-Ravikumar and Accused No.2-Suresh Babu, without there being securities in physical form or backed by BRs, which transactions are called by prosecution as “*structured transactions*”, wherein the cheques are issued by Accused No.1-Ravikumar and Accused No.2-Suresh Babu, drawn on RBI in favour of SBI, the credits of which Accused No.3-Sitaraman diverted to the account of Accused No.4-HSM, thereby causing wrongful gain to him and wrongful loss to the Banks. In these transactions, Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir are implicated, as Accused No.5-Atul and Accused No.6-Pankaj have issued the Contract Notes for these transactions and Accused No.7-Sudhir has given request letter Exhibit-154 to Accused No.3-Sitaraman for extending

the 'Single Point Clearance Facility' to Accused No.4-HSM, so as to facilitate diversion of funds to the account of Accused No.4-HSM directly.

54. The second set of transactions involves issuance of three cheques for the amount of Rs.2,50,000/-, Rs.13,00,000/- and Rs.8,98,912/-, respectively, by Accused No.1-Ravikumar and Accused No.2-Suresh Babu, drawn on RBI in favour of SBI, the credits of which ultimately went to the account of Accused No.9-Deepak and Accused No.10-Virendra, for the purpose of which Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra made false and forged documents and Accused No.3-Sitaraman facilitated them in doing so. Hence, in this set of transactions, the role of only Accused No.1-Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra is implicated.

55. Thus, though the offences alleged against all the accused are same, the nature of transactions and involvement of accused in those transactions is different. In the first set of transactions, Accused No.1-Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir are involved. In the second set of transactions, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are involved

along with Accused No.8-Hiten, Accused No.9-Deepak and Accused No.10-Virendra.

56. As a result, some witnesses as to the role of Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are common in both the sets of transactions; whereas, some witnesses are examined by the prosecution with their specific roles in respect of that particular set of transactions only. Majority of the prosecution witnesses are officers or employees of NHB, SBI and the counter-party Banks or Financial Institutions, with whom NHB has entered into transactions. Some witnesses are in the category of 'Brokers' and others are the 'Investigating Officers'.

57. For the sake of convenience, therefore, the large number of witnesses examined by the prosecution, in all sixty-eight in number, can be categorized as follows :-

List of the Prosecution Witnesses		
Witness No.	Name of the Witness	Status at the Relevant Time
Officers from NHB to prove the transactions at the end of NHB		
PW-1	Shri. Manojkumar L. Rakshit	Complainant (NHB)
PW-14	Shri. N. A. Sivaraman	Funds Management Department, NHB

PW-15	Shri. Basant Sheth	Regional Manager, NHB.
PW-16	Shri. Bantwal Chandrashekhar Baliga	Assistant General Manager, NHB
PW-17	Shri. Vivek Ramesh Katre	Manager/Regional Manager, NHB
PW-18	Shri. K. Muralidharan	Manager, New Delhi Office, NHB
PW-19	Shri. Milind Govind Deshpande	Assistant Manager, NHB
PW-30	Shri. B. Muralidharan	NHB - Accounts Department
PW-56	Shri. Ravi Veera Gupta	Chairman - NHB
Officers from SBI to prove the transactions at the end of SBI		
PW-9	Shri. Girdhar Hariram Hargunani	Clearing Officer, Mumbai Main Br. of SBI
PW-10	Shri. Madan Mohan Sharma	Deputy General Manager, SBI Main Br., Mumbai
PW-13	Shri. Bhushan Damodar Raut	Assistant Manager (Securities Division), Mumbai Main Branch, SBI
PW-25	Smt. Harsha Rajesh Shah	Public Sector Unit, SBI – Mumbai Main Branch
PW-26	Shri. Janardan Bandopadhyay	Treasury Manager, SBI Capital Markets Limited.
PW-27	Shri. Girish Balwant Patel	Clerk, SBI – Mumbai Main Branch
PW-28	Smt. Devyani Vinod Dalwani	Securities Division, SBI–Mumbai Main Br.

PW-29	Shri. Prakash R. Kanchan	Clerk-cum-Cashier, Bank Investment Cell, SBI – Mumbai Main Branch
PW-33	Shri. Venkatchalapathy V.G.	Asst. Accounts Officer, Deposit Accounts Department-RBI
PW-35	Shri. Mohan Trimbak Vijapurkar	Accountant (Personal Banking Division), SBI – Mumbai Main Branch
PW-36	Shri. Mahesh Kumar Gambhir	Assistant General Manager, SBI
PW-37	Shri. T. P. Nageswara Rao	Deputy Manager (Funds Management Dept.), S.B.I. - Mumbai.
PW-38	Shri. Anil Divakar Padhye	Assistant General Manager, (Personal Banking Division), SBI – Mumbai Main Branch
PW-39	Shri. Anant Baburao Nargund	Deputy Manager, Institutional Division, SBI – Mumbai Main Branch
PW-40	Shri. Arun Narendra Bavdekar	Deputy Manager, Securities Department, SBI – Mumbai Main Branch
PW-43	Shri. Vishwanath Shankar Shetty	Deputy Manager, DGM Secretariat, SBI – Mumbai Main Branch

PW-47	Shri. Sagun Vishnu Naik	General Manager, Treasury & Investment Management, SBI
PW-59	Shri. Anil Vinayak Joshi	Employee, Securities Division, SBI – Mumbai Main Branch
PW-60	Shri. Govardhan Bhojiram Kathuria	Chief General Manager/ Chief Financial Officer, SBI – Mumbai Main Branch
Banks and Financial Institutions, whose Securities were Sold and Purchased		
PW-2	Shri. A.V. Meenakshisundaram	Senior Project Manager, BOI Finance Limited
PW-3	Shri. Ranjeetsingh P.Anjaria	Chief Manager, UCO Bank
PW-4	Shri. Surinder Kumar Khurana	Chief Manager (Investment) State Bank of Patiala
PW-5	Shri. Pradip Anant Karkhanis	Senior Manager, UCO Bank
PW-6	Shri. Mukund Krishnaji Kher	Agent or Branch Manager, Fort Mumbai Branch, Bank of Karad
PW-7	Shri. Chinmoy Kumar Mukherjee	Probationary Officer, Investment Department UCO Bank
PW-8	Shri. Vasudev Anant Sant	Ledger Posting Machine Operator, R.B.I.
PW-31	Shri. Sharwankumar Munnalal Jindal	Manager (Investments), State Bank of Patiala, K.G. Marg Branch, New Delhi

PW-32	Shri. V. R. Srinivasan	Manager (Corporate Deployment Services), Standard Chartered Bank, Mumbai.
PW-34	Shri. Janakiram Subra Mani	Senior Manager (Investments), Punjab National Bank, PNB House, Mumbai.
PW-42	Shri. Ullal Ravindra Bhat	Executive Vice President, Indian Bank Mutual Fund
PW-44	Shri. Sudhir Gopal Raikar	Assistant Manager, Discount Finance House of India Ltd.
PW-45	Shri. Srinivasan Narayan	Chief Manager, Funds Management Dept., State Bank of Saurashtra
PW-51	Shri. T. S. Thiagarajan	Officer (Investment Dept.), Bank of Madura, Mumbai
PW-52	Shri. Kupuswami Mohan	Scale-I Officer, Karur Vyasya Bank, Mumbai
PW-63	Shri. Sudhakar Manpragada	Assistant Manager, Indian Overseas Bank
Officers from R.B.I.		
PW-12	Shri. Paras Ram Jangid	Dept. Banking Operation and Development
PW-20	Shri. Ramnathan Ganesh	Employee, M/s. Extol Investments

Various Brokers		
PW-21	Shri. G. Pushpanathan	Broker, M/s. G. Pushpanathan
PW-22	Shri. Mukesh Pravinchandra Shroff	Broker, M/s. Mukesh Shroff Kanpur Stock Exchange
PW-23	Shri. Chunilal Ratilal Kanani	Office of Broker (M/s. Bhupendra Champaklal Devidas)
PW-24	Smt. Sharda Krishnan	Broker, M/s. Sharda and Co. Mangalore Stock Exchnage
PW-49	Shri. Ganapayya Nagappa Hegde	Share Broker GNH Global Securities Ltd.
PW-50	Shri. Mohammed Ziaur Rehman	Manager, M/s. A.R. Financial Services
PW-57	Shri. Sundardas Kalyanji Kankal	Stock Broker 'Sunderdas Kalyanji Kankal'
PW-61	Shri. Navneet Nanubhai Rana	Dealer, Broker Firm – M/s. V.B.Desai
PW-62	Shri. Manjunath Anant Kamat	Broker, Broker Firm – M/s. V.B.Desai
Employees from the Office of Accused No.4-HSM		
PW-41	Shri. Vishwesh Bhatt	Computer Operator M/s. Growmore Group of Companies
PW-48	Shri. Vijay Rajaram Palande	Executive, Firm of Harshad Mehta

PW-58	Shri. Santosh Eknath Indulkar	Peon M/s. Growmore
Sundry Witnesses		
PW-11	Shri. Sudhir R.Raokadnur	Inspector (Investigation Wing), Income Tax Department
PW-46	Smt. Farzana Abdul Khalid Shaikh	Data Entry Operator M/s. Harsh Estate Pvt Ltd Co.
PW-53	Shri. Sunil Shantikumar Majithia	Professional Developer, 'Your Developer & Construction Company'
PW-54	Shri. Shailendra Arun Chandurkar	Assistant, State Trading Corporation
PW-55	Shri. Mani Lal Acharya	Chief Enforcement Officer, Enforcement Directorate, Nariman Point, Mumbai
PW-64	Shri. Madhusudanlal K.Sharma	Deputy Government Examiner of Questioned Documents at Shimla
Investigating Officers		
PW-65	Shri. Satish Sahebrao Gavali	Investigating Officer / Inspector in Bank Securities and Frauds Cell of CBI
PW-66	Shri. S.K.Vijay Rajiv	Investigating Officer
PW-67	Shri. Satyapal Singh	Investigating Officer
PW-68	Shri. P.K. Jacob	Investigating Officer / Deputy Superintendent of Police in Banks Security Cell, CBI, New Delhi.

EVIDENCE RELATING TO THE PROCEDURE ADOPTED AT NHB

58. In order to appreciate the evidence produced on record by the prosecution in this case, to decide whether prosecution has succeeded in proving its case against the accused beyond reasonable doubt, it would be necessary to understand the functioning at NHB and at SBI in respect of the sale and purchase of securities.

59. As regards the functioning at NHB, as stated, at the outset, it was established by the enactment of National Housing Bank Act, 1987 and came into existence on 9th July 1988. The main purpose of setting up of NHB was to promote Housing Finance Institutions at local and regional levels for providing financial support to such Institutions. As deposed by PW-1 Manojkumar Rakshit, NHB was looking for other avenues for deployment of its Short Term Surplus Funds and one of the avenues found out was to deal in Ready-Forward Transactions of permitted securities. Proposal for Ready-Forward Transactions was, accordingly, put up by Accused No.1-Ravikumar. Exhibit-13 is a 'Note' dated 13th July 1991 submitted by Accused No.1-Ravikumar seeking avenue for deployment of Short Term Surplus Fund. Exhibit-99 is another 'Note' dated 4th April 1991 put up by Accused No.1-Ravikumar, in which it was recommended that, *“taking into account the situation explained in the note, it would be necessary to enter into Ready-Forward Deals as and when required;*

especially, around reporting Fridays.” The perusal of the 'Note' Exhibit-99 reflects that, the General Manager has noted on it, “in the deployment of our resources, the first allocation is always re-finance operations, which are our mandate. The balance funds are invested in re-discounting of the bills, call money, etc. However, since RBI's buy-back facility has ceased from 1st April 1991, RFD would be seen to be next best avenue.”

60. Thus, as per this 'Note' Exhibit-99, the first priority, which was set up for NHB, was re-finance operations and RFDs were given the last preference. Moreover, only the surplus fund could have been deployed in the RFDs. Accordingly, NHB started deployment of short term funds available for investing in securities. This was done by the Funds Management Group, (for short, “FMG”). Accused No.1-Ravikumar was the 'Head' of the said group, whereas, Accused No.2-Suresh Babu was assisting him in his capacity as 'Assistant General Manager'.

61. PW-1 Manojkumar Rakshit has deposed, in detail, about the procedure for purchase of securities by NHB. According to him, NHB had not appointed any Broker for the purpose of investment transactions, including Call Money and Ready-Forward Transaction, as NHB had very short term funds available, after meeting its normal obligations. He has further deposed that, FMG was required to contact the concerned Bank

and Financial Institution or their authorized Brokers or Representative. After getting most favourable rate from the counter-parties, the deal was to be finalized and after the finalization of the deal, it was to be entered into the Deal Diary Register. The voucher and the cheques were also to be prepared and the entry of the same was to be taken in the Investment Register. The cheque would be then actually handed over to the counter-party, only after Costs Memo, Sale Memo, actual Securities or the BRs would be received by the FMG.

62. PW-1 Manojkumar Rakshit has then explained the procedure for sale of securities by NHB. In the sale of securities, according to him, reverse procedure was to be followed. The FMG was to then prepare Costs Memo or Sale Note and deliver Securities, either physically, or, hand over the BRs to the counter-party, after receiving the cheque of the sale proceeds from the counter-party. As deposed by PW-19 Milind Deshpande, the Assistant Manager of NHB, all the deals entered into by NHB were first to be entered in a Deal Diary maintained by Accused No.1- Ravikumar. The entries on the left side of the Deal Diary would indicate *'Payment Received By NHB'* and right side would indicate *'Payment Made By NHB'*.

Evidence Relating to Procedure Adopted at SBI

63. As to the procedure adopted by SBI in respect of sale or purchase of securities, PW-37 T.P. Nageswara Rao, who was working, at the relevant time, as 'Deputy Manager of FMD' in SBI, has explained, in detail, the said procedure by stating that whenever an offer regarding sale or purchase of securities would be received by the Deputy General Manager, who will be the Member of the Investment Committee, he would take the deal to the Investment Committee consisting of himself, Deputy Manager, Director and Managing Director for discussing the offer and to take a decision in that regard. If the deal was finalized, a Deal Book would be prepared by the Deputy General Manager and signed by all the Members of the Investment Committee. Then, information would be given to the Mumbai Main Branch through the Desk Officer and written confirmation would be exchanged by both the sides i.e. by the Corporate Centre of SBI and Securities Division of Mumbai Main Branch. A Desk Officer would, after informing Mumbai Main Branch about the deal, make an entry in that regard in the Sale and Purchase Register. The Sale and Purchase Register of the relevant period is produced and proved through him vide Exhibit-432.

64. PW-29 Prakash Kanchan, who, at the relevant time, was working as 'Clerk-cum-Cashier' in the Bank Investment Cell of SBI, has explained the

procedure for sale of securities at Bank's Investment Cell in Mumbai Main Branch. According to him, Sale-Slip-Books and Purchase Books were maintained by SBI for sale and purchase of securities, giving details of securities sold by SBI, such as, face value of the security, the rate at which it was sold, the name of the counter-party Bank as well as the name of the Broker. According to his evidence, the cheques would be received in case of sales and cheques would be issued to the counter-parties in case of purchases. In case of sale by SBI, the Cost Memo, along with BR, or, SGLF, or, physical delivery of security would be physically delivered.

65. PW-13 Bhushan Raut, Assistant Manager of Securities Division at SBI, has then explained the procedure adopted for preparing Cost Memo, Voucher etc. in sale and purchase of securities at SBI. According to him, the Funds Management Department used to give necessary instructions about the same. These instructions were received on phone. The concerned Officer used to instruct the 'Computer Operator' to feed the instructions in the computer. Then a Cost Memo was generated. On the basis of the Costs Memo, they used to make entry in Sale and Purchase Slip-Books. In case of purchase of securities, pay orders were issued, whereas, in case of sale of securities, pay orders were received. On the basis of the Slip-Book, debit or credit vouchers used to be prepared for issuance of Banker's Cheques. A Waste-Book was maintained for the said

purpose. The 'Computer Generated Memo' then used to be sent to Funds Management Department subsequently. Sale-Slip-Book of the SBI for the relevant period has been produced at Exhibit 400A. As to the Waste-Book, all entries taken in this Book used to be matched every day.

66. It is not disputed that, at the relevant time, Accused No.3-Sitaraman was heading SBI's Investment Department at Mumbai Main Branch and all the documents were prepared by either Accused No.3-Sitaraman or as per the instructions given by Accused No.3-Sitaraman.

67. It is also not disputed that Accused No.4-HSM was holding account with SBI's Personal Banking Division bearing Account No.4/8710. PW-35 Mohan Vijapurkar, who was the 'Accountant' in the Main Branch, has proved the Account Opening Form Exhibit-428 of the account of Accused No.4-HSM. The certified copy of the Statement of the said Account for the period from 9th September 1991 to 16th July 1992 is produced at Exhibit 429. PW-35 Mohan Vijapurkar has explained that, in the Banking Division, though they are supposed to maintain only Current and Savings Bank Accounts of their clients, this particular account of Accused No.4-HSM was maintained therein, as it was related to the transactions done in the Securities Division of Mumbai Main Branch. According to his evidence, at the end of the day, the Securities Division used to send debit or credit

voucher through a Transit Voucher Book to their Personal Banking Division. Then the voucher used to be entered in the Ledger Account of Accused No.4-HSM by the concerned Clerk and the Ledger along with voucher used to come to his Desk. He used to verify the voucher as per the account number, the name of the account-holder and the amount mentioned in the voucher and tally with the amount entered into Ledger Account. Then, by putting his initials on the voucher and the entry made in the Ledger Account mentioning that it is duly and correctly posted in the Ledger, the account of Accused No.4-HSM would be debited or credited, as the case may be. Accordingly, by the end of the day, whatever the credit or debit, as the case may be, was given to the account of Accused No.4-HSM.

68. PW-36 Mahesh Gambhir, the Assistant General Manager of SBI, has, in his deposition, explained how the money used to be diverted to the account of Accused No.4-HSM. According to him, if credit of its amount is received from R.B.I. in the S.B.I. Account and in some cases 'Y' amount will be added to this account by debiting Accused No.4-HSM's account, then the Banker's Cheque or clearance cheque would be issued from that account to SBI account and total amount would be disposed of as per the instructions of Accused No.4-HSM. Thus, the amount 'X' + 'Y' would go to various accounts as per the instructions of Accused No.4-HSM. Similarly,

there were transactions of a reverse nature that its credit would be coming from RBI account of SBI and local clearing account and the total amount would be credited into the account of Accused No.4-HSM.

**First Set of Transactions Pertaining to Sale and Purchase
of Securities and Involving Accused Nos.1 to 3 and 5 to 7.**

69. It is in the background of this procedure that the following purchase and sale transactions, which were entered into by NHB, are required to be considered with a caveat, as stated above, that though the case pertains to issuance of, totally, ten cheques and charge is also framed accordingly, as regards cheque dated 25th October 1991 for Rs.76,03,07,123=00, it has been included in Special Case No.1 of 1996, which has already been disposed off. Hence, prosecution has dropped the charge in respect of the said transaction in this case. This case, therefore, pertains to issuance of nine cheques only.

PURCHASE TRANSACTIONS

31st January 1992

70. NHB Record shows that there is purchase of UTI Units 6.50 crores @ Rs.13.70 from SBI for Rs.89,05,00,000/-. Exhibit-17 is the entry in Deal Diary. Exhibit-17 is in the hand-writing of Accused No.2-Suresh Babu, which is proved by PW-1 Manojkumar Rakshit (*Deposition Page 6 Para 6*).

71. NHB has prepared Voucher No.38 for the said transaction showing purchase of UTI Units, which is Exhibit-354. Voucher is in the hand-writing of Accused No.2-Suresh Babu (*Photocopy is at Exhibit-163*). The voucher is signed by Accused No.2-Suresh Babu (*Evidence of PW-30 B. Murlidharan - Para 2 Page 2*).

72. The purchase of Units of 6.50 crores also appearing in the Investment Register. The Investment Register is at Exhibit-18. It is in the hand-writing of PW-14 Sivaraman. (*Deposition of PW-14 Sivaraman - Page 4 Para 3*).

73. RBI Cheque No.173921 dated 31.01.1992 for Rs.89.05 crores has been issued in the name of SBI towards the said transaction, which is marked as Exhibit-19. The cheque Exhibit-19 bears the signatures of Accused No.1-Ravikumar and Mr. P. Jambukeshwaran. (*Deposition of PW-1 Manojkumar Rakshit - Page 7 Para 6, and Deposition of PW-14 Sivaraman - Page 3 Para 3*). The cheque is in the hand-writing of Accused No.2-Suresh Babu. (*Deposition of PW-1 Manojkumar Rakshit - Page 7 Para 6 and Deposition of PW 14 – Sivaraman - Page 3 Para 3*).

74. Exhibit-19 has been presented along with the pay-in-slip dated 31st January 1992, which is marked as Exhibit-385. Exhibit-385 would show

that Exhibit-19 is presented for crediting to the account of SBI with RBI. The pay-in-slip containing the signature of Accused No.3-Sitaraman (marked as Q-100).

75. Exhibit-60 is the Statement of Account No.7382 of NHB with RBI. In Exhibit-60, on 31st January 1992, in the withdrawal column, it is shown that Cheque No.173921 for Rs.89,05,00,000/- has been debited.

76. Exhibit-392 Colly is the Statement of Account No.2001 of SBI with RBI. In Exhibit-392 Colly, on 31st January 1992, there is a credit of Rs.89,05,00,000/-. Hence, this would show that the cheque amount has been debited in the account maintained by NHB and credited to the account of SBI.

Transactions in SBI

77. Exhibit-340 Colly is the Waste-Book Entries dated 31st January 1992. All the days transactions done by SBI would be appearing in the Waste Book. The Debit Voucher would be appearing on the credit side of the Waste Book and Credit Voucher would be appearing on the debit side of the Waste Book. Day-end, all the debit side and credit side should be tallied.

78. The Waste Book would show the following entries on 31st January

1992 pertaining to Accused No.4-HSM on that day and it apparently can be seen that both the sides are tallying.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
58	Exh 279 for debiting RBI	Exh 340/8	PW 28	89,05,00,000.00
59	Exh 346 for National and local clearing	Exh 340/9	PW 28	21,96,27,397.26
62	Exh 413 – Entry for Harshad S. Mehta (original voucher in Exhibit 158 colly Sr. No.61)	Exh 340/10	PW 29	113,68,15,268.65
Total				224, 69,42,665.91

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
70	Exh 280 for credit to Harshad Mehta	Exh 340/1	PW 28	111,01,27,397.26
74	Exh 341 for credit to inter divisional transfer a/c – Institutional Division	Exh 340/2	PW 28	2,00,01,525.00
75	Exh 276 for RBI Account – being purchase of securities from NHB	Exh 340/3	PW 28	26,66,32,017.48
76	Exh 342 for RBI Account being purchase of securities for NHB	Exh 340/4	PW 28	44,00,00,000.00

77	Exh 343 being purchase for various Banks	Exh 340/5	PW 28	40,91,81,576.17
78	Exh 344 for Banker's cheque	Exh 340/6	PW 28	10,00,000.00
79	Exh 345 for commission	Exh 340/7	PW 28	150
Total				224, 69,42,665.91

79. Apparently, all the above transactions done on 31st January 1992 were on behalf of Accused No.4-HSM. It can be seen that both the sides of transactions are tallying. On the very same day, there is a credit to the account of Accused No.4-HSM and also a debit.

80. Exhibit-429/2 is the entry for Rs.111,01,27,397=26, thereby giving credit to the account of Accused No.4-HSM with Personal Banking Division, Mumbai Main Branch. The above entry is corresponding to Exhibit-340/1. The corresponding voucher for Exhibit-429/2 is Exhibit-280.

81. On the same day, there is another entry for Rs.113,68,15,268=15 for debiting the account of Accused No.4-HSM, which is marked as Exhibit-429/3. The above entry is corresponding to Exhibit-340/10 in the Waste Book. The corresponding voucher for Exhibit-429/3 is Exhibit-413.

82. The procedure for sale of securities by SBI has already been discussed. Hence, if there is sale of securities by SBI, it should invariably

be appeared in the Sale Purchase Register maintained at SBI Corporate Centre. Exhibit-432 Colly is the Sale Purchase Register of SBI Corporate Centre. Page Nos.166 and 167 of the Register show the entries dated 27th January 1992 to 21st February 1992. Exhibit-432/2 is the entry related to sale of securities on 31st January 1992. The entry shows that it is sale of securities to Citi Bank and there was no sale of securities to NHB by SBI on 31st January 1992. PW-37 T.P. Nageswara Rao, in his deposition at page 4 para 7, stated that *"had there been a sale of securities to NHB on 31st January 1992, the same would have been reflected in these pages."*

83. Bank Investment Cell of SBI, Mumbai Main Branch, was maintaining Sales Slip Book for recording the sales done by SBI. Exhibit-400A is the Sales Slip Book for the concerned period. Exhibit-400/6A is Page No.3727 of Sales Slip Book dated 31st January 1992. The Sales Slip Book dated 31st January 1992 does not show any sale transaction with NHB on 31st January 1992. PW-29 Prakash Kanchan, in his deposition at page 30 para 68, stated that, *"had there been any such transaction, it would have been shown in Exhibit-400/6"*.

84. So, none of the SBI records would show that there was sale of securities by SBI to NHB on 31st January 1992. Rather, the cheque issued by NHB on that date was utilized by Accused No.4-HSM and the balance

amount was adjusted in the account of Accused No.4-HSM maintaining with the PBD, SBI.

16.03.1992

NHB

85. NHB purchased 2.50 crore UTI Units @ Rs.15.087 from SBI for Rs.37,71,75,000/-. Exhibit-20 is the Entry in Deal Diary for the said transaction. Exhibit-20 is in the hand-writing of Accused No.1-Ravikumar. *(Evidence of PW-1 Manojkumar Rakshit, page 7 para 7).*

86. Exhibit-21 is the entry in Investment Register dt. 16.03.1992 for purchase of 2.50 crore Units of UTI from SBI.

87. A cheque No.212521 dt. 16.03.1992 for Rs.25,41,40,170=21 in the hand-writing of Accused No.2-Suresh Babu and signed by Accused No.1-Ravikumar and P. Jambukeshwaran was issued by NHB towards the transaction, which is marked as Exhibit-23. The amount is less than the purchase price, because there was a sale of 13% RINL Bonds (Deal No.212) on 13th March 1992 for Rs.12,30,34,829=79. That amount has been adjusted in the transaction. Exhibit-162 is the voucher prepared for reversal of Deal No.212 for securities 13% RINL for Rs.12,30,34,829=79. Hence, the balance was Rs.25,41,40,170=21.

88. Exhibit-355 is the voucher dated 16th March 1992 for the said

transaction (*photocopy is at Exhibit-168*). The voucher shows purchase of 2½ crore Units by NHB for Rs.37,71,75,000/-. The voucher is signed by Accused No.2-Suresh Babu. (*Evidence of PW-30 B. Muralidharan - page 3 para 3*).

89. Exhibit-24 is the entry in RBI Scroll Book showing issuance of cheque for Rs.25,41,40,170=21 on 16th March 1992.

90. Exhibit-23 is the cheque presented before RBI along with a pay-in-slip dated 16th March 1992, which is marked as Exhibit-389. Overleaf of Exhibit-389 would show that Cheque No.212521 dated 16th March 1992 for Rs.25,41,40,170=21 from NHB has been presented along with the pay-in-slip. The pay-in-slip is prepared to get the credit of cheque amount into the Account No.2001 of SBI with RBI.

91. Exhibit-60 is the Account Statement of NHB with RBI. In Exhibit-60, on 16th March 1992, Cheque No.212521 for Rs.25,41,40,170=21 has been debited and in Exhibit-392 Colly, (*SBI Account statement with RBI*), an amount of Rs.25,41,40,170=21 has been credited. This would show that the NHB account was debited and amount has been credited to the account of SBI.

SBI

92. On 16th March 1992, an amount of Rs.25,41,40,170=21 has been

credited to Account No.4/8710 of Accused No.4-HSM by Credit Voucher No.53, which is at Exhibit-273 and signed by Accused No.3-Sitaraman.

93. On 16th March 1992, an amount of Rs.26,28,27,857=19 has been debited from the account of Accused No.4-HSM. The narration shows that it is for purchase of securities from SBI Cap. Exhibit-406 would prove the same.

94. The entries for Waste Book dated 16th March 1992 have been marked as Exhibit-411.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
98	Exh 278 for RBI	Exh-411/1	PW-29	25,41,40,170.21
97	Exh 406 for Harshad S. Mehta (original in Exhibit 158 colly SI. No.62)	Exh-411/2	PW-29	26,28,27,857.19
Total				51,69,68,027.40

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
50	Exh 407 for Bankers Cheque	Exh-411/3	PW-29	12,58,38,058.22
51	Exh 408 for RBI	Exh-411/4	PW-29	9,00,00,000.00
52	Exh 409 for RBI	Exh-411/5	PW-29	4,69,89,623.97

53	Exh 273 for Harshad S. Mehta	Exh-411/6	PW-29	25,41,40,170.21
49	Exh 410 for Commission	Exh-411/7	PW-29	175.00
Total				51,69,68,027.40

95. Exhibit-429/9 is a credit entry for Rs.25,41,40,170=21 dated 16th March 1992, in Accused No.4-HSM's account with SBI Personal Banking Division, which is a corresponding entry for Exhibit-411/6 of Waste Book and Voucher Exhibit-273.

96. Exhibit-429/10 is a debit entry for Rs.26,28,27,857=19 dated 16th March 1992, which is a corresponding entry for Exhibit-411/2. Exhibit-406 is the corresponding debit voucher for the debit entry marked as Exhibit-429/10.

97. Exhibit-432 Colly is the Sale Purchase Register maintained at SBI Corporate Centre. On Page Nos.94 and 95 of Exhibit-432 Colly, the entries are pertaining to sale of securities from 10th March 1992 to 21st March 1992. However, this page would not show any sale of securities to any Institution on 16th March 1992. PW-37 T. P. Nageswara Rao, in his deposition at page 5 on para 11, stated that, *“entries on these pages do not show any sale transactions dated 16th March 1992. Had there been a sale transaction on 16th March 1992, the same would have been reflected in these pages.”*

98. Exhibit-400 Colly is the Sale Slip Book maintained at Bank Investment Cell at Bombay Main Branch. On 16th March 1992, there was no sale of securities transactions with any Banks by SBI. Exhibit-400 Colly., Page No.3762, is the sale transaction dated 14th March 1992 and Page No.3763 is the sale transaction dated 17th March 1992, which proves that there was no sale transaction on 16th March 1992 by SBI. PW-29 Prakash Kanchan, in his deposition at page 28 para 61, stated that, *"had there been any sale transaction of SBI with anybody on 16th March 1992, it would have been reflected in Exhibit-400 Colly"*.

24th March 1992

99. NHB purchased 4 crore UTI Units @ Rs.15/- for Rs.60,00,00,000/- by Deal No.222; 17% NTPC Bonds face value Rs.50 crore @ 93% of face value for Rs.47,94,38,356=16 by Deal No.244; and 9% IRFC Bonds face value Rs.30 crore @ 90% face value for Rs.28,29,45,205=48 by Deal No.245. There are total three Deals on 24th March 1992. Exhibit-26 is the entries in Deal Diary dt. 24th March 1992, however, it is not specifically stated what are the securities in the Deal Diary.

100. However, Investment Register shows the nature of securities purchased on that day. Exhibit-27 is the entry dated 24th March 1992 in Investment Register for Deal No.222 for Rs.60,00,00,000/-. Exhibit-28

shows the entries in the Investment Register for Deal Nos.244 and 245 for Rs.47,94,38,356=16 and Rs.28,29,45,205=48.

101. A Voucher No.24 dated 24th March 1992 prepared and signed by Accused No.2-Suresh Babu is marked as Exhibit-356.

102. A Cheque No.212587 dt. 23rd March 1992 for Rs.14,62,12,000/- under the signature of P. Jambukeshwaran and Accused No.1-Ravikumar has been issued in the name of SBI, which is marked as Exhibit-29. The cheque is in the handwriting of Accused No.1-Ravikumar. *(Deposition of PW-14 Sivaraman - page 3 para 2)*. PW-1 Manojkumar Rakshit further deposed, in his deposition at page 10 para 8, that, *“possibly, the cheque was prepared on 23rd March 1992 on the basis of oral finalization of the Deal on that day, but the Deal appears to have taken place on 24th March 1992 and the cheque was also handed over on that day.”*

103. For the Deal, NHB had to make payment of Rs.136,23,83,561=64. However, they had made payment of Rs.14,62,12,000/- towards the transaction. Even though the Deal Diary shows three transactions on 24th March 1992, subsequently, through Exhibit-372, rectification entry has been passed. Exhibit-372 would show that, on 24th March 1992, there was only one transaction for Rs.40,45,93,060/- with SBI. On the same day,

there was sale of UTI 1.77 crore Units @ 14.5918 for Rs.25,83,81,060/- as per Exhibit-30 in the Deal Diary by NHB to SBI. Exhibit-30 is in the handwriting of Accused No.2-Suresh Babu. (*Deposition of PW-14 Sivaraman - page 3 para 2*). Hence, the cheque was issued for Rs.14,62,12,000/- (i.e. Rs.40,45,93,060/- – Rs.25,83,81,060/- = Rs.14,62,12,000/- made on account of the transactions for purchase of securities on 24th March 1992). Exhibit-31 is the entry showing outflow of Rs.14,62,12,000/- in the Deal Diary.

104. Cheque at Exhibit-29 has been presented with RBI along with a pay-in-slip dated 24th March 1992 to credit the amount to the account of SBI. The pay-in-slip is marked as Exhibit-390. Overleaf of Exhibit-390 would show that a Cheque No.212587 issued by NHB for Rs.14,62,12,000/- presented for payment.

105. Exhibit-60 is the Account Statement of NHB with RBI. In Exhibit-60, an entry is separately marked as Exhibit-134, which would show that on, 24th March 1992, a cheque No.212587 for Rs.14,62,12,000/- has been issued from the account of NHB maintained with RBI. In Exhibit-392 Colly, on 24th March 1992, an amount of Rs.14,62,12,000/- has been credited to the account of SBI. A combined reading of above Exhibits would prove that, on 24th March 1992, an amount of Rs.14,62,12,000/- has been

debited from the account of NHB and credited to the account of SBI with RBI.

SBI

106. Certified copy of Waste Book, Page No.68, dated 24th March 1992 is marked as Exhibit-415.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
82	Exh 277 for RBI	Exh 401/10	PW 29	14,62,12,000.00
83	Exhibit 414 for SBI Cap Market	Exh 401/11	PW 29	14,61,84,000.00
84	Exhibit 158 colly (Sl.No.64) – Harshad Mehta	Exh 401/12	PW 29	1,000.00
Total				29,23,97,000.00

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
52	Exh 416 for Bankers Cheque	Exh 401/13	PW 29	14,61,85,000.00
51	Exh 281 for SBI Cap Market	Exh 401/14	PW 29	14,62,12,000.00
Total				29,23,97,000.00

107. Exhibit-429/11 is a debit entry for Rs.1,000/- in Exhibit-429 Colly, which is corresponding to Exhibit-410/11 and Voucher Exhibit-158 Colly.

108. Exhibit-281 would show that the amount of Rs.14,62,12,000/- has been further credited to the account of M/s. SBI Cap and the narration in the voucher would show that it is for purchase of securities. From the above, it appears that RBI Account has been debited and SBI Cap Account has been credited, which shows SBI Cap had sold securities. (In such cases, the transaction will appear in Slip Book of SBI Cap.). Hence, in this case, the amount has not been credited to the account of Accused No.4-HSM, but gone to the account of SBI Capital Market.

109. Now, we may examine why the amount has been credited to the account of SBI Capital Market :

110. On 10th March 1992, SBI Cap entered into a deal with Canfin for purchase of Rs.10 crore Units @ Rs.14.55 by Deal Ticket No.4121, which is marked as Exhibit-302. The deal was to be reversed on 24th March 1992. The total amount, as per the deal, was Rs.14,55,00,000/- and the Broker for the transaction was Accused No.4-HSM.

111. The payment was made to Canfin for the said transaction by giving debit advice to SBI Mumbai Main Branch on 10th March 1992. Exhibit-303 is the copy of Debit Advice. Exhibit-303/1 is Sr. No.4, which would show purchase of 1 crore UTI Units @ Rs.14.55 with Broker Accused No.4-HSM and the total amount was Rs.14,55,00,000/-.

112. Blue Book entries dated 10th March 1992 has been marked as Exhibit-304 Colly. On Page No.2 of Exhibit-304 Colly, the last entry shows that payment to Canfina has been made for purchase of 1 crore UTI Units @ Rs.14.55, total Rs.14,55,00,000/-, which is marked as Exhibit-304/1.

113. On 24th March 1992, the above deal was reversed by Deal Ticket No.4121 through Broker Accused No.4-HSM. The Deal Ticket No.4121 is Exhibit-305. The Deal Ticket shows that the counter-party is Canfina. Total amount was Rs.14,62,12,000/-.

114. Exhibit-306 is the Credit Advice dated 24th March 1992 given to SBI Mumbai Main Branch and Exhibit-306/1 is the entry at Sr. No.4, which would show that SBI Cap sold 1 crore Units face value Rs.10 crore @ Rs.14.6212, total Rs.14,62,12,000/-, with Accused No.4-HSM as the Broker.

115. Exhibit-307 Colly, is the Blue Book copy of entries dated 24th March 1992 and Exhibit-307/1 would show that as per Deal Ticket No.4237, 1 crore units @ Rs.14.6212, total Rs.14,62,12,000/-, sold to Canfina.

116. Entries at Exhibit-432/7 Colly are related to sale of securities on 24th March 1992 in the Sale and Purchase Register maintained at the Corporate Office of SBI. Exhibit-432/7 would show sale of securities to Citi

Bank only. There is no sale of securities to NHB on 24th March 1992 by SBI. PW-37 T. P. Nageswara Rao, in his deposition at page 6 para 13, stated that, *“none of these entries show any sale to NHB on 24th March 1992. Had there been a sale of securities to NHB on 24th March 1992, the same would have been reflected in these pages”*.

117. Exhibit-400/7 and Exhibit-400/8 are Sale Slip Books, Page Nos.3769 and 3771 respectively, for 24th March 1992. (Page No.3770 is missing in Exhibit-400 Colly). In Exhibit-400/7 and Exhibit-400/8, names of counter-parties are not mentioned. However, the entries at Exhibit-400/7 are tallying with Exhibit-432/7 Colly, which would prove that the transactions appearing in Exhibit-400/7 are pertaining to Citi Bank. Hence, there was no sale of securities transactions with NHB on that date by SBI. Further, the amount paid by NHB has been directly credited to the account of SBI Capital Market. So, there is no chance to have a sale of securities transactions with SBI on 24th March 1992.

14th March 1992

118. On 14th March 1992, there was an entry showing outflow of Rs.44,97,75,000/- to SBI and same amount to be received from State Bank of Patiala. The entry has been struck off. This entry is marked as Exhibit-33, which is in the handwriting of Accused No.2-Suresh Babu.

Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman (*Page 5 Para 5*) would prove the same. However, Deal Diary has not shown what was the securities and what was the rate.

119. On 16th March 1992, the same entry has been repeated in the Deal Diary, but it is in the handwriting of Accused No.1-Ravikumar. The entry is marked as Exhibit-34, which also has been struck off. Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman (*page 5 para 5*) would prove that it is in the handwriting of Accused No.1-Ravikumar. However, there is no such sale of securities by NHB on that date. PW-1 Manojkumar Rakshit deposed, at page 11 para 9, that, *“this entry was regarding purchase of Units from SBI and sale of same Units to State Bank of Patiala. On 16th March 1992, Accused No.1-Ravikumar had addressed a letter to the Manager of State Bank of Patiala to make payment of those Units directly to SBI. State Bank of Patiala had issued cheque for payment of that amount to SBI.....”*

120. A Cheque No.331295 dt. 14th March 1992 has been issued by State Bank of Patiala to SBI for Rs.44,97,75,000/-. Exhibit-122 is the cheque issued by State Bank of Patiala to SBI. (*Statement for SBI not produced for 14th March 1992*).

SBI

121. A Debit Voucher at Exhibit-274 dated 14th March 1992 for Rs.4,69,35,616=44 has been prepared by PW-25 Harsha Shah, signed by Accused No.3-Sitaraman, shows that the amount has been debited from RBI account of SBI.

122. The Waste Book for 14th March 1992 would show the following entries, which would clearly show as to how much amount has been totally received on that date by SBI and how much has been paid by SBI on account of transactions with Accused No.4-HSM. Waste Book dated 14th March 1992 is marked as Exhibit-310 Colly. The Waste Book for 14th March 1992 was prepared by PW-27 Girish Patel.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
63	Exhibit 274 for debiting RBI Account	Exh 310/2	PW-25	Rs.4,69,35,616.44
64	Exhibit 311 for debiting National and Local Clearing Account	Exh 310/3	PW-27	Rs.45,30,25,000.00
62	Exhibit 158 colly (Sl.No.63) debiting account of HSM	Exh 310/1	PW-27	Rs.48,42,37,034.89
Total				98,41,97,651.33

123. The narration at Exhibit-311 would show that the amount mentioned in the voucher is on behalf of sale proceeds of securities.

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
61	Exh 312 for Commission	Exh 310/4	PW-27	100.00
62	Exh 313 for Bankers cheque	Exh 310/5	PW-27	9,47,42,193.15
63	Exh 314 for RBI	Exh 310/6	PW-27	6,13,87,300.68
64	Exh 315 for Bankers cheque	Exh 310/7	PW-27	19,67,06,986.30
65	Exh 316 for credit of SBI Cap Ltd.	Exh 310/8	PW-27	13,14,00,454.76
66	Exh 275 for credit HSM Account	Exh 310/9	PW-27	49,99,60,616.44
Total				98,41,97,651.33

124. Both the credit as well as debit entries for the day are tallying. An amount of Rs.49,99,60,616=44 has been credited to the account of Accused No.4-HSM, having account with Personal Banking Division (PBD) through Exhibit-275. Entry at Exhibit-310/9 in the Waste Book would be showing credit of the said amount to the account of Accused No.4-HSM.

125. Exhibit-429/7 is a credit entry for Rs.49,99,60,616=44 dated 14th March 1992, in Exhibit-429 Colly, which is the corresponding entry for

Exhibit-310/9 in the Waste Book. Exhibit-275 is the corresponding voucher for Exhibit-429/7.

126. Exhibit-429/8 is a debit entry for Rs.48,42,37,034=89 dated 14th March 1992 in Exhibit-429 Colly. The corresponding entry in the Waste Book is Exhibit 310/1. Hence, on 14th March 1992, there is credit as well as debit in the account of Accused No.4-HSM.

127. Entries at Exhibit-432/6 Colly are related to the sale of securities by SBI on 14th March 1992. The entries would not show any sale of securities on that day by SBI to NHB. PW-37 T. P. Nageswara Rao, on page 5 para 11 of his deposition, stated that, *"none of these entries show any sale to NHB on 14th March 1992. Had there been a sale of securities to NHB on 14th March 1992, the same would have been reflected in these pages."*

128. Exhibit-400/5 Colly is the Sales Slip Book, page Nos.3760 to 3762, for sale of securities by SBI on 14th March 1992. In Exhibit-400/5 Colly, there has been no sale transaction to NHB on 14th March 1992. PW-29 Prakash Kanchan, in his deposition, on page 22 para 43, stated that, *"had there been any transaction with NHB on 14th March 1992, it would have been reflected in Exhibit 400/5 Colly."*

21st February 1992

129. NHB purchased Treasury Bills face value Rs.50 crore for Rs.47,97,50,000/- from SBI. Exhibit-35 is the entry in the Deal Diary for purchase of Rs.50 crore Treasury Bills from SBI for Rs.47,97,50,000/-, which is in the handwriting of Accused No.1-Ravikumar. (*Evidence of PW-1 Manojkumar Rakshit - page 12 para 10*). However, Exhibit-35 would not show description of security.

130. Voucher No.25 dated 21st February 1992 was signed by Accused No.2-Suresh Babu for the said transaction, which is marked as Exhibit-357 (*Exhibit-165 is the photocopy*). The voucher evidences investment by NHB in Treasury Bills. (*Evidence of PW-30 B. Muralidharan - page 4 para 6*). The deal number is "1" and the deal date was "21st February 1992". The country-party shown in the voucher was "SBI".

131. Exhibit-36 is the entry dated 21st February 1992 in the Treasury Bills Investment Register in the handwriting of Accused No.1-Ravikumar. There is a purchase of securities, face value 50 crore, for Rs.47,97,50,000/-. The second entry shows that on the same day, there is sale of same securities to State Bank of Patiala for Rs.47,97,50,000/- and the amount has been credited.

132. NHB issued two separate cheques for the said transaction, both signed by Accused No.1-Ravikumar and P. Jambukeshwaran. Exhibit-37 is Cheque No.212156 dated 21st February 1992 for Rs.47,95,00,000/- and Exhibit-38 is Cheque No.212157 dated 21st February 1992 for Rs.2,50,000/-, both, in favour of SBI. The cheques are written by PW-14 Sivaraman. (*Deposition of PW-14 Sivaraman - page 6 para 6*).

133. Exhibit-39 is the entry dated 21st February 1992 in RBI Scroll for issuance of cheques dated 21st February 1992.

134. Cheque at Exhibit-37 is presented with RBI, along with a pay-in-slip, dated 21st February 1992. The pay-in-slip is marked as Exhibit-386. Exhibit-386 would show that the amount of Rs.47,95,00,000/- mentioned in the cheque has been credited to the account of SBI with RBI on 21st February 1992.

135. Vide entry at Exhibit-60 made on 21st February 1992, an amount of Rs.47,95,00,000/-, on account of Cheque No.212156, has been debited. Vide entry at Exhibit-392 Colly made on 21st February 1992, an amount of Rs.47,95,00,000/- has been credited. A combined reading of the above documents would show that the cheque amount has been debited from the account of NHB and the same has been credited to the account of SBI with RBI.

136. Vide entry at Exhibit-60 made on 26th February 1992, an amount of Rs.2,50,000/- has been debited on account of clearing of Cheque No.212157. The details about the transaction has been explained later.

SBI

137. The cheque issued in favour of SBI for purchase of the securities has been adjusted as per the directions of Accused No.4-HSM and entered the details in the Waste Book on 21st February 1992. Exhibit-350 is the copy of Waste Book for transaction dated 21st January 1992.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
80	Exh 351 for HSM	Exh 350/3	PW-29	4,01,50,000.00
81	Exh 284 for RBI	Exh 350/4	PW-29	47,95,00,000.00
82	Exh 352 for National and Local Clearing	Exh 350/5	PW-29	46,00,000.00
Total				56,56,50,000.00

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
59	Exh 349 for RBI	Exh 350/1	PW-29	8,81,00,000.00
60	Exh 348 for SBI Cap Ltd.	Exh 350/2	PW-29	47,75,50,000.00
Total				56,56,50,000.00

138. Waste Book entries for 21st February 1992 are tallying for the day. Perused Exhibit-351 for debiting the account of Accused No.4-HSM. The narration shows that it is the difference amount adjusted into the account of Accused No.4-HSM, maintained at PBD of SBI. Moreover, from the narration at Exhibit-349, it can be seen that it is prepared for purchase of securities for NHB.

139. Exhibit-429/4 is the entry dated 21st February 1992 in the account of Accused No.4-HSM with PBD, SBI Mumbai Main Branch, which would show that an amount of Rs.4,01,50,000/- has been credited to the account of Accused No.4-HSM as per voucher at Exhibit-351.

140. Exhibit-432 Colly is the Sale and Purchase Register maintained at SBI Corporate Centre. Entries at Exhibit-432/3 Colly are the deals done by SBI on 21st February 1992. None of the entries at Exhibit-432/3 Colly relate to sale of securities to NHB. PW-37 T. P. Nageswara Rao, in his deposition, at page 4 para 8, deposed that, *"had there been a sale of securities to NHB on 21st February 1992, the same would have been reflected in these pages."*

141. Exhibit-400/1 Colly is the Sale Slip Book (Page Nos.3734 and 3735). Exhibit-400/1 would not show any sale of securities to NHB on 21st

February 1992. PW-29 Prakash Kanchan, in his deposition, at page 8 para 20, has stated that, *"had there been a transaction of sale of securities with NHB on 21st February 1992, it would have been reflected in the Sale Slip Book."*

22nd February 1992

142. NHB purchased Government of India Loan Securities (11.50% GOI 2010) by two different deals i.e. Deal No.5 and Deal No.6. The first deal was for securities purchased at 98.44% and 99.82% of the face value for a total sum of Rs.151,99,22,734/- and the second deal was for Rs.13,00,000/-.

143. Entry dated 22nd February 1992 for the two deals in Deal Diary is Exhibit 40, which are in the handwriting of Accused No.2-Suresh Babu.

144. Deal Nos.5 and 6 entered in the Investment Register for Government Securities on 22nd February 1992, shows that NHB had invested 11.50% in GOI 2010 for Rs.152,12,22,734/- on 22nd February 1992, which is marked as Exhibit-41. Exhibit-41 is in the handwriting of Accused No.2-Suresh Babu (*Deposition of PW-14 Sivaraman - page 7 para 7*).

145. Exhibit-358 is Voucher No.19 dated 22nd February 1992 signed by

Accused No.2-Suresh Babu for the transaction dated 22nd February 1992, which shows investment of Government of India Loan and reversal date of the transaction is 7th March 1992. Amount of the voucher is Rs.152,12,22,734/- (*Photocopy is at Exhibit-166*).

146. NHB Cheque No.212166 dated 22nd February 1992 for Rs.151,99,22,734/-, issued in favour of SBI, signed by Accused No.1-Ravikumar and P. Jambukeshwaran, for the said transaction is at Exhibit 42. NHB Cheque No.212167 dt. 22nd February 1992 for Rs.13,00,000/-, issued in favour of SBI, signed by Accused No.1-Ravikumar and P. Jambukeshwaran is at Exhibit-43. The entries at Exhibit-42 and Exhibit-43 are in the handwriting of Accused No.2-Suresh Babu. (*Deposition of PW-14 – Sivaraman - page 6 para 7*).

147. RBI Scroll dated 22nd February 1992 shows that Cheque Nos.212166 and 212167 for Rs.151,99,22,734/- and Rs.13,00,000/-, respectively, have been issued in favour of SBI on 22nd February 1992, which is at Exhibit-44.

148. Cheque at Exhibit-42 has been submitted to RBI, along with a pay-in-slip dated 22nd February 1992, which is marked as Exhibit-387. The pay-in-slip would show that the amount has been credited to the account of SBI with RBI on 22nd February 1992. The total amount in the pay-in-slip

was Rs.173,61,10,262=41. However, on the overleaf of Exhibit-387, it can be seen that three cheques from NHB have been presented by a single pay-in-slip. The third Cheque No.212166 for Rs.151,99,22,734/- is related to the transaction, which represented Exhibit-42.

149. Vide entry at Exhibit-60 made on 22nd February 1992, an amount of Rs.151,99,22,734/- has been debited in the account of NHB against the Cheque No.212166. Further, Exhibit-60 would show that three cheques, viz. Cheque No.212164 for Rs.12,80,75,460=41, Cheque No.212165 for Rs.8,81,12,068/- and Cheque No.212166 for Rs.151,99,22,734/-, coming to a total amount of Rs.173,61,10,262=41, have been debited. Vide entry at Exhibit-392 Colly made on 22nd February 1992, an amount of Rs.173,61,10,262=41 has been credited in the account of SBI with RBI. The above would show that Cheque No.212166 for Rs.151,99,22,734/- has been debited from the account of NHB and credited to the account of SBI with RBI.

150. In case of Cheque at Exhibit-43 bearing No.212167 for Rs.13,00,000/-, the amount has been debited from the account of NHB on 26th February 1992 by clearing. Entry dated 26th February 1992 at Exhibit-60 would prove the same. The details of the transaction are explained later in the Notes of Arguments.

SBI

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
44	No voucher – Banks Investment Account	Exh 401/1	PW-29	26,51,78,240.00
45	No voucher – for RBI	Exh 401/2	PW-29	5,22,81,104.78
46	No voucher – Banks Investment Account	Exh 401/3	PW-29	114,39,88,950.00
	Interest on Government Securities	Exh 401/4	PW-29	2,46,11,265.89
47	No voucher –for National and Local Clearing	Exh 401/5	PW-29	279,52,85,035.34
48	No voucher – National and Local Clearing A/c.	Exh 401/6	PW-29	48,89,69,630.67
49	Exh 328 for National and Local Clearing	Exh 327/1	PW-27	546,85,58,058.34
50	Exh 402 for SBI Cap Ltd.	Exh 401/7	PW-29	100,52,01,100.56
51	Exh 329 for Banks investment in securities	Exh 327/2	PW-27	150,19,50,000.00
	Exh. 329 interest	Exh 327/2A	PW-29	4,51,21,527.77
52	Exh 330 for RBI	Exh 327/3	PW-27	173,61,10,262.41
53	Exh 331 for SBI Cap Ltd.	Exh 327/4	PW-27	9,52,25,700.00
54	Exh 332 for Harshad S. Mehta	Exh 327/5	PW-27	94,94,30,639.83
Total				1557,19,11,516.00

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
72	No voucher – Entry related to RBI Account	Exh 327/12	PW-27	26,51,78,240.00
73	No voucher – Entry related to Interest on Government Securities	Exh 327/13	PW-27	2,56,81,320.67
74	No voucher – Entry related to Bank Investment Government Securities	Exh 327/14	PW-27	119,52,00,000.00
75	No voucher – Entry related to Bank Investment Government Securities	Exh 327/15	PW-27	239,36,00,000.00
76	No voucher – Entry related to Interest on Government Securities	Exh 327/16	PW-27	2,53,78,966.01
77	No voucher – Entry related to Bank Investment Government Securities	Exh 327/17	PW-27	86,52,75,700.00
78	No voucher – Entry related to RBI Account	Exh 327/18	PW-27	100,52,01,100.56
79	Exh 333 for Interest on Government and other securities	Exh 327/6	PW-27	6,60,61,111.11
80	Exh 334 for Bank Investment Government Securities	Exh 327/7	PW-27	155,46,51,650.00
81	Exh 335 for RBI Account	Exh 327/8	PW-27	110,00,00,000.00

82	Exh 336 for RBI Account	Exh 327/9	PW-27	48,81,60,393.78
83	Exh 337 for SBI Cap Mark Ltd.	Exh 327/10	PW-27	100,64,01,101.56
84	Exh 338 for credit of various Banks	Exh 327/11	PW-27	558,11,21,931.90
Total				1557,19,11,516.00

151. Both the sides are tallying. Exhibit-429/5 is an entry dated 22nd February 1992 showing that Accused No.4-HSM was having account with PBD, SBI Mumbai Main Branch, which would prove that an amount of Rs.94,94,30,639=83, as per Exhibit-332, has been debited to his account.

152. Exhibit-432 Colly is the Sale and Purchase Register maintained at SBI Corporate Centre. Entries at Exhibit-432/4 Colly are related to sale of securities by SBI on 22nd February 1992. PW-37 T. P. Nageswara Rao, in his deposition at page 4 para 9, deposed that, *"none of the entries show sale of securities to NHB on 22nd February 1992. Had there been a sale of securities to NHB on 22nd February 1992, the same would have been reflected in these pages."*

153. Exhibit-400/2 Colly is the Sale Slip Book. Page Nos.3736 to 3739 pertaining to sale of securities by SBI on 22nd February 1992. Entries at Exhibit-400/2 do not reflect any transaction with NHB on 22nd February 1992 for sale of securities. PW-29 Prakash Kanchan, in his deposition at

page 15 para 30, stated that, *“had there been any sale transaction with NHB on that day, it would have been reflected in Exhibit-400/2”*.

7th March 1992

154. NHB purchased 11.5% Government of India 2010 Securities, face value Rs.100/- crore, @ Rs.101.88%, from SBI for Rs.101,88,50,194=56 on 7th March 1992. The entry for the said purchase in Deal Diary is at Exhibit-45, which is in the handwriting of Accused No.2-Suresh Babu. *Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman (Deposition - page 7 para 8)*. However, securities description is not mentioned in Exhibit-45.

155. The entry in Government of India Securities Portfolio dated 7th March 1992 shows Deal No.7. There is purchase of 11.5% GOI 2010, face value Rs.100 crore, from SBI, for Rs.101,88,50,194=56, which is Exhibit-46.

156. NHB has prepared Voucher No.16 dt. 7th March 1992 showing purchase of GOI securities from SBI on 7th March 1992, signed by Accused No.2-Suresh Babu, which is at Exhibit-359. *(Photocopy is at Exhibit-167)*. The voucher is evidencing purchase of Government Securities by NHB from SBI. The amount shown in the voucher is Rs.101,88,50,194=56.

157. NHB Cheque No.212282 dt. 7th March 1992 for Rs.101,88,50,194=56, in favour of SBI, signed by Accused No.1- Ravikumar and P. Jambukeshwaran has been issued for the said transaction, which is at Exhibit-47. *Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman (Deposition page 7 para 8).*

158. RBI Scroll dt. 7th March 1992 shows that Cheque No.212282 for Rs.101,88,50,194=56 has been issued in favour of SBI, which is at Exhibit-48.

159. NHB Cheque No.212282 dt. 7th March 1992 has been presented with RBI on 7th March 1992, along with a pay-in-slip, which is marked as Exhibit-388. Overleaf of Exhibit-388 would show that NHB cheque for Rs.101,88,50,194=56 has been presented along with the pay-in-slip and the amount has been credited to the account of SBI with RBI.

160. Vide entry at Exhibit-60 made on 7th March 1992, an amount of Rs.101,88,50,194=56 has been debited from the account of NHB on account of issuance of Cheque No.212282. Vide entry at Exhibit-392 Colly, an amount of Rs.101,88,50,194=56 has been credited in the account of SBI. A combined reading of the above Exhibits would prove that the amount has been debited in the account of NHB and credited in the account of SBI with RBI.

SBI

161. In the SBI, the particular day's transaction has been recorded in the Waste Book. Waste Book entries would show receipt of money from various parties and payments made as per the directions of Accused No.4-HSM. Waste Book entries for the day 7th March 1992 are at Exhibit 317-Colly.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
61	Exh 318 for Banks Investment and Interest	Exh 317/1	PW-27	1076,39,25,850.00 20,55,28,109.68
62	Exh 319 for H S Mehta	Exh 317/2	PW-27	16,57,27,428.60
63	Exh 320 for SBI Cap Market	Exh 317/3	PW-27	1,46,00,000.00
64	Exh 321 for RBI	Exh 317/4	PW-27	127,55,00,194.87
65	Exh 322 for National and Local Clearing Account	Exh 317/5	PW-27	502,80,23,610.20
Total				1745,33,05,193.35

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
74	Exh 323 for Banks Investment in Government Securities	Exh 317/6	PW-27	1269,12,44,860.00
75	Exh 324 for Interest on Government Securities	Exh 317/7	PW-27	26,54,14,257.13

76	Exh 325 for SBI Cap Market Ltd.	Exh 317/8	PW-27	7,53,200.00
77	Exh 326 for various Banks for purchase of securities	Exh 317/9	PW-27	449,58,92,876.22
Total				1745,33,05,193.35

162. Here the total transactions are more in the debit side of the Waste Book and hence an amount of Rs.16,57,27,428=60, through Exh-319, has been debited from the account of Accused No.4-HSM with PBD. The entry at Exhibit-317/2 in the Waste Book would prove the same.

163. Exhibit-429/6 is a debit entry for Rs.16,57,27,428=60 in the Account Statement of Accused No.4-HSM dated 22nd February 1992 and Exhibit-317/2 is the corresponding entry in the Waste Book for the same. Exhibit-319 is the corresponding debit voucher for the transaction.

164. Exhibit-432 Colly. is the Sale and Purchase Register maintained at SBI Corporate Centre. Exhibit-432/5 Colly. are the deals showing sale of securities on 7th March 1992. PW-37 T. P. Nageswara Rao, in his deposition at page 5 para 10, deposed that, *"none of these entries show any sale to NHB on 7th March 1992. Had there been a sale of securities to NHB on 7th March 1992, the same would have been reflected in these pages"*.

165. Entries made at Exhibit-400/3 Colly. are Page Nos.3749 to 3753 dated 7th March 1992, which do not reflect any sale of securities with NHB on 7th March 1992. PW-29 Prakash Kanchan, in his deposition at page 17 para 35, stated that, *“had there been any sale transaction with NHB on 7th March 1992, it would have been reflected in Exhibit-400/3 Colly.”*

30th March 1992

166. NHB purchased 17% NTPC Bonds for Rs.90,45,53,603=20 from SBI. However, there is no corresponding entry in the Deal Diary dated 30th March 1992. (*Voucher shows IRFC Bonds*).

167. RBI Scroll dated 30th March 1992 would show that Cheque No.212666 for Rs.90,45,53,603=20 has been issued in the name of SBI, which is at Exhibit-50.

168. NHB Voucher No.9 dated 30th March 1992 shows purchase of 9% IRFC Bonds by NHB on 30th March 1992 for Rs.145,63,97,260=27 from SBI and Standard Chartered Bank. The voucher evidences two transactions; one for Rs.90,45,53,603=20, and, another for Rs.55,18,43,657=07, which is in the handwriting of Accused No.2-Suresh Babu and signed by Accused No.2-Suresh Babu. Voucher is at Exhibit-360 (*Photocopy is at Exhibit-169*).

169. A Cheque No.212666 dated 30th March 1992 for Rs.90,45,53,603=20 has been issued in the name of SBI for the said transaction, which is signed by Accused No.1-Ravikumar and PW-17 Vivek Katre. Cheque is at Exhibit-49. PW-17 Vivek Katre also admitted his signature in Exhibit-49 (*Deposition - page 2 para 2*). The cheque is in the handwriting of PW-14 Sivaraman (*Deposition - page 8 para 9*).

170. Entry for this transaction is not appearing in the Investment Register and in the Deal Diary of NHB (*Deposition of PW-1 Manojkumar Rakshit at page 15 para 14*). However, Investment Register has not been produced for 30th March 1992.

171. Cheque at Exhibit-49 has been presented for payment on 30th March 1992 along with a pay-in-slip dated 30th March 1992. The pay-in-slip is marked as Exhibit-391. The overleaf of Exhibit-391 would show that Cheque No.212666 for Rs.90,45,53,603=20 issued by NHB has been presented along with the pay-in-slip.

172. Vide entry at Exhibit-60 made on 30th March 1992, an amount of Rs.90,45,53,603=20 has been debited on account of issuance of Cheque No.212666. Vide entry at Exhibit-392 Colly made on 30th March 1992, an amount of Rs.90,45,53,603=20 has been credited in the account of SBI

with RBI. Hence, a combined reading of the above Exhibits would prove that the cheque amount has been debited from the account of NHB and credited to the account of SBI with RBI on the very same day.

SBI
Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
81	Exh 403 for RBI	Exh 401/8	PW-29	90,45,53,603.20

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
79	Exh 405 for SBI Cap Mark	Exh 401/9	PW-29	90,45,53,603.20

173. The above statement would show that SBI account has been debited and account of SBI Cap has been credited.

SBI Cap

174. We may examine now why the amount has been credited to the account of M/s. SBI Cap Ltd.

175. Evidence of PW-26 Janardan Bandopadhyay, at page Nos. 4 to 8, paragraph Nos.6 to 20, would explain the transactions.

176. According to him, M/s. SBI Capital Market has entered into the

following deals with NHB :-

Date	Nature of Security	Deal Ticket Exhibit	Date of Reversal	Exhibit for Deal Ticket for Reversal	Amount on Reversal
28.03.1992	17% NTPC Bond	Exhibit 291	30.03.1992	Exhibit 290	200696286.58
28.03.1992	Units	Exhibit 293	30.03.1992	Exhibit 295	300822000.00
Total					501518286.58

177. PW-26 Janardan Bandopadhyay further deposed that, M/s. SBI Capital Market had entered into the following deals with M/s. Canfina through Broker Accused No.4-HSM :-

Date	Nature of Security	Deal Ticket Exhibit	Date of Reversal	Exhibit for Deal Ticket for Reversal	Amount on Reversal
04.03.1992		Exhibit 298	30.03.1992	Exhibit 299	256692315.62
28.03.1992	Units	Exhibit 300	30.03.1992	Exhibit 301	146343000.00
Total					403035315.62

178. On 28th March 1992, there was a deal for purchase of 17% NTPC Bonds for Rs.20,01,47,945=21 from NHB and Exhibit-291 is the Deal Ticket No.4282 for the said transaction. Exhibit-291 would show that the above deal is to be reversed on 30th March 1992. The payment for the said transaction was done by giving debit authority to the Mumbai Main

Branch from the account of M/s. SBI Cap for payment to NHB. Serial No.2 in Exhibit-292 and the Debit Note dated 28th March 1992 would show that M/s. SBI Cap have given debit instructions to the Manager, SBI, Securities Division, SBI Mumbai Main Branch, to debit Rs.20,01,47,945=21 on account of purchase of 17% NTPC Bonds from NHB. Exhibit-292 also would show that the Deal Ticket No.4282.

179. On 30th March 1992, there was a deal for sale of 17% NTPC Bonds, face value Rs.20 crore, for a total amount of Rs.20,06,96,286=58 from NHB. Exhibit-290 is the Deal Ticket No.4315 for the said deal. The above said deal was a reversal of earlier Deal No.4282 dated 28th March 1992, which is proved from Exhibit-290 itself. The Deal Ticket at Exhibit-290 would show the counter-party as "NHB" and it was a direct deal with M/s. SBI Cap and NHB. Evidence of PW-26 Janardan Bandopadhyay, at page 4 para 6, also would prove the same.

180. Exhibit-297 Colly is the copy of Blue Book dated 30th March 1992, in which the receipts from other Banks would be showing on the particular day. Exhibit-297/2 is the entry at page No.1 of Exhibit-297 Colly, which shows receipt of Rs.20,06,96,286=58 from NHB in respect of 17% NTPC Bonds, face value Rs.20 crore.

181. On 28th March 1992, vide Deal Ticket No.4283, M/s. SBI Cap

entered into a deal for purchase of Units, face value Rs.20 crore @ Rs.15/-, for a total sum of Rs.30,00,00,000/- from NHB. The Deal Ticket dated 28th March 1992 is at Exhibit-293. Exhibit-293 would show that the deal is to be reversed on 30th March 1992 and it was a direct deal between M/s. SBI Cap and NHB. Evidence of PW-26 Janardan Bandopadhyay, at page 5 para 9, also would prove the same.

182. All the credit and debit instructions issued by M/s. SBI Cap are maintained in a Book called “Blue Book” and Exhibit-294 Colly is the copy of the Blue Book dated 28th March 1992. On page No.2 of Exhibit-294 Colly, the two entries, which are marked as Exhibit-294/1 Colly, would show that for Deal Ticket Nos.4282 and 4283, debit instructions have been given to debit the amount mentioned in the Deal Ticket for purchase of securities from NHB.

183. On 30th March 1992, vide Deal Ticket No.4324, M/s. SBI Cap sold Units, face value Rs. 20 crore @ Rs.15.0411 to NHB for a total sum of Rs.30,08,22,000/-, which is marked as Exhibit-295. The transaction is a reversal of Deal Ticket No.4283 dt. 28th March 1992 with NHB and there is no Broker involved in the contract. Exhibit-296 is the Credit Advise dated 30th March 1992 given to SBI Mumbai Main Branch – Sr. No.4 showing sale of Rs.2 crore Units @ Rs.15.0411 for Rs.30,08,22,000/-.

184. On 4th March 1992, vide Deal Ticket No.4055, M/s. SBI Cap purchased IRFC Bonds from M/s. Canfina through Accused No.4-HSM for Rs.25,43,36,986=30, which was to be reversed on 30th March 1992. Exhibit-298 is the copy of the Deal Ticket dated 4th March 1992. The deal was reversed on 30th March 1992 vide Deal Ticket No.4311, which is marked as Exhibit-299. Total amount in the reversal was Rs.25,66,92,315=62

185. On 4th March 1992, M/s. SBI Cap, vide Deal Ticket No.4056, purchased 1 crore Units @ Rs.14.50 for a total sum of Rs.14,50,00,000/- . Exhibit-300 is the Deal Ticket No.4056. The Broker in the transaction was Accused No.4-HSM and it was to be reversed on 30th March 1992. The transaction was reversed on 30th March 1992 by Deal Ticket No.4307 for Rs.14,63,43,000/-, which is marked as Exhibit-301. Exhibit-301 would show the Broker in the transaction as Accused No.4-HSM and the counter-party as M/s. Canfina. The Deal Ticket also shows it as the reversal of Deal Ticket No.4056 dated 4th March 1992. The entries for Exhibit-299 and Exhibit-301, as are appearing in the Blue Book, which is marked as Exhibit-297 Colly, are separately marked as Exhibit-297/3 and Exhibit-297/4, respectively.

186. Hence, the total amount for the above four transactions is Rs.90,45,53,602=20. According to PW-26 Janardan Bandopadhyay, the amount that has been received by them on 30th March 1992 from NHB was towards the above dues.

187. Entries at Exhibit-432/8 Colly are related to sale of securities by SBI on 30th March 1992. PW-37 T. P. Nageswara Rao, in his deposition at page 6 para 14, has deposed that, *“none of these entries would show any sale to NHB on 30th March 1992. Had there been a sale of securities to NHB on 30th March 1992, the same would have been reflected in these pages.”*

188. Entries at Exhibit-400/4 Colly, page Nos.3774 to 3776, are from Sales Slip Book dated 30th March 1992. PW-29 Prakash Kanchan deposed that he could not say whether there is a sale of securities to NHB on 30th March 1992, but he admitted that there is no sale of securities of 17% NTPC Bonds by SBI on that date. (9% IRFC Bonds also not appearing in Exhibit-400/4 Colly).

16th November 1991

189. NHB purchased 2 crore Units of UTI for Rs.27,08,50,000/- from SBI. Deal Diary dt. 16th November 1991 would show the transaction, which is at

Exhibit-100. The deal number is '68' and the Units were purchased @ Rs.13.5425. Exhibit-100 is in the handwriting of PW-19 Milind Deshpande (*Deposition on page 2 para 3*).

190. UTI Portfolio Investment Register dated 18th November 1991 shows that there is purchase of 2 crore Units from SBI @ Rs.13.5425. PW-1 Manojkumar Rakshit deposed that the entry is appearing in the Investment Register on 18th November 1991, since 16th November 1991 was a Saturday and the Bank was closed. The entry in the Investment Register is at Exhibit-53.

191. Accused No.2-Suresh Babu has prepared and signed Voucher No.37 dated 16th November 1991 for Rs.27,08,50,000/- for the said transaction, which is marked as Exhibit-655. Exhibit-181 is the signature of Accused No.1-Ravikumar in the voucher.

192. NHB Cheque No.173483 dt. 16th November 1991 for Rs.27,08,50,000/- has been issued by NHB for purchase of securities under the signatures of Accused No.1-Ravikumar and PW-17 Vivek Katre. Cheque is at Exhibit-54. PW-17 Vivek Katre, who is the second signatory on the cheque, also identified his signature on the cheque, (*Deposition on page 2 para 2*). The cheque at Exhibit-54 was prepared by PW-19 Milind Deshpande, (*Deposition on page 3 para 7*). PW-19 Milind Deshpande also

deposed that the cheque was written by him as per the instructions of Accused No.1-Ravikumar and the entry in the Deal Diary was also made on the instructions of Accused No.1-Ravikumar, (*Deposition of PW-19 Milind Deshpande on page 3 para 7*).

193. RBI Scroll Entry dated 16th November 1991 would show issuance of RBI Cheque No.173483 for Rs.27,08,50,000/- in favour of SBI. The entry is at Exhibit-55.

194. The NHB Cheque No.173483 for Rs.27,08,50,000/- has been deposited in RBI on 16th November 1991 and Exhibit-384 is the pay-in-slip for the same. The pay-in-slip i.e. Exhibit-384 has been signed by Accused No.3-Sitaraman, which is proved by the evidence of GEQD. Further, Exhibit-384 would show that the credit has been given to the account of SBI bearing Account No.2001 with RBI.

195. Vide entry at Exhibit-60 made on 16th November 1991, an amount of Rs.27,08,50,000/- has been debited on account of issuance of Cheque No.173483. Vide entry at Exhibit-392 Colly made on 16th November 1991, an amount of Rs.27,08,50,000/- has been credited to the account of SBI with RBI. So, the cheque was issued for purchase of securities from NHB and the amount has been credited to the account of SBI with RBI.

SBI

196. Exhibit-425 Colly is Page Nos.139 to 143 of Waste Book dated 16th November 1991, maintained at SBI.

Waste Book Credit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
29	Exh 417 Government Securities A/c. and Interest on Government Securities	Exh 425/1	PW-29	25,05,00,000.00 15,68,229.33
30	Exh 418 Government Securities A/c. and Interest on Government Securities	Exh 425/2	PW-29	180,48,80,000.00 77,10,555.56
31	Exh 285 for RBI	Exh 425/3	PW-29	47,25,50,500.00
32	Exh 419 for National and Local Clearing	Exh 425/4	PW-29	84,88,32,462.97
Total				338,60,41,747.86

Waste Book Debit Side

Sr. No.	Vouchers	Exhibit in Waste Book	Proved Through	Total Amount [In Rs.]
37	Exh 420 for Banker's cheque	Exh 425/5	PW-29	75,000.00
38	Exh 421 for Harshad Mehta	Exh 425/6	PW-29	25,33,895.18
39	Exh 282 for RBI Cheque	Exh 425/7	PW-29	5,78,14,947.95
40	Exh 422 for Interest on	Exh 425/8	PW-29	79,54,166.67

	Government Securities			
41	Exh 423 for Bank Investment on Government Securities	Exh 425/9	PW-29	181,50,90,000.00
42	Exh 424 colly various Banks	Exh 425/10	PW-29	150,25,73,738.06
Total				338,60,41,747.86

197. Exhibit-429 Colly is the certified copy of the Account Statement of Accused No.4-HSM with Personal Banking Division, SBI, Mumbai Main Branch. On 16th November 1991, an amount of Rs.25,33,895=18 has been credited to the account of Accused No.4-HSM with PBD, SBI, which is marked as Exhibit-429/1. Exhibit-429/1 is the corresponding entry in the Waste Book, which is marked as Exhibit-425/6. The above statement would show that the excess amount in the whole day's transaction has been credited to the account of Accused No.4-HSM with PBD, SBI. Exhibit-429/1 is made on the basis of the voucher at Exhibit-421.

198. Exhibit-432 Colly is the Sale and Purchase Register maintained at SBI Corporate Office at the relevant time. In Exhibit-432 Colly, page Nos.158 and 159 are the relevant pages for the deals taken place during the period from 11th November 1991 to 30th November 1991. Exhibit-432/1 Colly is the details of deals taken place on 16th November 1991. PW-37 T. P. Nageswara Rao has stated that, in Exhibit-432/1 Colly, no sale of securities have been done to NHB on 16th November 1991. He also

deposed, in page 3 para 6, that, *“had there been any sale of securities to NHB on that day, the same would have been reflected in these pages.”*

199. Exhibit-426 Colly is the Sales Slip Book (Page Nos. 976 to 979 dt. 16th November 1991 in X-21). The entries at Exhibit-426 Colly do not show any sale transactions with NHB on 16th November 1991. PW-29 Prakash Kanchan, in his deposition on page 43 para 97, stated that, *“had there been any sale transactions with NHB on 16th November 1991, it would have been reflected in Exhibit 426 Colly.”*

SALE TRANSACTIONS

31st January 1992

200. There is sale of securities to Bank of India Finance by NHB. Deposition of PW-2 A.V. Meenakshisundaram, Senior Project Manager of BOI Finance, would show that there was a Ready-Forward Transaction with NHB on 31st January 1992 for purchase of Units of 7 crore for Rs.95.83 crore. The date of reversal was on 30th April 1992. Exhibit-105 is the Deal Slip for the transaction dated 31st January 1992 with NHB. The Deal Slip would show that there is transaction with NHB for purchase of 7 crore Units, which was to be reversed on 30th April 1992. However, the reversal date has been rounded in Exhibit-105 and shown as “5th May 1992”. The witness, in his deposition, explained that this was due to

Banker's strike on that date and fixed as the next working day as the reversal, which was on 5th May 1992.

201. The Payment Voucher issued by BOI Finance Ltd. on 31st January 1992 is marked as Exhibit-107. Exhibit-106 is the request letter dated 31st January 1992 issued by BOI Finance Ltd. to the Assistant General Manager of Bank of India, Stock Exchange Branch, to issue RBI cheque for Rs.95.83 crore in favour of NHB.

202. The cheque dt. 31st January 1992 for Rs.95.83 crore issued by Bank of India in favour of NHB is at Exhibit-394.

203. Exhibit-395 is the RBI Voucher, which would show that cheque for Rs.95.83 crore has been deposited in the Current Account No.7382 of NHB. Exhibit-60 is the Account Statement of NHB (Current A/c. No.7382) and entry dated 31st January 1992 Exhibit-61, which would prove that an amount of Rs.95.83 crore has been credited into the account of NHB on 31st January 1992.

204. A BR signed by Accused No.1-Ravikumar for the transaction dated 31st January 1992 has been issued in the name of BOI Finance, which is marked as Exhibit-59. The BR is prepared by Accused No.2-Suresh Babu

and it is signed by Accused No.1-Ravikumar, (*Deposition of PW-14 Sivaraman - page Nos.3 and 4, para 3*).

205. Voucher No.8 dated 31st January 1992 prepared by Accused No.2-Suresh Babu and signed by Accused No.2-Suresh Babu and PW-30 B. Muralidharan is at Exhibit-58. The above document would show that there is sale of 7 crore Units @ Rs.13.69 for Rs.95,83,00,000/- as Deal No.157, to BOI Finance, which is to be matured on 30th April 1992. The document is identified by PW-1 Manojkumar Rakshit, (*Deposition - page 22, para 23*), and PW-15 Basant Sheth (*Deposition - page 3 para 3*).

206. A Cost Memo at Exhibit-57 has also been issued in the name of BOI Finance. PW-64 Madhusudanlal Sharma (GEQD) opined that the handwriting marked as "Q-270" and the initial marked as "Q-271" in Exhibit-57 are that of Accused No.2-Suresh Babu (*Para 5 of Exhibit-613 Colly*).

207. In the Deal Diary at Exhibit-56, there is a transaction showing BOI Finance for Rs.95.83 crore, which is in the handwriting of Accused No.2-Suresh Babu.

208. (Page 643 of the Investment Register of NHB shows that there is a sale on 31st January 1992 - BOI Finance, which is to be reversed on 30th April 1992 – not marked, and Page No.649 of the Charge-Sheet, which is RBI Scroll dated 31st January 1992, shows that there is an entry on BOI RF for Rs.95.83 crore).

209. PW-2 A.V. Meenakshisundaram further deposed that, on 5th May 1992, NHB failed to meet the commitment and hence he met Accused No.1-Ravikumar and their ED Shri. Parthasarathi. Finally they got Rs.7.85 crore from NHB on 2nd June 1992 along with letter at Exhibit-108. The letter Exhibit-108 refers to Exhibit-59 i.e. the BR issued by NHB towards the transaction dated 31st January 1992. It is also mentioned in Exhibit-108 that, *“we enclose our RBI Cheque No.225705 dated 2nd June 1992 for Rs.7,85,00,000/- in part adjustment of the principal amount owed in respect of the captioned Bank Receipt. The interest on this transaction will be settled and decided by mutual consent in due course.”* The above letter would confirm that NHB has failed to make payment on due date i.e. 5th May 1992.

210. PW-2 A.V. Meenakshisundaram further deposed that, *“Exhibit-59 bears endorsement on the reverse that this has been discharged at the time of reversal, when we received the full payment on 9th July 1992.”*

211. As far as evidence of PW-2 A.V. Meenakshisundaram is concerned, the transaction with NHB for purchase of Units of Rs. 7 crore have not been denied. The credit amount of Rs.95.83 crore also not denied. It is also not challenged that NHB has not fulfilled its commitment to BOI Finance to repay the amount on 5th May 1992.

16th March 1992

212. On 16th March 1992, NHB sold 1 crore Units @ Rs.14.9825 and 2 crore Units @ Rs.14.9850, total Rs.44,95,25,000/-, to State Bank of Patiala. Deal Diary Entry dated 16th March 1992 for the said transaction is marked as Exhibit-62, which is in the handwriting of Accused No.1- Ravikumar, (*Deposition - page 24 para 28*).

213. Cost Memo for 1 crore Units @ Rs.14.9825 for Rs.14,98,25,000/- is Exhibit-63. (Reversal of the transaction shown as 28th March 1992 in Cost Memo Exhibit-63). It is written by Accused No.1-Ravikumar, which is proved by deposition of PW-1 Manojkumar Rakshit, on page 24, paragraph 29. In Exhibit-613 Colly, PW-64 Madhusudanlal Sharma opined that the handwriting at Exhibit-63 (marked as "Q-293") is of Accused No.1.

214. Cost Memo for 2 crore Units @ Rs.14.9850 for Rs.29,97,00,000/- is Exhibit-64. (Reversal of the transaction is shown as 28th March 1992 in

Cost Memo Exhibit-64). It is in the handwriting of Accused No.1-Ravikumar, (*Deposition of PW-14-Sivaraman, page 4 para 4*). In Exhibit-613 Colly, PW-64 Madhusudanlal Sharma opined that the handwriting at Exhibit-64 (marked as "Q-291") is of Accused No.1-Ravikumar.

215. Voucher dated 16th March 1992, signed by Accused No.2-Suresh Babu, would show that there is a deal of 1 crore Units @ Rs.14.9825 with State Bank of Patiala, the date of deal was 16th March 1992; the date of maturity was 28th March 1992 and the amount was Rs.14,98,25,000/-. The Voucher is at Exhibit-65. The Deal Number is "210".

216. Banker's Receipt for Rs.14,98,25,000/- dated 16th March 1992 signed by Accused No.1-Ravikumar in favour of State Bank of Patiala is at Exhibit-67.

217. Voucher dated 16th March 1992 signed by Accused No.2-Suresh Babu would show that there is a Deal No.211 for 2 crore Units @ Rs.14.9850 with State Bank of Patiala. The date of deal was 16th March 1992; the date of maturity was 28th March 1992 and the amount was Rs.29,97,00,000/-. The Deal Number is "211". The Voucher is at Exhibit-66. Exhibit-65 and Exhibit-66 are in the handwriting of PW-14 Sivaraman, (*Deposition - page 4 para 4*).

218. Banker's Receipt for Rs.29,97,00,000/- dated 16th March 1992 signed by Accused No.1-Ravikumar in favour of State Bank of Patiala is at Exhibit-68. Exhibit-67 and Exhibit-68 are in the handwriting of Accused No.1-Ravikumar and signed by Accused No.1-Ravikumar, (*Deposition of PW-14 Sivaraman - page 4 para 4*).

219. Cheque for Rs.44,95,25,000/- issued by State Bank of Patiala is marked as Exhibit-125. The above cheque is deposited in the Current A/c. of NHB on 16th March 1992 (*entry is not separately marked*). At Exhibit 60, there is a credit entry, made on 16th March 1992, showing credit of Rs.44,95,25,000/- in the account of NHB with RBI.

220. Investment Register of NHB dated 16th March 1992 would show that there are sale of securities as "Deal Nos.210 and 211" to State Bank of Patiala on 16th March 1992. The entry would show that 1 crore Units have been sold @ Rs.14.9825 and 2 crore Units have been sold @ Rs.14.985. The entry is in the handwriting of PW-14 Sivaraman and it is marked as Exhibit-161, (*Deposition of PW-14 Sivaraman – page Nos.4 and 5, para 4*).

221. Page No.643 of the Investment Register shows that there is a sale of 3 crore Units to State Bank of Patiala on 16th March 1992 (*not separately marked*), which is to be reversed on 28th March 1992. At Page No.653 of RBI Scroll – there is an entry made on 16th march 1992 “To SBP Units” and in the Deposit Column “Rs.44,95,25,000/-”.

222. Evidence of PW-4 Surinder Khurana would show that the deal for 1 crore Units @ Rs.14.9825 was entered with NHB through Accused No.4-HSM. Exhibit-124 is the Contract Note dated 16th March 1992 issued by Accused No.4-HSM in favour of State Bank of Patiala towards the said transaction.

223. PW-4 Surinder Khurana has explained the transaction for the deal of 1 crore Units with NHB. Deposition of PW-4 Surinder Khurana, in para 3 and 4 on page Nos.3, 4, 5, 6 and 7, would prove the same. PW-4 Surinder Khurana has explained that, on 14th March 1992, they have entered into a deal for purchase of 4 crore Units of US 64 @ 14.99, but he received a Contract Note and Delivery Note on 14th March 1992 from Accused No.4-HSM to settle 3 crore Units @ Rs.14.9925. The Units were to be purchased from NHB. Hence, the balance 1 crore Units were purchased on 16th March 1992 @ Rs.14.9825.

224. Evidence of PW-4 Surinder Khurana would further show that the deal for 2 crore Units @ Rs.14.9850 was entered with NHB through M/s. V. B Desai. Exhibit-123 is the letter written by PW-31 Shrawankumar Jindal to the Manager, Funds Department of SBP, regarding the transaction.

225. The principal amount of the transactions were received from NHB in July 1992. Interest was not received.

14th March 1992

226. On 14th March 1992, NHB sold 3 crore Units @ Rs.14.99250 for Rs.44,97,75,000/- to the State Bank of Patiala. There is no entry in the Deal Diary on 14th March 1992, showing sale of 3 crore Units to the State Bank of Patiala on 14th March 1992. Evidence of PW-1 Manojkumar Rakshit would show that there is an entry in the Deal Diary dated 14th March 1992, which would show sale of securities to the State Bank of Patiala for Rs.44,97,95,000/-, which was struck-off after writing. PW-1 Manojkumar Rakshit deposed that, 14th March 1992 was a Saturday and Saturdays are not working for NHB. Hence, the entry has been repeated on 16th March 1992, which was Monday. The entry dated 16th March 1992 was also struck-off. Hence, there is no record on the part of the NHB that a deal was entered with State Bank of Patiala on that date.

227. Exhibit-70 is the Cost Memo issued by NHB dated 14th March 1992 for Rs.44,97,75,000/- in favour of State Bank of Patiala.

228. No cheque has been issued by the State Bank of Patiala on 14th March 1992.

229. BR dated 14th March 1992 signed by Accused No.1-Ravikumar in favour of State Bank of Patiala for Rs.44,97,75,000/- is at Exhibit-69. The handwriting in Exhibit-69 is of PW-14 Sivaraman, (*Deposition - page 5 para 5*).

230. However, PW-1 Manojkumar Rakshit deposed that Exhibit-69 is the BR issued for the said transaction, which was originally written as “16th March 1992” by overwriting, changed to “14th March 1992”. Exhibit-70 is the Cost Memo issued by NHB for the said transaction, which was also originally written as “16th March 1992”, but, later, changed to “14th March 1992”. PW-1 Manojkumar Rakshit deposed that, *“Cost Memo (Exhibit-70) is in favour of State Bank of Patiala and it is clearly written that the Contract Date was “14th March 1992” for sale of 3 crore Units of UTI Scheme 1964”*. So, there was absolutely no record to show in the Books of NHB that they have sold Units for face value of Rs.30 crore on 14th March 1992 to the State Bank of Patiala. In order to falsify the accounts,

the entry made in the Deal Diary has been struck off-by the accused persons.

State Bank of Patiala

231. On 14th March 1992, the State Bank of Patiala has entered into a contract with Accused No.4-HSM for purchase of 3 crore Units @ Rs.14.99250 with delivery date as "14th March 1992". Exhibit-121 is the Contract Note issued by Accused No.4-HSM, signed by Accused No.5-Atul and Accused No.7-Sudhir for sale of 3 crore Units @ Rs.14.99250 in the name of "State Bank of Patiala" with delivery date as "14th March 1992".

232. Evidence of PW-4 Surinder Khurana would show that, on 13th March 1992, he received a letter from PW-31 Sharwankumar Jindal, which is at Exhibit-119. The contents of the letter would show that the State Bank of Patiala had entered into a contract through Broker Accused No.4-HSM for purchase of 4 crore Units. Evidence of PW-4 Surinder Khurana, in para 3 on page Nos.3 and 4, would prove the same. "This is regarding the settlement of evidence of PW-31 Sharwankumar Jindal, in para 4 on page Nos.2 and 3. The calculations were written by PW-31 Sharwankumar Jindal on the reverse of the letter Exhibit-119, which is at Exhibit-120. PW-4 Surinder Khurana would further depose that the purchase was an

outright transaction. Evidence of PW-31 Sharwankumar Jindal, on page Nos.2 and 3 in para 4, would show that PW-31 Sharwankumar Jindal had entered into a deal for purchase of 4 crore Units through the Broker Accused No.4-HSM. He would further depose that, *"this deal had been settled by me on behalf of State Bank of Patiala. Mr. Pankaj Shah, Mr. Atul Parikh and one Smt. Poonam used to contact me on phone in connection with this deal."* Exhibit-121 has been signed by Accused No.5-Atul and Accused No.7-Sudhir as per the GEQD.

233. Exhibit-122 is the Cheque No.331295 dt. 14th March 1992 issued by State Bank of Patiala for Rs.44,97,75,000/- under the signature of PW-4 Surinder Khurana. The cheque was in the name of SBI. Exhibit-69 would show that, on 14th March 1992, NHB has received an amount of Rs.44,97,75,000/- for Units, face value, Rs.30 crore @ Rs.14.99250.

234. PW-4 Surinder Khurana, in his deposition on page 4 in para 3, has deposed that he has received Exhibit-121 from Accused No.4-HSM with Delivery Order Exhibit-481. Exhibit-481 shows that delivery instruction has been given by Accused No.4-HSM to the State Bank of Patiala for receiving the securities mentioned in Exhibit-121 from NHB.

235. Exhibit-70 is the Cost Memo received by State Bank of Patiala towards the transaction and Exhibit-69 is the Banker's Receipt received by the State Bank of Patiala, (*Evidence of PW-4 Surinder Khurana - para 3 page 4*). Exhibit-70 signed by Accused No.1-Ravikumar would show the security as Units for face value, total Rs.30,00,00,000/-, @ Rs.14.99250. According to PW-4 Surinder Khurana, the BR bears his signature and endorsement Exhibit-69 shows that the BR was discharged on 6th July 1992 i.e. after the scam broke out. Evidence of PW-4 Surinder Khurana, in para 3 on page Nos.5 and 6, would state that, *"we were supposed to get the Units within 90 days, but we did not get those Units. Finally, we got the amount in June for this transaction, but we discharged the BR on 6th July 1992. After 90 days, Head Office wrote to the NHB and I also followed-up, but, since the scam broke out, the deliveries did not come"*. The above statements would prove the fact that NHB entered into the deal with State Bank of Patiala without having securities and failed to deliver the securities in time, as per the deal, which will fortify the case of that prosecution that it was a '*structured transaction*'.

236. Now, we may see the reason for issuance of cheque by State Bank of Patiala towards the above transaction :

237. PW-4 Surinder Kumar Khurana deposed in para 3 page 3 as : “The transaction dated 14th March 1992 arose, because, on 13th March 1992, I received a letter dated 12th March 1992 from Shri. S.K. Jindal informing me that he has entered into a deal of purchase of 4 crore Units of US 64 @ 14.99 per Unit through the Broker Harshad Mehta..... On 14th March 1992, I received a Contract Note and Delivery Order from Broker Harshad Mehta stating that I have to settle for 3 crore of Units @ Rs.14.9925. This transaction was settled on 14th March 1992 itself. There, Units were to be purchased from NHB. The Contract Note is same, now shown to me. It is marked as Exhibit-121. Representative of NHB came to me with Banker's Receipt and Cost Memo”.

21st February 1992

238. On 21st February 1992, NHB sold Treasury Bills, for face value of Rs.50 crores, to the State Bank of Patiala for Rs.48 crores. Deal Diary dtd. 21st February 1992 of NHB shows that there is a sale of Treasury Bills of State Bank of Patiala for Rs.48 crores. The entry is marked as Exhibit-71. The above transaction is proved through PW-1 Manojkumar Rakshit. In his deposition, on page 29 in para 38, PW-1 Manojkumar Rakshit deposed that, it is in the handwriting of Accused No.2-Suresh Babu.

239. The Cost Memo of the said transaction for Rs.48 crores is at Exhibit-73. The above documents are in the handwriting of PW-14 Sivaraman. (*Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman - Deposition of PW 14 - page 6 para 6*). The Cost Memo has not been signed by anybody.

240. State Bank of Patiala has issued an RBI Cheque for Rs.48 crores dtd. 21st February 1992 in favour of NHB, which is at Exhibit-76.

241. The above cheque has been deposited with NHB in the Current Account through RBI pay-in-slip dtd. 21st February 1992, which is marked as Exhibit-75. The above amount is credited in the account of NHB on 21st February 1992.

242. RBI Scroll - Page No.656 of the Charge-Sheet shows that there is deposit of Rs.48 crores in the account of State Bank of Patiala on 21st February 1992.

243. Vide Exhibit-60, there is an entry made on 21st February 1992 for Rs.48,00,00,000/-, showing credit in the account of NHB with RBI. PW-33 Venkatchalapathy V.G., in his deposition on page 7 para 19, deposed that *"the cheque (Exhibit 76) has been drawn by SBP in favour of NHB. The*

amount has been credited in the account of NHB on the same day i.e. 21st February 1991.”

244. NHB has issued BR dtd. 21st February 1992 for Rs.48 crores in favour of State Bank of Patiala, which is at Exhibit-72. BR at Exhibit-72 has been signed by Accused No.1-Ravikumar and it is prepared by PW-14 Sivaraman. *(Evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman - Deposition on page Nos.5 and 6, para 6).*

245. Exhibit-74 is the Voucher No.26 dated 21st February 1992 signed by Accused No.2-Suresh Babu for Rs.48 crore, which shows that the NHB has sold Treasury Bills, face value 50 crore @ 96%. The voucher is partly written by Accused No.2-Suresh Babu, *(Deposition of PW-1 Manojkumar Rakshit - page 31 para 41)*. Exhibit-74 would show that the Deal Number was “2”; date of the deal was “21st February 1992”, and the counter-party as “State Bank of Patiala”.

246. PW-4 Surinder Khurana was the Chief Manager (Investment) of State Bank of Patiala. Evidence of PW-4 Surinder Khurana would show that the State Bank of Patiala had entered into a deal for purchase of Treasury Bills with NHB for face value of Rs.50 crore, which was an

outright purchase. Exhibit-76 was the Cheque for Rs.48 crore, issued by the State Bank of Patiala towards the transaction to NHB. State Bank of Patiala received Exhibit-72 the Cost Memo and Exhibit-73 the BR from NHB, but NHB did not give the securities. Evidence of PW-4 Surinder Khurana would further show that they got the amount only in July 1992 i.e. after the scam broke out.

22nd February 1992

247. On 22nd February 1992, there were two sale transactions by NHB. First transaction is for sale of "GOI Loan – 2007", for face value of Rs.50 crore, total Rs.51,57,21,633=44, to the Bank of Karad @ 99.85%, with interest of Rs.1,64,71,633=44; and second sale is for "GOI Loan – 2008", for face value of Rs.100 crore, total Rs.100,62,01,100=56, to M/s. SBI Capital Market Ltd. @ Rs.98.48, with interest Rs.2,14,01,100=56. The Deal Diary of NHB dtd. 22nd February 1992 shows the above transactions, which is marked as Exhibit-77. The entries are in the handwriting of Accused No.2-Suresh Babu, (*Deposition of PW-14 Sivaraman - on page 6, para 6*).

248. Bank of Karad issued a cheque for Rs.51,57,21,633=44 in favour of NHB on 22nd February 1992, which is marked as Exhibit-129.

249. The above cheque was deposited to Current Account of NHB with RBI on the same date, through RBI pay-in-slip, which is marked as Exhibit-80.

250. In Exhibit-60, there is an entry, made on 22nd February 1992, showing credit of Rs.51,57,21,633=44 in the account of NHB with RBI.

251. NHB has prepared a voucher dt. 22nd February 1992 for Rs.152,19,22,734/- signed by Accused No.2-Suresh Babu for transactions with State Bank of Patiala and Bank of Karad. The voucher is in the handwriting of PW-14 Sivaraman, (*Deposition of PW-14 Sivaraman - page 7 para 7*). Exhibit-82 is the Voucher prepared for the said transaction (*for both the transactions*). Voucher shows that the reversal of transaction was on 7th March 1992.

252. NHB issued a Cost Memo dtd. 22nd February 1992 in favour of Bank of Karad for Rs.51,57,21,633=44, which is marked as Exhibit-79. The Cost Memo shows that the reversal of transaction was on 7th March 1992.

253. NHB has issued BR dtd. 22nd February 1992 in favour of Bank of Karad for Rs.51,57,21,633=44 signed by Accused No.2-Suresh Babu,

which is marked as Exhibit-78. It has come in the evidence of PW-1 Manojkumar Rakshit, on page No.33 para No.45, that Accused No.2-Suresh Babu was not authorized to sign Banker's Receipt on behalf of NHB. Evidence of PW-14 Sivaraman would show that Exhibit-78 is in his handwriting and signed by Accused No.2-Suresh Babu, (*Deposition – page Nos.6 and 7, para 7*).

254. Evidence of PW-6 Mukund Kher would show that they have been issued Cheque Exhibit-129 by debiting the account of M/s. V.B. Desai, which shows that the transaction was with M/s. V.B. Desai. In turn, there is a Credit Voucher Exhibit-131 dt. 22nd February 1992, crediting an amount of Rs.51,57,21,633=44 in the account of M/s. V.B. Desai, which would show that, on the same day, they have sold the same securities to the Punjab National Bank and received payment. This would show that, on 22nd February 1992, M/s. V.B. Desai had purchased securities from NHB and sold to Punjab National Bank. However, it may be seen that Exhibit-78 and Exhibit-79 have been issued in the name of Bank of Karad.

255. Exhibit-81 is the Banker's Receipt issued by NHB in favour of M/s. SBI Cap for Rs.100,62,01,100=56, signed by Accused No.2-Suresh Babu. BR Exhibit-81 is written by PW-14 Mr. Sivaraman, (*Deposition of PW-14*

Sivaraman - page 7 para 7). No Cost Memo has been issued in favour of M/s. SBI Cap for the said transaction.

256. The cheque issued by M/s. SBI Cap for Rs.100,52,01,100=56 is exhibited as Exhibit-396 and the pay-in-slip, by which the cheque has been deposited with RBI Current Account, is marked as Exhibit-83. The total amount in the pay-in-slip is Rs.210,52,01,100=56, which includes Exhibit-129 cheque.

257. In Exhibit-60, there is a credit entry for Rs.210,52,01,100=56 made on 22nd February 1992.

258. Exhibit-82 is the Voucher No.18 prepared and signed by Accused No.2-Suresh Babu dated 22nd February 1992, evidencing sale of "Government of India Loan - 2007 and 2008" to M/s. SBI Cap Market Ltd. and Bank of Karad. The date of deal was 22nd February 1992 and the amount shown in the voucher was Rs.152,19,22,734/-. The date of reversal was 7th March 1992. The amount for SBI was Rs.100,62,01,100=56 and the amount for Bank of Karad was Rs.51,57,21,633=44.

SBI Cap

259. Exhibit-288 is a Deal Ticket No.1860 dated 22nd February 1992, by which M/s. SBI Cap had entered into a contract for purchase of 11.5% GOI 2008, face value for 100 crore Units @ Rs.98.48. The total amount was Rs.100,62,01,100=56. The transaction was an outright deal. The above deal was proved by the evidence of PW-26 Janardan Bandopadhyay in his deposition on page 2 para Nos.3 and 4. However, PW-26 Janardan Bandopadhyay stated that, they did not receive the securities mentioned in the Deal Ticket from NHB. The Banker's Receipt was, subsequently, discharged i.e. after the scam broke out.

260. Exhibit-289 is the Contract Note issued by Accused No.4-HSM in favour of M/s. SBI Cap for the said deal. Hence, the Broker in the deal was Accused No.4-HSM, which reveals from Exhibit-289 as well as Exhibit-288. Exhibit-288 also mentioned the name of the Broker as 'Accused No.4-HSM'. The voucher of NHB would show that, it is a Ready-Forward Transaction with reversal on 7th March 1992. However, Deal Ticket of M/s. SBI Cap would not show that it was a Ready-Forward Deal and the witness deposed that from the document, it appears that it is an outright sale/purchase transaction.

7th March 1992

261. On 7th March 1992, there is a sale of 11.5% Central Loan 2007 to the Standard Chartered Bank for Rs.101,88,50,194=56.

262. Deal Diary dtd. 7th March 1992 shows that there is a sale of securities for Rs.101,88,50,194=56 in the handwriting of Accused No.2-Suresh Babu, which is marked as Exhibit-84, (*Deposition of PW-14 Sivaraman - page 3 para 2*).

263. Exhibit-85 is a Voucher prepared and signed by Accused No.2-Suresh Babu for the sale of securities to Standard Chartered Bank dtd. 7th March 1992. Evidence of PW-1 Manojkumar Rakshit (*Deposition para 51*) and PW-14 Sivaraman (*Deposition - page 9 para 8*) would prove the same. The voucher number is '17' and the amount is Rs.101,88,50,194=56. The said voucher was issued by NHB in favour of Standard Chartered Bank, which is exhibited as Exhibit-86. Exhibit-86 is in the handwriting of Accused No.2-Suresh Babu, (*Deposition of PW-1 Manojkumar Rakshit - para 51*). However, the Cost Memo shows the date is "16th March 1992" instead of "7th March 1992".

264. Exhibit-87 is the BR issued by NHB, which is signed by Accused

No.1-Ravikumar for Rs.101,88,50,194=56 in favour of Standard Chartered Bank, (*Deposition of PW-1 Manojkumar Rakshit - para 51*). Exhibit-87 is in the handwriting of PW-14 Sivaraman, (*Deposition of PW-14 Sivaraman - page 7 para 8*).

265. Standard Chartered Bank had issued a cheque for Rs.101,88,50,194=56 in favour of NHB, which was marked as Exhibit-382.

266. The above cheque was deposited with Current A/c. of NHB maintained with RBI, through pay-in-slip dtd. 7th March 1992. Pay-in-slip dtd. 7th March 1992 is marked as Exhibit-88.

267. In RBI Scroll, the entry for Rs.101,88,50,194=56 was appearing on 7th March 1992, which is at Exhibit-89. RBI Scroll Entry is in the handwriting of Accused No.2-Suresh Babu, (*Deposition of PW-1 Manojkumar Rakshit - para 51*).

268. Exhibit-381 is a Deal Slip dated 7th March 1992 for Deal Nos.196 and 197 for purchase of 11.50% Central Loan 2007, face value Rs.100 crore @ Rs.98.23. The Broker in the deal is shown as Accused No.4-HSM and the amount paid is shown as Rs.101,88,50,194=56.

269. Exhibit-380 is the Contract Note dated 7th March 1992, issued by M/s. HSM for the 11.5% Central Loan 2007, face value Rs.100 crore @ Rs.98.23.

270. Exhibit-382 is the Cheque No.960075 dated 7th March 1992 for Rs.101,88,50,194=56 issued in the name of NHB by the Standard Chartered Bank.

271. PW-32 V.R. Srinivasan, in his deposition on page 3 para 6, has deposed that, *"I remember that normally, one Pankaj Shah used to deal with us on behalf of M/s. Harshad Mehta. In this case also, he was the person who was co-ordinating on behalf of the Broker."*

272. At Exhibit-60, there is a credit entry, made on 7th March 1992, showing Rs.101,88,50,194=56 in the account of NHB with RBI.

273. All the Exhibits, except Exhibit-86, show the date of transaction as "7th March 1992". However, the Cost Memo Exhibit-86 would show the date of transaction as "16th March 1992". However, the Cost Memo tallies with all other details, such as, nature of securities, name of the Institution, amount, face-value, price etc. Hence, Cost Memo probably might have issued at a later stage for the same transaction.

30th March 1992

UCO Bank

274. On 30th March 1992, NHB sold 9% IRFC Bonds on the outright basis to UCO Bank. However, there is no entry for such a sale of securities to UCO Bank in the Deal Diary on that date.

275. Exhibit-90 is the Voucher dtd. 30th March 1992 for Rs.145,63,97,260=27, which is in the handwriting of Accused No.2-Suresh Babu and signed by him, (*Evidence of PW-1 Manojkumar Rakshit - Deposition - paragraph 53; and PW-14 Sivaraman Deposition - page 8 para 9*). The voucher evidences sale of "IRFC Bonds" to the UCO Bank by NHB and the voucher number is "1" and the date of deal was "30th March 1992".

276. Exhibit-112 is the cheque dtd. 30th March 1992 for Rs.145,63,97,260=27 issued by UCO Bank towards the above transaction.

277. Exhibit-94 is the entry in the RBI Pay Scroll of NHB, which shows the credit of Rs.145,63,97,270=27 on 30th March 1992.

278. NHB issued a BR dt. 30th March 1992 for Rs.70,63,97,270=34 in favour of UCO Bank, written and signed by Accused No.2-Suresh Babu, which is marked as Exhibit-91.

279. NHB issued another BR dt. 30th March 1992 for Rs.75 crore in favour of UCO Bank, written and signed by Accused No.2-Suresh Babu, which is marked as Exhibit-92.

280. Exhibit-93 is the pay-in-slip for crediting the cheque amount of Rs.145,63,97,260=27 in the account of NHB with RBI.

281. Vide Exhibit-60, there is a credit entry, made on 30th March 1992, showing credit of Rs.145,63,97,260=27 in the account of NHB with RBI.

282. PW-3 Ranjeetsingh Anjaria, who was the Chief Manager at Hamam Street Branch of UCO Bank, has proved the Debit Voucher Exhibit-110, by which an amount of Rs.145,63,97,260=27 was debited from the Head Office Account and vide Exhibit-111, the said amount was credited to the D.N. Road Account for issuing RBI Cheque for Rs.145,63,97,260=27 Exhibit-112.

283. Exhibit-113 and Exhibit-114 are the Receipt Memos prepared by

UCO Bank for the transaction dated 30th March 1992. Exhibit-113 and Exhibit-114 would show that the transaction dt. 30th March 1992 with NHB was an outright purchase transaction and not a Ready-Forward Transaction. PW-3 Ranjeetsingh Anjaria further deposes that, he received Voucher Exhibit-91 and Voucher Exhibit-92 for the said transaction from NHB, out of which, Voucher Exhibit-92 was discharged by him, after receiving payment from NHB and Voucher Exhibit-91 was not discharged.

284. Exhibit-115 is the copy of the letter dated 17th June 1992, written by PW-3 Ranjeetsingh Anjaria addressed to NHB for getting the physical securities.

285. Exhibit-116 is a copy of the letter written by UCO Bank to NHB and Exhibit-117 is a covering letter, by which UCO Bank received Rs.90,45,53,603=27 towards the transaction dated 30th March 1992 from NHB.

286. PW-5 Pradip Karkhanis, Senior Manager of UCO Bank, Investment Department at HO, deposed before the Court that UCO Bank had purchased 17% Power Finance Corporation Bonds for Rs.145,63,97,260=27 from NHB through the Broker Accused No.4-HSM. The securities were sold to M/s. PNB Capital Ltd.

16th November 1991

287. On 16th November 1992, NHB sold 2 crore Units for Rs.27.09 crore to the State Bank of Saurashtra. NHB received a cheque of Rs.27.09 crore from SBI, which is marked as Exhibit-393. The above cheque has been deposited in the Current Account of NHB, along with RBI pay-in-slip dt. 16th November 1991, which is marked as Exhibit-95.

288. Exhibit-96 is the entry in RBI Scroll for receipt of cheque of Rs.27,09,00,000/-.

289. Vide Exhibit-60, there is a credit of Rs.27,09,00,000/- in the account of NHB with RBI on 16th November 1991.

290. "D-165" is the BR issued by NHB dated 16th November 1991 towards the transaction. *(Deal Diary Entry dated 16th November 1991 for Rs.27.09 crore has not been marked).*

Marshalling Of Evidence – Facts Not In Dispute

291. At the outset, it should be mentioned that the purchase and sale transactions having taken place on the respective dates between respective Financial Institutions is not under dispute. There is also no dispute as to the documents, which are produced on record, in respect of

these purchase and sale transactions, which are otherwise also stand proved on record. There is also no dispute with regard to the purchase transactions, that RBI cheques were issued under the signature of Accused No.1-Ravikumar and other Authorized Officer of the NHB in favour of SBI and those cheques were deposited in RBI. As a result, the account of NHB with RBI was debited with the amount of the cheques and SBI's account with RBI was credited with that amount and on the same day, credit vouchers were prepared in SBI and the amount of the cheques was credited to the Current Account of Accused No.4-HSM with SBI. It is not in dispute that Accused No.4-HSM was holding Current Account with the SBI Personal Banking Division and his Current Account Number was "4/8710". The account was in the name of the Firm "M/s. Harshad S. Mehta". It is not in dispute that Accused No.5-Atul and Accused No.6-Pankaj were working in Accused No.4-HSM's Firm, which was situate in Makers Chamber, Nariman Point, Mumbai. Accused No.5-Atul had admitted in his statement, recorded u/s. 313 Cr.P.C., that the Contract Notes at Exhibits "289", "380" and "483 to 496" bear his initials and Contract Notes at Exhibits "121" and "124" bear his signatures. Accused No.6-Pankaj has admitted in his statement, recorded u/s. 313 Cr.P.C., that the letter Exhibit-154 seeking 'Single Point Clearance Facility' bears his signature and he has delivered it personally to PW-38 Anil Padhye. It is

also not in dispute that Accused No.7-Sudhir, who is the younger brother of Accused No.4-HSM, was his Constituted Attorney, who used to sign on behalf of him. He has not disputed his signature on the Contract Notes Exhibits “121”, “124”, “289”, “380” and “383 to 495”. Accused No.7-Sudhir has stated in his statement, recorded u/s. 313 of Cr.P.C., that he was holding a Power of Attorney from Accused No.4-HSM and used to work on behalf of Accused No.4-HSM in his absence.

292. There is also no dispute regarding the transactions of sale. With regard to sale transactions, BRs were issued by Accused No.1-Ravikumar and one BR by Accused No.2-Suresh Babu. The counter-party Banks have issued cheques in favour of NHB and those cheques have been deposited with RBI and the amount of cheques have been credited to the account of NHB with RBI and debited from the counter-party Bank's account with RBI.

293. There is also oral evidence of PW-14 Sivaraman and PW-1 Manojkumar Rakshit to prove those transactions. Undisputedly, PW-14 Sivaraman was working with NHB at the relevant time. After having retired on superannuation from the Accountant General's office, he joined NHB in January 1992 as 'Assistant' in FMG. His evidence shows that, at that time,

Accused No.1-Ravikumar was in-charge of Funds Management Department and Accused No.2-Suresh Babu was assisting Accused No.1-Ravikumar. Accused No.1-Ravikumar used to sit in one cabin and he himself and Accused No.2-Suresh Babu used to sit outside Accused No.1-Ravikumar's cabin. It is undisputed that the people, who were working in FMG, were only Accused No.1-Ravikumar, who was Assistant General Manager, Accused No.2-Suresh Babu, who was Assistant Manager, and PW-14 Sivaraman. According to the evidence of PW-14 Sivaraman, Accused No.1-Ravikumar used to enter into all the transactions, the deal slip used to be prepared on the basis of it and as per the instructions of Accused No.1-Ravikumar, PW-14 Sivaraman and Accused No.2-Suresh Babu used to make entries in Deal Diary, Investment Register, prepare vouchers, prepare RBI Cheque, make entry in RBI Scroll, prepare RBI pay-in-slip and forward the cheque to counter-party Bank in case of transactions of purchase of securities, after getting the signature of Accused No.1-Ravikumar and the signature of other authorized officer on the cheque. There is no dispute with regard to this procedure followed in FMG of NHB in case of transaction of purchase of securities.

294. As can be gathered from the evidence in this set of transactions, there are two parts of the conspiracy, which were hatched between March

1992 and May-June 1992. In the first part, the conspiracy was to transfer NHB's fund with the intervention of Accused No.4-HSM or his representatives to SBI, where Accused No.4-HSM had an account, and with the help and connivance of the Officer working in the SBI, namely, Accused No.3-Sitaraman, to get that amount credited to the running account of Accused No.4-HSM. The second part of the conspiracy, which was hatched during the same period, was to generate funds by showing the transaction of sale of securities by NHB to other Financial Institutions with the help of Accused No.4-HSM or his representatives and get the funds from those Financial Institutions in the name of NHB and in that process, cheating the other Financial Institutions to send those funds to NHB on the basis of the BRs issued by NHB, when those BRs were not backed by the securities. In the first part, the involvement was of Accused Nos.1 to 7, i.e. Accused No.1-Ravikumar and Accused No.2-Suresh Babu working with the NHB, Accused No.4-HSM and Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir working with Accused No.4-HSM's Firm and Accused No.3-Sitaraman working in SBI, with whose help the cheques issued by NHB in favour of SBI were credited to the SBI account with the RBI and immediately transferred to the Current Account of Accused No.4-HSM by issuing credit vouchers. In the second part, the involvement was only of Accused No.1-Ravikumar and Accused

No.2-Suresh Babu, working in NHB, and Accused No.4-HSM and Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir working with Accused No.4-HSM's Firm.

295. As the aforesaid entire evidence is not seriously challenged, it is clear that in respect of the transactions of purchase of securities, nine cheques were issued under the signature of Accused No.1-Ravikumar on behalf of NHB in favour of SBI. It is further clear from the aforesaid documents that, in respect of the purchase transactions, the cheques were received by SBI and they were deposited with RBI and the amounts of those cheques were deposited in NHB's account with RBI and at the same time, the amounts were credited to the SBI account with the RBI. It is further established that in the SBI, Credit Vouchers were prepared in respect of those nine cheques, favouring the Current Account of Accused No.4-HSM and then amounts of those nine cheques were credited to the Current Account of Accused No.4-HSM with SBI.

296. The evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman proves that neither the physical securities nor the BRs, in lieu of the physical securities, were ever received in NHB from SBI.

297. The above evidence, thus, relating to sale and purchase of transactions clearly goes to show that NHB Officers viz. Accused No.1-Ravikumar and Accused No.2-Suresh Babu were issuing the cheques for sale of securities, but without having the securities either in the physical form or Bank Receipts to that effect. The transactions entered into by NHB proved that they were for securities worth more than crores of rupees. Though it is true that, as per the Note Exhibit-99, NHB was permitted to deal with Ready-Forward Transactions, the Note makes it clear that, only the surplus funds were to be deployed for those deals. It is admitted position on record that NHB had very limited funds of their own available for deployment in securities. Therefore, entering into such transactions without having surplus funds was itself a gross irregularity and illegality in the financial matters. Secondly, it was done by sale of non-existing securities with NHB. In all the sale transactions, it can be seen that there was no security available with NHB. However, the records were created and securities were sold to other Financial Institutions and Banks. In all the said transactions, the Broker for counter-party was either Accused No.4-HSM himself or some other Broker from his Firm acting on his behalf. Thus, it is apparent that, by utilizing the funds received from Banks or Financial Institutions, NHB Officials viz. Accused No.1-Ravikumar and Accused No.2-Suresh Babu had falsified records by

showing purchase of securities from SBI and transferred the funds for the use of Accused No.4-HSM.

298. It is pertinent to note that whenever there is purchase of securities from SBI, there is corresponding sale shown in the Books of NHB, thereby clearly proving that the sale transactions were made only to obtain funds from other Banks, which were utilized by NHB for issuing cheques in the name of SBI. In this respect, it will also be useful to note whether the requisite procedure was followed by the NHB Officials while purchase of securities. PW-1 Manojkumar Rakshit has categorically deposed that, for purchase of securities, FMG of NHB was required to contact the concerned Banks and Financial Institutions or their authorized Brokers or Representatives. After getting most favourable rate, the rate would be agreed and the deal would be finalized. After the deal was finalized, it would be entered into Deal Diary Register, the voucher and cheque would be prepared and the entry of the same would be taken in the Investment Register. The cheque would be actually handed over to the counter-party, only after the Cost Memo, Sale Memo, actual securities or the Bank Receipts would be received by the FMG of NHB. There is nothing on record to show that NHB Officials in-charge of FMG, namely, Accused No.1-Ravikumar and Accused No.2-Suresh Babu, have ever contacted

anyone from SBI to finalize the deals. Further, no Bank Receipt, Cost Memo or Sale Memo were received from SBI for the said transactions, as per the procedure explained by PW-1 Manojkumar Rakshit and also by PW-14 Sivaraman. According to the evidence of PW-14 Sivaraman, in case of sale of securities by SBI, the position would be reversed i.e. SBI would be issuing the Cost Memo along with Bank Receipt, SGL, or, would be forwarding actual securities. According to his evidence, in this case, there was no transaction of sale of securities by SBI to NHB on the given date. According to him, if there had been such transaction, SBI would have issued Cost Memo along with some other form of delivery, such as Bank Receipt, SGL, transfer form, or, actual physical delivery.

299. Thus, as rightly submitted by the Senior P.P., this entire evidence needs to be read in conjunction with evidence relating to sale transactions done by NHB on the corresponding dates. It shows that actually there was no security available with NHB, still Accused No.1-Ravikumar and Accused No.2-Suresh Babu have made sale of securities and accepted amount from the Financial Institutions. When, as per the Note Exhibit-99, there was a decision to deploy only their own surplus funds in the security transactions, there is no explanation offered by Accused No.1-Ravikumar as to why he sold securities of other Banks or Financial Institutions and

deployed the said funds for purchase of securities from SBI. The utilization of the said funds at SBI in the account of Accused No.4-HSM makes it clear that the cheques were actually issued for the purpose and use of Accused No.4-HSM and not for the purchase of securities from SBI. The evidence of PW-26 Janardan Bandopadhyay in this respect fortifies this inference. His evidence reveals that the cheque Exhibit-49 issued by NHB on 30th March 1992 for the amount of Rs.90,45,53,602=20 was utilized directly for making payment to M/s. SBI Caps for reversal of four transactions, which they had made through Accused No.4-HSM. However, there is no record in the Deal Diary of NHB with regard to the said deal. His evidence further reveals that the cheque for the amount of Rs.14,62,12,000/- issued by NHB on 24th March 1992 has been utilized for making payment to M/s. SBI Cap for reversal of two deals, which they had made with M/s. Canfina through Accused No.4-HSM.

300. Thus, the evidence relating to all these transactions, if considered in the proper perspective, is more than sufficient to reveal that Accused No.1-Ravikumar and Accused No.2-Suresh Babu have entered into the transactions with SBI without having physical securities. No case is made out either on behalf of Accused No.1-Ravikumar or Accused No.2-Suresh Babu, who were in-charge of FMG, that the physical securities or BRs in

respect of the securities concerning the purchase transactions were exchanged between NHB and SBI, although the documents were prepared in NHB showing the transaction of purchase of securities on the aforesaid dates. It is pertinent to note that SBI has disowned such transactions, as also the responsibility to reverse the same. The stand of SBI had been that, it had no transaction of sale of securities to NHB. This further makes it clear that the securities shown to have been purchased were never received by NHB and, thus, could not be with NHB. Hence, as submitted by the Senior P.P., all these transactions, in that way, were structured or fake transactions. The evidence of PW-1 Manojkumar Rakshit also clearly goes to prove that, after the scam broke out, they had carried out inspection of the record of NHB and found that the securities concerning the above said purchase transactions were not found with NHB. Even the BRs were also not found. The monies were, however, found transferred from NHB to SBI by way of various RBI cheques issued by NHB under the signature of Accused No.1-Ravikumar in favour of SBI.

301. On behalf of Accused No.1-Ravikumar, a submission is advanced that, after the scam broke out, some securities were found in the office of NHB, however, the details of those securities were not disclosed. The evidence of PW-1 Manojkumar Rakshit reveals that, in those securities,

the securities in question were not found. It is significant to note that it is also not the defence of Accused No.1-Ravikumar and Accused No.2-Suresh Babu that the securities were, in fact, received and they were kept somewhere and no entries with regard thereto were ever made. Admittedly, no Register for holding of securities was maintained in FMG. As Accused No.1-Ravikumar and Accused No.2-Suresh Babu were in-charge of FMG, the responsibility was on them to maintain such Register. Therefore, they cannot now raise the contention that there was no Register and hence non-receipt of the securities cannot be proved. Moreover, as stated above, the SBI is also not admitting the sale or purchase of such securities. In such situation, the inference is inevitable that, without there being the backing of securities in physical form or the BRs, the cheques were issued towards the alleged purchase of securities.

Role of Accused No.1-Ravikumar

302. The evidence on record categorically goes to prove that Accused No.1-Ravikumar was in-charge of FMG at the relevant time. It is also not disputed that only three persons were working in the FMG, namely, Accused No.1-Ravikumar, who was the Assistant General Manager, Accused No.2-Suresh Babu, the Assistant Manager, and PW-14 Sivaraman as 'Assistant'. Though, by Office Order dated 31st May 1991, one Muralidharan was appointed in place of Accused No.1-Ravikumar, the

Office Order itself indicates that Accused No.1-Ravikumar was to continue to oversee the work of FMG till completion of the audit for the year 1990-1991 and the said order of appointing Muralidharan in place of Accused No.1-Ravikumar never came into actual effect. Though Accused No.1-Ravikumar has tried to contend that he was never in-charge of the funds of FMG and Shri. S.D. Hosangadi, Chief General Manager, was the only official of NHB who had complete domain over the funds, the evidence of PW-1 Manojkumar Rakshit and PW-14 Sivaraman borne out that even after completion of the audit for the year 1990-1991, Accused No.1-Ravikumar continued to hold charge of FMG, despite the Office Order dated 31st May 1991. The evidence on record that of PW-1 Manojkumar Rakshit and PW-14 Sivaraman also go to prove that all the transactions carried out in FMG were by the Officer-in-charge of the FMG and the Officer-in-charge of FMG was Accused No.1-Ravikumar, who was entering into the deal and authorizing the deal. As deposed by PW-14 Sivaraman, it was at the instance of Accused No.1-Ravikumar that the entries in the Deal Diary used to be made and other documents used to be prepared like vouchers, RBI Scroll, entry in Investment Register etc. These entries used to be made either by Accused No.2-Suresh Babu or by PW-14 Sivaraman in his absence. Thus, the evidence on record proves that Accused No.1-Ravikumar was, in fact, in-charge of the FMG.

303. It is pertinent again to note that Accused No.1-Ravikumar has not denied having entered into any of these transactions. He has also not denied that he has signed all the cheques in respect of these transactions. Though he has contended that there is no evidence to show that who has collected these cheques, in my opinion, it is totally irrelevant as to who has collected the cheques drawn on RBI in favour of SBI, because the fact remains that the cheques had actually reached SBI and on the basis of those cheques, the amounts have been debited from the account of NHB with RBI and credited to the account of SBI with RBI. The evidence of PW-1 Manojkumar Rakshit clearly shows that the cheques were to be handed over against the physical securities or BRs. However, in this case, no such securities are produced on record. Hence, the liability of Accused No.1-Ravikumar for these structured or fake transactions is required to be held as proved.

Role of Accused No.2-Suresh Babu

304. As regards Accused No.2-Suresh Babu, though he has tried to contend that he was merely a glorified clerk, being the lowest in the official hierarchy at NHB and above him there were several other Officers, the evidence on record clearly goes to show that it was Accused No.2-Suresh Babu, who used to write the cheques and make necessary entries in the record. Thus, he was, in fact, assisting Accused No.1-Ravikumar in every

way. The evidence on record categorically proves that it is Accused No.1-Ravikumar and Accused No.2-Suresh Babu, who were the only two persons-in-charge of FMG. Hence, it was their joint responsibility to ensure that the securities were received as and when the cheques were handed over. It was for Accused No.2-Suresh Babu to ensure the said fact, as it was his duty to prepare cheques and make necessary entries in the record. He cannot throw his hands in the air to contend that his duty was only to record the transactions and act according to the instructions of his superiors.

305. It is pertinent to note that, both, Accused No.1-Ravikumar and Accused No.2-Suresh Babu are playing blame-game in this respect. According to Accused No.1-Ravikumar, it was the job of back-office, namely, that of Accused No.2-Suresh Babu, to maintain the record pertaining to securities and BRs and there is no evidence that he was informed that back-office had not received securities. As against it, it is the contention of Accused No.2-Suresh Babu that his job was only clerical, of maintaining the record, making entries etc. Thus, it is clear that both of them are trying to shift blame on each other. However, the fact remains that, as only two of them were working as in-charge of FMG, without their knowledge and connivance, these transactions could not have seen the

light. Hence, both of them become equally liable. The evidence on record goes to prove that the cheques had gone out of NHB without receipt of the physical securities or BRs. It cannot be accepted that it was without the knowledge of Accused No.1-Ravikumar and Accused No.2-Suresh Babu that the cheques had gone out without receipt of the purchase securities or BRs in lieu thereof. Hence, the necessary connivance or collusion between Accused No.1-Ravikumar and Accused No.2-Suresh Babu can be easily inferred from the evidence on record in respect of all these transactions.

306. The contention of Accused No.1-Ravikumar and Accused No.2-Suresh Babu is that the cheques used to be signed by the two signatories and, therefore, they alone cannot be held liable for issuance of the cheques. However, the evidence of PW-1 Manojkumar Rakshit clearly goes to prove that Officer working in the Department, from which the cheque was issued, was required to sign the cheque first and thereafter the second signatory would sign the same. It may be true that, by simply looking at the cheque, it cannot be made out as to which of the two signatories had put his signature first; however, the fact that the cheques were issued from FMG and it was Accused No.1-Ravikumar, who was in-charge of FMG, makes it necessary to hold that Accused No.1-Ravikumar

was the first signatory and hence the responsibility for issuance of cheques lies squarely on the shoulders of Accused No.1-Ravikumar.

Role of Accused No.3-Sitaraman

307. Now coming to the role of Accused No.3-Sitaraman, who was, at the relevant time, in-charge of SBI's Investment Cell of Security Division of SBI, Mumbai Main Branch. The evidence on record proves that he had signed all the vouchers for making credit / debit of the accounts. The Waste Book and the Vouchers prepared at the end of SBI unequivocally prove that the proceeds of the cheques had been utilized as per the directions of Accused No.4-HSM. The evidence of PW-25 Harsha Shah proves that she has prepared the vouchers as per the directions of Accused No.3-Sitaraman and it was Accused No.3-Sitaraman, who used to tell her to prepare particular vouchers and she used to do accordingly. PW-29 Prakash Kanchan has also deposed that the officer-in-charge of Bank's Investment Cell was Accused No.3-Sitaraman. The nature of his duties, while working as 'Clerk-cum-Cashier', was to maintain the Sale Slip Book, Purchase Slip Book and prepare cheques, as instructed by the officer-in-charge, namely, Accused No.3-Sitaraman. PW-40 Arun Bavdekar has also, in his deposition, stated that Accused No.3-Sitaraman was in-charge of the Bank's Investment Cell in the Security Department at the relevant time. According to him, as all the Bankers' Cheques

exceeding Rs.25,000/- were required to be signed by, at-least, two Officers, some of the vouchers and the Bankers' cheques used to come to him for second signature. However, those cheques used to be already signed by Accused No.3-Sitaraman. He has further stated that the transactions taking place in Bank's Investment Cell were known to Accused No.3-Sitaraman only and the vouchers and Banker's cheques used to be given to the other Officers in a routine manner for counter signature only.

308. Thus, there is more than sufficient evidence produced on record to prove that, at the relevant time, Accused No.3-Sitaraman was heading the Bank's Investment Cell of Mumbai Main Branch of SBI and looking after the sale and purchase of Government Securities. The evidence of PW-58 Santosh Indulkar, the Peon from M/s. Growmore, also proves that, when he used to take RBI cheques to SBI, Accused No.3-Sitaraman used to instruct him to deposit the cheques in RBI directly. Accordingly, after depositing the cheques, he used to give counter-foils to Accused No.3-Sitaraman. The credits of the said cheque amounts with SBI are not disputed by Accused No.3-Sitaraman. The evidence on record goes to prove that, after the credit of the said amount in the account of SBI, the proceeds thereof have been utilized for making payments as per the

directions of Accused No.4-HSM, by preparing various vouchers, as described earlier, in transaction wise analysis. Accused No.3-Sitaraman has also not disputed the said fact.

309. The only defence of Accused No.3-Sitaraman is that all these cheques were intended for Accused No.4-HSM and that was the reason the proceeds of the cheques were utilized as per the directions of Accused No.4-HSM. In this respect, Accused No.3-Sitaraman has relied upon the "*Single Point Clearance Facility*" allegedly granted to Accused No.4-HSM. According to Accused No.3-Sitaraman, the endorsement on letter Exhibit-154, by which a 'Single Point Clearance Facility' was sought by Accused No.4-HSM, reveals that such facility was, in fact, recommended by the Committee headed by late Shri. Goiporia, the then Chairman of SBI, and, therefore, it was not at all his brain-child, as alleged by the prosecution, or, even the brain-child of Accused No.4-HSM. In this respect, Accused No.3-Sitaraman has relied upon the evidence of PW-38 Anil Padhye, Assistant General Manager of SBI, and PW-10 Madan Sharma, DGM of SBI, to contend that so many Officers in the Personal Banking Division of SBI had discussed as to whether such facility should be granted to Accused No.4-HSM or not and they were enthusiastic about the proposal, as it would bring float funds for SBI to use without any costs

to it. It is submitted that PW-38 Anil Padhye, Assistant General Manager of SBI, has admitted that such facility was, in fact, granted to Accused No.4-HSM. It is submitted that none of those Officers, who participated and agreed to the request of Accused No.4-HSM, are either accused or pardoned approvers. Moreover, the letter Exhibit-154 was addressed to the Personal Banking Division of SBI and not to Securities Division, where he was working. Hence it is urged that, unless some one from Personal Banking Division had communicated to him about such facility, he could not have granted to Accused No.4-HSM the facility for crediting the proceeds of the cheques issued in favour of SBI to the account of Accused No.4-HSM.

310. Further, it is submitted by Accused No.3-Sitaraman that once the funds are received into the accounts of SBI, SBI can appropriate them as it deems fit and, therefore, there is absolutely no question of misappropriation of the funds or of committing criminal breach of trust. It is urged that the charge under Section 409 IPC is itself self-contradictory, since there were no transactions by SBI with NHB, as alleged by the prosecution. The funds in question were the funds of SBI. Accused No.3-Sitaraman can, at the highest, be said to have dominion over the funds of SBI and not of NHB. Since there were no transactions with NHB, the

funds were of the beneficial ownership of SBI and hence they could be allocated, as directed by the persons bringing the cheques, namely, Accused No.4-HSM or his representative. Thus, according to Accused No.4-HSM, the entire set of allegation made against him falls on the ground.

311. However, in my considered opinion, in this respect it would be essential to refer to the evidence of PW-10 Madan Sharma and PW-38 Anil Padhye. PW-10 Madan Sharma has categorically deposed that he had never granted this facility of 'Single Point Clearance' to Accused No.4-HSM and he came to know that the facility had already been extended to Accused No.4-HSM without his approval. PW-38 Anil Padhye has also deposed that he did not get any approval in writing regarding the request of 'Single Point Clearance Facility' made in the letter Exhibit-154. Therefore, there is nothing on record to show that, in reality, such facility was actually granted by the competent authority of SBI to Accused No.4-HSM. Despite that, it is clear that Accused No.3-Sitaraman has credited the proceeds of the cheques issued in favour of SBI directly to the account of Accused No.4-HSM. In such situation, Accused No.3-Sitaraman cannot escape from the criminal liability of misappropriation of funds of the SBI, which were received from the cheques issued by NHB.

312. Accused No.3-Sitaraman has also raised contention that it was a market practice at that time to give routing facility to the brokers and, therefore, the proceeds of the cheques issued in favour of SBI are credited to the account of Accused No.4-HSM. However, in this respect, the prosecution has relied upon the circular dated 1st September 1988 Exhibit-397 issued by RBI prohibiting the issuance of cheques on behalf of private parties. So there was no legal backing for granting such a facility to Accused No.4-HSM. In the said circular, it was specifically stated that the current account of the Banks with RBI was being misused by some of the Banks by violating the stipulations laid down while opening the current account that the account is not to be treated as an ordinary account and cheques on behalf or in favour of third parties are not to be issued on this account. The said accounts were meant only for the purpose of the payments to RBI and Government Departments on behalf of Banks only and not on account of other parties by using RBI cheques. Thus, this circular clearly prohibited the practice adopted by some Banks to issue cheques on behalf of private Banks. In view thereof, it also does not appear probable that SBI will allow such facility to Accused No.4-HSM and if such a facility was allowed by Accused No.3-Sitaraman, it has no legal backing at all and it was clear abuse of his official position. As there

was no underlying transaction with NHB, SBI should have returned the cheques to issuing Bank or should have sought clarification from NHB. Instead of that, Accused No.3-Sitaraman credited the proceeds of the cheque amounts to the account of Accused No.4-HSM. In such situation, Accused No.3-Sitaraman cannot take shelter behind, what is described as market practice. The Hon'ble Apex Court in the case of *Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748*, has occasion to deal with such market practices behind which the accused persons in the said case had taken the shelter and it was held in paragraph No.377 as follows :-

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

313. Thus, by rejecting the said contention, it was held that the offences charged against those accused were made out in the said case. In the instant case also, this contention, therefore, raised by Accused No.3-Sitaraman cannot be accepted.

314. In the case of *Vinayak Narayan Deosthali (supra)* also, in paragraph No.15, it was held that the patent illegality cannot be defended in the name of market practice or direction of a higher authorities. Mens rea is established from the fact that false BRs were issued for non-existent securities.

315. Accused No.3-Sitaraman in the instant case also cannot raise contention that there was no fund exposure to SBI and no risk was involved as the evidence on record clearly goes to prove that the SBI had suffered loss in the scam due to the facility given by Accused No.3-Sitaraman unauthorizedly to Accused No.4-HSM. The cheques were collected by SBI not as a collecting banker but as payee, so the protection under section 128 of the Negotiable Instruments Act was also not available. The said act was also against Section 10 of the Negotiable Instruments Act. In the case of *Ram Narain Poply (supra)*, the Hon'ble Apex Court was pleased to hold in paragraph No.333 that, "*a Bank cannot*

act as a broker under the Banking Act. It is not one of the permitted acts. There is also not a question of paying of any commission on purchase or sale of transactions. The transactions are, therefore, not transparent.”

316. At this juncture, it may be useful to consider the evidence relating to sale transactions. Normally, the sale and purchase of transactions are independent ones. In this case, however, the evidence on record proves that same securities were sold to different Financial Institutions on the same day and almost for the same consideration, which makes it clear that both Accused No.1-Ravikumar and Accused No.2-Suresh Babu knew that although there were purchase transactions, the securities or Bank Receipts in lieu thereof had not been received on the respective dates. It was also to their knowledge that although they had entered into transaction of sale of some securities that were purchased from the different Banks and Financial Institutions, the said securities were not in their custodies, nor the Bank Receipts in lieu thereof were in their custody. It is, therefore, clear that both, Accused No.1-Ravikumar and Accused No.2-Suresh Babu, had acted in collusion and connivance with each other for entering into not only the purchase transactions but also the sale transactions, with full knowledge that the securities in the purchase transactions were not received and without being in possession of the

same, they issued Bank Receipts in sale transactions. Mere fact that all the sale transactions were reversed by NHB and all the Bank Receipts were issued by the authorized officers of the NHB, is of no help. The authority in Accused No.1-Ravikumar and Accused No.2-Suresh Babu of issuing Bank Receipts presupposes that the Bank Receipts were backed by the physical securities and while issuing Bank Receipts, the physical securities were available. Neither Accused No.1-Ravikumar, nor Accused No.2-Suresh Babu had any authority to issue Bank Receipts, which were not backed by physical securities.

317. The submission of learned counsel for Accused No.1-Ravikumar and Accused No.2-Suresh Babu in this respect is that the Bank Receipts could be issued even in expectation of receipt of securities. The specific contents of the formats of the Bank Receipt are pointed out by them, which are to the effect that, *"the units / bonds of the face value of Rs..... will be delivered as soon as they are ready in exchange for this receipt duly discharged and in the meantime, the same will be held on A/c. of (name of the Bank)"*. Thus, it is urged that these contents make it clear that Bank Receipts can be issued even in the absence of physical securities, which can be delivered subsequently. However, to accept this contention, there should be such physical securities. However, in the

present case, it was to the knowledge of Accused No.1-Ravikumar that he could not have discharged this undertaking or liability when he issued the Bank Receipts as physical securities were not available with him, nor were likely to be received later or during the course of the day or even subsequent thereto. It is, therefore, clear that even with regard to the sale transactions, Accused No.1-Ravikumar and Accused No.2-Suresh Babu had acted in connivance with each other.

Charge of Criminal Conspiracy

318. To prove the charge of criminal conspiracy, the learned Senior P.P. has relied upon 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 said charge, in the backdrop of the similar allegations, in a case arising out of the decision of the Special 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 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.”

319. In paragraph No.345, while dealing with the ingredients of the offence of criminal conspiracy, the Hon'ble Apex Court was pleased to hold that,

“345. There should be an agreement between the persons who are alleged to have conspired and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and 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.”

320. Learned Senior P.P. has also placed 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 Apex Court was pleased to observe as follows :-

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

“24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the

charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.” [See State of Kerala v. P. Sugathan, (2000) 8 SCC 203, SCC p. 212, para 14].”

321. 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.”

322. In the context of Section 10 of the Indian Evidence Act, it was held by the Hon’ble Apex Court, in paragraph No.348, that, the expression “*in furtherance to their common intention*” in Section 10 is very

comprehensive and appears to have been designedly used to give it a wider scope than the words “*in furtherance of*” used in the 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.

323. In this authority, while dealing with the diversion of the funds of the public body, it was observed by the Hon’ble Apex Court, in paragraph Nos.380 and 381, that,

”380. The offences in these cases were not of the conventional or traditional type. The ultimate objective was to use public money in a carefully planned manner for personal use with no right to do it.

381. Funds of public bodies were utilized as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL a Government Company, were diverted and all the concerned accused persons A1, A3 and A5 played dubious roles in these illegitimate transactions. Their acts had serious repercussions on the economic system of the country and the magnitude of financial impact involved in the present

appeal is only tip of the iceberg. There were several connected cases and interestingly some of the prosecution witnesses in the present case are stated to be accused in those cases. That itself explains the thread of self-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]

324. In the instant case, the evidence on record, discussed above, clearly goes to prove that without the active connivance and collusion of Accused No.1-Ravikumar and Accused No.2-Suresh Babu at the NHB end and Accused No.3-Sitaraman at the SBI office, the crores of funds from the Financial Institutions would not have been diverted to the account of Accused No.4-HSM. The evidence on record also goes to prove that there was blatant violation of all the canons and rules and regulations of the Banking Institutions and financial transactions. Without having securities or Bank Receipts in hand, the cheques were issued and the sale proceeds of the same were then credited to the account of Accused No.4-HSM without there being such mandate by NHB to SBI, which clearly goes to prove that all these three officers, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, have acted hand-in-gloves for the benefit of Accused No.4-HSM.

325. Hence, the contention raised by Accused No.1-Ravikumar and Accused No.2-Suresh Babu that, all the cheques issued were account payee and on none of the cheques any endorsement in favour of any individual, much less, Accused No.4-HSM was made; they were also credited to the SBI account maintained with RBI and if thereafter they were diverted to account of Accused No.4-HSM, they are not in any way responsible for the same, cannot be accepted. Their further contention that SBI should have returned those cheques if there were no securities transactions with them, therefore, the scam originated at the end of SBI; hence, Accused No.3-Sitaraman alone is responsible for the diversion of funds to account of Accused No.4-HSM also cannot be accepted. It 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. The criminality on the part of Accused No.1-Ravikumar and Accused No.2-Suresh Babu was to issue the cheques without there being securities or BRs and the criminality on the part of Accused No.3-Sitaraman was accepting such cheques, encashing them, knowing fully that there were no transactions of SBI with NHB and thereafter diverting those funds to the account of Accused No.4-HSM. Unless and until all these three accused had played their individual parts in tandem, which parts were

supplementary and complementary to each other, this scam would not have taken place. The entire sequence of transactions thus clearly proves that Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman had acted in collusion, every one playing his part towards achieving the common object of criminal conspiracy. There need not be any direct link or proof to establish this criminal conspiracy, as contended by these accused. As per the well settled position of law, such conspiracy can be rarely established by the direct evidence. Hence, the prosecution and this Court has to draw the inference of this conspiracy from the facts, circumstances and documents elucidated above, which are more than self-speaking.

326. The Hon'ble Apex Court has occasion to deal with similar such submissions and also the charge of criminal conspiracy in the recent decision of *R. Venkatkrishnan Vs. Central Bureau of Investigation, (2009) 11 SC 737*. It was an appeal against the decision of this Special Court, pertaining to the call money transaction between NHB and UCO Bank. While dealing with the offence of criminal conspiracy in the said case, the Hon'ble Apex Court has quoted with approval the above referred paragraph No.344 in the case of *Ram Narain Poply (supra)* to reiterate that, "*the law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The*

encouragement and support which co-conspirators give to one another rendering enterprises possible, which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment.”

327. The Hon'ble Apex Court has further quoted with approval in paragraph No.101 the observations in *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.”*

328. Here, in this case, both, Accused No.1-Ravikumar and Accused No.2-Suresh Babu at the one end and Accused No.3-Sitaraman at other end have indulged into shifting blame on each other. Accused No.1-Ravikumar and Accused No.2-Suresh Babu are saying that the scam was originated at SBI as Accused No.3-Sitaraman had without mandate or any direction from NHB credited the proceeds of the cheque issued in favour of SBI in the account of Accused No.4-HSM. Whereas, according to Accused No.3-Sitaraman, there was no reason at all for Accused No.1-Ravikumar to issue the cheques when there were no transactions of sale or purchase of securities with SBI, therefore, fault lies with the officers of

NHB. As discussed above, the fault not only lies at one end but at both the ends, as can be seen from the blame game played by Accused No.1- Ravikumar and Accused No.2-Suresh Babu on one hand and Accused No.3-Sitaraman on the other hand. There were gross illegalities committed in these entire transactions, which ultimately ended into siphoning off crores of funds of the public Bank like NHB or SBI to the account of a broker like Accused No.4-HSM. These illegalities would not have taken place without there being some active connivance between these two sets of accused. It was due to only the encouragement and support which the co-conspirators, like, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman gave to each other, that the siphoning of funds of the Banks was rendered possible, which, if left to individual effort of Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, would have been impossible and, therefore, it furnishes the ground for proving the charge of criminal conspiracy. Hence, in this case, I have no hesitation in holding the charge under Section 120B of IPC proved against Accused No.1- Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman.

Charge of Criminal Breach of Trust

329. As regards the charge of criminal breach of trust and dishonest misappropriation of property, punishable under Section 409 of IPC, in the

case of *Ram Narain Poply (supra)*, the Hon'ble Apex Court was 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 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.”

330. In this decision, the Hon'ble Apex Court quoted with approval its earlier decision in *Jaswantrao Manilal Akhaney Vs. The State of Bombay*, AIR 1956 SC 575, to the effect that, *“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.”

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

332. 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”.*

333. According to Hon’ble Apex Court, *“to establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion, which 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.”

334. While dealing with similar such charge of criminal breach of trust in the context of this very Accused No.1-Ravikumar himself, in the case of *R. Venkatakrishnan Vs. Central Bureau of Investigation, AIR 2010 SC 1812*, wherein present Accused No.1-Ravikumar (Accused No.6 in that case) had allowed the diversion of huge sum meant to be used for specific purpose, namely, call money to be lent to another Nationalized Bank, the Hon'ble Apex Court, in paragraph No.152 was pleased to hold 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, offence of criminal breach of trust must be held to have been committed. 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.”*

335. In paragraph No.153 of its Judgment, the Hon'ble Apex Court, further held 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 attracts the ingredients of Section 405 of the Penal Code”.

336. In this case, Accused No.1-Ravikumar and Accused No.2-Suresh Babu in connivance with Accused No.3-Sitaraman has allowed the funds of the Bank on which they had dominion and entrustment to be used for the benefit of Accused No.4-HSM a private person, who was not expected to reap the fruits of the said money. He was allowed to retain the same, to make an unlawful gain therefrom. Hence, there is no reason but to hold that the offence of criminal breach of trust has been made out against Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman. In the present case, as also in the case of *R. Venkatakrishnan (supra)*, Accused No.1-Ravikumar parted with money of NHB, which was entrusted to him, so that Accused No.4-HSM could get it, although not entitled therefor in law. The conduct of Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman therefore, being dishonest, they are liable to be held guilty for the offence of criminal breach of trust.

337. The next contention raised by Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman is that the entire amount of Rs.700,07,56,39,000/- has already been paid by SBI to NHB as per the directions of RBI, by debiting the account of Accused No.4-HSM. Hence, as the repayment has already been made, there is no question of any offence being committed as such. However, this contention is also considered by the Hon'ble Apex Court in the case of *Ram Narain Poply (supra)* and effectively dealt with in paragraph No.358 by observing as follows :-

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

338. In this case, in the face of gross violation of the various rules, guidelines, when the funds have been transferred, the mere fact that ultimately under the direction of RBI, the repayment of the said funds was

made, that too under protest, does not dilute, in any way, the nature of the offence.

339. As observed by the Hon'ble Apex Court in another such latest decision of *Vinayak Narayan Deosthali Vs. Central Bureau of Investigation*, (2015) 2 SCC 553, in paragraph No.15, while dealing with the contention of the accused therein, which contention is raised by accused persons in this case also, that they had not derived any benefit or caused any loss to the Bank that, “ *it was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorized conversion of public funds to private funds of an individual. Issuing of Bank Receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual. 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.*”

340. By holding thus, in the said case, the offences of conspiracy, forgery, misappropriation and corruption were held established against the accused. In the instant case also, this contention raised by accused that they have not received any individual benefit has to be rejected in toto.

**Charge u/s. 13(1)(c) and (d) r/w. Section 13(2) of the
Prevention of Corruption Act, 1988**

341. As to the offences under Section 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988, it was held in the authority of *R. Venkatakrishnan (supra)*, in which, as stated above, present Accused No.1-Ravikumar was involved in respect of call money transaction with UCO Bank, the Hon'ble Apex Court held that, "the essential ingredients of sub-clause (iii) of Section 13(1)(d) are that accused should be a public servant; he should use some corrupt or illegal means or otherwise abuse his position as a public servant, that he should have obtained any valuable thing or pecuniary advantage for himself or for any other person; then he would be guilty of "*criminal misconduct*", for which punishment is provided in Section 13(2) of the Prevention of Corruption Act, 1988. It was held in this case that as Accused No.1-Ravikumar, who was Accused No.6 therein, had misused his position as a public servant, so that Accused No.4-HSM gets some pecuniary advantage, he was guilty of "*criminal misconduct*", under the Prevention of Corruption Act, 1988. It was further held that, "*along with Accused No.1, other officers of UCO Bank, who were Accused Nos.1 to 3 therein, at the relevant time, were public servants, each of them had played a specific role in diversion of funds from NHB to the account of Accused No.4, all ostensibly under a call money transaction, they thereby, in our opinion, facilitated Harshad Mehta*

to obtain pecuniary advantage within the meaning of the section. The acts were anything but intended to be in public interest. On the contrary, the public loss and suffering occasioned thereby was immeasurable. Though it is true, as has been argued before us, that all the funds diverted have subsequently been returned to NHB and no actual loss has been occasioned thereby either to UCO Bank or NHB, it must not be forgotten that white collared crimes of such nature affect the whole society even though they may not have any immediate victims.”

342. The Hon'ble Apex Court has, accordingly, in this decision held Accused Nos.1 to 3, the officers from UCO Bank, and Accused No.6, i.e. present Accused No.1-Ravikumar from NHB, liable for criminal misconduct under Section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988.

343. In the instant case also, the evidence on record clearly goes to prove that Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, who, at the relevant time, were admittedly the public servants, have by misusing their positions as public servants, played a specific role in diversion of funds from NHB to the account of Accused No.4-HSM, all ostensibly under the structured transactions of

sale and purchase of securities. They have thereby facilitated Accused No.4-HSM to obtain pecuniary advantage, within the meaning of Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. These acts were anything but intended to be in public interest. On the contrary, the public loss and suffering occasioned thereby was immeasurable in this case also, as in the above said case. Ultimately, though the funds diverted have been returned to NHB and it may be true that, no actual loss has been occasioned thereby either to NHB, it cannot be forgotten that these white collared crimes of such nature affect the whole society, even though they may not have any immediate victim. Therefore, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman are required to be held guilty of criminal misconduct under Section 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

344. At this stage, it is also necessary to deal with the contention raised by Accused No.1-Ravikumar and Accused No.2-Suresh Babu as to the validity of the sanction order. The accused have challenged the same on the count that PW-56 Ravi Gupta, who has issued the sanction orders for prosecution of Accused No.1-Ravikumar and Accused No.2-Suresh Babu vide Exhibits 545 and 546, was not the competent authority to do so. The second ground on which the sanction orders are challenged is about the

non-application of mind. It is pertinent to note that the similar contentions were raised by Accused No.1-Ravikumar and Accused No.2-Suresh Babu for challenging the sanction orders issued by PW-56 Ravi Gupta for their prosecution in the case of *R. Venkatakrishnan (supra)* also. In that case, the present Accused No.1-Ravikumar and Accused No.2-Suresh Babu were Accused Nos.6 and 7. While dealing with similar contentions therein, as to the competency of PW-56 Ravi Gupta, the Chairman and Managing Director of NHB, to issue the sanction orders, it was observed in paragraph Nos.58 and 59 by the Hon'ble Apex Court, as follows :-

"58. It is contended by Accused 6 C. Ravikumar that he had come to NHB on deputation from RBI, and, therefore, the conditions of his service were governed by the RBI Regulations and not those of the NHB Act. According to him, the Governor of RBI was the only competent sanctioning authority.

69. Indisputably, Accused 6 was initially appointed by Reserve Bank of India and was sent to NHB on deputation in the year 1988. He was, however, permanently absorbed there in 1992 and the order of sanction in respect of him was passed on 26-2-1993. It is a fundamental principle of service jurisprudence that an employee, subject to statutory interdict, cannot have two masters. If from the date of his absorption the relationship of employer and employee came into being between him and NHB, it is fallacious to suggest that

Reserve Bank of India continued to be his employer. It is not in dispute that if accused 6 is treated to be an officer of the Bank, the Chairman-cum-Managing Director, being its highest authority would be competent to pass the order of sanction.”

345. While dealing with the similar contentions raised by present Accused No.2-Suresh Babu herein, who was Accused No.7 in that case, the Hon'ble Apex Court was pleased to observe in paragraph Nos.60 and 61 of its Judgment, as under :-

“60. Next it was urged before us on behalf of Accused 7 S. Suresh Babu that since the terms and conditions of service of the employees of NHB till as late as 1995 used to be governed by the Service Regulations framed by Reserve Bank of India, Shri. R.V. Gupta, the Chairman-cum-Managing Director, NHB had no authority to issue the sanctioning order. It was argued that NHB's own staff regulations governing conduct and discipline came into effect only in the year 1995.

61. The said contention in our opinion is wholly misconceived. Even if till the framing of regulations by NHB, it adopted the Service Regulations governing the employees of Reserve Bank of India, the same would not mean that the appointing authority would also be an officer of Reserve Bank of India and not the appropriate authority of NHB. The Chairman-cum-Managing

Director of NHB being a highest executive authority, would be, subject to any delegation of powers conferred in terms of the regulations or through resolutions adopted by the Board of Directors, the appointing authority. As an appointing authority, therefore, he will have the requisite jurisdiction to accord sanction for prosecution of the employees.”

346. So, this issue relating to competency of PW-56 Ravi Gupta for issuance of sanction orders for prosecution of Accused No.1-Ravikumar and Accused No.2-Suresh Babu being already settled at the Hon'ble Apex Court level itself, it can no more be agitated further.

347. There is also no reason or any material elicited to show that the sanction given was without any application of mind. Merely saying so, is not sufficient in that respect.

348. As regards Accused No.3-Sitaraman, the sanction order Exhibit-568 for his prosecution is properly proved by the prosecution by examining PW-60 Govardhan Kathuria, the Chief General Manager of SBI, Local Head Office, Mumbai and Accused No.3-Sitaraman has not challenged its legality or validity in any way.

349. The next submission advanced by learned counsel for Accused No.1-Ravikumar and Accused No.2-Suresh Babu, in-person, is that no departmental proceedings were initiated against them so far as these transactions are concerned. It is urged that if no case was made out for institution of the departmental proceedings, then it follows that there was no case even for the institution of criminal proceedings. However, as rightly submitted by learned Senior P.P., this aspect is also dealt with by the Hon'ble Apex Court in the case of *R. Venkatakrishnan (supra)*, in paragraph No.150, as follows :-

“Non-Institution of Departmental Proceedings

150. *In this regard, it must be emphasized that the submission of the learned counsel that the Banks have not initiated any proceedings and suffered any loss and thus the judgment of conviction and sentence of criminal breach of trust is wholly unsustainable, cannot be accepted for more than one reason. It is not the law that complaint petition under all circumstances must be made by the banks and financial institutions, whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. It is now trite that criminal law can be set in motion by anybody. The prosecution was initiated on the basis of the information received by the Central Bureau of Investigation. It would be*

entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by the Janakiraman Committee. The money involved in the transfer is public money belonging to public sector banks.”

350. Therefore, this contention fails in this case also.

351. Thus, all the contentions which have been raised by Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman in this case have already been raised, considered and rejected by the Hon'ble Apex Court in the very cases pertaining to these accused and other cases in which similar questions of facts and law were involved in the appeals preferred against the Judgment of this Special Court. Now those contentions cannot be reopened again in this case because the same reasoning and the laws will apply to them, even if they are reopened. This Court being bound by the decisions of the Hon'ble Apex Court, there is no need to state that this Court cannot take any divergent view. Even otherwise, nothing is brought on record to distinguish the above said decisions even on facts, far remain on law.

352. As to the evidence of PW-53 Sunil Majithia and PW-55 Mani Acharya relied upon by the prosecution to show that Accused No.3-

Sitaraman has received an amount of foreign remittance in 1991 under an Immunity Scheme pertaining to foreign exchange and the said amount was from Accused No.4-HSM, routed through the foreign channels, as illegal gratification for crediting the cheques in the account of Accused No.4-HSM, which were not meant for him, there is no charge framed to that effect in this case. The reason may be because Accused No.3-Sitaraman was prosecuted separately for the same under Section 13(1)(e) of Prevention of Corruption Act, 1988, in Special Case No.48 of 1994 and he was acquitted therein. Hence, now in view of Section 300 Cr.P.C., he cannot be prosecuted again for the same offence or for any other offence based on the same facts for which he might have been charged earlier, for being in possession of assets disproportionate to known source of income.

353. Learned counsel for Accused No.1-Ravikumar and Accused No.3-Sitaraman have then relied upon the decision of the Hon'ble Apex Court in the case of *Central Bureau of Investigation, ACB, Mumbai Vs. Narendra Lal Jain and Ors.*, (2014) 5 SCC 364, to submit that when the matter is amicably settled between the parties and financial liability is satisfied, then, in this authority, the Hon'ble Apex Court was even pleased to quash the criminal prosecution against the accused for the offences punishable under Sections 120B and 420 of IPC and Section 5(2) r/w. Section 5(1)(d)

of Prevention of Corruption Act, 1988. It is submitted that in the present case also the entire amount has been paid by SBI to NHB. Hence, no cause remains to proceed further with the prosecution. However, in my considered opinion, neither this submission nor this authority can be made applicable to the facts of the present case as in that case, the prosecution was quashed under Section 482 of Cr.P.C., thereby implying that the trial was not conducted and mere the F.I.R.s were recorded. In this case, that stage is already over. The trial is conducted and the guilt of Accused No.1- Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman clearly stands established. So, there is no question of quashing the F.I.R. filed against them, by exercising powers under Section 482 of Cr.P.C. Secondly, the facts of the said authority reveal that the Civil Suit for recovery of the amount was disposed of on account of compromise relating to payment of the claims. Moreover, the offence of cheating was compoundable and no substantive grievance of the Bank had been brought to the notice of the Court. In the instant case, the matter is not at all mutually settled amicably. Even if SBI has paid the amount to NHB, it is under protest. Therefore, it cannot be said that there is no subsisting grievance of SBI in this regard. In view thereof, the reliance placed on this authority of the Hon'ble Apex Court, in my considered opinion, is misplaced.

354. Thus, as regards Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, I have no hesitation in coming to the conclusion that prosecution has proved its case against them in respect of above said transactions for the offence punishable under Section 409 r/w. Section 120B of IPC and also Section 13(1)(c) and (d) r/w. Section 13(2) of Prevention of Corruption Act, 1988.

Charge of Forgery and Falsification of Documents and Cheating

355. The evidence on record also proves the offence of forgery punishable under Section 467 r/w. 120B of IPC against Accused No.1-Ravikumar and Accused No.2-Suresh Babu, as it is proved that these accused have prepared the Bank Receipts in respect of the sale transactions when those Bank Receipts were not backed by the securities, but shown them to have been sold in sale transactions with clear intention that the Banks which have entered into sale transaction with NHB would part with the money and in fact they had issued various cheques in favour of NHB and those cheques were debited in the NHB's account with the RBI. As a result, the charge under Section 471 r/w. section 467 r/w. Section 120B of IPC also stands proved against these Accused No.1-Ravikumar and Accused No.2-Suresh Babu. In respect of the purchase transactions, the charge under Section 477A r/w. 120B of IPC also stands proved against Accused No.1-Ravikumar and Accused

No.2-Suresh Babu as they had falsified the documents like Investment Register, Deal Diary and vouchers by making entries therein in respect of the fake or structured transactions and it was clearly done with intent to defraud NHB. The same charge also stands proved in respect of the sale of securities as the sale transactions were entered into without being backed by Bank Receipts or physical securities. The knowledge that there were no such securities available with NHB was exclusively with Accused No.1-Ravikumar and Accused No.2-Suresh Babu. However, the representation that was made to the purchasing Banks in the form of Bank Receipts was a false representation that Bank Receipts were backed by securities. Thus, Accused No.1-Ravikumar and Accused No.2-Suresh Babu stand guilty for the offences punishable under Sections 467, 471 r/w. 467, 477A r/w. 120B of IPC and Section 420 r/w, Section 120B of IPC.

**Prosecution Case Against Accused No5-Atul,
Accused No.6-Pankaj and Accused No.7-Sudhir**

356. As regards the prosecution case against Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir, who fall in the category of the persons working with Accused No.4-HSM in his Firm, as per prosecution case, there is evidence on record to show that there was meeting of minds between Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir with other accused persons for entering into

contracts with the Banks and Financial Institutions for purchase of securities from NHB. It is urged that NHB could not have issued the cheques in favour of SBI for the utilization of Accused No.4-HSM, unless the sale transactions were not entered into. It would show that Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir acted in conspiracy with other accused to procure the funds from Banks and Financial Institutions by way of purchase of securities from NHB. According to Senior P.P., evidence has come to the effect that Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir were dealing on behalf of Accused No.4-HSM. Accused No.5-Atul has admitted that all the contract notes entered on behalf of Accused No.4-HSM were initialed by him and Accused No.7-Sudhir has admitted that they were signed by him. According to learned Senior P.P., the contract note is a primary document in proof of a deal. The fact that Accused No.5-Atul and Accused No.7-Sudhir were authorized to sign the contract notes itself proves the fact that they were authorized to enter into the contract on behalf of Accused No.4-HSM. Hence, without the help of these accused persons, Accused No.4-HSM could not have achieved the diversion of money from NHB for his private gain. According to learned Senior P.P., prosecution has already established the conspiracy between the accused persons for issuance of cheques by NHB and sale of securities by NHB without

having securities in possession. Hence, once the conspiracy is established, the acts of these accused persons, in pursuance of the conspiracy, would be covered under Section 10 of the Indian Evidence Act. In this respect, reliance is placed by learned Senior P.P. on the celebrated decision of the Hon'ble Apex Court in the case of *Kehar Singh and Others Vs. The State (Delhi Admin.)*, AIR 1988 SC 1883, wherein it was held that,

“This section mainly could be divided into two; the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to section 120A where it is provided, “when two or more persons agree to do, or cause to be done”. This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be, therefore, necessary that a prima facie case of conspiracy has to be established for application of Section 10. The second part of Section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by

any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear that this second part permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in Section 10 in cases of conspiracy. The second part operates only when the first part of the section is clearly established i.e. there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of Section 120A. It is only then the evidence of action or statements made by one of the accused could be used as evidence against the other.”

357. Learned Senior P.P. has also relied upon the decision of the Hon'ble Apex Court on similar lines in the case of *Saju Vs. State of Kerala, 2001 CRI.L.J. 102*. As per learned Senior P.P., having regard to the law laid down in these authorities, including that of *Ram Narain Poply (supra)*, *R. Venkatakrishnan (supra)*, Accused No.5-Atul, Accused No.6-Pankaj and Accused No.7-Sudhir cannot escape from the criminal liability for the acts committed by them.

358. As against it, the contention of Accused No.5-Atul is to the effect

that he was merely an employee of one of the companies of Accused No.4-HSM. The only allegation against him is that of signing few contract notes issued by the Firm of Accused No.4-HSM. It is urged that the material on record will bear out that he has not signed any contract notes. Only his initials appear on the left side bottom corner of few contract notes issued by the Firm of Accused No.4-HSM, to certain Banks from whom NHB received RBI cheques for credit to its own account maintained with RBI. It is urged that the evidence of PW-48 Vijay Palande clearly shows that the authority to sign contract notes was only with Accused No.4-HSM, Accused No.7-Sudhir and their brother Ashwin Mehta, who is not implicated in this case. Accused No.5-Atul had no authority to sign contract notes and he has actually not signed any contract notes. His role was only to confirm the data on the hard copy of the Contract Note with the same in the computer maintained by the Firm of Accused No.4-HSM. Such practice was not only in the Firm of Accused No.4-HSM, but was also prevalent with other brokers in the market. In this respect, Accused No.5-Atul has placed reliance on the evidence of PW-20 Ramnathan Ganesh, wherein he has admitted that;

"It is correct that normally in the transactions relating to shares and securities, the broker contracts for both the parties and prepares a 'deal slip'. Such 'deal slip' gives the details, such as name of the contracting party, the

security involved, the amount and date of the transaction etc. Based on this 'deal slip', the data is fed in computer and from this data, the contract note is generated. Such contract note would usually be verified by some person from the broker's office before it is brought to the person who would sign the same."

359. It is urged that contracting parties are bound by the contract only with signatures by authorized persons and as Accused No.5-Atul was not an authorized person at any given point of time, he cannot be held liable in any way.

360. As regards the evidence of PW-31 Sharwankumar Jindal, on which the prosecution has also relied upon, it is urged by learned counsel for Accused No.5-Atul that PW-31 Sharwankumar Jindal mentions three names, that of Accused No.5-Atul, Accused No.6-Pankaj and one Ms. Poonam Khanna, who used to contact him in connection with the deal. However, prosecution has not examined Ms. Poonam Khanna. If she was examined, it would have come to light that it was she who finally concluded that deal. It is urged that PW-31 Sharwankumar Jindal has admitted that he has not seen any of these three persons and he was in contact with them only telephonically and therefore, his evidence cannot be of much help to the prosecution.

361. Further it is submitted by Accused No.5-Atul that the prosecution has referred to five transactions, but only four contract notes are produced being Exhibits 121, 124, 289 and 380 for transactions at Serial Nos.1, 2, 3 and 4, respectively, at page 89. For transaction at serial No.5, the prosecution has not referred to any contract note. Conversely, it is categorically admitted by the prosecution that in the remaining cases, prosecution could not establish a direct link of Accused No.4-HSM with the transactions due to non-availability of documents and witnesses. It is urged that the perusal of the entries in NHB's account with RBI produced at Exhibit-60 would show that there are hundreds of crores of rupees credited to the account of NHB, which facilitated payment to SBI and, therefore, it is only the conjecture that because of these four transactions, NHB could issue cheques to SBI.

362. It is urged that for the similar functions performed by Accused No.5-Atul that of initialing on the left side bottom corner of the contract notes, he has been made witness for prosecution in many cases filed by the prosecution. He has given a chart of the cases in which he has given evidence as witness for prosecution, which shows that in Special Case No.6 of 1996, he has given evidence as PW-11 Sudhir Raokadnur; in Special Case No.1 of 2003, his evidence was recorded as PW-27 Girish

Patel; in Special Case No.4 of 1994 registered in Special Court at New Delhi, he was PW-100; whereas, in Special Case No.4 of 1998, his evidence is recorded as PW-29 Prakash Kanchan.

363. In fact, according to him, in Special Case No.4 of 1998, on the basis of his deposition, Accused No.7-Sudhir was acquitted by this Court though he has signed many contract notes, as had been signed by him in this case. Furthermore, for similar functions performed by Accused No.5-Atul, this Court was pleased to acquit him in Special Case No.1 of 1996. Thus, in sum and substance, the contention of Accused No.5-Atul is that none of the charge can be said to have been remotely also proved against him.

364. As regards Accused No.7-Sudhir, he is the brother of Accused No.4-HSM. According to him, he used to work in capital market and manage Jyoti Mehta's card, who had membership in the stock market. He used to sit in another office bearing Room No.1018; while, Accused No.4-HSM used to sit in Room Nos.1205 / 1206. It is his contention also that as a constituted attorney of Accused No.4-HSM, he used to sign on his behalf on few contract notes. According to him, he used to see the initials on contract notes as he would not know whether the contract notes are correct. The initials used to be made by a person from the back office,

who was verifying the contents of the contract notes. According to him, though his signatures are appearing on other contract notes also, he has signed thereon only as a constituted attorney of Accused No.4-HSM and nothing more. Thus, according to him also, he is not at all involved in the entire transactions.

365. In my considered opinion, as rightly submitted by learned Senior P.P., the Contract Note being the primary document in proof of a deal and Accused No.5-Atul having initialed the Contract Notes and Delivery Orders and Accused No.7-Sudhir, having signed them as Constituted Attorney of Accused No.4-HSM, both of them cannot escape from their liability. It is significant to note that both of them are trying to evade their liability by shifting it upon one another. According to Accused No.5-Atul, he was not an authorized signatory on the Contract Notes. He has merely initialed the same in token of verification of its contents. Whereas, according to Accused No.7-Sudhir, he used to see the initials of Accused No.5-Atul on the Contract Notes in token of the verification of its contents and signed thereon as Constituted Attorney of Accused No.4-HSM, as he would not know personally whether the contents of the Contract Notes were correct or not. Thus, it is clear that their role is supplementary and complementary to each other. If Accused No.5-Atul has not initialed on

Contract Notes, Accused No.7-Sudhir would not have signed on them and without his signature, the Contract Notes would not have been accepted. As without such Contract Notes and Delivery Orders, the transactions could not have taken place, the involvement and participation in criminal conspiracy of diverting the funds of the Banks and Financial Institutions to the account of Accused No.4-HSM of, both, Accused No.5-Atul and Accused No.7-Sudhir, is clearly proved on record. Hence, both of them are required to be held guilty for the offences punishable under Sections 409 r/w. 120B IPC.

366. However, so far as Accused No.6-Pankaj is concerned, as rightly submitted by him, except a general statement that Accused No.6-Pankaj was dealing on behalf of Accused No.4-HSM with PW-32 V.R. Srinivasan, Manager of Standard Chartered Bank, no other role is attributed by the prosecution to him. The evidence of PW-31 Sharwankumar Jindal is quite vague on this point, as he has mentioned the names of Accused No.5-Atul and Accused No.6-Pankaj and Ms. Punam Khanna, who used to contact him in connection with the deals. However, he has not seen any of them. Hence, Accused No.6-Pankaj need to be acquitted of all the charges levelled against him by extending him benefit of doubt.

Second Set of Transactions

367. This brings me to the second set of transactions, which pertain to Accused No.1-Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.8-Hiten and Accused No.9-Deepak and Accused No.10-Virendra. As per prosecution case, during the course of investigation, it was found that the two cheques bearing No.212157 dated 21st February 1992 for the amount of Rs.2,50,000/- Exhibit-38 and No.21267 dated 22nd February 1992 for the amount of Rs.13,00,000/- Exhibit-43 issued by NHB for purchase of securities from SBI have not gone to the account of SBI. The investigation revealed that apart from these two cheques, there was one more cheque No.173926 dated 1st February 1992 issued by NHB in favour of SBI on the count that NHB had received an excess amount of Rs.8,98,972/- from SBI, which amount they had returned to SBI by this cheque. However, according to prosecution, there was no such excess amount, as claimed by NHB. The prosecution has tried to explain the origin of this cheque Exhibit-138 for the amount of Rs.8,98,912/- by stating that there were two transactions on 14th January 1992, which were to be reversed on 21st January 1992. Further, on 16th January 1992 and 17th January 1992, there was one more transaction each and the same were to be reversed on 31st January 1992. According to Accused No.1-Ravikumar and Accused No.2-Suresh Babu, they had

received the excess amount of Rs.8,98,912/- in respect of these four transactions, which was to be returned to SBI and hence the cheque was issued. The prosecution has in this respect relied on Exhibit-102 the Deal Memorandum signed by Accused No.2-Suresh Babu, Exhibit-446/4 the entry dated 14th January 1992 in the Books of Accused No.4-HSM showing that "SBI BRT" sold two crore units @ Rs.13.50 to NHB and the delivery dated 14th January 1992 and entry Exhibit-447/3 to that effect along with evidence of PW-41 Vishwesh Bhatt that both these entries relate to one and the same transaction.

368. Prosecution has then relied on the Deal Memorandum Exhibit-368 signed by Accused No.2-Suresh Babu to prove that on 14th August 1992, NHB had entered into a deal with SBI as Deal No.123 for purchase of securities of 15,00,000 units @ Rs.13.54 for Rs.6,77,00,000/-, which was reversible on 21st September 1992. There is corresponding entry in the Books of Account of Accused No.4-HSM Exhibit-446/3 and Exhibit-447/2 in the NHB with the evidence of PW-41 Vishwesh Bhatt that both the entries relate to one and the same transaction.

369. To prove the reversal of Deal Nos.121 and 123, prosecution has again relied on the voucher Exhibit-371 bearing signature of Accused

No.2-Suresh Babu and PW-13 Bhushan Raut dated 29th January 1992, the entry in the Books of Account of Accused No.4-HSM Exhibits 446/2 and 446/5 and the print-out from the computer of Accused No.4-HSM Exhibit-448/1 dated 29th January 1992. The prosecution has further relied upon the entry Exhibit-446/6 and Exhibit-448/2 to show that there was an excess amount of Rs.6,08,912/-. In the said reversal deal, which was kept in the Sundry Deposit by voucher Exhibit-371. The prosecution has further relied upon the relevant entries Exhibits "103", "446/7" & "447/4" and the evidence of PW-41 Vishwesh Bhatt to prove Deal No.128 and the voucher signed by Accused No.2-Suresh Babu Exhibit-364, the entry Exhibit-446/9 in the Books of Account of Accused No.4-HSM and entry Exhibit-447/5, coupled with the evidence of PW-41 Vishwesh Bhatt, to prove the Deal No.139. Thus, according to prosecution, in both the deals, counter parties were SBI. There are further entries to that effect, like, Deal Diary dated 31st January 1992 Exhibit-365 and Exhibit-366, coupled with the entry in the RBI Scroll Book Exhibit 367. It is urged that these entries clearly reveal that there was no excess amount received from SBI; despite that the cheque for the amount of Rs.8,98,912/- was issued only with an intention to benefit Accused No.9-Deepak. According to Senior P.P., the voucher Exhibit-364 was prepared for it. It is urged that if the NHB had purchased the Bond @ Rs.85/-, why it has sold the same @ Rs.84.96216,

when reversal always will be on a higher rate compared to the first leg.

370. It is urged by the prosecution that all the above three cheques were bearing the signature of Accused No.1-Ravikumar and P. Jambukeshwaran. They were all drawn on RBI. However, they were presented in the account of Accused No.9-Deepak, along with three credit advises, requesting the proceeds of the cheques to be credited into the account of Deepak Mehta bearing Account No.005660. Exhibits "137" and "141" are the credit advises pertaining to the cheque for the amount of Rs.8,98,902/- and Rs.2,50,000/- directing SBI that the sale proceeds of these cheques be credited to the account of Accused No.9-Deepak. Exhibit-144 is a credit advise purportedly signed by only one officer from NHB, namely, P. Jambukeshwaran again giving mandate to SBI to credit the proceeds thereof to the account of Accused No.9-Deepak. As per prosecution, all these three cheques are forged as the signatures appearing thereon are not of authorized signatories of NHB. It is urged that there was a conspiracy to credit the amount of these cheques to the account of Accused No.9-Deepak. As the cheques were drawn in favour of SBI, the proceeds of the cheques could not have been credited into the account of Accused No.9-Deepak in some other Bank. Hence, for this particular purpose only, the account was opened in the name of Accused

No.9-Deepak at SBI Mumbai Main Branch, with the help of Accused No.3-Sitaraman.

371. As regards the documents produced on record at Exhibit-446, the submission of learned counsel for Accused No.1-Ravikumar is that these are the computer printouts, which are not authenticate documents and hence cannot be said to have been proved as per the provisions of Section 65B of the Indian Evidence Act. Hence, they cannot be admissible at all. According to him, these computer printouts do not constitute Books of Account as these are loose sheets. Moreover, prosecution had not complied with the provisions of Section 65B of Indian Evidence Act, which lays down the conditions to be complied with for admissibility of electronic evidence. It is urged that though the said section was introduced by way of an amendment with effect from 17th October 2000, still, being the procedural law, it operates retrospectively.

372. In this respect, learned counsel for Accused No.1-Ravikumar has also drawn attention of this Court to Section 34 of Indian Evidence Act, which pertains to the entries in the Books of Account, including those maintained in an electric form, kept regularly in the course of business. It is urged that as per this Section, these entries are relevant but the statements made therein shall not alone be sufficient to charge any

person with liability. To substantiate this submission, learned counsel for Accused No.1-Ravikumar has relied upon the landmark decision of the Hon'ble Apex Court in the case of *Central Bureau of Investigation Vs. DCS, 1988 Cri.L.J. 480*, which examines the scope of Section 34 of Evidence Act. It is urged that in this decision, the Hon'ble Apex Court has also considered its earlier decision in *Chandradhar Goswami and Ors. Vs. Gauhati Bank Ltd., (1967) 1 SCR 898*, and held that entries in Books of Accounts are not by themselves sufficient to charge any person with liability, the reason being that a person cannot be allowed to make evidence for himself by what he chooses to write in his own Books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in the absence of such evidence, no relief can be given to the party, who relies upon such entries to support his claim.

373. It is urged that in view of the conspectus of these decisions, it is clear that even correct and authentic entries in the Books of Account cannot, without independent evidence of their trustworthiness, fix any liability upon a person. Here in the case, it is urged that Exhibit-446 are loose sheets. Moreover, they are computer printouts, but, no certificate, as required under Section 65B of Indian Evidence Act, is attached to prove

their authenticity. There is also no evidence of the person, who has made entries in computer in respect of these sheets and there is no independent evidence also to back these entries. Hence, it is urged that on the basis of Exhibit-446, no liability can be fixed on any of the accused persons.

374. However, as rightly submitted by learned Senior P.P., these entries are not the sole piece of evidence, on which the prosecution is relying, but these entries are fully supported with the other documentary evidence on record, like, entries in Deal Diary, RBI Scroll Book etc. and hence the above said submission of learned counsel for Accused No.1-Ravikumar cannot be accepted.

375. As per the contention of Accused No.2-Suresh Babu, whose signatures are appearing on these three cheques, the proceeds of these cheques were credited by SBI into the account of Accused No.9-Deepak on the basis of forged and fabricated covering letters. It is submitted that there is evidence to that effect of PW-64 Madhusudanlal Sharma, Government Examiner, proving that the covering letter Exhibit-141 and pay-in-slip at Exhibit-140 of Cheque No.38 is in the handwriting of Accused No.9-Deepak, whereas covering letter Exhibit-144 and pay-in-slip Exhibit-143 of cheque at Exhibit-43 is also in the handwriting of Accused No.9-Deepak. Similarly, pay-in-slip at Exhibit-36 and covering

letter Exhibit-137 of cheque Exhibit-130 is again in the handwriting of Accused No.9-Deepak. It is urged that if on the basis of such false and fabricated documents, Accused No.9-Deepak has got some amount credited to his account, then, again Accused No.2-Suresh Babu cannot be held responsible for the same. Accused No.9-Deepak in this respect was assisted by Accused No.3-Sitaraman in opening the account in the Bank only on 3rd February 1992 and closing immediately on 19th June 1992 merely for the purpose of getting the proceeds of the said cheques collected in his account.

376. It is urged that as regards the amount of Rs.8,98,902/- of the cheque Exhibit-138, NHB had no claim to that amount because, according to the Books of Account of NHB, it was an excess amount received from SBI and hence it was kept in Sundry Deposit Account till it was paid to SBI vide cheque at Exhibit-138. According to Accused No.2-Suresh Babu, if there was no claim made by SBI to that account, then, the cheque ought to have been returned to NHB. That amount, in any way, cannot, therefore, become payable to Accused No.9-Deepak.

377. It is urged by Accused No.2-Suresh Babu that the claim of Accused No.9-Deepak that the said cheques were issued by NHB for purchase of shares by Mr. M.J. Pherwani is false and totally baseless. It is urged that if

shares had been purchased by Mr. M.J. Pherwani, the then Chairman of NHB, then, the cheques should have been taken from him. *Why would NHB issue cheques for purchase of shares by Mr. Pherwani?* Moreover, the cheques should have been taken from Mr. Pherwani, in favour of M/s. M/s. Extol Investment. It is urged that the claim made by Accused No.9-Deepak that due to non-payment of balance amount of Rs.8,39,000/-, he has exercised his right of lien and retained the said shares worth Rs.32,88,000/- with himself, is also not tenable as no sub-broker can retain shares worth Rs.32,88,000/- when the amount in default is only Rs.8,39,000/-. Further the fact that the shares allegedly purchased on behalf of Mr. M.J. Pherwani had been transferred subsequently in the family members' name of Accused No.9-Deepak and Accused No.10-Virendra, is also not tenable. It is submitted that in none of the three letters Exhibits "576", "577" and "578", allegedly sent by Accused No.9-Deepak and/or Accused No.10-Virendra to Mr. Pherwani, there is mention of the balance amount payable by him. Moreover, those letters do not have any acknowledgement from Mr. Pherwani. This further proves that the said letters are only fabricated documents. Thus, according to Accused No.2-Suresh Babu, in respect of these transactions involving Accused No.9-Deepak and Accused No.10-Virendra also, there is nothing to implicate him.

378. It is a matter of record that Accused No.3-Sitaraman has not disputed that he has identified Accused No.9-Deepak for opening of the said account. The account opening form Exhibit-436, pay-in-slip Exhibit-43 and Ledger Sheet Exhibit-437 are the relevant documents, which are not disputed by Accused No.9-Deepak also. Exhibit-436 proves that the account was opened as per the introduction of Accused No.9-Deepak by Accused No.3-Sitaraman. The handwriting thereon is proved to be of Accused No.3-Sitaraman, coupled with the signature thereon, as is opined by the handwriting expert PW-64 Madhusudanlal Sharma. As a matter of fact, Accused No.3-Sitaraman has also not disputed the said fact, but, according to him, it was purely an innocuous act and prosecution is deriving unwanted and unnecessary inference therefrom.

379. However, this contention of Accused No.3-Sitaraman cannot be accepted for the simple reason that the account in the name of Accused No.9-Deepak appears to be opened merely for the purpose of credit of these three cheques. It is pertinent to note that the proceeds of the cheque Exhibit-138 was credited into the account of Accused No.9-Deepak on 14th February 1992; whereas, the credit of the cheques Exhibits "38" and "43" was given in his account on 26th February 1992. The pay-in-slips are produced on record to that effect. Accused No.9-

Deepak has admitted his handwriting and signatures on these pay-in-slips in his statement recorded under Section 313 of Cr.P.C. Prosecution has given the details of how the proceeds of these cheques were utilized from the account of Accused No.9-Deepak towards issuance of cheques in favour of M/s. D.M. Investments and M/s. Extol Investment. It is pertinent to note that the account was closed immediately on 19th June 1992 vide Exhibit 439 by Accused No.9-Deepak, after the balance amount of Rs.6,482/- was paid by SBI in his account vide Cheque No.071752 dated 19th June 1992. According to prosecution, the amount from the account of Accused No.9-Deepak went into the account of TMS Board towards purchase of shares in the name of Accused No.9-Deepak; whereas, the amount of Rs.4,50,000/- was transferred to the account of D.M. Investment, which was, later on, transferred to the account of M/s. Extol Investment. M/s. D.M. Investment is a Proprietary Concern, in which Accused No.9-Deepak is a Proprietor. The documentary evidence is produced on record to that effect vide Exhibit-207 to 210 and Accused No.9-Deepak has not disputed the said fact.

380. Prosecution has examined PW-37 T. P. Nageswara Rao to prove that several cheques were issued from this account to PW-37 T. P. Nageswara Rao towards purchase of the securities. Some of the cheques

were issued in favour of M.B. Mehta from the account of M/s. Extol Investment during the said period. None of these facts is disputed by Accused No.9-Deepak and Accused No.10-Virendra also.

381. According to prosecution, the pay-in-slips, along with these three cheques viz. "137", "141" and "144", were forged for crediting the said amount of the cheques to the account of Accused No.9-Deepak. In this respect, reliance is placed on the evidence of PW-9 Girdhar Hargunani, who has stated that though in respect of these three cheques, payee was SBI, they were credited to the account of Accused No.9-Deepak, because along with these cheques they had received the credit advises issued by NHB stating that the amount be credited to the account of Accused No.9-Deepak. As per the prosecution case, the alleged signatures of P. Jambukeshwaran on these Exhibits "137", "141" and "144" were sent to PW-64 Madhusudanlal Sharma, Hand Writing Expert for comparison as the signatures thereon were not found to be that of P. Jambukeshwaran.

382. It is urged that PW-64 Madhusudanlal Sharma, the Government Examiner, has in his deposition and in his report categorically stated that the person i.e. P. Jambukeshwaran, who wrote the specimen writing and signatures marked as Exhibit-542 collectively and Exhibit-542A collectively, did not write the questioned signatures marked as "Q-2"

Exhibit-137, “Q-7” Exhibit-141 and “Q-8” Exhibit-144. Thus, according to prosecution, these documents are categorically proved to be the forged documents, which were used by Accused No.9-Deepak in connivance with Accused No.3-Sitaraman for the purpose of getting the proceeds of these three cheques. Learned Senior P.P. in this respect has relied on the decision of the Hon'ble Apex Court in *Alamgir Vs. State (NCT, Delhi)*, AIR 2003 SC 282, wherein relying on the decision in *Murari Lal Vs. State of M.P.*, AIR 1980 SC 531, it was held that the evidence of handwriting expert alone can also be relied upon without any corroboration to prove the offence of forgery. It is submitted that, as observed by the Apex Court, there is no rule of law or any rule of prudence, which has crystallized into a rule of law that opinion evidence of a handwriting expert can never be acted upon unless substantially corroborated.

383. As against it, learned counsel for Accused No.9-Deepak has challenged the evidence and opinion of handwriting expert on the count that he has not retained the pencil notes on the basis of which he has prepared the final notes, as he has admitted in his evidence that the said pencil notes were destroyed. It is, therefore, submitted that the primary evidence is not before the Court and therefore, defence has been seriously prejudiced in its ability to cross-examine the expert to determine the veracity of his opinion.

384. However, in my considered opinion, this contention cannot be accepted because the pencil notes, as admitted by PW-64 Madhusudanlal Sharma, were prepared in the course of examination of the documents. Thereafter, the reasons were prepared giving salient features and then the pencil notes were destroyed, as they were rough notes. Therefore, it cannot be said that rough pencil notes were the primary evidence. The evidence of handwriting expert clearly reveals that he has subjected the disputed handwriting and the signatures to all the necessary examination by using various equipments. He has noted similarities and dis-similarities in the general writing habits, such as, writing movements, writing skill, line quality, writing slant, writing speed, spacing, size and proportions, style of writing, alignment, formation, nature of commencing and terminating the specs, combination of various strokes, alignment, simplification etc. and thereafter only he has given his opinion. There is no reason at all to challenge the same in any way.

385. Moreover, in this case, the evidence of Handwriting Expert PW-64 Madhusudanlal Sharma stands fully corroborated from other circumstantial evidence, like, the amount being credited to the account of Accused No.9-Deepak on the basis of Exhibit-137. The details written in Exhibit-137, the pay-in-slip are the details of the account of Accused No.9-

Deepak and, therefore, exclusively within his knowledge. Hence, an outsider could not have been aware about the same. It is not the case of Accused No.9-Deepak that anyone else has filled those details.

386. The defence of Accused No.9-Deepak in respect of these three cheques is very specific. According to Accused No.9-Deepak, he was a small time sub-broker. He was not knowing Mr. Pherwani personally. According to written statement filed by him under Section 313 of Cr.P.C., his cousin brother Accused No.4-HSM had given the said three cheques to him for purchasing the shares for Mr. M.J. Pherwani. Those shares were of Apollo Tyres Ltd., Mazda Packaging Ltd. and Gujrat Cycles Ltd. He has purchased those shares through sub-broker PW-57 Sundardas Kankal. Delivery of the shares was given to his Partner Accused No.10-Virendra. He has purchased these shares through his Firm M/s. Extol Investment, for Rs.32,88,490/-. The bill was sent to Mr. Pherwani by Accused No.10-Virendra. As he had received money from Mr. Pherwani only to the extent of Rs.24,00,000/- and the balance amount was not received, he had kept the shares with him. As the Book Closure Date for M/s. Apollo Tyres Ltd. was approaching in July – August, 1992, he and Accused No.10-Virendra decided to transfer shares in the name of his family members in order to prevent the shares becoming a bad delivery.

The idea was to re-transfer the shares in the name of Mr. Pherwani on receiving full payment; so that his interests would also be secured. According to Accused No.9-Deepak, after the scam broke out, he has voluntarily surrendered the shares of M/s. Gujarat Cycles Ltd. and M/s. Mazda Packaging Ltd. to C.B.I. and suffered a great financial loss.

387. As regards the three cheques, according to Accused No.9-Deepak, on the instructions of Accused No.4-HSM, he opened the Bank Account and deposited them in his account genuinely believing that those cheques were issued for and on behalf of Mr. Pherwani.

388. Learned Senior P.P. has analyzed this contention of Accused No.9-Deepak threadbare and rightly so. Admittedly, Mr. Pherwani was the Chairman of UTI for almost five years. He was also the Chairman of Stock Holding Corporation of India and Infrastructure Leasing and Finance Company, India. He had, therefore, no reason for purchasing the shares from Accused No.9-Deepak, who was, admittedly, a small time sub-broker. Moreover, if the shares were purchased on behalf of Mr. M.J. Pherwani, then, there was no reason for NHB to issue the cheques for purchase of those shares. The prosecution has also led the evidence of PW-68 P.K. Jacob to show that during the course of investigation, considering that Mr.

Pherwani has met with an unfortunate death on 21st May 1992, a thorough investigation was carried out to ascertain whether this claim made by Accused No.9-Deepak that the cheques were issued towards the price of the shares purchased by Mr. Pherwani was true. PW-68 P.K. Jacob, the Chief Investigating Officer has, in this respect, deposed that the search of the house of Mr. Pherwani was conducted to find out his involvement. However, even after extensive investigation, they could not get any evidence of Mr. Pherwani's involvement. The originals of these shares, which were allegedly purchased on the basis of the copies of bills mentioned in Exhibits "576", "577" and "578" were never found in spite of extensive search and it was also revealed that no such shares were ever transferred in the name of Mr. Pherwani.

389. As against it, the evidence on record shows that as per Exhibit 576, 577 and 578, the total amount due from Mr. M.J. Pherwani, if at all he has purchased the shares, was Rs.32,88,490/-. However, the amount paid by him vide Exhibits "148", "38" and "43" was only Rs.24,49,000/-. The first cheque of Rs.8,98,912/- was collected by Accused No.9-Deepak on 14th February 1992. The other two cheques for Rs.13,00,000/- and Rs.2,50,000/- were credited into his account on 26th February 1992. However, in none of the Exhibits "576", "577" and "578", which are the

letters issued by M/s. Extoll Investments and addressed to Mr. M.J. Pherwani, dated 15th March 1992, 7th March 1992 and 28th March 1992, there is mention about the amount of Rs.24,49,000/- paid by Mr. Pherwani. Moreover, in none of these letters, the balance amount is claimed from him.

390. Moreover, the Cash Book of M/s. Extol Investment Exhibit-582 shows that Mazda Packaging Shares were purchased from Manjula Mehta and other shares from M/s. D.M. Investment. However, the letters Exhibits “576”, “577” and “578” show that shares were purchased by M/s. Extol Investments. Admittedly, the shares were purchased by Accused No.9-Deepak from M/s. S.K. Kankal, a share-broker Firm and the documents show that there was a huge difference between the buying price and selling price of the shares. The prosecution has given the details about the same vide Exhibit-551 to show that Manjula Mehta sold the alleged shares of Mazda Packaging to Mr. Pherwani for almost the double price. It is also a matter of record that the original shares were never handed over to Mr. Pherwani. Though it is claimed by Accused No.9-Deepak that as some amount was due from Mr. Pherwani, he had retained those shares, the evidence of PW-57 Sundardas Kankal reveals that broker cannot exercise general lien / particular line. There was also

no mandate from Mr. Phewani to purchase the shares and then to purchase them for such an exorbitant rate.

391. It is pertinent to note that these shares were subsequently transferred vide letter Exhibit-585 dated 24th July 1992 in the name of family members of Accused No.10-Virendra, without giving any notice of the transfer to the family members of Mr. Pherwani.

392. Thus, in this case, as regards these transactions, the evidence on record clearly establishes the fact that Accused No.9-Deepak had not given any satisfactory explanation as to why he had accepted the cheques issued in the name of SBI when the shares were to be purchased on behalf of Mr. Pherwani; especially, when Accused No.9-Deepak did not have any account with SBI. There are no documents to prove that Mr. Pherwani had given any instructions for purchase of the shares or they were actually purchased in the name of Mr. Pherwani. Conversely, the shares allegedly purchased in the name of Mr. Pherwani were registered in the name of Accused No.9-Deepak and Accused No.10-Virendra or their relatives. No explanation is offered in the letters Exhibits 576, 577 and 578 as to why the fact that some amount remained to be received from Mr. Pherwani was not mentioned therein. There is

also no explanation as to variation in the price for sale and purchase of the shares. Moreover, if the Mazda Packaging shares were purchased from Mr. Ms. Manjula Mehta and Apollo Tyres and Gujrat Cycle shares were purchased by M/s. D.M. Investment, there is no explanation why the letters were sent from M/s. Extol Investment, showing purchase of shares by them. All these points and the discussion above, make it clear that the case put up by Accused No.9-Deepak that this amount was towards shares purchased for Mr. Pherwani, is totally false and put up only as an afterthought, taking advantage of death of Mr. Pherwani.

393. The next defence taken by Accused No.9-Deepak that the cheques were given by Accused No.4-HSM along with advises is also required to be rejected, as it is taken only in view of the death of Accused No.4-HSM. It is raised for the first time, only when his statement was recorded under Section 313 of Cr.P.C. Therefore, so far as liability of Accused No.9-Deepak is concerned, there cannot be any shred of doubt about his involvement in the various offences punishable under Sections 409, 467 and 471 r/w. 120B of IPC. His contention that only evidence against him is that of the handwriting expert and there can be no offence of criminal breach of trust, as the said amount did not belong either to NHB or SBI and none of them had claimed it, cannot be accepted.

394. The contention of Accused No.9-Deepak is also to the effect that he is already de-notified by the custodian. To support this contention, Accused No.9-Deepak has also filed Miscellaneous Application No.68 of 2015 u/s. 294 Cr.P.C. for the production of certified copy of proceedings leading to his notification. In my considered opinion, however, as the liability under Criminal Law is different from civil liability, such de-notification of Accused No.9-Deepak by custodian will not have any bearing or effect on his liability under Criminal Law, which prosecution has succeeded in establishing in this case against him beyond reasonable doubt.

395. In respect of these transactions for issuance of these three cheques, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman also, therefore, cannot escape from the liability.

Role of Accused No.8-Hiten

396. As regards Accused No.8-Hiten, however, except for the evidence and opinion of the handwriting expert relating to the forgery in respect of Exhibit-137, there has been absolutely no evidence on record, as admitted by the prosecution itself. Hence, it becomes difficult to hold that the prosecution case is proved against him beyond reasonable doubt.

There is no evidence brought on record by the prosecution that he was either in any way connected with M/s. Extol Investments, the Firm of Accused No.9-Deepak and Accused No.10-Virendra or he has in any way become the part of the conspiracy. Hence, he deserves to be acquitted from this case.

Role of Accused No.10-Virendra

397. Similarly, as regards Accused No.10-Virendra, who was, admittedly, not an employee of the company of Accused No.4-HSM, there is no sufficient evidence on record to prove the charges levelled against him. He is charged only because he is the partner of M/s. Extol Investments and because certain shares of the companies like M/s. Apollo Tyres Ltd. were claimed to be purchased for Mr. Pherwani and subsequently transferred in the name of his family members. Prosecution has failed to prove that he has played any role in obtaining the cheques from NHB or the said cheques being credited to the account of Accused No.9-Deepak. In view thereof, it has to be held that the benefit of doubt has to be extended to him also.

398. Of-shot of the above-said discussion is that, the prosecution has succeeded in proving its case against Accused No.1-Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.5-Atul,

Accused No.7-Sudhir and Accused No.9-Deepak for the offences punishable under Sections 120B of IPC. The prosecution has also succeeded in proving the guilt of Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman beyond reasonable doubt for the offences punishable under Section 409 r/w. Section 120B of IPC and Section 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 r/w. Section 120B of IPC.

399. Prosecution has further succeeded in proving the offences punishable under Sections 403, 467, 471, 477A and 420 r/w. Section 120B of IPC against Accused No.1-Ravikumar and Accused No.2-Suresh Babu.

400. Prosecution has also succeeded in proving its case against Accused No.5-Atul and Accused No.7-Sudhir for the offence punishable under Section 409 r/w. Sections 109 and 120B of IPC.

401. Prosecution has also succeeded in proving its case against Accused No.9-Deepak for the offence punishable under Sections 403, 409, 411, 467 and 471 r/w. Section 120B of IPC and Sections 13(1)(c), 13(1)(d) of Prevention of Corruption Act, 1988 r/w. Sections 109 and 120B of IPC.

402. Accordingly, I hold the accused guilty for the offences as stated above.

403. At this stage, I stop dictation of Judgment in order to hear the accused on the question of sentence.

[Dr. Shalini Phansalkar-Joshi, J.]

404. As regards the question of sentence, it is submitted by Accused No.1-Ravikumar in person that he has undergone the sufferings of pending cases since the year 1992. He has lost his job during the said period and has also suffered mentally and physically on account of the liver failure. It is urged that, totally, in six cases, he was prosecuted, out of which, in one case, he is discharged; in another case, he is acquitted. Totally, he has undergone the imprisonment of twenty-four months and in this case, he has undergone the imprisonment of four months and twenty-six days (*total "146" days*). In view thereof, it is submitted by Accused No.1-Ravikumar in person and his counsel Shri. Satyanarayanan that Accused No.1-Ravikumar has been regularly attending this Court since last twenty-four years; there is nothing to take any deterrent view of the matter and, therefore, by adopting a lenient view, most minimal sentence be imposed.

405. Accused No.2-Suresh Babu, who appears in person, has also submitted that the role attributed to him, considering the nature of his duties, was very minimal. He has only obeyed the orders of his superiors. He has personally not entered into any contract or deals as such. He has also submitted that, since last twenty-four years, he is undergoing this investigation and trial process. During the said period, he has suffered mentally and physically also. He has been regular in attending this Court. According to him, totally, six cases were filed against him also. Out of them, in one case, he was acquitted by the Special Court; in another case, he was discharged; in third case, he was convicted by the Special Court, but acquitted by the Hon'ble Supreme Court; and, in fourth case, his conviction was upheld, but he was released on the punishment already undergone. It is submitted that, as he has already spent in the jail the period of twenty-five days totally, a lenient view be taken and minimal punishment be imposed.

406. It is his further submission that, in Special Case No.4 of 1994, which also deal with similar offences and arising out of the same F.I.R., though some accused were convicted, the punishment imposed on them was merely of S.I. till rising of the Court and that may be considered in his case also. He has also submitted that he is having no financial support, as

he is not employed. His wife is also unemployed and, therefore, even while considering imposition of fine amount, this fact needs to be taken into account.

407. Accused No.3-Sitaraman, who is also appearing in person, has submitted that, since last twenty-four years, he is also undergoing the rigors of the investigation and trial process. Totally, six cases were filed against him; out of which, four have ended into conviction. However, vide order passed by the Hon'ble Supreme Court in Criminal Appeal No.536 of 2016 on 27th April 2016, the punishment in all these cases is reduced to the sentence already undergone in the jail. He has urged that, he was in jail, in all, for two months. He has urged that he is also having no financial support since last twenty-four years. While in the job of attending the Court in these various cases, he could not be even gainfully employed and hence a minimal sentence be imposed on him. He has further submitted that, in addition to these six cases, he is also prosecuted in four more cases, which are filed in the Sessions Court at Mumbai and one case in the Sessions Court at Delhi. It is submitted by him that, out of the four cases filed in the Sessions Court at Mumbai, in two cases, he has been acquitted. Other cases are pending. He is attending those cases also.

408. Further, he has pointed out to the Judgment of this Court in Special Case No.4 of 1994, to submit that, for the similar role played by Accused No.6 in the said case, namely, Smt. Mohana Subramanyam, who was from Grindlays Bank, she has been sentenced only to suffer S.I. till rising of the Court and to pay fine of Rs.15,000/- only. According to him, as his role is similar to the role played by Accused No.6 Smt. Mohana Subramanyam in Special Case No.4 of 1994, he also cannot be sentenced to suffer more imprisonment than the one imposed on her. He has further urged that he is also suffering from the medical problems, like, High Blood Pressure at the advanced age of 64 years. Therefore, according to him, this is a fit case where the lenient view needs to be adopted.

409. So far as Accused No.5-Atul is concerned, submission is advanced on his behalf by his learned counsel Shri. D.U. Mirajkar that the similar role for which Accused No.5-Atul is held guilty in this case, he was examined as witness in Special Case No.4 of 1998. Secondly, he has urged that Accused No.5-Atul has already been in jail for a period of Fourteen, Fifteen and Nineteen days in three other cases. According to learned counsel for Accused No.5-Atul, Accused No.5-Atul is running the

age of 60 years and suffering from Diabetes and the initial stage of renal problem. He has urged that, as the verdict in this case is being delivered after a period of twenty-four years, that fact should also be considered; especially, having regard to the role attributed to him and also considering the fact that in Special Case No.4 of 1994, though he was convicted by this Court, for the similar offence and the same role, he was sentenced only to the S.I. till rising of the Court and some fine amount. Thus, it is submitted by learned counsel, for Accused No.5-Atul, Shri. Mirajkar that, similar approach and sentence may be justified in this case also, adopting a lenient view of the matter.

410. As regards Accused No.6-Pankaj, it is submitted by him that merely because he was the brother and Constituted Attorney of Accused No.4-HSM, he has been implicated. The only role attributed to him is of making the signatures on the Contract Notes. He has not received any monetary gain. That is not the allegation of the prosecution also. Further, it is submitted that, though several cases are instituted against him, in more than one case he is acquitted and in one case, though he is convicted, he is sentenced to suffer S.I. only till rising of the Court. Further, he has submitted that in the year 1992, when the scam broke out, he was only 24 years of age. Now, he is 52 years. His prime youth had undergone in the

trial process in various Courts. Now, his two daughters, who are engaged, are about to be married and hence it is urged by him that minimal punishment be imposed, taking a lenient view of the matter.

411. His learned counsel has submitted that in all the cases which are decided by this Special Court, when they reached to the Hon'ble Supreme Court in Appeals, the Hon'ble Supreme Court has taken the most lenient view and released the accused on the punishment which they had already undergone. Here in the case also, he has submitted that this accused has totally undergone the imprisonment of forty-five days and that may be considered sufficient so as to release him on the punishment already undergone.

412. As regard Accused No.9-Deepak, it is submitted by his learned counsel that he is prosecuted only in one case i.e. the present case. There is no other case filed against him. It is further submitted that he has not received any pecuniary gains in the entire transaction. He has voluntarily surrendered the shares to the C.B.I. and it is not that C.B.I. has seized those shares or recovered them from him. Further, it is urged that for the offence for which he is charged and convicted, there is no mandatory period of sentence and considering that his age at the time of

incident about 24 years back, the benefit of the provisions of Section 4 of Probation of Offender's Act also deserves to be extended to him, as it is his first offence. Further, it is submitted that he is suffering physically and mentally during this period of last twenty-four years. He has Diabetes and also suffering from Arthritis. The marriage of his daughter is also on the card and hence, according to his learned counsel, whatever minimal punishment, which can be imposed by this Court, needs to be considered and awarded.

413. All these submissions, advanced by the accused in person and their learned counsels, are strongly controverted and resisted by learned Senior P.P. by submitting that the offences in this case are of very serious nature, having wide repercussions and implications. It is urged that the scam of the year 1992 has rocked the economy of the entire country. Some Banks went into liquidation, whereas, several persons lost their money and committed suicide. Therefore, according to him, this case does not deserve any lenient view. Learned Senior P.P. has also pointed out to the decisions of the Hon'ble Supreme Court in the case of *Ram Narain Poply and Vinayak Deosthali (supra)* to submit that the offences of economic nature and economic fraud cannot be viewed leniently. He has urged that the fact that the accused are involved in various cases clearly

indicate that some deterrent punishment needs to be awarded to them. Even as regards Accused No.9-Deepak, it is urged that he is the beneficiary of Rs.25,00,000/-. Moreover, he has not surrendered the shares to the legal heirs of Mr. Pherwani, according to his defence, but, only when the C.B.I. registered the case, he has surrendered those shares to C.B.I. Therefore, according to learned Senior P.P., the benefit of Probation of Offender's Act cannot be invoked or extended to Accused No.9-Deepak. Further, according to learned Senior P.P., the punishment, which was imposed on Accused No.8-Mohana in Special Case No.4 of 1994, cannot be imposed in this case, as she was a lady and having small child; therefore, different considerations, were prevailing before the concerned Court at that time. There cannot be any parallel or precedent on that aspect and hence in his opinion, having regard to the gravity of the offence, this is a fit case where this Court should adopt a deterrent approach.

414. I have given my thoughtful consideration to the submissions advanced by the accused in person, their learned counsels and learned Senior P.P.

415. It is true that, in this case, the offence has taken place, way back in

the year 1992, and about twenty-four years have lapsed since then, as this verdict is coming in the year 2016. It is also true that during this period of twenty-four years, the accused persons have undergone both, the physical and mental sufferings, not only of attending the Court regularly, which they are doing, as can be seen from the record of this case also, but also because the sword of conviction and sentence was always hanging on their heads. It is also true that the approach, which is adopted by the Hon'ble Supreme Court while considering the appeal preferred by them, is of leniency, in the sense that they are released on the punishment already undergone by them in some of the cases.

416. However, at the same time, it is also true that the offence, which is committed by them; especially, Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman is of a grave and serious nature, it is of siphoning of crores of funds of the Nationalized Bank, Financial Institutions to the account of some third person, who was not entitled thereto, like Accused No.4-HSM. The country has witnessed the repercussions of the said offence in the sense that the economy of the country was totally shattered on account of this scam. The Hon'ble Apex Court is also serious as regards the economic offences and that can be viewed from the observations of the Hon'ble Apex Court in the case of *Ram Narain Poply (supra)*, as follows :-

"380. The offences in these cases were not of the conventional or traditional type. The ultimate objective was to use public money in a carefully planned manner for personal use with no right to do it.

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

417. Even in the case of *Vinayak Deosthali (supra)* also, the Hon'ble Apex Court has not reduced the sentence to the punishment already undergone when the accused were implicated and convicted with the similar offences.

418. Therefore, while awarding the sentence, the Court has to do the balancing act and in such situation, the principle of proportionality assumes significance. The sentence has to be proportionate to the offence committed by the accused and at the same time the Court has to

take into account all the relevant factors, like, the delay in pronouncement of the verdict, the period during which the accused has undergone this entire trial process, then the physical and financial conditions of the accused and their liabilities, coupled with their age and the ailments, which they may be suffering. If all these facts are kept in mind, it is needless to state that, though it is first offence and the only conviction of Accused No.9-Deepak, the benefit of the provisions of the Probation of Offender's Act cannot be invoked for his offence; especially when his conviction is for the offence punishable under Section 409 r/w. Sections 109 and 120B of IPC and, therefore, that is out of question.

419. So far as remaining accused, like Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman, are concerned, as they are charged for committing the offence of misusing their position as public servants and, therefore, for the offence punishable under Section 409 of IPC and Section 13(2) of the Prevention of Corruption Act, 1988, it cannot be accepted that undue lenient view should be taken, so as to release them on the punishment already undergone; especially when except for Accused No.1-Ravikumar, none of the remaining accused had spent a single day in the jail, as far as this case is concerned. They were released on the bail on the same day they were produced before this

Court. Even as regards Accused No.1-Ravikumar, he was in jail, in this case, hardly for five to six months. Hence, there is no question of releasing them on the sentence already undergone or simple imprisonment till rising of the Court.

420. Even in respect of Accused No.5-Atul and Accused No.7-Sudhir, having regard to the fact that they have played a crucial role in the sense that one has initialed the Contract Notes and other has signed them. Contract Note, being the primary document, their submission that they may be released on S.I. till rising of the Court, also cannot be accepted.

421. Thus, having regard to all the factors of the case, the submissions advanced by the accused, their learned counsels and learned Senior P.P., in my considered opinion, following punishment will meet the ends of justice. Hence the order :-

“ORDER”

- (A) Accused No.1-Ravikumar is convicted for the offences punishable under Sections 120B, 409, 403, 420, 467, 471 and 477A of IPC and under Section 13(1)(c) and 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988.

- Accused No.1-Ravikumar is sentenced to suffer R.I. for four years and to pay fine of Rs.1,50,000/-, in default, to suffer R.I. for six months for the offence punishable under Section 409 r/w. Section 120B of IPC.
- Accused No.1 is further sentenced to suffer R.I. for three years and to pay fine of Rs.25,000/-, in default, to suffer R.I. for one month for the offence punishable under Section 403 of IPC.
- Accused No.1-Ravikumar is further sentenced to suffer R.I. for two years and to pay fine of Rs.25,000/-, in default, to suffer R.I. for one month for the offence punishable under Section 420 of IPC.
- Accused No.1-Ravikumar is further sentenced to suffer R.I. for three years and to pay fine of Rs.25,000/-, in default to suffer R.I. for one month for the offence punishable under Section 471 of IPC. However, no separate sentence is awarded for the offence punishable under Section 467 of IPC.

- Accused No.1-Ravikumar is further sentenced to suffer R.I. for three years and to pay fine of Rs.25,000/-, in default to suffer R.I. for one month for the offence punishable under Section 477A of IPC.
- Accused No.1-Ravikumar is also sentenced to suffer R.I. three years and to pay fine of Rs.50,000/-, in default to suffer R.I. for three months for the offence punishable under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.
- No separate sentence is awarded for the offence punishable under Section 120B of IPC.
- All the substantive sentences of imprisonments, as regards Accused No.1-Ravikumar is concerned, are to run concurrently.
- Accused No.1-Ravikumar is also entitled to set-off for the imprisonment already undergone in jail from 9th October 2009 to 4th March 2010.

(B) Accused No.2-Suresh Babu is convicted for the offences punishable under Sections 409 r/w. Section 120B, 403, 420, 471 and 477A of IPC and under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

However, having regard to the role played by him and keeping in mind the role attributed and proved against him;

- Accused No.2-Suresh Babu is sentenced to suffer R.I. for two years for the offence punishable under Section 409 r/w. Section 120B IPC and to pay fine of Rs.50,000/-, in default to suffer R.I. for two months.
- Accused No.2-Suresh Babu is further sentenced to suffer R.I. for one year for the offence punishable under Section 403 of IPC and to pay fine of Rs.25,000/-, in default to suffer R.I. for one month.
- Accused No.2-Suresh Babu is also sentenced to suffer R.I. for one year for the offence punishable

under Section 420 of IPC and to pay fine of Rs.25,000/-, in default, to suffer R.I. for one month.

➤ Accused No.2-Suresh Babu is further sentenced to suffer R.I. for one year and to pay fine of Rs.25,000/-, in default to suffer R.I. for one month for the offence punishable under Section 471 of IPC.

➤ No separate sentence is awarded for the offence punishable under Section 467 of IPC.

➤ Accused No.2-Suresh Babu is further sentenced to suffer R.I. for one year and to pay fine of Rs.20,000/-, in default to suffer R.I. for fifteen days for the offence punishable under Section 477A of IPC.

➤ Lastly, Accused No.2-Suresh Babu is sentenced to suffer R.I. for three years and to pay fine of Rs.50,000/-, in default to suffer R.I. for three months for the offence punishable under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of

Prevention of Corruption Act, 1988.

- No separate sentence is awarded for the offence punishable under Section 120B of IPC.
- All the substantive sentences of imprisonments, as regards Accused No.2-Suresh Babu is concerned, are to run concurrently.

(C) Accused No.3-Sitaraman is convicted for the offences punishable under Sections 409 r/w. Section 120B of IPC and under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

- Accused No.3-Sitaraman is sentenced to suffer R.I. for four years and to pay fine of Rs.2,00,000/-, in default, to suffer R.I. for six months for the offence punishable under Section 409 r/w. Section 120B IPC.
- Accused No.3-Sitaraman is sentenced to suffer R.I. for three years and to pay fine of Rs.1,00,000/-, in default, to suffer R.I. for two months for the offence

punishable under Section 13(2) r/w. Sections 13(1) (c) and 13(1)(d) of Prevention of Corruption Act, 1988.

- No separate sentence is awarded to him for the offence punishable under Section 120B of IPC.
- All the substantive sentences of imprisonments, as regards Accused No.3-Sitaraman is concerned, are to run concurrently.

(D) Accused No.5-Atul and Accused No.7-Sudhir are convicted for the offence punishable under Section 409 r/w. Section 109 and 120B of IPC and both of them are sentenced to suffer R.I. for six months, each, and to pay fine of Rs.50,000/-, each, in default, to suffer R.I. for one month.

No separate sentence is awarded to them for the offence punishable under Section 120B of IPC.

(E) Lastly, Accused No.9-Deepak is convicted for the offences punishable under Sections 409, 403, 420,

411, 467 and 471 r/w. Section 120B of IPC and under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, r/w. Sections 109 and 120B of IPC.

➤ Accused No.9-Deepak is sentenced to suffer R.I. for four years and to pay fine of Rs.1,00,000/-, in default to suffer R.I. for one year for the offence punishable under Section 409 r/w. Section 120B IPC.

➤ Accused No.9-Deepak is further sentenced to suffer R.I. for six months and to pay fine of Rs.50,000/-, in default, to suffer R.I. for one month for the offence punishable under Section 403 r/w. Section 120B of IPC.

➤ Accused No.9-Deepak is also sentenced to suffer R.I. for one year and to pay fine of Rs.25,000/-, in default, to suffer R.I. for one month for the offence punishable under Section 420 of IPC.

➤ Accused No.9-Deepak is further sentenced to

suffer R.I. for one year and to pay fine of Rs.50,000/-, in default, to suffer R.I. for one month for the offence punishable under Section 411 of IPC.

➤ Accused No.9-Deepak is further sentenced to suffer R.I. for one year and to pay fine of Rs.25,000/-, in default, to suffer R.I. for three months for the offence punishable under Section 471 of IPC.

➤ No separate sentence is awarded for the offences punishable under Sections 467 and 120B of IPC.

➤ Lastly, Accused No.9-Deepak is sentenced to suffer R.I. for three years and to pay fine of Rs.50,000/-, in default, to suffer R.I. for three months for the offence punishable under Section 13(2) r/w. Sections 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988, r/w. Sections 109 and 120B of IPC.

➤ All the substantive sentences of imprisonments, as

regards Accused No.9-Deepak is concerned, are to run concurrently.

422. Except for Accused No.1-Ravikumar, who was in jail for a period from 9th October 2009 to 4th March 2010 in this case, no other accused was in jail as regards this case is concerned. All these accused were released on bail on the same day when they were produced before the Court. They were not even remanded to Police Custody Remand. Hence, except Accused No.1-Ravikumar, none of the accused are entitled to set-off for the period of imprisonment already undergone in this case.

423. Accused No.1-Ravikumar is, however, entitled to the set-off for the period undergone by him in jail from 9th October 2009 to 4th March 2010.

424. Accused No.1-Ravikumar, Accused No.2-Suresh Babu and Accused No.3-Sitaraman stand acquitted for the offence punishable under Section 411 r/w. 120B of IPC on benefit of doubt.

425. Accused No.6-Pankaj, Accused No.8-Hiten and Accused No.10-Virendra are acquitted on the benefit of doubt of all the charges levelled against them.

426. The certified copy of this Judgment be provided to Accused No.1-

Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.5-Atul, Accused No.7-Sudhir and Accused No.9-Deepak forthwith free of costs.

427. At this stage, before parting with the Judgment, this Court would like to place on record its profound sense of appreciation and gratitude for the enormous efforts taken by learned Senior P.P. and learned counsels for all the accused, in apprising this Court and taking this Court through the entire evidence, which was recorded in this case, before my learned predecessor.

428. With these observations, the Judgment is concluded.

429. At this stage, a submission is advanced on behalf of Accused No.1-Ravikumar, Accused No.3-Sitaraman and Accused No.9-Deepak, who are sentenced to suffer imprisonment above three years, that though u/s. 389(3) Cr.P.C., they may not be entitled to be released on bail on conviction by this Court, they may be released on bail by suspending their substantive sentences of imprisonments by this Court by exercising its power u/s. 9(4) of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, in order to enable them to approach the Hon'ble Supreme Court. It is submitted that this Court has repeatedly and on several occasions, while convicting the accused for such offences, has

exercised its powers under Section 9(4) of the Special Court (Trial of Offences Relating to Transaction in Securities) Act; according to which, this Court is empowered to adopt such procedure as it deems fit consistent with the principles of natural justice. This Court has, for e.g. in Special Case No.7 of 1994, decided on 14th August 1998, has observed that,

“Normally, the accused would have been able to approach a higher Court in this city without any difficulty. However, by virtue of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, the accused can only approach the Hon'ble Supreme Court. Hence, this Court must take note that some time would be required for the accused to approach the Hon'ble Supreme Court. Hence, in view of the principles of natural justice, in cases like this, where personal liberty is at stake, some time must be given to the accused to effectively exercise their right of appeal. In my view, Section 9(4) of the said Act will empower this Court to suspend the sentence of imprisonment and fine for some time.”

430. Considering the above-said observations made by this Court in Special Case No.7 of 1994 and in subsequent cases thereto, and the consistent practice followed by this Court in such cases, it is necessary, having regard also to the fact that Accused No.1-Ravikumar, Accused No.3-Sitaraman and Accused No.9-Deepak will require some time to

approach the Hon'ble Supreme Court against the Judgment of this Court, that the sentence of the accused be suspended for a reasonable period. Similarly, having regard to the fine imposed by this Court, which accused are unable to raise immediately, so as to deposit the same in this Court, some reasonable time needs to be given, as requested by them, for deposit of the fine amount also. Accordingly, the substantive sentence of imprisonment and fine amount needs to be suspended for a period of reasonable time. According to learned Senior P.P., reasonable time may be four weeks. However, learned counsel for accused points out that, considering the Winter Vacation to the Hon'ble Apex Court commencing from 17th December 2016 onwards and considering the present situation created due to demonetization, it is urged that, these accused may require some more time to raise such a substantial amount of fine. Thus, having regard to the difficulties in the way of the accused persons, the substantive sentence of imprisonment and fine of Accused No.1-Ravikumar, Accused No.3-Sitaraman and Accused No.9-Deepak is suspended for a period of eight weeks from today.

431. So far as remaining Accused No.2-Suresh Babu, Accused No.5-Atul and Accused No.7-Sudhir are concerned, as they are sentenced to suffer the imprisonment for a period of less than three years, their sentence of imprisonment and payment of fine for the reasons stated above, is also

suspended u/s. 389(3) Cr.P.C. for a period of eight weeks from today in order to enable them to approach the Hon'ble Supreme Court against this Judgment.

432. Accused No.1-Ravikumar, Accused No.2-Suresh Babu, Accused No.3-Sitaraman, Accused No.5-Atul, Accused No.7-Sudhir and Accused No.9-Deepak are released on P.R. Bond of Rs.10,000/-, with one or two solvent surety in the like amount, on the same terms and conditions, as were imposed earlier and on further execution of the Bond, laid down in Form 44A in pursuance of Section 424(1)(b) Cr.P.C. regarding payment of fine amount.

433. On the request of the accused, time of one week is granted to furnish the Surety Bond.

[DR. SHALINI PHANSALKAR-JOSHI, J.]