(2015) 10 BOM CK 0117

In the Bombay High Court

Case No : Special Case No. 1 of 1996

Central Bureau of Investigation APPELLANT

Vs

M.S. Srinivasan and Others RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 314
Penal Code, 1860 (IPC) — Section 120, 120 B, 120B, 202, 302
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2), 19

Citation : (2015) 10 BOM CK 0117

Hon'ble Judges : R.S. Dalvi, J.

Bench : Single Bench

Advocate : R.S. Mahamane, Special P.P., for the Appellant; M.V. Khatavkar, Advocate, for the Respondent

Judgement

R.S. Dalvi, J.—There are 22 accused facing trial in this case. 3 of them have been discharged. 3 of them have expired. 14 out of the 22 are public servants from banks and financial institutions. 8 are brokers who are private individuals. The main banks involved in this case are State Bank of Saurashtra (SBS), State Bank of India (SBI). The other banks and other financial institutions involved in a smaller part of the case are Canara Bank Financial Services & National Housing Bank (Canfina), (NHB), UCO Bank, Indian Bank (IB) and Small Industrial Development Bank of India (SIDBI). Accused No. 1 (A1) who was at the material time Chief Manager of the Funds Management Cell (FMC) of SBS is the prime accused. Accused No. 8 (A8) who was bank officer in the securities division of SBI is his counter part. Both these accused have entered into various transactions by and between SBS and SBI in which the broker A2 (since deceased) was involved. Large funds extending hundreds of crores of rupees have been paid off/transferred/siphoned off by the acts of these two accused in the account of A2. A2 had opened personal current account in SBS as well as SBI. His account in SBS is the best testimony to the transactions. His account in SBI does not reflect these transactions. The fact that the monies passed from

SBI into his account has been admitted by SBI in earlier litigations more specially MP No. 52 of 1993 which shall be considered presently.

2. Accused No. 8 has been the key person in SBI involved in the transactions that resulted in funds being transferred to A2. Accused No. 1 has been the key person in SBS involved in the transactions that resulted in funds being transferred to A2. A2 has since expired. He has been the recipient of the proverbial divine justice. This case is, therefore, not as much concurred with what has been ultimately transferred to A2 if the roles of A1 and A8 for imputing upon them the criminal liability is made out.

3. The prosecution case, therefore, is essentially of criminal conspiracy between these accused and/or criminal breach of trust by them as public servants as it involved entrustment and/or control and transfer of monies of the aforesaid two banks in illegal and irregular manner by A1 and A8 with A2. The prosecution case is also of falsification of accounts by these accused, forgery, cheating, forging valuable security, receiving stolen property as contained in certain registers, credit and debit vouchers and issue of cheques by these accused on behalf of their respective banks.

4. The other accused have similarly been charged under similar transactions but in which the loss to the bank and the link between them and the aforesaid accused have not been established.

5. The prosecution has examined 44 witnesses who have led oral evidence and produced as many as 650 documents, several of which may not be required to be considered in the judgment since they have not been connected to the aforesaid or any other accused to show and prove the aforesaid charges.

6. The private accused who are the brokers are essentially from Accused Nos. 2 and 4 to 7 (A2 to A7). A2 has expired. Accused Nos. 4 to 7 are seen to have been the associates and or employees of A2 and have acted in transactions for signing some of the documents of the firm of A2 on behalf of A2 but against whom the criminal charges have not been proved and hence their role shall not be separately considered. Accused Nos. 9 & 10 (A9 & A10) from NHB, Accused Nos. 11 and 12 (A11 & A12) from Canfina, Accused Nos. 14 to 22 (A14 & A22) from SBS except accused No. 17 (A17) from SIDBI have had subsidiary roles to play in the transactions in which accused Nos. 1 and 8 have also been concerned and as a link has not been found established between them and the A1 & A8 the aforesaid charges against them have not been established and they would require the necessary benefit of doubt. A14 to 16 and A21 and 22 have played whatever roles they have had from another department of SBS in transactions guided by A1 who has also been concerned in each of the transactions in which they have been involved, A1 being superior in rank to all of them. A22 who was even superior to A1 and who has admittedly initiated the process of having the concerned banking transactions, has not directly taken part in any of the transactions though he may have inspired those transactions and hence is also to

be left at that for his subsidiary role.

7. The prosecution has obtained sanction against all the public servants who have been officers of banks and financial institutions except accused No. 11 and 12 of Canfina, A17 of SIDBI who were dismissed and were not in service at the time of the filing of chargesheet.

8. There have been as many as 313 charges framed out against all the of the above accused in this case. They have been framed separately for each of the various transactions entered into by each of them separately and individually. It would be futile to dwell into these charges separately. It shall be not the style but the substance of the charges that shall have to be considered. As aforesaid only the charges under Section 120B and 409 Section 13(1) (c) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (P C Act) shall have to be considered only against A1 and A8 to see whether they have been proved as per the prosecution case against these accused.

9. The appreciation of the evidence would show that the charges have not been proved against other accused and hence it would be improper to set them out in the same verbose detail in which they have been framed but it shall be seen from the appreciation of the evidence as to how those charges are made out.

10. The aforesaid charges against the accused in this case are under four separate types of transactions. They may be enumerated thus :

"1. Securities transactions between SBS and SBI as also NHB dated 2nd September, 1991, 10th September, 1991, 1st October, 1991 and 23rd October, 1991 under which without any securities having been obtained monies have passed by and between the two banks and from them ultimately to A2.

2. 3 transactions of the issue of bank receipts (BRs) by SBS favouring the SBS in which also amounts have been alleged to be credited to the account of A2 under BRs shown to be cancelled dated 13th July, 1991, 10th August, 1991 and 12th August, 1991.

3. 5 Call money lending and borrowing transactions between SBS and IB showing two rates of interest of money lent, the higher rate shown by IB and the lower rate shown in some of the documents of SBS by A1 and higher rate in few other documents also by A1 culminating in two cheques being issued by IB in favour of SBS, one for principal amount and the lower rate of interest and the other for the difference in the rates of interest, the latter of which have been given on 18th June, 1991, 26th June, 1991, 3rd July, 1991, 4th July, 1991 and 5th July, 1991 found itself been credited in the account of A2 on 9th July, 1991.

4. Transactions in which banker''s cheques favouring SBS were credited into account of A2 without disposal instructions given by the drawers of the cheques as per banking practice.

5. 2 securities transactions between SBS and SIDBI dated 10th August, 1991

and 12th August, 1991 which are similar to the above securities transactions. They may be considered separately."

11. It would have to be seen whether in the aforesaid transactions or some of them A1 and A8 have committed the offences with which they are charged more specially the offence of criminal breach of trust by misappropriation of the funds entrusted to them or which were in their control. Hence the points of determination which would essentially arise in this case are :

"1. Whether A1 as a public servant committed criminal breach of trust in respect of the property of SBS entrusted in the aforesaid transactions to him having dominion over such property in the conduct of his business as a banker punishable under Section 409 of the IPC.- -- Yes

2. Whether A8 as a public servant committed the offence of criminal breach of trust in respect of the property of SBS having dominion over such property in the conduct of his business as a banker punishable under Section 409 of the IPC. --- Yes

3. Whether A1 and A8 entered into a criminal conspiracy to commit the aforesaid offences to defraud the respective banks punishable under Section 120 of the IPC. --- No

4. Whether A1 as a public servant committed the offence of criminal misconduct by dishonestly and fraudulently misappropriating the property of SBS punishable under Section 13(1) (c) r/w. Section 13(2) of the P C Act.- -- Yes

5. Whether A8 as a public servant committed the offence of criminal misconduct by dishonestly and fraudulently misappropriating the property of SBI punishable under Section 13(1) (c) r/w. Section 13(2) of the P C Act. --- Yes

6. Whether A4 to 7, 9 to 12, 14 to 17, 21 & 22 committed the offence of criminal breach of trust, receiving stolen property, cheating, forgery, forging valuable security or falsifying accounts punishable under Section 120B , 202 , 409 , 411 , 420 , 467 , 468 , 471 , 477A of the IPC or whether A9 to 12, 14 to 17, 21 & 22 committed criminal misconduct punishable under Section 13(1)(c) , 13(1) (d) r/ w. Section 13(2) of the P C Act.- -- No. "

12. The four transactions would best be demonstrated by columnar statements, to understand the roles of the main accused Nos. 1 and 8 thereunder as also the roles of the other accused who have been found to be involved thereunder.

Re.: Transaction No. 1

13. The transaction shows that right at the inception SBS purchased Rs. 5 Cr. units of UTI for Rs. 67.74 Cr. For the purchase SBI had issued a BR or take other securities to secure the payment. SBI has not issued any BR for the sale of the units to SBS. SBS had to pay Rs. 67,74,50,000/- on 2nd September, 1991 to SBI. SBS did not pay the entire consideration. SBS sold 5 Cr. units to Canfina on the same day i.e. 2nd September, 1991 and received Rs. 67,75,00,000/-. In that

it made a small profit of Rs. 50,000/- from the sale price. SBS paid off SBI initially partly and later all the remainder of the amount. Initially SBS paid Rs. 36,74,50,000/- to SBI. It is stated that such part payment is not the banking practice. The balance amount of Rs. 31 Cr. was shown as call money borrowing by SBS from SBI. SBS must return that amount. SBS lent that amount to DFHI. DFHI returned it next day with added interest of Rs. 1,04,041/-. Later that day SBS repaid SBI Rs. 31,00,99,749.52 retaining with itself a paltry profit of Rs. 1,04,041/- less 99,794.52 = Rs. 4,246.48.

14. PW1 has deposed that such breakup of the transaction is irregular. PW7 from SBS essentially prepared and signed all the documents. A1 has signed some of the documents.

15. What is most important is the conspicuous absence of the entire transaction in the books of SBI. The call money lending and borrowing register does not show the entry of any call money lending. The sale slip book does not show the transaction of sale. The BR was not issued. A8 served in the securities department of SBI. The officer looking after the call money transactions of SBI, PW26 deposed that such transaction could have been done only by his department. Cheque issued by any other individual or department would not be proper banking practice. Similar is the lack of entry shown by the officer working in the securities section by sale and purchase of securities in SBI, PW28 who showed the absence of any entry in the sales slip book Register, Exh. 539.

16. For the 5 Cr. units sold by SBS to Canfina A11 prepared the deal pad which has made the interpolation incidentally striking off SBI and inserting SBS in the transaction. Thereafter, of course, documents do show SBS being the entry in the transaction register Exh. 446.

17. The second transaction which commenced from 7th September, 1991 and continued until 13th September, 1991 was for Rs. 67 Cr. showing call money lent by SBS to SBI. Rs. 67 Cr. of call money would have to be returned within a day or two. The paper entries show the completion of return on 13th September, 1991. It is shown to be returned in part each time. Rs. 67 Cr. was the call money lending transaction of SBS to SBI evidenced by the credit vouchers, debit vouchers and cheques of Rs. 50 Cr. and Rs. 17 Cr. The initial part repayment was for Rs. 11 Cr. with interest on the entire amount of Rs. 67 Cr. The cheque was issued by SBI in favour of SBS upon the credit voucher prepared by A8. The paper entry of the day of return after two days of such part amount shows that the remainder of Rs. 56 Cr. was freshly lent as call money for one day by SBS to SBI. The entry in call money lending and borrowing register Exh. 93 shows a renewal of Rs. 56 Cr. in the entry dated 9th September, 1991 in the handwriting of A1 in the column at pg.10. The entry in the call money lending and borrowing register Exh. 48 shows call money of Rs. 50 Cr. bearing interpolated and corrected to read Rs. 56 Cr. Hence Rs. 56 Cr. is a paper entry falsely shown as lending by SBS to SBI. In fact there has been no cheque and a false credit voucher has been prepared by A1 Exh. 71. Such voucher shows two stamps one

red and one blue. The red is of payment by clearing. It should show a cheque number. No cheque number is shown. The blue stamp shows payment by transfer. That is crossed out. No scroll number is mentioned. A1 would claim that clerks affix the stamps ignoring the fact that he has signed the vouchers. Hence there is no payment by transfer also and hence no amount came in to SBS from SBI. The amount remained in SBI totally unaccounted. The amount of Rs. 56 Cr. is accordingly been lost to SBS.

18. There is no entry in call money lending and borrowing register of SBI Exh. 526 or the sales slip book of SBI Exh. 539 in which such transaction would have been reflected had it been a genuine transaction.

19. The credit voucher is shown to be prepared by A8 for Rs. 15.20 Cr. on 10th September, 1991 upon which also a cheque of SBI would be drawn in favour of SBS. Such entry is not in the registers of SBS Exh. 48 or 93. That would be a further part payment from Rs. 56 Cr. which never was. Subtracting Rs. 15 Cr. from Rs. 56 Cr. Rs. 41 Cr. would remain. Out of such Rs. 41 Cr. Rs. 26.81 Cr. is shown to be paid again by adjustment by showing purchase by SBS of units of 1964 of UTI of the total value of Rs. 26.81 Cr. For this transaction also a debit voucher is prepared by similar two red and blue stamps showing neither the cheque number for clearing, nor the scroll number for transfer signed by A1.

20. SBS is shown to have sold units worth Rs. 26.82 Cr. to PNB on that day itself. The entry in the advice register Exh. 36 in the handwriting of A1 shows the transaction backed by a BR and the cost memo upon which PNB issued its cheque of Rs. 26.82 Cr. Hence SBS claims to have accounted for the purchase made by SBS to SBI by the sale made by the SBS to PNB. However, for the purchase made by SBS and the corresponding sale by SBI, no documents of SBI are seen. The entire transaction is not accounted in SBI. Such was the transaction between SBS and PNB of Rs. 26.82 Cr. leaving Rs. 14 Cr. with SBI. Hence the amount of Rs. 14 Cr. was not shown to be actually lent by SBS to SBI and the securities are never shown. Both the call money lending and borrowing registers of SBI Exh. 48 & 93 show interpolated entry of Rs. 14 Cr. in the handwriting of A1 in between two entries on the lent register showing repayment of SBI after two days @ 13%. Both these transactions are not reflected in the SBI registers of call money lending and borrowing register Exh. 526 or the sales slip book Exh. 529.

21. Out of these Rs. 14 Cr. Rs. 11 Cr. are shown to be repaid on 12th September, 1991 with interest of Rs. 91,722/- as per credit vouchers of SBI signed by A8 upon which the SBI cheques would be drawn. But this transaction of Rs. 11 Cr. is not reflected in the call money lending and borrowing register Exh. 48. It is reflected in the call money lending and the borrowing register Exh. 93 as having been repaid by SBI. The remaining Rs. 3 Cr. are only paid on 13th September, 1991 by SBI to SBS followed by the interest of Rs. 10,686/- having been paid on 13th September, 1991 under the credit vouchers signed by A8 which is also upon a fictitious call money lending of Rs. 3 Cr. This entry is made in the call money

lending and borrowing registers of SBS Exh. 48 and 93. The call money lending and borrowing registers Exh. Nos. 93 and 48 maintained by SBS are worth a note. Exh. 93 shows the entries of Rs. 11 Cr, with a renewal of Rs. 56 Cr., another entry of Rs. 14 Cr. interpolated between two entries followed by the entry of Rs. 11 Cr. and the entry of Rs. 3 Cr. on page 10. Exh. 46 shows the entry of Rs. 56 Cr. which is interpolated by correction over Rs. 50 Cr. It shows the entry of Rs. 14 Cr. interpolated between two entries. It does not show the entry of Rs. 11 Cr. and shows the entry of Rs. 3 Cr.

22. Thus it is seen that there were series of irregularities :

"a) No call money deposit receipts (CMDR) were received by the SBI.

b) Payments were made in part by SBI which is not proper banking practice and which had no precedent.

c) Call money and securities transactions were inter linked which is also not proper banking practice."

23. The witness of SBI PW 26 who was looking after call money transaction of SBI has deposed that it was only in his department that call money transactions could be effected and that no department or individual except his department could issue and accept cheques in call money transactions. He has shown no transaction in SBI of the nature that A1 has made in SBS for the part payments of initial Rs. 67 Cr. lent by SBS to SBI. He has deposed that there were no transaction of SBI with SBS and no entries in the call money lending and borrowing register maintained by his department, Exh. 526.

24. Similarly the witness of SBI PW 28 who worked in securities section where A8 worked deposed that he prepared debit vouchers and cheques for purchase of securities and maintained the securities register called the sales slip book and the purchase slips books Exh. 539 and 538 respectively. He has also deposed that he did not find any of the aforesaid transactions in the sales slip book of SBI.

25. A1 contends that on 10th September, 1991 he was out of office during a part of the day, A22 is superior having had to go to Calcutta leaving SBS. He contends that call money transactions executed by him were regular transactions. He has reported all of them to the HO by telephone and telex. He claims that vide daily reports as has been deposed by PW1.

26. A1 & A8 entered into a transaction for sale/purchase of 13% MLC bonds from SBI to SBS on 1st October, 1991 for Rs. 4,54,68,287/-. The transaction is evidenced by the debit and credit vouchers supported by the cheque of SBI, the number of which is mentioned in the credit voucher of A1 and is shown in the advice register of SBS by A1. For this transaction SBI should have issued a BR or physical security which is not issued by A8 who entered into the transaction for SBS.

27. The same security was sold by SBS to Bank of Madura for Rs. 4,54,73,287/-

making paltry profit of Rs. 5,000/- on the same day. The credit advice, credit voucher and cost memo were made for this transaction for which the cheque was issued by Bank of Madura in favour of SBS and BR No. 65 was issued by SBS favouring Bank of Madura. Hence while SBS sold to Bank of Madura under the BR, in the earlier transaction the BR was not issued by SBI who initially sold all securities to SBS and SBS issued a BR in anticipation of SBI issuing the BR. Because that was not issued, the BR of SBI remained outstanding. The cheque is to be issued by Bank of Madura on the basis of credit voucher. Though the BR was not issued by SBI the entries in the advice register for purchase as also sale have been made by A1. These entries are dated 1st October, 1991. They are after the entries dated 3rd October, 1991 and 4th October, 1991. The evidence of PW7 suggests that this reflects that the credit advice was made 2/3 days after 1st October, 1991 though it shows to be dated 1st October, 1991.

28. Upon the sale of the securities to Bank of Madura by SBS funds were received from Bank of Madura by SBS who in turn had to issue its cheque to SBI. The transaction of Bank of Madura from the sale and purchase register of Bank of Madura shows the clean arms length transaction by Bank of Madura in issuing the cheque and BR upon issuing necessary credit and debit vouchers.

29. The contract note and the delivery order of the broker is for Rs. 5 Cr. The contract note is executed three days prior to the transaction. The delivery order calls upon Bank of Madura to take delivery from SBS.

30. Since the BR remained outstanding Bank of Madura entered into correspondence over a period of time with SBS to liquidate it. The BR could not be liquidated because the corresponding BR for the purchase of the securities by SBS was not issued by SBI. The transaction in SBI is of dubious distinction. Not only is there no BR issued for what could be the sale of the securities by SBI to SBS, the very transaction is not recorded in their registers being the sale slip book or the waste book for 1st October, 1991. Hence A8 entered into the transaction of sale and has received the cheque dated 1st October, 1991 of SBS for the initial transaction. This cheque is, therefore, completely unaccounted for in the books of SBI.

31. From a reading of the documents together it can be seen that though A1 on behalf of SBS did purchase MLC bonds from SBI on 1st October, 1991 and issued his cheque in favour of SBI without any BR, SBS made a paltry profit to the bank of Rs. 5,000/- and sold the MLC bonds to Bank of Madura on the same day upon execution of the BR on Bank of Madura. Bank of Madura purchased the MLC bonds and issued a cheque in favour of SBS. Hence SBS did not make any loss. A1 on behalf of SBS did not cause any loss to be made to his bank. A8 acting on behalf of SBI received the initial cheque from A1 on behalf of SBS but never accounted it to the credit of SBI. Though the amount of the transaction was shown in the remittance schedule of 1st October, 1991 it has not been shown in either the waste book of the SBI or the sales slip book of SBI. A8 is alone responsible for misappropriation of the said amount.

32. A1 would claim that the deposition of PW1 and PW7 are contradictory. He has admitted that the transactions were back to back transactions as SBS has received funds from Bank of Madura and made payment to SBI. He put much stress upon the fact that the SBS funds were not involved. However, SBS received funds from Bank of Madura but SBS would have to account for those funds. SBI would have no place in the transaction except for diversion by way of siphoning of funds. A1 would also claim that neither he nor PW7 was aware of the non receipt of the BR from SBI. He would claim that there was no doubt in the transactions under the banker''s cheque favouring SBI of which SBS was a wholly owned subsidiary. Whatever that position may be in corporate structure, SBS was an independent bank and hence transacted with SBI. The transactions must, therefore, be as between two banks. A1 has relied upon the fact that he reported the transaction to HO (who must have been wholly oblivious of any oblique dealings) and stressed the fact that no query or irregularity was brought to his knowledge. Further, he contends that PW7 did not inform him of any irregularity to the HO, an act which could not have been expected of an officer who herself indulged in irregularity as much as of an officer who would have been made to transact business under orders of her superior.

33. Accused No. 1 on behalf of SBS purchased units of NHB on 23rd October, 1991 for Rs. 75,81,75,000/-. Hence SBS would have to pay NHB that amount. SBS did not have the funds. Yet the purchase was made. That purchase relates to the contract note of A2 in favour of SBS. A2 was, therefore, concerned with the transaction from the inception as a broker. He got the purchase transaction done. Since there were no funds and no repayment could be made, a call money borrowing transaction came to be made between SBS and NHB. The evidence of PW1 shows that normally such transactions are in round figures. This transaction was for Rs. 75,81,75,000/- instead. It was made as and by way of retention of money because money could not be paid for the purchase effected. Hence it would have to be seen whether it is genuine transaction because the case of the prosecution is that it is not. PW1 has deposed that there was no call money borrowing but only retention. There could be no retention in the form of call money borrowings. If there were no funds for payment to NHB SBS had no power to borrow from the call money market. Hence the two transactions were "inter locked". PW7 has also deposed that the two transactions are "netted" with each other. On account of the purchase SBS account would be debited. Hence NHB had to be given credit under the credit voucher and a banker''s'' cheque had to be issued had it been a genuine transaction. PW 1 had deposed that such steps are not taken in this case. If only a credit voucher is issued but not followed by the cheque, the transaction would remain at that. The credit voucher was prepared without a cheque. Hence PW1 has deposed that there was no flow of funds. PW7 has deposed that no funds were exchanged. A1 prepared a Call Money Deposit Receipt (CMDR). It remained in his drawer. Had there be a fall in the cash reserved ratio (CRR), A1 as the head of the FMC of SBS could have borrowed call money but would have to communicate it with the HO. That was

not done. The amount which should have been paid to NHB for the purchase of units was retained by SBS as borrowing and that amount was lent to UCO bank. This would be a fresh transaction. It was at a slightly higher rate than the retention amount. Hence until then SBS had not made any loss. Call money borrowing was communicated by A1 to the HO but the purchase was not. Hence inter locking of the two transactions was not made known to the HO. The CMDR has also not travelled to the HO.

34. The transaction with UCO bank was for Rs. 75 Cr. but at a higher rate of interest at 15%. SBS issued a cheque of Rs. 75 Cr. to UCO bank. UCO bank issued a CMDR (unlike SBS which did not issue the CMDR upon NHB). UCO bank would pay back Rs. 75 Cr with interest at 15%. The cheque of UCO bank in favour of SBS is for Rs. 75,03,08,219/-. The cheque has not been produced. The credit vouchers are for the principal amount and for the interest separately.

35. On the same day SBS sold the units to PNB for Rs. 75,83,12,500/-. The purchase was for Rs. 75,81,75,000/-. Hence the sale resulted in a marginal profit to SBS of Rs. 1,37,500/-. The transaction by PNB is at arm''s length. A BR is issued by PNB in favour of SBS but remained outstanding. PNB took follow up action.

36. The amount of Rs. 75,81,75,000/- borrowed on 23rd October, 1991 was repaid by SBS to NHB on 24th October, 1991. The repayment is to the extent of Rs. 75,84,55,421/- which entry is in the scroll book and in the call money borrowing and lending register. Hence the amount borrowed on 23rd October, 1991 of Rs. 75,81,75,000/- resulted in payment of Rs. 75,84,55,421/- the very next day. The net loss to SBS was Rs. 2,80,421/- which was interest paid to NHB on the next day i.e. 24th October, 1991. For this call money borrowing no funds were exchanged and hence PW7 has deposed that it was a fictitious transaction made to net the transaction of purchase of units.

37. The deal diary of NHB does not show the transaction of 23rd October, 1991 of Rs. 75,81,75,000/-. The deal diary shows Rs. 76 Cr. on 24th October, 1991. How that Rs. 76 Cr. is derived is interesting to note. It consists of the amount of Rs. 75,84,55,421/- which is the amount repaid by SBS to NHB under its cheque No. 592729 on 24th October, 1991. Alongside this entry is the another entry of Rs. 15,44,579/- in the deal diary as also in the investment register of NHB. This amount of Rs. 15,44,579/- has come surprisingly and intriguingly from SBI which was until then not at all concerned in the transaction from the credit voucher made out and signed by A8. The sum of total Rs. 75,81,75,000/- and Rs. 15,44,579/- is precisely Rs. 76 Cr.

38. The cheque issued by the SBI for no apparent reason and upon no real transaction by which the SBI came to lose Rs. 15,44,579/- is reflected in account of A2 by the debit entry of Rs. 15,44,579/- on 24th October, 1991. The initial transaction of borrowing is absent in the books of NHB. The transaction of repayment is shown in the books of NHB. This repayment is along with further

interest to make it Rs. 76 Cr. which interest has come from SBI which issued the cheque on the basis of the credit voucher prepared by A8. The credit voucher is prepared and signed by A8. The cheque is signed by A8 and another. The aforesaid two figures are reflected in the pay-in-slips, investment register, RBI scroll and deal diary of NHB. The interest cheque of Rs. 15,44,579/- is separately shown in the credit voucher, deal diary and the separate pay-in-slip. NHB appears to have managed to find itself fit in the RBI account which reflects the said transaction of Rs. 76 Cr. in the RBI scroll.

39. A1 would claim that there was no question of inadequacy of funds for payment to NHB as deposed by PW1 for the retention money payable to NHB as call money borrowing because the money was received from PNB. A1 would, therefore, contend that it was a regular call money borrowing and lending transaction but has maintained silence as to how and why brokers came to be involved in such transactions when they were not allowed to function under the RBI guidelines and banking procedure. A1 would further contend that the monies retained by way of call money borrowings from NHB was lent to UCO bank at a higher rate of interest, thus making a profit which was indeed paltry. He would contend that the security transaction as also call money transaction were reported to the HO on the same day in the usual manner and the purchase consideration was made by repayment by SBS to NHB of the principal amount together with interest. A1 has admitted that BR for security transaction were to be kept in the BRs received file. He had however, noticed that they were not in proper custody and were kept in box files. He is the head of the department would assume moral and legal responsibility for the wrong practise even upon noticing it.

40. For Transaction Nos. 1 to 4 generally A1 has admitted his handwriting and signature on all the documents. He is the manager, Funds Management Cell of SBS at the relevant time. He must be taken to understand the implication of the documents which he has signed and the consequences of his signature. A1 contends that his signatures were obtained by PW7, a case which must be outright rejected. He contends that she independently carried out all the transactions and struck the deal on 2nd September, 1991. He would contend that she should have called her superiors in the normal course of her conduct and taken their approval even in his absence. He has relied upon the hot line as also the telephone lines in the FMC to in that regard. He was of course, out of office on same occasions. He would be in the HO, Bhavnagar. He placed reliance upon his TA bill which contains the name of the hotel where he was put up on that date. He has, therefore, refuted the phone call stated to have been made by him to PW1 to enter into that transaction as deposed by PW7.

41. PW7 is indeed seen to have also acted in much the same manner carrying on transaction under a wholly irregular procedure. However, a look at the above columnar statements would show the overpowering influence and approval of A1 on the transactions.

42. A1 has admitted in his written submissions that SBS was found to have outstanding security transactions in the wake of the securities scam of 1991-1992 which was when he was incharge and responsible as the head of FMC.

TRANSACTIONS OF 3 BRs.

43. It is the prosecution case that there are three transactions relating to banker''s receipt (BRs) entered into by A 1 & A8 in collusion to cause wrongful pecuniary gain to A2.

44. These are transactions of purchase and sale of securities. These are purchased from one bank and sold to another. In substance the transaction shows the difference in the amount of purchase and sale resulting in a pecuniary gain which is stated to be transferred to A2.

45. It is the prosecution case that the aforesaid transactions are fictitious transactions entered into by A1 with A8 in collusion with A2 for causing wrongful gain to A2 through the services of SBI.

46. In the first BR transaction the prosecution has sought to show that the entry relating to BR No. 18 is not reflected in the advise register of SBS. Indeed, the very first document in the transaction is the sale contract dated 11th July, 1991 of A2 for Rs. 65 Cr. for delivery on 13th July, 1991. However, the purchase contract note of A2 is of 12th July, 1991 for the same amount for delivery on 13th July, 1991. The BR is for the amount of Rs. 65 Cr. plus interest. The cancellation of the BR without any discharge indeed shows that it was not used. There is indeed no entry in the advise register. However the BR register shows a mention of BR No. 18. The purchase contract note is a day after the sale contract note. That delivery order of A2 makes a mention of the SGL form of UCO bank. Upon purchase from UCO bank SBS has sold securities to SBI. As a seller SBS has issued BR which is cancelled and not discharged and accordingly not used. Even the cost memo of A1 has made a reference to the cancelled BR No. 18. The ultimate credit advise is for the difference in the transaction only which is informed to the HO by A1 in FMC. Consequently the credit voucher prepared by A1 is also only for the differential amount which is stated to be a wrong banking practise.

47. It is the prosecution case that there is no entry of this transaction of sale of securities by SBS to SBI in their purchase slip book. However, that is shown to be incorrect by A8 who has shown the Court the slip No. 2743 dated 13th July, 1991 which shows the transaction of Rs. 65,22,75,000/- amongst other transactions of 13th July, 1991 along with related documents being the deal ticket and the other register of SBI as also the letter relating to purchase of securities which shows the aforesaid three transactions including the transaction of Rs. 65 Cr. with interest of Rs. 22,75,000/-.

48. The crux of the transaction would be to see the wrongful entries and the consequent misappropriation of funds of SBS or SBI by A1 or A8 respectively.

49. The 2nd BR transaction is shown three parts. The purchase of units by SBS from UCO bank is followed by the sale of those same units to SBI. The purchase is on 4th July, 1991 under the contract note of A2 dated 4th July, 1991 for delivery on 4th July, 1991 itself. The sale is also on the same date but at a higher rate. Whereas the purchase is at the 99.99, the sale is at the rate of 100 per unit for the same securities of Rs. 50 Cr. 11.5% Central Loan 2007. Hence whereas the purchase is for Rs. 51,06,50,550/-. The difference is of Rs. 50,000/-. The purchase is under advise No. 505074/82 entered into in the advise register at Entry No. 82. The sale is under advise No. 420761/91 entered into advise register under entry No. 91.

Had this been a genuine truthful transaction both the purchase and the sale would have been reflected in the advise register. However, the purchase is not reflected in the advise register. Entry No. 82 is, therefore, a fictitious (fake) entry. That entry deals with the entirely different transaction of SBS with UCO bank for sale of 13% MLC bonds of Rs. 19,92,64,349/-. Consequently the difference of Rs. 50,000/- as a profit upon sale is under a fictitious transaction. A1 has written and signed the debit advise and sent it to the HO Bhavnagar showing Entry No. 82 and the amount of Rs. 51,06,50,550/- which is incorrect and untruthful. Though the transaction is only of the difference of Rs. 50,000/-, documents of the aforesaid amount are prepared. The debit and credit advise for the purchase and sale are upon the contract note of A2 showing the difference in the rate which difference is shown also in the credit and debit advise by A1. BR No. 12 is issued for the sale of these units to SBI for Rs. 51,07,00,550/-. This BR is discharged by A8 on behalf of SBI to whom the units were shown to be sold without showing the purchase. SBI is, therefore, shown to have purchased this security.

50. About a week later on 11th July, 1991 another contract note of A2 is executed for the same security at a still higher rate of 100.50 per unit. That delivery order for the security at that rate is endorsed by A1 as the contract for extension. It is indeed an extension of the contract for sale, but without the initial purchase. The BR No. 19 issued by A1 on behalf of SBS upon SBI is, therefore, for a larger amount of Rs. 51,32,00,550/- and it is not discharged by SBI on the reverse. It has remained at large. It is this amount which is misappropriated by and between A1 and A8.

51. There is no entry in respect of BR No. 19 Exh. 142 dated 13th July, 1991 for sale on the credit side of advise register. The entry is only with regard to BR No. 12 and not the extension of the contract. PW1 has deposed that BR No. 12 is replaced by BR No. 19. Consequently it is seen that BR No. 12 for Rs. 51,07,00,550/- is shown also in BR No. 19 and is, therefore, cancelled and replaced by the amount of Rs. 51,32,00,550/- by A1 and BR No. 12 is cancelled by inverted green endorsement shown from entry No. 91 of the advise register. Hence the entry at page 106 of the advise register at Sr. No. 91 is actually the cancelled entry. The entry is in fact not cancelled. This is the only entry which

shows differential figure of Rs. 50,000/-. It would, therefore, show that SBS has not issued Rs. 51,07,00,550/- upon sale of the securities but only difference of Rs. 50,000/-.

52. That aspect has not been conveyed by A1 of the FMC to the HO, at Bhavnagar. What is conveyed to the HO is entry for Rs. 51,07,00,550/- which has turned out to be the fictitious (fake) entry for want of actual purchase of the securities and the consequent sale. Hence SBS did not receive the consideration price under the transaction.

53. The entry at Sr. No. 82 at Page 15 of the advise register Exh. 36 is for Rs. 51,06,50,550/- showing purchase of securities from UCO bank under advise No. 505074 which is also shown in the debit voucher Exh. 152 and the debit advise Exh. 153.

54. As per entry No. 91 at page 106 of the advise register Exh. 36, the figure of Rs. 50,000/- is the only amount shown to be received by SBS. Such an entry is not found any where else in the register. Hence the evidence of PW1 that SBS did not receive the consideration price and there was no fund flow is seen to be correct. The cheque received by SBS was only for Rs. 50,000/- which has not been produced in evidence. However, no cheque of Rs. 51,07,00,550/- is also shown to be received by SBS and hence evidence of PW1 that that amount was not received by FMC and only the difference was received is also seen to be correct. PW 1 has further deposed that such netting is not allowed as per banking norms. It is in fact now shown in the advise register Exh. 36 also.

55. Though it is the case of the prosecution that there is no corresponding entry for showing the purchase by SBI for the sale allegedly made by SBS of 11.5% GOI 2007, A8 has shown entry No. 2743 in the purchase slip book Exh. 538 amongst the aforesaid three entries shown in transaction No. 1. This is also reflected similarly in the deal ticket Exh. 600, the register Exh. 601 and the letter of the Dy. General Manager (FMC of SBI) also showing securities of 31st July, 1991. However this entry is not shown by A8 to be reflected in the waste book Exh. 551.

56. The 3rd BR transaction has been initiated by A2 upon SBS for purchase of the securities from UCO bank. The purchase is effected under the debit advise No. 505069 and is reflected in the debit advise register entry No. 79. This initial transaction is for Rs. 50,48,79,467/- for which a cheque is issued by A1 upon UCO bank for the purchase of which 4 SGL forms are stated to have been issued. They are not produced by the prosecution. However, the purchase would be upon securities or SGL forms.

57. The transaction is followed by the sale transaction on the same day. The purchase transaction is @ 99.99 per unit. The sale transaction is for Rs. 100 per unit. Hence for Rs. 50 Cr. of GOI loan 2008, the difference in the sale price is Rs. 50,000/- being Rs. 50,49,29,467/- less Rs. 50,48,79,467/-. The profit of Rs. 50,000/- made by SBS is not shown under any document of SBS.

58. The BR which is issued by the seller bank SBS in respect of the sale to SBI is BR No. 10 for Rs. 50,49,29,467/-. About 9 days thereafter another BR has been drawn also by A1 for no apparent reason and upon no corresponding documents or upon no other contract note of A2. BR No. 20 shows the amount of Rs. 50,67,49,467/- in words as well figures by showing the rate of Rs. 50 Cr GOI loan 2008 on 100.25 per unit resulting in the addition of further Rs. 12,50,000/- being Rs. 50,61,79,467 less Rs. 50,49,29,467/-. There is absolutely no document to show that this amount has been received by SBS though the BR has been discharged by A8. The BR is devoid of even the contract note of A2 but shows his initials on the top right hand corner.

59. The document of SBI with regard to these transactions are relied upon by A8. A8 has shown the Court the purchase slip book register which indeed shows this transaction along with other two BR transactions under voucher 2743/13th July, 91. Similarly the deal ticket No. 14 is for the consolidated value of Rs. 165 Cr. which is in the three transactions of Rs. 50 Cr., Rs. 50 Cr. and Rs. 65 Cr. but at the rate of 12.5% and not 11.5% as shown in the contract notes. However, the copy of the register of SBI 1991-92 which shows all the three transactions against the broker A2 does not shown the corresponding bank to be SBS but UCO bank. Hence issue of BR by SBS for the additional amount after correcting the initial amount by A1 cannot be understood. Similarly, the discharge of that BR by A8 on behalf of SBI remains esoteric. It has not been explained by A8 why UCO bank is shown in the three entries in Exh. 601 relied upon by him if he has discharged the BR of SBS. Similarly the letter of the Dy. GM. FMC of SBI showing the purchase of securities on sale back basis for the aforesaid three BR transactions do not make a reference to the BR of SBS but to UCO bank. It further shows the interest of 12.5% and not 11.5% to be obtained by SBI when the securities would be sold back on 10th August, 91.

60. The three BR transactions, therefore, show that though the transactions have been initiated on 4th July, 91 they have culminated into the transaction on 13th July, 91 with the above anomalies left at large. The case of the prosecution that A1 and A8 misappropriated the funds of the bank for executing the aforesaid documents is clearly seen.

61. A1 has accepted that the BRs were not kept in proper custody were kept in box files and no due care was taken for their custody. A1 has also stated that the BRs were cancelled because there was no underlying transaction and they were prepared on the basis of instructions of a broker. A1 would contend that in each of these transactions the SGL form from UCO bank was received and claimed that it has been admitted by PW7. However, A1 has not shown the actual SGL forms. A1 claims that upon the three SGL forms received by SBS, three BRs were issued. They were cancelled and the money thereunder was not received presumably because there was no underlying transaction is accepted by A1 in answer to question Nos. 164 & 165 in his 313 statement. These were, therefore, contracts of buying and selling securities in which A1 claims that no funds of SBS

were involved. A1 has not denied the cancellation or its reason. He only claims that his clarification was not sought by PW1 with regard to the BRs. His clarification in his 313 statement is his reliance upon the instructions of the broker and the fact that there was no underlying transactions. Aside from that the cancellation is yet not clarified by A1. The amounts were transferred to SBI and have remained at large. A1 would contend that PW1 did not make enquiries with SBI as to how the amounts came to be received from SBI. However that would not be necessary in view of the aforesaid documentary evidence. Though A1 would also contend that PW1 did not enquire with the officials of UCO bank about the issue of SGL transfers form by them to SBS upon which the three BRs came to be issued, A1 has not called upon PW1 to explain in that regard in his cross examination either and his only claim is that SBS was not exposed to any risk as the SGL forms had been with the bank.

62. A1 also contends that the netting was accepted as banking practice during the relevant period ignoring the fact that he has stood the entire trial upon the irregularity of netting practice which resulted in the scam which had adverse consequences upon inter alia his own bank.

63. A1 has also claimed constant communication with the HO for all the security transactions and the fact that SBS was not exposed to any risk upon the claim that the BRs were outstanding. He maintains that SBS did not lose any money on account of the transactions but made a profit (however paltry).

64. A1 has claimed that as per the contract notes issued by A2, SBS was to buy security from UCO bank and sale the same to the SBI and claims that SBI issued BRs to SBS on the strength of the SGL forms issued to SBS by UCO bank. He has accepted that payment for the sale to SBI to be received from SBI as also payment to UCO bank for the purchase have not been made. Such a statement made by A1 in his written submissions would itself show the wholly irregular transactions. The claim of A1 that because payment was not received from SBI he cancelled the transaction despite making the endorsement on the reverse of the BRs also shows the irregular transaction. He would claim upon such transactions that the BRs were returned to SBS and SGL forms were returned to UCO bank. The amounts would then remained at large. That amount was with the SBI. That was the transaction with A8. The transaction was entered into through the broker A2. Much later SBS claims to have been paid. The difference between the sale and the purchase rates is the precise amount of loss caused to SBS. The only amounts stated to be received by SBS are Rs. 65,000/- and Rs. 50,000/-.

65. A8 aside from showing the entries in the transactions, A1 has remained strikingly silent about the banking practice relating to the BRs which was evidently not followed.

66. SBS lent monies to Indian Bank (IB) in which the lending is shown at a lower rate of interest in some of the documents of SBS and at a higher rate of interest

in some other documents. It is shown at a higher rate of interest in the documents of IB but two cheques are issued; one for the principal amount with the lower rate of interest and other for the difference. The difference amount has been credited to the account of A2 by SBS.

67. In these transactions amounts are lent by A1 on behalf of SBS to IB from time to time for one or two days. The CMDRs of IB as also rough book of IB show higher rate of interest. Some of the documents of SBS also show that rate of interest. Some of the documents show lower rate of interest as shown above. IB has issued two separate cheques not separately for the principal and interest amount but separately for the principal and the lower rate of interest amount as also for the difference in the higher and lower rate of interest amount. Hence lower rate of interest shown in the documents of IB more specially the credit vouchers has been credited to the account of SBS. The difference in the rate of interest has been credited to the account of A2 though the cheque has been made out in the name of SBS under and as per the pay-in-slip in favour of A2 drawn on behalf of A2 and initialed by A14.

68. All the 5 amounts of interest of Rs. 1,62,328.78, Rs. 80,137/-, Rs. 10,78,797/-, Rs. 61,643.84 and Rs. 58,219.18 are credited to the account of A2 on 9th July, 91 and cleared on that day and hence credited on that day as deposed by PW12 in paragraph 11 of his deposition. This was without any disposal instructions of IB which were required as per banking procedure because the cheque had to be deposited in the account of any one other than the payee.

69. PW12 has deposed about the correct and incorrect procedure in that behalf. He has identified each of the pay-in-slips. He has deposed in paragraph 6 of the deposition that he was the recipient of one such pay-in-slip which he noticed was not in order. He refused to credit the amount to the account of A2. He was called in the chamber of A14. He was directed to credit the amount in the account of A2 on the ground that it was the practice of the bank to deposit in the account of the customer without disposal instructions. He refused to do so.

70. He also deposed that PW 15 B C Patel and A14 signed and initialed pay-in-slips thus denoting that the proceeds of the cheque could be deposited in the account mentioned in the pay-in-slip. He has deposed that both the officers cannot be taken to have verified pay-in-slip along with the banker''s cheques because there were no disposal instructions and yet it was directed to be the credited in the account of A2. Pay-in-slips remained in the branch which is how he has deposed about them.

71. PW15 has deposed that he has signed pay-in-slips as accountant in SBS after they were initialed on the top by A14 who was the branch manager. He has deposed that unless the bank manager initialed and passed the pay-in-slip he could not sign as an accountant and get it deposited in the account of any party other than the payee of the cheque. The deposit of the pay-in-slips are, therefore, directly under the control and guided by A14 in the SBS, Fort branch

in which the new account of A2 was specifically opened and where he served as the branch manager.

72. Five entries of 9th July, 91 of Rs. 1.62 L., Rs. 80,137/-, Rs. 1.07 L, Rs. 61643/- & Rs. 58,219/- marked Exh. 184/1 to 5 have been the result of these five transactions of lending money by SBS to IB and returned by IB showing two rates of interest in which the difference in the rates has gone into the account of A2 to the extent of the aforesaid entries.

73. These clearly show the amount of SBS finding their resting place in the account of A2.

74. The ostensible contention of A1 is that he did not know how the difference in the interest rate came to be and was received by SBS by way of a separate cheque. In fact A1 had executed debit and credit notes in that behalf. The only refrain of A1 is that PW7 never reported the irregularity to the HO. The two reports of PW1 does not fix responsibilities for these transactions upon him. PW1 had not enquired with any bank or IB. HO never questioned him. Though PW27 who was directly in-charge of FMC under the financing accounts department visited the FMC, A1 would question the function of SBS as to why no attempt was made to ascertain why IB issued CMDR of higher rate of interest with a separate cheque for the difference in interest. He would claim that the messenger who brings such cheques in IB was not examined. A reading of the above columnar statement would show the act of A1 to have been of primarily instituting and carrying out the transaction. It is for A1 to explain why two cheques were issued for the principal and the interest amount mentioned by A1 in the SBS registers by IB and why a separate cheque for the difference was issued by IB which was accepted by him under his own transactions. Though A1 would question why PW2 and 7 would have prepared vouchers for different rates of interest, he has not explained how he signed those vouchers without cross checking the same in the call money lending register. A1 has certainly accepted the loss caused to the bank when he demands why his transactions were not brought to the notice of HO. One fails to explain how A1 as the superior in-charge of the FMC would not have done what he expected his inferiors to do.

75. A1 would also contend that there are no guidelines or instructions from HO during the relevant period for security transactions as also under RBI guidelines regarding the books and registers to be maintained. A1 would rest satisfied with the fact that there was no complaint from HO regarding any irregularity in carrying out securities transactions or call money transaction by FMC. In fact the prosecution case has emanated mainly from the fact that the HO remained clearly ignorant of the irregularities and hence the resultant loss to SBS. A1 would claim loss of certain letters and replies forming a chain of correspondence between SBS and SBI which do not find place in the report of PW1 Exh. 95. However A1 has not orally explained to Court the contents of such correspondence to show how the irregularity did not take place.

Transactions for crediting the account of A2 with the cheques issued in favour of SBS.

76. It has been the prosecution case that the account of A2 was opened specially for the purpose of depositing cheques issued by various banks in favour of SBS in his personal account without any disposal instructions and though the payee was the SBS. It is called "new account" in some of the aforesaid documents. The New account is account No. 2230. It has been opened pursuant to the request to open the account made by A2 under Exh. 232. It was opened upon the introduction of A1 which was never challenged in view of his position of Chief Manager, FMC, SBS. It has been identified and proved by PW15 who served in that department and who dealt with the account.

77. The prosecution has produced the certified true copy of the account maintained in the ordinary course of the business of SBS. The certification that it is true account is made as per the provisions of Banker''s Book Evidence Act and signed by the authorised signatory of SBS, Fort branch, Mumbai. The statements of account are issued from month to month. The relevant statements of the account maintained in bank is Exh. 184. These account statements are from the date of the opening of the account on 18th June, 91 pursuant to the aforesaid letter Exh. 232 of A2 and until the scam was declared to have taken place in June, 92.

78. It would be feasible to set out the relevant debit and credit entries in the said account showing the deposits and withdrawals made into the account to get a clear picture of how the account was operated. The bank account statement of A2 in SBS, Exh. 184 opened on 18th June, 1991 with the first deposit of Rs. 500/- in which separate entries are proved by different witnesses makes for interesting reading and thus runs :

79. The transgression is seen to have begun in the newly opened account initially modestly in thousands of rupees which has later escalated to entries of crores of rupees.

80. The initial entry in the account on the date of the opening of the account on 18th June, 1991 is a cash credit of Rs. 500/-. On the same day another credit entry is made of Rs. 4.79 L consequent upon a pay-in-slip showing new account without an account number. This pay-in-slip is the usual, genuine pay-in-slip of SBS showing deposit in the name of A2. It bears only one signature of the accountant identified to be the signature of PW 15. This pay-in-slip would require to be distinguished from the pay-in-slips pursuant to which further sums have gone into the account of A2 as the account progresses.

81. Five entries of 9th July, 91 of Rs. 1.62 L., Rs. 80,137/-, Rs. 1.07 L, Rs. 61643/- & Rs. 58,219/- marked Exh. 184/1 to 5 have been the result of these five transactions of lending money by SBS to IB and returned by IB showing two rates of interest in which the difference in the rates has gone into the account of A2 to the extent of the aforesaid entries.

82. These are followed by a legal entries under the instructions of A2 issued under the letters of A2 or through his representative. The first of such entries are dated 17th July, 91 for Rs. 20,548/- and Rs. 1.19 L. A letter of A2 Exh. 277 received by A14 identified by PW 15 shows that the cheques were issued in favour of SBS by UCO bank and are directed to be credited to A2''s "new currant account No. 2230 titled as Harshad S. Mehta". The letter is followed by two pay-in-slips for Rs. 20548/- and Rs. 1.19 L, Exh. 275 and 276 signed by A14 under his instructions "Pl. accept" and signed by PW 15. The amounts are reflected as credit entries in the account of A2, first of which is Exh. 184/2.

83. These entries are followed by another credit entry of Rs. 3.5 Cr. dated 26th July, 91 under the pay-in-slip for Rs. 3.50 C. dated 26th July, 91 Exh. 438. The pay-in-slip is signed by PW 15 and is signed by A7 on behalf of A2.

84. On 29th July, 91, three days after the deposit of Rs. 3.5 Cr. A2 has withdrawn Rs. 3.5 Cr. The entries of Rs. 3.5 Cr. dated 26th July, and 29th July, 91 have remained at large.

85. A2 has thereafter withdrawn Rs. 3 L on 22nd August, 91 from the above account.

86. The next entry is dated 30th August, 91 for a credit of Rs. 5 Cr. Rs. 5Cr are shown to be withdrawn three days thereafter on 2nd September, 91 from the account.

87. On 27th September, 1991 Rs. 2 Cr. are deposited in the account and on 28th September, 1991 Rs. 2 Cr. have been withdrawn under the entry Exh. 184-C. This transaction is evidenced by another pay-in-slip dated 27th September, 1991 initialed by A14 and signed by PW 15 as accountant Exh. 291. Interestingly this pay-in-slip does not even show the account number of A2 as for the other pay-in-slips earlier. It only shows ''C/D''. A debit voucher made in the name of A2 shows the office cheque issued by SBI by debiting their CD account No "as per parties request" Exh. 292.

88. The following entry is dated 13th November, 1991 for Rs. 3.5L Exh. 184-A consequent upon the pay-in-slip also dated 13th November, 91 for Rs. 3.5L Exh. 184-B. This pay-in-slip is also similarly initialed by A14.

89. The following entry is dated 27th December, 91 for crediting Rs. 2 Cr. in the above account pursuant to the pay-in-slip dated 26th December, 1991 for Rs. 2 Cr. in the name of A2. The said pay-in-slip is shown to be ticked in black and signed by PW 15 Exh. 437-A. Upon deposit of Rs. 2 Cr. on 27th December, 1991 A2 has written a letter to SBS for issue of a cheque of Rs. 2 Cr. in favour of SBI from the above account along with a covering letter instructing SBI to credit that account to his current Account No. 4/8710 titled Harshad S. Mehta with SBI Exh. 293. The letter shows cheque No. 202560 for Rs. 2 Cr. dated 28th December, 91 issued by SBS as per the instructions of A2.

90. This is followed by another credit entry of Rs. 1.11 Cr. on 3rd January, 92

Exh. 184/7, three days after upon the deposit of Rs. 1.11 Cr A2 has written letter dated 6th January, 1992 directing SBS to issue a cheque of Rs. 1.10 Cr. in favour of ANZ Grindlays Bank by debiting the above account with a covering letter instructing ANX Grindlays Bank to credit Current Account No. 01C/BM/85377 Exh. 313. The instructions have been followed in the same day evidenced by debit voucher of Rs. 1.10 Cr, Exh. 184/15.

91. Thereafter on 6th January, 92 itself A2 has issued a letter to SBS to receive and issue on his behalf from the Canbank Mutual Fund (CBMF) to ANZ Grindlays Bank for Rs. 9.88 Cr. Exh. 253. There is credit entry of Rs. 9.88 Cr. on 6th January, 92 Exh. 184/11. A14 has endorsed the letter "Pl. accept" banker cheque for Rs. 9 Cr. favouring ANZ Grindlays Bank dated 6th January,

92. The endorsement is circumstantially proved by the debit entry of Rs. 9 Cr. dated 6th January, 92 Exh. 184/10.

93. The pay-in-slip of RBI dated 6th January, 1992 shows the said amount to be credited to the account of SBS which is written by PW2 and signed by A1 Ex. 252. Despite that A1 has signed a credit voucher for crediting RBI cheque No. 202775 from CBMF in the account of A2 being CD Account No. 2230 showing the name of A2 on 6th January, 1992 for Rs. 9.88 Cr.. The voucher is in the handwriting of PW2 and signed by A1, Exh. 254. Debit voucher in the name of A2 is made for Rs. 9 Cr. for banker''s cheque issued in favour of ANZ Grindlays Bank "as per your instructions" on 6th January, 1992 Exh. 255. Consequently account Exh. 184 shows the credit of Rs. 9.88 Cr. on 6th January, 1992 with a debit of Rs. 9 Cr. Exh. 184/10 on 6th January, 1992. Thereafter there is a further debit of Rs. 80 L Exh. 184/16 on 8th January, 1992 without any other documentary evidence.

94. Thereafter on 11th January, 1992 Rs. 51.32 Cr. came to be made in the account of A2 as per the instructions of A1 in the letter dated 11th January, 1992, Exh. 182. That letter has been received by A15 who has put the endorsement "pl. allow" dated 10th/11th January, 1992 initialed by him. This letter is accompanied by the cheque bearing No. 69364 of Syndicate Bank for Rs. 51.32 Cr. made out not in the name of A2 who sent it to SBS Exh. 268. As per the letter of A2 SBS was requested to receive the cheque of Rs. 51.32 Cr. SBS issued a credit note signed by PW 6 also dated 11th January, 1992 to the credit of CD A/C No. 2230 of A2 for the amount of the banker''s cheque from Syndicate Bank, Exh. 183. Hence Rs. 51.32 Cr came to be credited to the account of A2 on 11th January, 1992. A debit of Rs. 51 Cr is made on 11th January, 1992 itself under Exh. 184/18 & 17 respectively. Later on 16th March, 1992 a similar letter of A2 dated 16th March, 1992 was sent to SBS signed by A7 on behalf of A2, Exh. 272 inclusive a cheque of SBI for Rs. 9.92 Cr and requesting credit the said cheque to the account of A2 and issuing cheque in favour of Bank of Bahrain and Kuwait of the same amount. Indeed the account Exh. 184 shows the credit of Rs. 1.92 Cr upon the pay-in-slip for Rs. 9.92 Cr made in the name of A2 for crediting account No. 2230 on 16th March, 1992, signed by PW 15 Exh. 257 and debit of

Rs. 1.92 Cr both on 16th March, 1992 Exh. 184/12 & 13 respectively.

95. On 26th March, 1992 a credit entry is made in the aforesaid account under entry, Exh. 184/9. The letter of A2 signed by A7 as proprietor/attorney of A2 dated 28th March, 1992 requests SBS to issue RBI cheque in favour of NHB for the said amount by debiting current Account of A2. An endorsement "pl issue a cheque favouring NHB" dated 28th March, 1992 is made by A14 on the said letter, Exh. 287. Accordingly a credit voucher is prepared on 26th March, 1992 for crediting account of A2 with the proceeds of the said cheque deposited in RBI account meant "for the above party" for Rs. 2.10 Cr, Exh. 251. Consequently the account Exh. 184 shows the credit of Rs. 2.10 Cr. on 26th March, 1992 and a debit of Rs. 2.10 Cr. on 28th March, 1992 under Exh. 184/9.

96. Thereafter there is credit of Rs. 2 Cr. on 31st March, 1992 followed by debit on 2nd April, 1992. Immediately upon the receipt of the cheque a credit voucher is prepared signed by PW 1 dated 31st March, 1992 for crediting the account of A2 with the amount of the cheque of Rs. 2 Cr, Exh. 249. This is seen to have been made under the letter of A2 signed by A2 dated 2nd April, 1992 for showing banker''s cheque in favour of ANZ Grindlays Bank for Rs. 2 Cr. to debit his account and for crediting the same to the current account of A2 No. 01C/BM/85377/00, Exh. 283. Consequently the aforesaid last two credit and debit entries are made as Exh. 184/8.

97. After all these credit and debit entries upon cheques being received in favour of SBS but credited to the account of A2 as per the instructions of A2 and debited from his account also as per his instructions to be issued to other banks more specifically ANZ Grindlays Bank in which also he shown to have an account for crediting that account, a balance of Rs. 63,14,555/- remained in the aforesaid account in April, 1992.

98. The scam was declared in June, 1992. On 1st June, 1992 itself the entire balance has been wiped out by the withdrawal of Rs. 63 lacs made on that day leaving a princely balance of Rs. 14,555/-.

99. A1 would claim that the credit of account of A2 was not made by him but by same clerks forgetting fact that the entire transaction which resulted in the credit had numerous documents executed by him. The very opening of the account by A2 under his introduction, which could not have been challenged by any one in the department, was the key factor for what the glare and the gaze must fall upon A1.

Transactions of SIDBI - The prosecution case is that A-17 on behalf of SIDBI entered into transactions with SBI to siphon off funds of SIDBI to SBI which was later credited to the account of A2 in the personal banking division of SBI.

100. The transactions of SIDBI may be taken to be the dress rehearsal for the bad tidings to come. They are ostensibly for sale and purchase of securities executed in August, 1991, a month before the main 4 transactions shown above.

The first transaction dated 10th August, 1991 is made pursuant to the contract notes and delivery order dated 10th August, 1991 issued by A2 for the sale of the securities on 10th August, 1991 itself. The transactions are initiated in SIDBI by A17 who put up the note before General Manager for obtaining sanction for sale of PSU bonds. The initial note specifies the specific bonds to be sold which are of IRFC and NTPC. The sanction notes are signed by A17 on the date of the transaction. The transaction is effected under two cost memos of SIDBI for the said bonds for the amount of principal and interest mentioned therein. A17 has issued two BRs on 10th August, 1991 for the said transaction of sale to UCO bank. A18 (since deceased) who served in UCO bank has discharged the BRs on 12th August, 1991. The sanction is not obtained prior to the transaction or even on the date of the transaction. It is obtained two days later. The entire transaction of 10th August, 1991 shows the amount having come from SBI and not from UCO bank. Though the receipt voucher shows receipt from UCO bank being the usual document of SIDBI prepared by A17, the statement of account of SIDBI shows the deposit made in SBI. The sanction is obtained after the entire transaction has been completed by A17 from the GM on 12th August, 1991.

101. The transaction of 12th August, 1991 which is purportedly for purchase of the bonds from UCO bank is under the contract note and the delivery order of A2 for receiving the bonds from UCO bank on 12th August, 1991 executed by A17 under the cost memos of SIDBI signed by him which resulted in amount as much as Rs. 45.72 Cr being withdrawn from the account of SIDBI and transferred to SBI though the receipt voucher shows investment in PSU bonds in UCO bank. The purchase transaction has been sanctioned after the date of the transaction and after it was completed by A17 again through the sanction of GM on 13th August, 1991 by which time Rs. 45.72 Cr. have been withdrawn from SIDBI and deposited in SBI.

102. A17 has accepted the documents executed by him but has refuted the delivery orders of A2. He has claimed in his 313 statement that he had never seen those delivery orders in his life. A18 who made the transactions has expired. Hence the sanction which was for receipt from UCO bank shows receipt from SBI through the RBI cheque of Rs. 45.69 Cr. which is deposited in the account of SIDBI and withdrawn two days after. There is, therefore, much substance in the prosecution case that though the two transactions are shown as sale and purchase of securities they actually constitute one transaction entered into on 10th August, 1991 through the execution of the BR and reversed on 12th August, 1991 through the discharge of the BR and consequent withdrawal of the amount from SIDBI''s account with RBI.

103. Such are the varied transactions in which the banking and financial talents have been used, especially by A1 & A8 perversely and illegally resulting in enormous financial impecuniosity as reflected from the marshaling of the oral and documentary evidence contained in the above columnar statements.

The defence of A1

104. It would be pertinent to note what accused No. 1 would have to say about these transactions. Upon his report he was given the questions to be put to him for recording his statement under Section 313 of the Cr PC in writing as he is hearing-impaired. He wrote down the answers in his handwriting which is filed on record and printed. He submitted his arguments in writing and his consolidated arguments and additional submissions.

105. A1 has apprised himself as a well meaning officer brought into the FMC on merit and who raised SBS from the dumps by introducing business efficacy in the borrowing transactions made by SBS despite the huge surplus of Rs. 1,100 Crores (which is not shown by him though stated). He claims to have lent Rs. 250 Crores of SBS money on the very first day that he served the FMC and wiped off the entire surplus within a fortnight. A1 has neither shown how much was lent on day one, nor that the surplus was Rs. 1,100 Cr. In any case, his case that he had unloaded the entire surplus during the relevant fortnight would not give him any license to unload the amount contrary to law and the RBI regulations. The desire of A1 to reduce loss and increase profits for the SBS must go only as far as making profits by fair means. An officer of his standing and caliber must understand the criminal liability of transgression from the normal banking or market practice. Indeed such good banking practice would result in profits for the bank which was his prime duty to earn. However, merely earning profits without scruples would end up in the kind of transactions that A1 has transacted with A8 in SBI. After having been brought into the FMC, for which he took credit, it was his duty whilst reporting to the HO to have shown fully what transpired on a daily basis and to ensure that there were no irregularities in the banking function.

106. A1 has also contended that deposition of PW1 would show back to back transactions in which funds of SBS are not involved contrary to the deposition of PW7. Hence in such transactions SBS would borrow money from one bank and lend to another. If SBS had a surplus of Rs. 1,100 Cr. which was found by the A1 on day one itself, there would still be little requirement of having the initial transaction to back up the later transaction. The defence that the call money transactions as also securities transactions were entered into to earn profits for the bank as was the mandate given by the ultimate superior, A22, would not digress from the position that whatever earnings or profits a bank had to make had to be in accordance with law and procedure.

107. The general defence of A1 is essentially that he is innocent of the charge of dishonestly entering in the ostensible security transaction with SBI and NHB and with other banking and financial institutions such as Canfina, PNB and Bank of Madura which he introduced. He would also claim to be innocent of the charge of SBS transferring the funds to SBI as call money lending without receipt of the CMDR in call money transactions between SBI and SBS or of issuing banker''s cheques favouring SBS into the account of A2 reflected in Exh. 184. He would claim innocence of the charge of entering into call money lending transactions with IB by lending monies to IB at a higher rate of interest then that charged by

SBS so that on repayment the difference of the rates charged in those transactions by IB could be siphoned off which were credited into the account of A2 in SBS opened upon his introduction.

108. His usual main refrain is that there were internal audits, more than one, including concurrent audit and the audit by PW1 who was directed to enquire into these transactions and who has submitted his report, which did not find any transactions in disarray or bring forth any irregularity. He would claim that PW1 did not point out anything to him or to the HO earlier. That of course, cannot be any defence to an action when any fraud, forgery or misappropriation or even an error is later unearthed. Only when it is brought to light that it would require to be considered by the Court and be replied by the accused based upon the case made out by the prosecution and put to the accused. Hence the defence in that regard requires no further consideration.

109. It is also his grievance that all the bank officers have sought to put the blame on him. He has, of course, denied almost the entire oral evidence of the officers of SBS stating all that may have transpired. Oral evidence which is not corroborated by documentary evidence would be best disregarded. It cannot be put past any officers to place the blame upon the shoulders of another when confronted with a scam of the proportion that was indeed brought to light in about April, 1992 which adversely affected the economy of the country and propelled the legislature to pass a legislation for attaching and salvaging huge amounts of bank funds which went out of the coffers of various banks together with civil and criminal liabilities involved thereunder.

110. He would also contend that he was not made a party in the civil suit filed by SBS disregarding the fact that SBS obtained a decree against SBI upon the loss suffered by it in the aforesaid transactions which were entered into admittedly by A1 and which shall be considered presently.

111. A1 would contend that his signatures were obtained by PW7 who was his subordinate and who is stated to have independently carried out all transactions. The evidence has shown a number of documents written and executed by PW7 with or without the signature of A1. For such all those documents as would not have the signature of A1, she must be taken to have acted independently. For such of those that carry A1''s signature, he being her superior, she cannot be taken to have independently acted.

112. A1 has sought to counter the oral case of PW7 that in a given transaction he had himself telephoned from a hotel in Bhavnagar and instructed her to enter into the transaction. A1 has refuted telephone call and the hot line which have not been proved.

113. It has been the case of the prosecution that all financial transactions, more specially call money transactions, had to be reported by the FMC to the HO. A1 has accepted the requirement of reporting and has contended that all transactions were reported transparently. He has accepted the documents of

reporting more specially the daily reports which had to be communicated to the HO. The prosecution case goes to show that reporting was not done correctly to reflect the true position. It was indeed done. However, it has been seen how the reporting was specifically distorted and consequently flawed. Reporting of transactions of lesser value of interest amount would not tantamount to reporting at all as it would be tainted by suppressio veri which would show a fraudulent act.

114. Since securities transactions as also call money transactions are essentially transacted over the telephone, the material liability thereunder can be evidenced only by the documents of the transactions. Consequently the acts of A1, only in so far as can be seen from the documentary evidence, which has been fairly accepted by A1 (as also the other accused in this case) has been considered to see any irregularity and consequential illegality in the outflow of funds of the banks and into coffers of A2. The aforesaid columnar statements show the acts not only of A1 but also of PW7 (who has turned approver) and in some cases other witnesses such who have not been charged as accused No. 1. The criminal liability of A1 would have to be decided only upon the documents executed by him alone.

115. The issue of BRs for security transactions is a regular practise of the banks. A1 has come under flak for issuing BRs more specially BR Nos. 18, 19, 20 & 53 etc in bogus transactions evidencing some of government securities for which consideration of crores of rupees in each transaction has been involved. It is alleged by the prosecution that BRs had been misplaced by A1. A1 would contend that they were kept in proper custody which were box files and had to be kept by other subordinate officers, not he. He has of course, refuted that they have been used for the benefit of A2. That case would have to be proved only through the actual benefit received by A2 which would be credited in his bank account in SBS opened upon the introduction of A1.

116. Certain BRs are seen to have blanks but are signed by A1. A1 would contend in reply to question No. 123 in the 313 statement that that was not brought to his notice at any point, nor reflected in the report of PW1. That would be apparent from the look at the document itself. The issue of BR 19 substituting BR No. 12 without flow of funds would also be seen from the aforesaid columnar statement despite the denial of A1. The case of the prosecution that BRs are bogus transactions is essentially upon the case that the entries are not found in the registers made for that purpose. A1 has claimed that the BR issued register was in fact introduced by him in the bank. Though he has accepted that all the BR entries are not entered in the register, the prosecution has charged A1 only for the entries which were not so entered. It does not matter that other entries were entered in the register issued by A1. A1 has admitted in reply to question No. 136 that due care was not exercised in the receipt of BR/physical securities.

117. The prosecution has alleged that the BRs were wrongly cancelled by A1 in the bogus transactions. A1 has admitted in reply to question Nos. 164 and 165

that the BR was cancelled because there was no underlying transaction. He has further stated that the BR was prepared on the basis of oral information from the broker (A2) and since the transaction did not take place the BR was cancelled. He has stated that he has affixed his initial to the cancellation; precisely the case of the prosecution in respect of the transaction with UCO bank and later with SBI. A1 in reply to question No. 165 in the 313 statement has stated that he had collected cheque of Rs. 65,000/- from the broker since he had ''practically done all the work'' and had to cancel the transaction at the last minute. Hence his contention that he could not have envisaged that in the transactions BRs were not to be received is in vain. Further the contention that all SBS could do was to request SBI, who was its 100% holding company, only by writing letters is also to no avail.

118. With regard to the two stamps on the vouchers, which is been deposed to be irregular banking, A1 has stated in reply to question Nos. 133 and 134 of the 313 statement that affixing of stamps was clerical error as vouchers are prepared by clerks and has stated in reply to question No. 171 that instructions are not usually given for preparation of the vouchers and that the vouchers are prepared ''as per the records of transactions'' concluded. The difference in the rate of interest has been rubbished by A1 upon his statement in reply to question No. 162 of the 313 statement that it is for the Indian Bank to explain on what basis they had issued separate cheques for the difference of amount of interest and that the rate of interest mentioned in the document was one concluded on the phone with Indian Bank. Similarly his statement in reply to question No. 178 that it is not clear on what basis Indian Bank issued CMDR of a different rate of interest is unacceptable. This is in total disregard of the fact that the two cheques have been accepted by SBS whilst he headed the FMC and ultimately found their resting place in the account of A2. A1''s refrain that the crediting of the amount of A2 was not done by FMC and was not authorised and instructed by him in reply to question No. 135 is unacceptable in view of his position qua A2.

119. A1 has not refuted that A2 was introduced by him as customer of the bank. The officers of the bank accepted A2 as the customer simplicitor upon his introduction since it would be taken to be unquestioned. Though A1 has refuted that he acted upon any letters of A2 for allowing the cheques issued in the name of SBS to be credited to his personal account opened upon his introduction without disposal instructions of the issuing bank, and has claimed that the branch officials where the account was opened would credit the cheque, incidentally the account has credits only of the transaction which A1, and in some cases PW7, had executed.

120. Though it may be prudent not be led by any oral evidence unsubstantiated by documentary evidence, the fact remains that authorised security transactions and call money transactions are indeed made over the telephone. Oral evidence in that regard can be only corroborated by documentary evidence. The oral evidence of PW7 that she noticed manifold increase in call money transactions

and securities transactions with A2 which she brought to the notice of A1 and was told to continue transactions can be evidenced by the transactions themselves. If those transactions were irregular or illegal and could not have been entered into, they have not been reversed by A1 either. Though PW7''s deposition that there were certain meetings where A1 called her to go to meet A2 in his office and when she pointed out irregularities A1 stated that the transactions were authorised by the MD A22 may not be accepted as the whole truth, the Court must see who has actually transacted with A2 and whether the transactions bore any irregularity. A1 has stated that he has no administrative control over the officers of the branch where the current account of A2 was opened and hence could not allow cheques drawn in favour of SBS to be credited to account of A2 without the disposal instructions of corresponding banks, SBI or NHB. Yet the fact remains that A1 is shown to have signed various documents in the transactions which resulted in the amounts to be credited to the account of A2. A1 being the driving force of these transactions, he would be primarily criminally liable for the resultant misappropriation. A2''s account itself was opened upon the introduction of A1 which was accepted without demur. The operation of the account would, therefore, follow as a matter of corollary under the same influence.

121. A1 has also contended that a false document Exh. 307 was prepared ostensibly to show a meeting held on 31st August, 1991 at HO, Bhavnagar which was created in June, 1992 after the scam broke out but stated to have been prepared on 3rd September, 1991. He would make much of such antedated document upon which the FIR came to be filed by the General Manager (Inspection and Finance) SBS. He would claim that the designation mentioned therein came to be published under circular dated 10th June, 1992 suggested that those persons could not have held their office under those designations on 31st August, 1991 when the meeting was held as per the minutes dated 3rd September, 1991. Whatever be the meeting that may have been held between the officers of the company, the charge of the prosecution is based upon the documentary evidence which has been considered by Court and not the oral say of any of the officers of SBS uncorroborated by documentary evidence.

122. A2 claims that the decrees passed in civil suits have been fully satisfied. He has not shown how decrees have been fully satisfied. He claims that there is no outstanding to SBS. Even if there is no outstanding of SBS because the decrees are satisfied, the civil liability that arose under the contract has been discharged. The criminal liability that would arise under the contract has been seen from the aforesaid documentary evidence. That criminal liability has been incurred by A8 on behalf of SBI and by A1 on behalf of SBS, A8 having parted with the funds of SBS upon instructions of A2 wholly illegally and wrongfully and A1 having executed the documents in the aforesaid three securities transactions without delivery of corresponding securities that were required.

The defence of A8.

123. A8 has specifically relied upon two letters of A2 dated 19th August, 1991 and 10th January, 1992 requesting Manager, Securities Division and Manager, Personnel Banking Division, SBI, Bombay, Fort branch for issuance of banker''s cheques against the cheques which were brought by him. He has shown the necessity for getting the cheques cleared at one place to avoid the time delay. A8 states that it was contended by A2 that SBI would not have any outlay of funds of SBI from such transactions. A8 claims that this was approved by "the Managers" as shown in Exh. D.24. The letter dated 10th January, 1992 shows that A2 was the prime broker of SBI and its subsidiary SBI Capital Markets Ltd. (SBI Cap) dealing with the securities division frequently. This is where A8 served and came into direct contact with A2. The letter was for facilitating single point clearance. A2 requested the Manager Personnel Banking Division of SBI to allow the activities of issuance and acceptance of banker''s cheques to be conducted by the securities division. They would have been otherwise conducted by the personal banking division. The request, if accepted, would put A8 at the centre stage of the transactions of A2 on behalf of SBI. Indeed the letter shows that such a facility would facilitate A2 to meet deadline of another bank clearing timings.

124. A8 has shown that several bank officials endorsed on that letter. The AGM personnel banking division has endorsed that A2 was a valued customer and his request is genuine. He recommended it for acceptance as A2 kept good float funds with them. The AGM of the securities division endorsed that there was no funds outlay in the facility as the banker''s cheques brought in SBI (which would be in favour of SBI) and the banker''s cheques issued to A2 would be clearing on the same day in another bank clearing system. It appears that A2 was asked to deposit Rs. 25 lacs in TDR and he deposited Rs. 5 lacs thereunder on 13th January, 1992.

125. Though A8 has sought to fix the blame on the shoulders of the AGM of the Personnel Banking Division and the securities division, the fact remains that upon the issue of the letters A2 had direct contact as also nexus with A8 and A8 came to be the officer in the securities division to issue various cheques as also the credit vouchers, all of which are key to the loss of crores of rupees of SBI and are admitted to have been issued by A8.

126. A8 has relied upon the paragraph 8 of the order in MP No. 52 of 1993 that SBI admitted that it had received monies on behalf of A2 which were credited to the account of A2.

127. A8 has admitted in the memorandum of written submissions under Section 314 of the Cr.P.C. filed by him that he accepted banker''s cheque issued by SBS in favour of SBI dated 2nd September, 1991, 3rd September, 1991, 7th September, 1991, 9th September, 1991, 10th September, 1991, 13th September, 1991, 1st October, 1991 and 24th October, 1991. He has also admitted that he was looking after the execution of transaction of SBI on its own investment account, transactions of SBI Capital Market as banker of SBI Cap by taking and

following instructions of various clients including A2. With regard to the banker''s cheques issued upon the aforesaid dates he has specifically admitted that the cheques were brought by the representative of A2 to SBI, the pay order was realised by SBI on its account first and the proceeds were passed on A2 as his representative had brought the PO. A8 has not shown how and when the PO''s were realised by SBI, though he has stated so. Nevertheless he has admitted that the proceeds were passed on A2. These proceeds are stated to have been passed on merely because the peon of A2 brought the banker''s cheque/PO of SBI. It does not stand to reason that bankers would credit the amount of a party when the banker''s cheque is issued by another bank on his own bank merely because his peon carried it. The written submissions of A2 further shows that SBI had issued banker''s cheques which were the cheques issued in favour of A2 as per the instructions of A2. It is not understood how a banker would take instructions from a broker to issue banker''s cheques.

128. Relating to three transactions of 2nd September, 91, 10th September, 91 and 1st October, 91, A8 has relied upon the judgment of the Special Court in Misc. Petition No. 52 of 1993 dated 18th January, 1991. It has been observed in paragraph 8 of the judgment that in all these transactions the securities were not delivered even though payment had been made. It was contended by SBI in the petition that there were no such transactions. The amounts shown in the transactions had been received by SBI for and on behalf of A2 and were credited to the account of A2 with SBI. The account number is not shown. It has been observed in paragraph 10 of the judgment that such credit in the account of A2 by SBI was without any written authority from SBS. This credit was given precisely by A8 in SBI. A number of witnesses have deposed that a banker''s cheque issued in the name of another bank cannot be credited to the account any another single individual without the disposal instructions of the issuing bank. It is, therefore, that it has been observed in the judgment that this credit was without authority. A2 admitted in MP No. 52 of 1993 that he had received the monies and that the transactions was his. This was an oral admission without even any reply to the letters of the petitioners. The admissions of A2 was rubbished by the Court. The Court saw that there were transactions between SBS and SBI. SBI accepted and encashed banker''s cheques of SBS without demur and had also directed adjustment of call money transactions. This has been done by none other than A8 in SBI. The Court has observed that if SBI claimed that it acted on behalf of A2 (much as A8 has claimed that he acted upon the instructions of A2 in his written submissions) the Court observed that it was for SBI to prove it. Hence it would be for A8 to prove the instructions given by A2. If that is proved the liability if any would have been only of A2 and A8 would have been able to contend that he acted upon the instructions of the clients in the normal course. Instructions for crediting the account of a third party for several crores of rupees cannot be accepted to be given orally. No written instructions are produced by A8. Cheques are admittedly credited to the account of A2. A8 would claim that the cheques have not been credited in account No. 8710 of A2

in the personnel banking division. However, the admission that it was credited upon the instructions of A2 would show that it has been credited to another account of A2. The production of the account becomes immaterial in view of the admission of A8 in his written submissions and in view of the observations of the Court in the judgment relied upon by A8 about the proof of the authority. Yet this court is not concerned as much with the credit of the amounts in the account of A2, A2 having expired and the case having abated against him, as with the loss the A8 is shown to have caused to SBI by his wanton egregious misconduct.

129. The Court has held that account payee cheques drawn in favour of a party can only be credited into the account of that party. It is further held that without authority from the drawers SBI (A8 acting on behalf of SBI as seen in this case) could not have credited the proceeds of the account payee banker''s cheques into the account of A2. The Court has further held that if that was done by SBI, it would have been done by SBI at its own risk. This risk is the criminal liability in this case of none other than the A8.

130. A8 would claim that SBI first encashed the cheques in the account of SBI and had then credited the proceeds there of to the account of A2 in his written submissions. A8 has not shown the initial credit in the account of SBI. No such account is produced. It is not the prosecution case that there has been any such account in which there is any such credit. It is only the case of A8 (and it was the case of SBI in MP No. 52 of 1993) that this round about banking transactions was done to initially deposit in the account of SBI and to immediately thereafter give the proceeds or credit the proceeds into account of A2. What has been held by the special Court relating to the risk of SBI in MP No. 52 of 1993 has become final. It is upon the risk of SBI that the criminal liability has to be imputed. In this case it is imputed upon A8.

131. The Court has held in the said judgment that SBI would liable to SBS in conversion. That would have been the tortuous liability for the tort of conversion. The civil claim has been actually decided. The criminal liability would follow as a matter of course. Placing reliance upon the said judgment A8 has claimed that all the monies have been paid to SBI aggregating to Rs. 800 Crores. That would be the judgment upon the civil liability. Upon such admitted fact finally decided, the criminal liability of A8 would have to be determined in this case.

132. It is further held in paragraph 12 of the judgment that the entire consideration in all three transactions has been received by SBI on behalf of A2. The case that there was no delivery of securities by SBS has been rejected. Consequently the case of failure of consideration claimed by SBI also has been rejected. Hence the case that SBI did not sell securities because the records of SBI could not show the sale of securities is already held to be false. The record of SBS having transactions with SBI has been affirmed in the judgment. In fact it is held that even though there would be no delivery of securities; there would remain the liability of return of monies.

133. It is further held in the judgment, and it has become final, that there has been wrongful misappropriation of amounts holding that A2 had unjustly enriched himself and wrongfully misappropriated the amounts and was liable to repay the same to SBS. The judgment observes that there has been no evidence led by SBI upon what it claimed in the MP No. 52 of 1993 about these three transactions. Hence the similar claim of A8, when no documentary evidence is produced and when A8 has not even called upon the prosecution to produce such document, which in any case were never shown and not even produced by SBI, is also seen to be wholly false and deserves to be rejected. The holding in the judgment that the transactions were between SBS and SBI and were undertaken by SBS for and on behalf of A2 is, therefore, established as the judgment has become final. Similarly, the judgment records the fact that A2 had received monies from SBS which case has been held to have been made out in the said judgment.

134. A8 was admittedly a Junior Officer in securities division. A2 had desired the transactions to be made through the securities division. SBI had admitted and it was seen that it acted on behalf of A2. A8 is the only relevant officer to have been done so as is evidenced from the credit vouchers prepared by A8 as also cheques issued by A8. The amounts have been admitted to have been received by A2. A2 has been directed to repay the amounts. These are precisely amounts Rs. 67,74,50,000/-, Rs. 288180000/- & Rs. 45468287.67, which are the amounts under the aforesaid three securities transactions. A decree has been passed in favour of SBS against A2 for the amount totalling Rs. 991098287.67 (being total of the aforesaid three amounts) with interest @ 6% thereon.

135. The custodian is stated to have transferred the said amount to SBI as per the order of this Court on 25th February, 2011 upon directions passed by this Court in the custodian report No. 9 of 2010.

136. It is, therefore, seen that from the very judgment produced by A8 himself as also the report produced by A8, the case of SBI and consequently the liability of A8 has come to be established with regard to the misappropriation of the funds of the SBI done by A8 causing unjust enrichment to A2.

137. A8 has also relied upon and produced copy of the judgment in Special Case No. 1 of 2003 in which A8 was the accused dated 22nd October, 2010 in which A8 has been convicted under Section 120 B , 467 r/w.471 of IPC, as also under Section 13(2) of the Prevention of Corruption Act, 1988. It has been held in that case by this Court that the sale proceeds received from PNB by cheque/PO credited in the account of SBI Caps but were directed to the account of A2 himself or used for making payment to different persons and financial institutions for and on behalf of A2. Amounts to the extent of Rs. 152.89 Cr. was seen to have been siphoned off by A8 in conspiracy with A2. SBI had only provided routing facility to A2. That was the common prevailing practice among all banks and financial institutions. In the guise of such practice A2 entered into transactions of purchase and sale of securities, but on record the bank would be

shown as the principal and A2 would be shown as the broker. The Court observed that the sale notes pertaining to the transactions in that case were prepared and signed by A8. A2 was shown as the broker thereunder. The contract notes were prepared by A2 on his letter head showing the securities to be sold to PNB. But the name of the counter party selling the securities was not mentioned. The delivery order directed to receive the amount from the counter party (SBI Cap). There was no entry in the blue book maintained by SBI Cap about those transactions pursuant to the deal ticket issued by SBI Cap. It is observed that the absence of the entries in the blue book show that the deal tickets were never sent for making any entry in the blue book. A8 was serving in the securities division of SBI at the SBI main branch Bombay. The Court observed that SBI as the routing bank would credit the amount of the transaction in the account of A2.

138. It has been observed in that case that pursuant to giving routing facility to A2, A8 prepared and signed sale notes showing SBI Caps as the real selling party. He was held to have prepared forged documents to entered into the securities transactions in the case with PNB Caps. The Court has concluded that when A2 made huge profit of Rs. 152.84 Cr. in that case, A8 can also be presumed to have earned huge profit from out of it. A2 could not have made profit without the routing facility hence upon the sale notes prepared by A8 it was held that A8 dishonestly made false documents, forged the sale notes in the securities transactions which are valuable securities and hence committed offences under Section 467 of the IPC.

139. The aforesaid documents read together show the gravity of the acts by A1 and A8 upon the reach of A2, since deceased, under the spate of transactions which must be considered together for their true impact. Though the prosecution has not been able to show the ultimate resting place of the crores of rupees of mullah in the SBI account of A2 Exh. 535 as in the SBS account of A2, Exh. 184, the entire of which is proved by virtue of the certification under the Banker''s Book Evidence Act aside from various entries separately proved, the link with A2 is not required to be established to consider the criminal liability of A2 as the above case has abated against him upon his death. The prosecution has established the case of transfer of funds entrusted to A1 and A8 by them upon misappropriating them and dishonestly using and disposing them off in various ways shown above - under securities transfers for purchase and sale of securities or BRs, BR transactions, call money transactions with different rates of interest, and simplicitor banker''s cheques credited to the SBS account of A2, all of which is shown to have been done against banking practice.

Criminal liability

140. It would have to be seen whether such acts constitute criminal breach of trust defined under Section 405 of IPC, the relevant part of which runs thus :

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

141. The case of A1 and A8 is of admission of the documents written or executed by them, but denial of their liability.

142. A1 has contended in his additional submissions that the dominion or control resulting in obligation in relation to the property which is misappropriated is required to be established. Further the misappropriation has to be with a dishonest intention. He has relied upon the judgment in the case of Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, .

"16. According to Section 405 IPC, the offence of criminal breach of trust is committed when a person who is entrusted in any manner with the property or with any dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or willfully suffers any other person so to do. Thus in the commission of the offence of criminal breach of trust, two distinct parts are involved.

"10.... The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created."

The judgment applies to the case against A1 as also A8.

A1 has contended that he has informed the HO about all the transactions of the FMC executed by him as Chief Manager. He has not shown all the parts of the 4 transactions made known to the HO. The HO would be none the wiser in respect of the transactions involving the counter parties and their acts. In case of transactions with IB involving two rates of interest, the HO was informed of the lesser rate of interest and the receipt of cheques as per that rate of interest alone. The HO was not informed of the difference in the rate of interest and the cheques for such difference. That would be seen even in the various audits. The misappropriation by such artful mode betrays the dishonest intention of A1. Similarly the fact that the relevant BRs remained outstanding from SBI shows the dishonest intention of both A1 and A8 in SBS and SBI respectively. The fact that in call money lending and borrowing transactions credit vouchers are issued by A8 who had no authority in the securities department to enter into such transactions shows his dishonest criminal intention directly and positively. Further the non-reflection of such entries in the call money lending and borrowings register of SBS also reveals the dishonest intention of A1 who entered into these transactions on behalf of SBS with SBI. Further the issue and cancellation of BRs of SBS by A1 not entering them in the advise register demonstrates the dishonest criminal intention of A1. Similarly the fact that the BR is not discharged by A8 who entered into the transaction with SBS exhibits his dishonest criminal intention. Consequently the false information given by A1 to the HO which has been seen to be of fictitious entries further accentuates the dishonest criminal intention of A1.

143. The aforesaid facts proved by the prosecution through specific documentary evidence, admittedly executed by A1 & A8 brings both of them squarely within the parameters of Section 405 of IPC. Accordingly the prosecution has proved the case of criminal breach of trust punishable under Section 409 of IPC against A1 and A8.

144. In the wake of the plethora of charges, almost unintelligible, and considering the aforesaid documentary evidence, interspersed by only the relevant oral evidence which corroborates it, the charge of criminal breach of trust by misappropriation of crores of rupees of SBI & SBS entrusted to A1 and over which A8 had dominion is clearly and unequivocally established. That must define the criminal liability of the two artful dodgers, A1 & A8. The other charges under the IPC against both of them, which are overlapping as reflected from several transactions do not require to be separately considered against them. The transactions are carried on independently by each of them as also jointly by them but in different parts of the same transaction. Though the first 3 transactions do show a nexus in the acts of A1 & A8, they do no establish a link showing that they have acted jointly and with commonality. Hence the case of criminal conspiracy of the prosecution falls a tad short of the legal requirement. Hence point Nos. (i) and (ii) of the aforesaid points of determination are answered in the affirmative and point No. (iii) is answered in the negative.

145. Both A1 & A8, being public servants and covered by the Prevention of Corruption Act, 1988 (P C Act) are also charged with having committed criminal misconduct by them dishonestly and fraudulently misappropriating the funds of the banks, SBS & SBI entrusted to them or being otherwise under their control as such public servant permissible under Section 13 (1) (c) and punishable under Section 13(2) of the P C Act.

146. A1 & A8 have been issued sanction orders Exh. 580 & 561 respectively as required under Section 19 of the P C Act. The sanction orders are in order and have considered their roles in the aforesaid transactions separately and distinctly. They are for from being mechanical as is a case of A1 and A8 which is the usual lament.

147. The charge under the P C Act follows as a corollary from the charge of misappropriation already proved. Such fraudulent and dishonest misappropriation by a public servant comes out vividly clear against both A1 & A8 for affixing the specific criminal liability also under the PC Act. Hence point Nos. (iv) and (v) of the points of determination are answered in the affirmative.

148. The other accused being A4 to A7 who are brokers are seen to have acted only for and on behalf of A2, the fulcrum of these transactions which resulted in the scam. The other accused 9, 10, 11, 12, 14, 15 and 17 are the other bank officers who are indeed seen to have been part of the transactions as evidenced by the above documentary evidence contained in above columnar statements. It is seen that A10 has indeed made entries and executed documents on behalf of NHB in the transaction No. 4 with SBS. The statement of A10 that his entry showing SBI''s is a mistake made to be rejected and shows a dishonest defence. A9 is his superior and must be taken to have instructed A10, but his role goes no further. The reference to "Harshad" in the documents of Canfina in parts 7 & 9 of transaction No. 1 does show some connection of A11 and his superior, A12 with the acts of A1 and A8 as also A2. Yet it does not conclusively establish the link thereto. Certain pay-in-slips have indeed been signed by A14 and A15 in the transactions of SBS under the aegis of A1 with IB, but only upon receiving the cheques of the difference in the interest rates of the CMDR of IB which were credited to the account of A2, Exh. 184. A14 has also made certain endorsements for issue of the cheques in favour of NHB on the letter of A7 on behalf of A2 in the transactions for crediting the amounts of cheques drawn in favour of SBS in the account of A2. These transactions were initiated by A1. The prosecution is not shown to have established any commission of criminal breach of trust by them for the properties entrusted to A9, A10, A11, A12, A14 and A15 and under their dominion by their respective banks and financial institutions. Benefit of doubt would, therefore, have to follow.

149. A16 is stated by PW7 to have been sent "for training" to the office of A2. He was not accepted. He returned to the SBS sans the training. He has stated in his 313 statement that he was not allowed to access the system and could not avail of any training. It was, therefore, a failed attempt at involving A16 in the transactions with A2. A 21 is stated to have been brought into SBS with A16 from SBI Caps on deputation. A16 and 21 served in FMC, but have not fallen foul of the law. They have remained outside the entire purview of the tainted transactions. No documents are shown to have been at all executed by them. Their involvement is, therefore, erroneous. An honourable acquittal would have to follow in respect of A16 & A21.

150. A22 was the Managing Director of SBS. He was instrumental in spotting the talent to give an edge to the financial dealings of SBS. He desired to increase the profitability of SBS. He brought A1 in the FMC and elevated him to the position of no return. He also brought in A16 and A21 who remained in their respective positions as bank officers. A1 is stated to have acted under the umbrella of A22. PW7 has deposed about A1 informing her, upon she having noticed a spate of call money transactions, that they were executed as per his desires and directions. He would assume moral responsibility upon his top position in SBS, but is not shown to have himself executed any documents in the tainted transactions for any legal liability to be imputed upon him. An acquittal on benefit of doubt would require to follow in respect of A22.

151. Hence point No. (vi) of the point of determination would have to be answered in the negative.

152. A1 is, therefore, held guilty and convicted of the offence of criminal breach of trust defined under Section 405 punishable under Section 409 of the IPC.

153. A8 is held guilty and convicted of the offence of criminal breach of trust defined under Section 405 and punishable under Section 409 of the IPC.

154. A1 is also held guilty and convicted of the offence of criminal misconduct by him as a public servant by dishonestly and fraudulently misappropriating the property entrusted to him and under his control as a public servant under Section 13(1) (c) and punishable under Section 13(2) of the P C Act.

155. A8 is also held guilty and convicted of the offence of criminal misconduct by him as a public servant by dishonestly and fraudulently misappropriating the property under his control as a public servant under Section 13(1) (c) and punishable under Section 13(2) of the P C Act.

156. A1 & A8 are held not guilty and acquitted of all other charges against them.

157. A4 to A7 and A9, A10, A11, A12, A14, A15 and A17 are given benefit of doubt of having committed any of the offence with which they are charged and are acquitted of all the charges.

158. A16 & A21 are acquitted of all the charges against them.

159. A22 is given benefit of doubt and acquitted of all the charges against him.

160. A1 states that he has been in control of the FMC and had made the HO aware of every single transaction. He has done no act prejudicial to the SBS. He has always acted in interest of the bank. He further states that upon his dismissal he was not given any compensation. He has conducted trial on his own. He has travelled from other cities on his own.

None of these is a mitigating circumstance. The Court has seen the documentary evidence written and signed by A1 himself upon which the conviction has been passed and the sentence would be considered.

A1 further states that he has lost his son three weeks ago. The Court shares in his grief. However, the Court cannot be carried away by the personal tribulations of parties before the Court unconcerned with the offence that is committed by them.

161. A8 states that he has attended to this trial for the last 19 years regularly. He has conducted the affairs of SBI rightly. He acted upon the instructions of his client as per normal practice. He has defended the trial alone and single-handedly. He has not earned a single paise from the transactions that he entered into. Since his dismissal in 1996 he had no support. He states that he has no source of income and no house of his own. All his properties have been attached, he being a notified person. He has rented premises for his residence for the last

15 years. He states that his wife is sick and he has a son. He is 62 years old with no job. He is also facing another prosecution.

None of these is also a mitigating circumstance. In view of the documentary evidence seen by the Court, which has made out the case of misappropriation and the consequent siphoning off huge funds of SBI by A8, the Court must account for only such evidence in considering the quantum of sentence.

162. The learned Spl. P.P. reminded the Court that the offences committed in this case are against the public funds and not private funds. SBS and SBI were the two banks in which crores of rupees have been wiped off and gone into the pocket of a private individual. He states that the case does not merit any mitigation of sentence as per the latest Supreme Court judgment in the case of Raj Bala Vs. State of Haryana and Others .

163. The judgment is a treatise, short and precise, on the jurisprudence of sentencing policy. The judgment considers what could be the mitigating circumstances and how judicial discretion has to be used judiciously.

That was the case of an offence under Section 306 of the IPC in which the trial Court upon conviction granted what it considered a lenient sentence. The sentence of three years was imposed upon the initial charge under Section 302 which was later prosecuted only under Section 306 of the IPC.

The trial Court considered the fact that the offenders were first time offenders and belonged to weaker section. It saw that the daughter of the accused was teased. It, therefore, granted a lenient sentence of three years.

In the High Court the mitigating circumstances were considered afresh. The High Court passed the sentence already undergone upon an observation that no useful purpose will be served by taking the appellants (offenders) back to jail for the remaining sentence of imprisonment and observing that ends of justice would be amply served if their substantive sentences of imprisonment were reduced.

The Supreme Court deprecated the observation as casual and fanciful reflection of reasoning of the High Court rather than a just one. The Supreme Court observed that those were absolutely were not the mitigating factors and, in a way, totally inconsequential for imposing sentence of three years (let alone the sentence already undergone).

164. The Supreme Court held that the sentencing policy is a duty to respond to the collective cry of the society. It observed in paragraph 11 that the legislature in its wisdom has conferred discretion on the Court but the duty of the Court in such a situation becomes more difficult and complex. It, therefore, held :

"It (the court) has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim as the survivors of the victim society waits with patience to see that justice is done. There is a hope on the part of the society when the criminal culpability is established and the discretion is irrationally exercised by the Court, the said hope is shattered and the patience is wrecked. It is the duty of the Court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective."

165. The Supreme Court has, therefore, held how discretion would have to be exercised by other trial Courts in imposing sentences. It must be under the principle of proportionality between the crime and the punishment which should be just punishment and not punishment disproportionately excessive. It cannot be in a straitjacket formula nor a solvable theory in mathematical exactitude.

166. The Supreme Court is, therefore, directed that-

"The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court."

167. Quoting Friedman in "Law in Changing Society" the Supreme Court observed that the "State of criminal law continues to be a decisive reflection of social consciousness of society".

168. Therefore, the Supreme Court observed that the sentencing policy should be a corrective machinery or deterrence based on a factual matrix. The sentencing process must, therefore, be stern where it should be, and tempered with mercy where it warrants to be. Hence the Supreme Court has held that :

"...undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats."

Quoting Justice Benjamin N. Cardozo (who is oft quoted on the proof beyond the reasonable doubt) on the right of the victim also as "justice though due to the accused is due to the accuser too", the Court in essence considered the sentencing policy as a doctrine of victimology.

169. This Court is covered and bound by the observations of the Supreme Court which are in fact oft repeated. Indeed sentencing policy must reflect the conscience of the society. In this case the complainant, the victim, the accuser, is the country at large. It is the coffers of public financial institutions that have been swept clean. Proportionate, unjust, enrichment which has been caused to

the person who has been fulcrum of the crime. Despite the fact that the Courts have realised and re-transferred into public exchequer some part of the monies lost, the remainder has been lost for ever. It would take years before those monies finally find the place where they belong. Until then the victimization of society would due and so must the punishment.

170. It is rightly stated " To punish less, punish more severely" by Napoleon Bonaparte.

171. Thus seen the acts of A1 and A8 who were the prime accused for their respective banks, SBS and SBI, must end in legitimate and proper punishment, neither lenient nor excessive.

172. A1 & A8 are exposed and uncovered to have caused tremendous loss aggregating to several hundreds of crores of rupees to SBS & SBI unbefitting their position as public servants responsible to the public exchequer. They are seen to have degraded themselves in misappropriating public property for illegal and criminal ends causing enormous monetary loss to the public exchequer. Their acts can well be termed anti-national as such acts had caused a tremendous economic strain and drain upon the country resulting in the scam of 1992. The sentence against them must account for wanton economic loss to the country reflecting the deprecation for the subterfuge of accused A1 & A8 and the consequent conundrum caused to our country. They have not only corrupted themselves but corroded the country.

"The accomplice to the crime of corruption is frequently our own indifference"

173. Civil Misc. Petition No. 52 of 1993 relied upon by A8 is the indicator of gigantic extent of the loss caused by the acts of A1 & A8 to SBI & SBS which the court had called attention to.

174. The large amounts of SBS thus misappropriated by A1 and A8 have been directed to be paid back and returned to SBS thus proving beyond any reasonable doubt the loss caused to SBS by the illegal acts of A1 & A8. Part of this amount is recovered by SBS. The punishment for criminal liability must be in keeping with the civil loss decreed which has come to be final. The sentence of compensation to be considered imperatively as per the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, must in the same measure vindicate the loss and damage caused to public banking institution.

175. Hence the following order :

"1. A1 is convicted of committing the offence of criminal breach of trust by public servant punishable under Section 409 of the IPC and sentenced to suffer rigorous imprisonment for a term of four years and to fine in a sum of Rs. 5 lacs and in default to suffer further rigorous imprisonment for a period of 1 year.

2. A1 is also convicted of committing the offence of having dishonestly and fraudulently misappropriated the funds of SBS punishable under Section 13(1)

(C) and r/w Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for a term of four years.

3. The aforesaid sentences shall run concurrently.

4. A1 shall pay compensation of Rs. 5 Crores (Rupees Five Crores only) for the amounts misappropriated by A1 from SBS.

5. A8 is convicted of committing the offence of criminal breach of trust by public servant punishable under Section 409 of the IPC and sentenced to suffer rigorous imprisonment for a term of four years and to fine in a sum of Rs. 5 lacs and in default to suffer further rigorous imprisonment for a period of 1 year.

6. A8 is also convicted of committing the offence of having dishonestly and fraudulently misappropriated the funds of SBI punishable under Section 13(1) (C) r/w. 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for a term of four years.

7. The aforesaid sentences shall run concurrently.

8. A8 shall pay compensation of Rs. 5 Crores (Rupees Five Crores only) for the amounts misappropriated by A8 from SBI.

9. A1 and A8 are acquitted of all other charges.

10. A4 to A7 and A9, A10, A11, A12, A14, A15 and A17 are given benefit of doubt of having committed any of the offences with which they are charged and are acquitted of all the charges.

11. A16 & A21 are acquitted of all the charges against them.

12. A22 is given benefit of doubt and acquitted of all the charges against him.

13. The bail bonds of A1 & A8 are cancelled. A1 and A8 shall be taken in custody.

14. A1 and A8 shall be entitled to set off the period of imprisonment, if any, already undergone by them in this case. The Superintendent of the relevant prison shall be given a copy of this judgment by the prosecution for computing the period of set off in this case.

15. The bail bonds of A4 to A7, A9, A10, A11, A12, A14, A15, A16, A17, A21 and A22 are discharged.

16. The Court records its satisfaction and appreciation for the mammoth task that the learned Special Public Prosecutor has undertaken in this case to author two volumes of compilation as arguments painstakingly culled out from a huge mass of oral and documentary evidence upon expansive verbose 313 charges that formed the crux of this case, which counsel Mr. Vivek Sharma fairly and rightly referred to as the Bible in this case."

