

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1477 OF 2004

Mir Nagvi Askari

...Appellant

Versus

C.B.I.

...Respondent

WITH

CRIMINAL APPEAL NOS. 1525, 1526 OF 2004, 5 AND 121 OF 2005

J U D G M E N T

S.B. SINHA, J :

These five appeals, arising out of a judgment and order dated 19/10/2004 passed by the Special Court constituted under the Special Court (Trial and Offences related to Securities) Act, 1992 (for short “the Act”), were taken up for hearing together and are being disposed of by this common judgment.

BACKGROUND FACTS

Andhra Bank is a Scheduled Nationalised Bank. It has a branch at Mumbai known as the Fort Branch. Out of five appellants before us, Accused Nos. 1, 2, 4 and 5 were officers of the said Branch of the Andhra Bank. Accused No. 1 was the Manager of Funds, Accused Nos. 2 and 4 were Junior Management Officers of the Funds Department, and Accused No. 5 was the Assistant Manager, Debit Section. Accused No.3, Hiten Dalal, was at all relevant times and still is a broker and, inter alia, deals in securities.

Accused Nos. 1, 2, 4 and 5, in their capacity as public servants, were working in the Fort Branch of Andhra Bank.

They were charged with abuse of their position and acting dishonestly and fraudulently, as a result whereof undue pecuniary advantage is said to have been procured by Accused No. 3 by way of crediting bankers' cheques without them having been presented or sent for clearance and, thus, cheating Andhra Bank and dishonestly permitting substantial withdrawals from his current account by the Accused No. 3. They are said to have prepared false documents and used them as genuine ones, with the intention to defraud and falsify entries in the books of accounts of the Bank. They are also charged with entering into the criminal conspiracy, as they, having been entrusted

with the property of the Andhra Bank, prepared credit and debit vouchers in favour of Accused No. 3 authorizing credit of amounts of various cheques to the account of Accused No. 3 without having actually received any bankers' cheques.

Indisputably, the Reserve Bank of India appointed a Committee known as the Jankiraman Committee whence the alleged security scam came to light. It submitted a report, a portion of which was marked as Exhibit 334 before the learned Special Judge wherein certain irregularities in the functions of Andhra Bank were pointed out, the relevant portion whereof reads as under :

“(6) It was observed on a scrutiny of the current account of H.P. Dalal that the branch has accommodated the broker by affording credit of some of the banker's cheques received from other banks to his account one working day prior to the day on which the instruments were sent for clearing, with a view to avoiding overdrawings in the account on these days. The funds so credited have been utilized by the broker either for purchase of securities or making some other payments. Instances noticed are given in the annexure. It will be seen therefrom that in the case of item No. (i) the branch had afforded the credit even before the actual date of the instrument.”

(Emphasis added)

It was also pointed out how Accused No.3 had received financial benefit out of the said transactions.

FIRST INFORMATION REPORT

Relying on, or on the basis of, the Jankiraman Committee Report, a First Information Report was lodged by PW-25 Sitaram Premaram Paladia on or about 02/06/1993 (Exhibit 333), initially against the accused Nos. 1, 2 and 3.

No further preliminary inquiry was conducted before lodging the said First Information Report. Ten instances of grant of credit to Accused No. 3 were detailed therein, in respect of the cheques received or those yet to be received from four banks, namely Bank of Karad, ANZ Grindlays Bank, Canara Bank and Standard Chartered Bank (hereinafter referred to as “the drawer banks”), without presenting or sending them for clearance.

PW-26 Mr. Waydande while making investigation into the said offence, allegedly found involvement of Accused Nos. 4 and 5 as well, who had prepared debit and credit vouchers, and made entries in the transfer scroll, BCR Registers, Cheque Clearing and Receiving Registers, etc. They were thereafter made accused in the said case.

PROSECUTION CASE

The prosecution contends that the appellants herein entered into a conspiracy with each other with the object of giving undue pecuniary advantage to Accused No. 3, and for the said purpose, the bank officers had misused their position as public servants, forged documents and used them as genuine ones for the purpose of falsification of accounts.

The prosecution case is that such credits should not have been given until the amount of the cheques was realized. It was furthermore alleged that credit had been given even though the said cheques had not actually been received in the Fort Branch of Andhra Bank. The aforementioned acts on the part of the officers of Andhra Bank constituted criminal breach of trust and forgery, as well as offences under the Prevention of Corruption Act, 1981.

PROCEEDING BEFORE THE SPECIAL COURT

As many as ten transactions were in question before the learned judge. Separate charges were framed in respect of each of the aforementioned ten transactions. Before the learned Special Court, 26 witnesses were examined by the prosecution.

PWs 1 to 10 were employees/officers working in the drawer bank along with four officers from the Funds and Investment Department.

PWs 11 to 19 and 22 to 24 were working in the Andhra Bank. PW-11 Hemlala G. Nair and PW-12 Rajinderkumar and one Rane, were working as clerks in the Funds and Investment Department, Andhra Bank. Rane died in 1993 and thus, could not be examined as a witness. PW-13 Sunil Pore and PW-14 Dilip Gursahani were working as typist and Clerk-cum-Cashier respectively in the Clearing Department, Andhra Bank. PW-17 Katta Hari Babu and PW-18 Ramesh G. Ramteke were officers in the Current Account Department, Andhra Bank. PW-19 S. Ganavinayagam was the Manager (Operational) in the Current Account Department and PW-22 J.S. Sastry was working as Chief Officer, at the Head Office of Andhra Bank, Hyderabad. PW-23 G.D. Bhalla was working as Chief Manager in Fort Branch, Andhra Bank, Mumbai. PW-24 C. Raja Rao was working as General Manager (Personnel) at the Head Office, Andhra Bank, Hyderabad. PW – 20 Anand Sinha and PW-21 M. Mahajan were officers working in the Reserve Bank of India.

JUDGMENT OF THE SPECIAL COURT.

In respect of transaction no. 1, the Special Court noted that the account of A3 was credited on 18/05/1991, whereas the cheque is dated 20/05/1991. As Accused No.1 and 2 authorized the credit vouchers to the Current Accounts Department, allowing it to credit an amount of Rs.2 crores indicated therein to the account of Accused 3, without having in their possession the cheque for the said amount, A1 and A2 were guilty of criminal breach of trust as also for creating false documents.

In respect of transactions no. 2 and 3, the Special Court held that though the cheque dated 05/07/1991 was received on 06/07/1991, the credit therefor had been given on 05/07/1991; the cheque amount was realized only on 06/07/1991. As A1 and A2 prepared debit and credit vouchers and ensured credit to the account of A3, even without having in their possession the corresponding cheque and, thus, they were guilty of criminal breach of trust and also falsifying documents.

In respect of transaction No. 4, the Special Court held that though the cheque dated 17/09/1991 was received on 18/09/1991, the credit was given one day prior thereto, i.e., on 17/09/1991 and the cheque amount was realized only on 18/09/1991. Hence, on the day on which the credit was

given, the cheque was not in possession of the A1 and A2, and, thus, by issuing credit voucher on 17/09/1991, A1 and A2 committed criminal breach of trust and falsification of documents.

In respect of transactions no. 5 and 6, it was held by the Special Court that the cheque dated 06/11/1991 was supposed to have received on 06/11/1991, but credit thereof was availed by him on 06/11/1991 although the cheque was realized on 08/11/1991; 07/11/1991 being a holiday. Hence, on the day on which the credit was given, the cheque was not in the hands of the A2 and A4; and by issuing the credit voucher on 06/11/91, they have committed the offence of criminal breach of trust as also falsification of documents.

It was also held in respect of transaction no. 7, that the cheque dated 13/11/1991 was received on that date and the credit was given on 13/11/1991, although the cheque amount was realized only on 14/11/1991. The cheque was not sent for clearing on 13/11/1991 and therefore, by issuing credit voucher on that day, A1, A2 and A4 had committed criminal breach of trust and were also guilty of preparing false documents.

So far as transaction No.8 is concerned, the Special Court held that the cheque dated 04/12/1991 was received on 05/12/1991 and the credit was

given on 04/12/1991, despite the amount was realized only on 05/12/1991. Evidence on record has clearly proved that the cheque in question was not received in the Funds Department on 04/12/1991, although A1 and A5 authorised crediting the cheque amount into A3's account on that day and therefore A1 and A5 were guilty of criminal breach of trust as also making of false documents in respect of the said transaction.

In respect of transaction no. 9, it was held by the Special Court that the cheque dated 16/12/1991 was received on 16/12/1991, the credit is given and availed on 16/12/1991 and the cheque was actually realized only on 17/12/1991. The cheque was not sent for clearing on 16/12/1991 and therefore, by issuing credit voucher on that day, A1 and A2 were guilty of criminal breach of trust and of making of false documents in furtherance thereof.

In respect of transaction no. 10, the Special Court held that the cheque dated 07/04/1992 was received on 08/04/1992, and the credit was given on 07/04/1992 even though the cheque was realized only on 08/04/1992. As on the day on which the credit was given, the cheque was not in the hands of A2, by issuing the credit voucher on 07/04/1992, A2 was guilty of criminal

breach of trust and also guilty of making false documents in furtherance of this transaction.

It was also recorded by the Special Court that the pecuniary advantage had illegally been given to A3, and thereby A2 and A4 have committed an offence under Section 13 (2) read with 13 (1) (c) and 13 (1) (d) of the Prevention of Corruption Act. It was also held that since the credit was illegally given to A3, they have committed criminal breach of trust, and that by issuing a credit voucher without the cheque having been realized, A2 and A4 have prepared false documents and thereby committed forgery. It was also held that A2 and A4 entered into criminal conspiracy with A3 and other accused persons for the purpose of giving illegal credit to A3 and thus securing a pecuniary advantage for him.

ADMITTED FACTS:

Before advertng to the rival contentions raised before us by the parties, we may, at the outset, notice the following:

- (i) All the cheques involved are banker's cheques.
- (ii) Payments under the banker's cheques are guaranteed.

- (iii) Cheques received by the Bank are dealt with by the Funds Department, Current Account Department, Clearing Department and Day Book Department.
- (iv) The Current Account, Clearing and Day Book Departments operate under the Operation Department of the Fort Branch, Andhra Bank
- (v) In addition thereto, there is a service centre of the Bank which is situated in separate premises. It is responsible for sending the banker's cheques to the Reserve Bank of India for clearance.
- (vi) It was not proved that the bank officers received any pecuniary advantages for themselves but by their action pecuniary advantages were received by Accused No. 3.
- (vii) Whereas there are no guidelines for operation of the Funds Department, guidelines have been issued by the Andhra Bank for other connected departments, viz., Current Account Department, Clearing Department and Day Book Department.
- (viii) It is also not in dispute that a machine known as Advance Ledger Posting Machine (ALPM) was installed in the Current Account

Department which was possible to be operated manually. We will highlight the operational details of the said machine at an appropriate stage.

SUBMISSIONS OF LEARNED SENIOR COUNSEL.

Mr. Naphade, Mr. C. Mukund and Mr. Das, learned counsel appearing on behalf of the accused nos. 1, 2, 4 and 5 urged :

- (i) Since the First Information Report was lodged only on the basis of the report of the Jankiraman Committee without any further preliminary enquiry, the entire proceeding is vitiated in law.
- (ii) Jankiraman Committee having only pointed out irregularities committed both by the Current as well as the Clearing Department, appellants cannot be said to have been involved in commission of any offence, as alleged or at all.
- (iii) There is no evidence to show that the appellants had any dominion over the property of the bank at any point of time, and/ or they were ultimately responsible for the disposal thereof in violation of any direction of law.

- (iv) Since the purported guidelines [Exhibit 322] have no force of law, no offence of criminal breach of trust can be said to have been committed in terms of Section 405, read with Section 43 of the Indian Penal Code.
- (v) Further, the guidelines purportedly issued by the Bank, in any event, have no nexus with the functioning of the Funds Department being applicable in respect of securities transactions; the impugned judgment of the Special Court is wholly unsustainable.
- (vi) Appellants, having scrupulously followed the prevailing bank practices and furthermore having complied with all the procedures laid down therefor, cannot be said to have committed any offence.
- (vii) The job of the Funds Department was only to prepare credit and debit vouchers on receipt of the Banker's Cheque and to forward the same to the Current Accounts Department and it was the officers of the Current Accounts Department have both a duty, as well as the authority to scrutinize, verify and process these vouchers resulting in ultimate clearance thereof and in that view of the matter, no offence can be said to have been committed by the appellants alone.

- (viii) Even assuming that the appellants are party to any conspiracy but the same by itself cannot yield any result, viz., ultimate benefit to the Accused No. 3, as the clearance of the cheques was in the hands of some other officers and as such the impugned judgment is liable to be set aside.
- (ix) Since the banking practice in regard to grant of instant credit to the holder of a negotiable instrument is an accepted one, meant for the benefit of the customers, there can be no rationale that such benefits though required to be given to the customers, would be withheld unless the actual fund is received from the drawer bank. Although there existed guidelines only for the Current Account and other Departments, there existed no guidelines as regards the grant of instant credit which had come to be established based on the internal practice followed by the banks. Accordingly, no case for the commission of an offence of criminal breach of trust had been made out.
- (x) It being not the case of the prosecution that the procedures in respect of the said transactions were totally disregarded and only because the scam broke out, faults were sought to be found without

rectifying the said procedure and in that view of the matter, the functionings of the appellants could not have been questioned.

- (xi) The veracity or the existence of the documents being not disputed, the judgment of the Special Court as regards actual date of receipt of the cheques were wholly unjustified, particularly in view of the statements made by the witnesses examined on behalf of the drawer banks who had categorically stated that no cheque was ante-dated.
- (xii) The Andhra Bank not being involved in the security transactions wherein only the drawer banks were involved, the Special Court had no jurisdiction to try the alleged offence.
- (xiii) Even if the findings of the Special Court that some documents did not contain all the details is held to be correct, all the officers concerned, from receiving the cheque to clearance thereof (including the clearance of the Funds Department) should be held to be liable therefor and not the appellants alone.
- (xiv) In view of the pressure of work on all the employees being admitted, and as all entries in the registers were required to be

done on the same day which having substantially been complied with, inadvertent errors on the part of employees cannot be considered to be acts of illegality.

(xv) Since the current account credit vouchers were released by the accused persons in discharge of their official duties, the allegation that they had prepared any false document and, thus, committed acts of forgery, must fail.

(xvi) The banker's cheques having been admittedly 100% guaranteed and the bank having not suffered any monetary loss and having also not filed any complaint, the impugned judgment cannot be sustained.

(xvii) Appellants having followed the established and longstanding banking practices, deviation therefrom would only amount to misconduct, as no *mens rea* can be attributed to them.

(xviii) The transactions in question being exceptional in nature, which according to PW-17, Katta Hari Babu, would mean "it involves large credits and large debits"; some priority was required to be given thereto

(xix) When cheques are posted (which means the amount is credited into the account), the customer becomes entitled to utilize the same, which is not subject to the clearance of the banker's cheque wherewith the accused had no role to play; and hence the impugned judgment is wholly unsustainable.

(xx) In view of the fact that Sh. Ramesh G. Ramteke, PW-18, both had the authority to verify the transaction, as well as discovered discrepancies in the date of the cheque and/or the credit and the debit voucher for which he went back to the Funds Department, but no action was taken therefor would clearly go to show that he satisfied himself that only a wrong date has been mentioned, which was otherwise usual.

(xxi) Appellants not being the authorized officers of the bank, could not be said to have any dominion over the property of the bank and thus no offence can be said to have been committed.

(xxii) PW-19, S. Ganavinayagam having testified that accused No.3, Hiten Dalal used to receive preferential treatment and for whom only the guidelines Ex.322 had been issued, any action taken pursuant thereto or in furtherance thereof must be held to be legal

and within the framework of law particularly when in relation to bankers' cheques, as was admitted by PW-20,. Anand Sinha, an officer of the Reserve Bank of India that no guidelines had been issued therefor.

(xxiii) From the deposition of prosecution witnesses, particularly those who are high ranking officers including PW-23, Sh. G. Bhalla, Chief Manger of Andhra Bank, it would be evident that the appellants had followed the usual banking practice. It has also been admitted that any transaction carried out was subject to scrutiny, as the Funds Department used to send a daily report to PW-23.

(xxiv) Accused No.5 having been shown to be involved in respect of only two transactions, namely transaction Nos. 8 and 9, and as in respect transaction of No.9, he had not been found guilty, for the self-same reasons he should have been found to be not involved in respect of transaction No.8 as well.

(xxv) There being no independent material on record to show conspiracy between A-1, A-2, A4 and A-5 on the one hand and A-3 on the other the appellants could not have been convicted for commission

of an offence under Sections 120-A and 120-B of the Indian Penal Code 1860.

(xxvi) As conspiracy is a separate and distinct offence under the Indian Penal Code, and the original agreement between the accused is a sine qua non therefor, mere knowledge of conspiracy by itself cannot be said to be sufficient in arriving at a finding of guilt in respect thereof.

Mr. U.U. Lalit, learned senior counsel appearing on behalf of accused No.3 would contend:

- (i) As no material of either any meeting or any conversation having been brought on record, the question of holding him guilty of commission of an offence of conspiracy does not arise.
- (ii) The bankers' cheques having been issued by the banks for utilization of the amounts thereof by accused No.3 and he being beneficiary thereof, there was no question of his being benefited by entering into any conspiracy with anyone.
- (iii) Charges alleged made by the prosecution being confined to non realization of the bankers cheques from the Reserve Bank of India at

the end of the day, although credit thereof had been given in the account of accused No.3, the irregularity in respect thereof was to be dealt with by different branches of the banks wherewith accused No.3 was not concerned and, thus, he cannot be said to have committed any offence.

- (iv) Even assuming that irregularity had been committed in the matter of realization of the amount under the bankers' cheques from the Reserve Bank of India, the same by itself would not lead to an inference of commission of an illegal act and consequently, an offence of conspiracy.

Mr. A. Mariarputham, learned counsel appearing on behalf of the Central Bureau of Investigation, on the other hand, submitted :

- (i) Although there is no direct evidence of conspiracy, in view of the materials brought on record by the prosecution, accused Nos. 1, 2, 4 and 5, who authorized crediting of the amounts of the bankers' cheques for the benefit of accused No.3 must be held to have misused their position so as to cause wrongful loss to the bank and wrongful gain to accused No.3, and, thus, have clearly committed the offence of

criminal breach of trust within the meaning of Section 405 of the Indian Penal Code 1860.

- (ii) Circular dated 5th December, 1990 issued by the Andhra Bank (Ext. 322) specifically providing that the transaction may be carried out in the case of Hiten Dalal (accused No.3) and the commission to be charged therefor having been prescribed and, thus, no exception having been made granting him the facility of over draft, charging of interest on any advance or over draft etc., the officers of the banks having not taken the requisite precautions by them in regard to receipt of any cheque and, thus, have violated the directions as the account of accused No.3 was credited much before the Bank received credit in respect of the said cheques in the account maintained with the Reserve Bank of India.

- (iii) The cheques/transactions would fall into three categories, namely – (1) post dated cheques and credit given therefor earlier ; (2) cheques although not in physical possession of Andhra Bank, but credit was still given to the account of accused No.3; and (3) cheques presented for clearance the next day, but account of accused No.3 was credited the previous day, all of which were wholly illegal.

- (iv) From a bare perusal of the findings of the learned Special Court it would appear that in regard to transactions 1, 2, 3, 4, 7, 8 and 10 the cheques were not in physical possession of Andhra Bank at the time when the account of accused No.3 was credited, although in respect of transaction No.1 the cheque might have been with the Andhra Bank and, thus, the charge against the appellant must be held to have been established.
- (vi) In so far as the first transaction is concerned, account of accused No.3 was credited on 18th May, 1991 but the cheque was dated 20th May, 1991 which clearly shows the intention on the part of the appellants to confer an illegal benefit to accused No.3, to which he was not otherwise entitled to.
- (vii) In respect of transaction No.10, although the account of accused No.3 was credited on 7th April, 1992 for an amount of Rs. 4 crores, the materials on record clearly show that although the cheque was dated 7th April, 1992, it was issued/forwarded only on 8th April, 1992 which is clearly demonstrative of the fact that the accused had dealt with the said cheque without there any forwarding letter having been issued by the transferee bank stating that accused No.3 was the beneficiary

thereof, the criminal misconduct on the part of the accused must be informed.

(viii) So far as transaction Nos. 2, 3, 4, 7 and 8 are concerned, it is borne out from the record that the cheques had not been received by the Andhra Bank and in any event the same having not been sent for clearance on the dates they were purported to have been received, wherefor the bank did not receive any credit from the Reserve Bank of India, the findings in the impugned judgment in this behalf are unassailable.

(ix) So far as transaction No.7 is concerned, it is established that a credit of Rs.1.5 crores had been given although the actual figure mentioned in the cheque was Rs.2,37,29,750/- which is beyond anybody's comprehension as a partial credit is not given in any banking transactions.

(x) The learned Special Judge having dealt with each of the transactions separately showing in details as to how, and on what basis his conclusions were arrived at in regard to the fact that the cheques involved in seven transactions were not with Andhra Bank when the

account of accused No.3 was credited; the impugned judgment should not be interfered with.

- (xi) It is clear from the findings of the learned Special Judge that but for the credit given on the relevant dates, the account of accused No.3 would have been overdrawn i.e. money in the account No.3 would not have been sufficient to honour cheques issued by him and presented for payment on these days, and thus, the appellants have rightly been found guilty for commission of the said offence.
- (xii) Even for a banking branch to grant immediate credit to the account of accused No.3; as at least in respect of 5 cheques, the conditions required therefor, namely the physical availability of bankers' cheques with the Andhra Bank, having been found to be missing at the point of time when the credit was given to the account of accused No.3, the appellants must be held to have committed the offence under Section 409 read with Section 120-B of the Indian Penal Code.
- (xiii) When an account holder is permitted to draw money in excess of the amount in his account, it would be an over-draft or an advance or loan from the bank to the account holder, wherefor interest would become chargeable and as no interest has been charged, the same would

amount to giving undue benefit to the account holder, and loss to the bank, particularly when in the circular letter (Ext. 322) there was no exception made in favour of accused No.3.

- (xiv) As Accused No.3 had no overdraft facility or overdraft limit sanctioned to him, he could not have indirectly obtained the facility at the behest of accused Nos. 1, 2, 4 and 5.
- (xv) In a situation of this nature, the Court is required to take a holistic view of the mater and for the said purpose the materials brought on record to prove the ingredients may have to be considered from different angles, namely – (a) if a cheque had been received the entire procedure for grant of credit had been rushed through beyond the normal banking hours so that credit may be given to the account of accused No.3; (b) the cheques are of one date and the forwarding letters of the next date, the credit and debit vouchers in the name of accused No.3 could not have been prepared in absence of the forwarding letters; (c) the requirements of accused No.3 must be held to be known to the officers of the bank, as against the cheque amount of Rs.2,37,29,750/- credit for a sum of Rs. 1.5 crores could not have been granted, which clearly goes to show that even if cheques were

received later the amounts were credited to the account of accused No.3 so as to enable him to meet his other obligations and in the process, money belonging to the bank was being used by Accused No.3 facilitated by officers of the bank using their authority.

(xvi) Appellants have not offered any explanation as to why details had not been entered in such a large number of documents, although the register must show as to who is the beneficiary of the cheques and the amount therefor, hence the impugned judgment should not be interfered with.

(xvii) Banking norms, for the purpose of attracting ingredients of Section 405 of the Indian Penal Code, are binding on its officers and for giving any undue facility given to accused No.3, the appellants could be found guilty.

JURISDICTION OF THE SPECIAL COURT

It is well known that during the period for April 1992 to June 1992, certain large scale irregularities and malpractices were detected in certain security transactions which were alleged to have been carried on by some prominent brokers in collusion with employees of various public sector

banks and financial institutions. To deal with the situation and to ensure the speedy recovery of the huge amount involved, the Parliament enacted the Special Court (Trial of offences relating to transaction in Securities) Act, 1992, “the Act” establishing the Special Courts from whose judgment this appeal comes before us.

The question which now arises for our consideration is whether having regard to the peculiar facts and circumstances of the case the Special Courts so constituted had jurisdiction to try this matter.

Indisputably Section 7, read with sub section 2 of Section 3 of the Special Courts Act, limits the jurisdiction of Special Courts only to offences relating to transactions in securities after the 1st day of April, 1991 and before 6 June 1992.

Further Section 8 provides that the special courts shall have jurisdiction to try any person concerned for the offence referred to in sub section 2 of Section 3 either as a principal, conspirator or abettor and accused persons can be jointly tried at one time, in accordance with CrPC.

Since we have already dealt with the issue as to the ambit of jurisdiction of the Special courts in R Venkatkrishnan v. Central Bureau of

Investigation (Criminal Appeal No. 76 of 2004 decided today), it is not necessary to deal with this aspect of the matter once again.

Indisputably the jurisdiction of the Special Court is wide in nature. The provisions of the Act need to be interpreted keeping in mind its object and purport. The Act being a special Act must be given its full effect.

It would bear repetition to state that A3 was one of the clients of Andhra Bank dealing with the purchase and sale of securities through the Funds Department and that he had a Current Account bearing No. 4819 mainly for the said purpose.

While dealing with the securities transactions on behalf of A3, there used to be sale as well as purchase of securities. In case of transaction of sale of securities, Accused No. 3 used to receive his payments through Bankers Cheque which were deposited with the Funds Department, and the amount of the Cheque in relation to sale in securities. It is the undisputed position that the Funds Department of the Andhra Bank was the only branch exclusively dealing with securities.

Furthermore it must be noted in this respect, that Exhibit 322 Notification of the Andhra Bank dated 5.12.1990 authorized the Fort Branch of Andhra Bank to deal with A3 in regard to securities transactions.

Besides, as we have already noted, there is ample evidence of the officers and the staff members working in the Bank of Karad, Standard Chartered Bank, Canara Bank and ANZ Grindleys Bank that they had issued these Bankers Cheque in regard to security transactions, especially in respect of Mr AD Narottam, who was dealing in securities.

Officers who are accused in the present case A1, A2, A4 and A5 are officers in the Funds Department of the Andhra Bank at its Fort Branch. As stated earlier, the said branch was the only one dealing with security transactions on behalf of the entire Andhra Bank.

The submission of the learned counsel for the appellants that the trial of offences by the Special Court is without jurisdiction and without the authority of law would, thus, have to be rejected and, in our opinion, the court rightly exercised jurisdiction in the present matter. We affirm the findings of the court in this regard.

PROCEDURES FOLLOWED BY THE VARIOUS DEPARTMENTS

In order to appreciate the issues involved in the present case it is necessary to set out in brief the working modalities of the various departments of the Fort Branch of Andhra Bank, Mumbai which were connected with transactions relating to bankers cheques. There are four such departments to which we must pay special attention; namely Funds and Investment Department (hereinafter “Funds Department”), Current Account Department, the Clearing Department and lastly Day Book Department. It is also to be noted that the Funds Department was an independent department whereas the other departments namely Current Accounts Department, the Clearing Department and the Day Book Department were under the Operations Department of Fort Branch of Andhra Bank, Mumbai.

The Funds Department which was functioning at the Fort Branch was exclusive to the said branch, and did not exist in any other branch of Andhra Bank throughout India. This department was dealing in call money and securities transactions on behalf of the bank as a whole. The functioning of the department was directly under the supervision of the head office of the bank, situated at Hyderabad.

For a proper analysis of the factual matrix of the case it would be essential to take a close look at the procedure followed in the various departments of the Bank.

FUNDS DEPARTMENT

Bankers cheques used to first arrive at the Funds Department of the Bank. These cheques which were received from the drawer bank were accompanied with a forwarding letter indicating the nature of the beneficiary and the amount of the Cheque. On receipt of the Cheque, an entry used to be made in the Bankers Cheque Receivable Register [BCR Register]. The register contain all necessary particulars with regard to the Cheque, the name of the drawer bank, the number, the date and amount thereof as also to whom the amount of the Cheque was to be credited.

Thereafter, entries used to be made in the transfer scroll, which contained credit as well as debit vouchers. The details of the credit voucher are entered in the transfer scroll on the credit side, and the details of the debit voucher are entered on the debit side. The entries in the transfer scroll used to be made on the same day on which the Cheque was received.

On the credit side, the particulars of the person in favour of whom the Cheque was received was entered, along with the amount of the cheque. On the debit side, debit voucher entries were made by debiting the BCR account with the amount of the cheque. Thereafter, the credit voucher used to be sent to the Current Account Department for posting, i.e., giving credit equal to the amount of the cheque directly to the account of the beneficiary. The debit voucher was however retained in the Funds Department.

All these vouchers were required to be signed, which in effect authorizes the credit to be given to the beneficiary of the cheque.

As per the procedure followed by the department, a consolidated credit voucher and a consolidated debit voucher used to be prepared on the basis of the entries made in the BCR Register by about 2.30 to 2.45 pm. Accordingly the voucher contained the total of all the cheques received until then.

The consolidated credit voucher was prepared, along with a slip bearing the amounts of all the cheques. The total of the vouchers and the total of all the cheques given on the slip should tally with the total of the BCR Register.

Thereafter, the consolidated credit voucher so prepared along with the slip and all the cheques used to be sent to the Clearing Department of the Bank, whereas the consolidated debit voucher was sent directly to the Day Book Department.

CURRENT ACCOUNT DEPARTMENT

The Current Account Department as has already been noted came under the Operations Department of Andhra Bank. The officers working in the Current Account Department would check the credit vouchers received from the Funds Department and then make posting on the computer which operated as per the Advanced Ledger Posting Machine [ALPM] programme. The amount shown in the credit voucher would, through the posting, be credited to the account of the client indicated on the credit voucher. At the end of the day two lists used to be generated through the ALPM system from the computer. The first list concerned Exceptional Transactions of the day which were transactions involving amounts of more than one lakh. The second list, namely the transaction listing, was for all the transactions handled by the Current Account Department on that day.

CLEARING DEPARTMENT

As has already been noted, the Clearing Department used to receive the consolidated credit vouchers along with the slip bearing the amounts of the various cheques, along with the cheques themselves from the Funds Department. These cheques, thereafter, were bifurcated bank-wise and accordingly a bank-wise slip, for the purpose of preparing the bank schedule, was made. Mr Sarkar [PW 15] used to verify the entries made in the bank schedule along with the cheques before sending them to the service centre for clearance.

A clearing rubber stamp along with the date would be put on each Cheque as well as the consolidated credit voucher. The date of the stamp would be the date on which the Cheque was received in the Clearing Department and sent to the service centre for realization. It was the job of the service centre to send the cheques to the RBI where the amount of the cheque would be credited in the account of Andhra Bank with RBI.

The cheques would then go back to the drawer bank and the bank schedule would be sent back to the service centre. In case a cheque was dishonored, it used to come back to the Clearing Department through the service centre. If no Cheque was received back by the Clearing Department

from the service centre by 4.00 pm, then it meant that all the cheques had been cleared.

Subsequently, the consolidated credit voucher would be sent from the clearing department to the Day Book Department.

DAY BOOK DEPARTMENT

Day Book Department used to ultimately receive both the consolidated credit voucher as well as the consolidated debit voucher. Though it used to receive the credit voucher from the Clearing Department, the debit voucher used to be directly received by it from the Funds Departments. Since both the vouchers were prepared from the BCR Register they would both tally with each other. Accordingly it was in this department that all the transactions of the day of Fort Branch of Andhra Bank used to be consolidated. Mr Mukesh [PW 16] used to handle the consolidation.

It was his duty to consolidate the data in the Day Book Register. It must be noted that a day book register is like a balance sheet showing the assets and liabilities of the bank on that day. Accordingly a Bankers Cheque which remained to be realized at the end of the day would be shown as an debit excess under the head of 'Bankers Cheque receivables'

A similar balance sheet through the General Ledger Balance [GLB] used to be generated through the ALPM system. This GLB gave a snapshot of the assets and liabilities on a particular day.

GUIDELINES FOR BANKERS CHEQUES

Let us now consider the relevant guidelines which relate to the dealing of the Bankers Cheques.

Mr. Sastry, the Assistant General Manager and the Chief Officer in the Central Accounts Department at the head office of Andhra Bank at Hyderabad, stated in his testimony that the head office had issued guidelines for the operation of securities transactions of constituents at Fort Branch , Bombay dated 5.12.1990 [Exb. 322].

In his testimony, he further clarified that the intention behind issuing the guidelines was to ensure that the purchase price for the transaction would be made only after ensuring that the sale proceeds of the transaction are credited in the RBI to Andhra Bank.

As per him, the Funds Department would receive the bankers cheques on account of sale transactions of the clients and enter the particulars of

these instruments and send them to the Service centre for being forwarded to the RBI for crediting the amount to Andhra Bank's account.

Guideline 12 of Exhibit 322 [Operations of Security Transactions for Constituents at Fort Branch, Bombay] specifically provides:

“Please ensure that all the cheques received towards sale transactions will be presented in Special Clearing for interbank cheques and ensure that the credit is afforded to our Bank with RBI on the same day.”

It had also been vehemently submitted before the Special Court that the said guidelines were not in respect of the Funds Department. It was furthermore contended that guideline itself does not indicate that they were pertaining to the Funds Department. The learned special judge rightly rejected the said arguments.

These guidelines were issued by the Head Office. They were issued for the purpose of operation of security transaction at Fort, Bombay Branch of Andhra Bank. The guidelines moreover specify that permission had been granted to Hiten P Dalal (A3) for the purpose of securities transactions.

Therefore, these directions were obviously binding on the persons who were working in the Funds Department. These guidelines were

exclusively meant for the Funds Department for handling securities transactions, and there was no other department or branch of Andhra Bank anywhere in India which was handling such securities transactions. As such, they were binding on the accused persons.

THE PRESENT CASE

In the aforementioned backdrop of events, let us now analyse the transactions involved herein. Ten transactions relating to drawer's cheques are in question, the details whereof are as under:

Tran. NO.	Date of Credit	Amt. Credited to a/c of A3	Date of realisation of cheque	Actual date of cheque
1	18.05.91	2 crore	20.05.91	20.05.91
2	05.07.91	29 lacs	06.07.91	05.07.91
3	05.07.91	71 lacs	06.07.91	05.07.91
4	17.09.91	61,84,925.59	18.09.91	17.09.91
5	06.11.91	86,62,500	08.11.91	06.11.91
6	06.11.91	75 lacs	08.11.91	06.11.91
7	13.11.91	1,50,00,000	14.11.91	13.11.91
8	04.12.91	7 crores	05.12.91	04.12.91
9	16.12.91	8,80,95,890	17.12.91	16.12.91
10	07.04.92	4 crore	08.04.92	07.04.92

Accused No.1 is involved in all the transactions ; Accused No.2 is said to be involved in eight transactions, i.e., transaction Nos. 1 to 6, 9 and 10; while Accused No.4 is allegedly involved in four transactions,

transaction Nos.4 to 7. Accused Nos. 2 and 4 are jointly involved in transaction Nos. 4 to 7.

Accused No.5 has not authorised any payment. He is said to be involved in transaction Nos.8 and 9 only. However, Accused No.5 has been given benefit of doubt in respect of the 8th transaction. We are, therefore, concerned herein with his involvements in the 8th transaction.

We have discussed the functioning of different departments at some length only to highlight the submissions of learned counsel appearing on behalf of the appellants that the prosecution has not been able to prove the charge of conspiracy as without involvement of other departments, it was not possible for accused No.3 to obtain any pecuniary gain out of the said transactions at all, if any.

We must also notice that the functioning of the different departments has not been seriously disputed.

The functioning of the Funds Department has been proved by PW 2, Sampada S. Amre, and the other departments' functionings by PW 11, Hemlata Nair. The same would also be apparent from the entries made in the BCR register, marked as Ext.111. So far as the functioning of the

Clearing Department is concerned, the same has been proved by PW 13, Sunil Pore. Therein, cheques are segregated bank-wise and amount wise. There appears to be some controversy as to at what time cheques are sent out for clearance. According to the appellants, the Funds Department is bound to receive cheques up to 3.00 p.m. However, according to the prosecution a consolidated statement of the cheques received upto 2.30 p.m., after preparing bank schedule by the Clearing Department are sent at about 2.45 p.m. to the service centre and the R.B.I. Appellants contend that any cheque received after the prescribed hours i.e. 2.30 – 2.45 p.m., is sent with a single voucher to another department.

It is accepted by PW 13, Sunil Pore that any cheque received up to 3.00 p.m. is also entertained wherefor a separate voucher is prepared, and the same is sent to the Current Account Department. This voucher may not be sent on that date, but must be sent on the day after.

It is also contended that in regard to the processing of the cheque for giving credit or making entries, the Funds Department evidently had no access. It is also admitted that the Funds Department personnel have no access to the ALPM machine. It also appears from the evidence of PW-7, K. Hari Babu, that the crucial function of operating the machine is of the

Current Account Department. Before signing the document relating to the posting of the cheque, an officer of the Current Department only would verify the entries made in the computer on the basis of which a print out would be taken out which is considered to be a document authorization in respect thereof.

The said witness further states that the credit granted are of two types, namely cleared credits and uncleared credits. This would be known from the vouchers received from the Funds Department.

Before us, the aforementioned procedural aspect is not at all in dispute. What is in dispute is what is meant by authorisation.

Our attention has also been drawn to certain flaws in the system pertaining to the working of the various departments but we are not much concerned with them herein

According to the prosecution, as instructions are received by the Current Account Department from the Funds Department by way of credit vouchers, signing of the same by the officer would itself amount to authorization whereas according to the accused, posting of the vouchers for clearance would amount to authorization.

The learned Special Judge in his judgment has dealt with each transaction in great details. He has considered both the aspects of the matter in respect of each of the transactions. The learned Judge, however, found that apart from three transactions, being transaction Nos. 5, 6 and 9, physical possession of the cheques might have been established, but in respect of other transactions either vouchers had been prepared before receipt of the cheques, or post dated cheques issued by the drawer banks have been entertained, in violation of the guidelines issued by the Bank. Credit had been given on the basis of post dated cheques. Two cheques were not in the physical possession of the Andhra Bank. Although the cheques were presented for clearance on the next date, the account of Accused No.3 was credited on a previous day.

Although we have been taken through the depositions of all important witnesses, as regards the functioning of the Bank, which includes not only the internal functioning of its different departments but also the banking practice developed over the years for grant of instant credit to its customers including Accused No.3, it may not be necessary to delve thereto in details.

In our considered opinion, we may proceed on the assumption that the transactions in question are exceptional transactions and a banking practice

had developed for grant of advance credit to some of the customers of the Bank, including Accused No.3.

It is not in dispute that the guidelines issued by Andhra Bank (Ext. 322) do not relate to Bankers Cheques. It is also not in dispute that the payment under the Bankers Cheques is guaranteed. It is furthermore admitted that the Funds Department used to receive cheques along with a forwarding letter mentioning in whose account the same it is to be credited and upon verification thereof, it would be sent to the Clearing Department. The cheques used to be received by the officer of the Funds Department and on the instructions of these officers that the credit vouchers were to be prepared. After preparation, the vouchers were to be handed over to the officers who, by signing them, used to authorise the transaction.

As per PW 23, Mr. G.H Bhalla, the cheques used to be sent to the Clearing Department, which in turn was responsible for sending them to the service centre.

Similarly, according to PW 12, Mr. Rajinderkumar, the debit vouchers were retained in the Funds Department and credit vouchers were sent to the Operational Department. It was on the basis of credit vouchers that entries were made in the Current Account of the Customer.

Mr. Katta Hari Babu's (PW 17) responsibility was to verify the signature of the officer on the credit vouchers after they were received by him whereafter he used to give it to his operator with an instruction for posting.

During daily proceedings, the Bank Schedules were made ready by 2.30 p.m everyday. Separate vouchers were made for cheques that were received after the consolidated voucher had been prepared.

The banker's cheques, since they related to daily transactions would never be post dated. No credit was to be given on the basis of post dated Cheque. Bankers Cheques used to be accompanied by a Covering letter, which was in the form of a letter of Authorization of the issuing bank containing details of the beneficiary of the said cheques.

PW 23, Mr. G.H. Bhalla, further elaborates that giving immediate credit meant preparing the credit voucher on the receipt of the banker's cheque and sending the said voucher to the Current Account department for posting credit to the customer's account. However, customers who had deposited banker's cheques could not demand the credit as a right on the same day before the realization. Since Officers of the Funds Department had the ultimate responsibility to give credit, they used to exercise considerable

discretion in the matter. It was the concerned officers' responsibility to satisfy himself that the credit should come on the same day.

He further goes on to say that Accused No.3 had only a Current Account in the Branch. He did not enjoy any overdraft facility. It was the Funds and Investment Department's responsibility to carry out sale and purchase of received banker's cheques on his behalf.

CRIMINAL CONSPIRACY

Appellants were charged for entering into a criminal conspiracy in the matter of commission of several offences.

Criminal conspiracy, it must be noted in this regard, is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

The ingredients of the offence of criminal conspiracy are:

- (i) an agreement between two or more persons;
- (ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.

Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/ or by necessary

implication. [See Mohammad Usman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra (1981) 2 SCC 443]

The following passage from *Russell on Crimes* (12th Edn. Vol 1) cited by Jagannatha Shetty, J in Kehar Singh and Ors. v. State (Delhi Administration), [1988 (3) SCC 609 at 731] brings out the legal position succinctly:

“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough”

Further it was noted in Kehar Singh (supra) that to establish the offence of criminal conspiracy ‘[i]t is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.’

In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself.

This Court in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659] opined that it is necessary for the prosecution to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

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

[See also K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631]

Since we have dealt with the law with respect to criminal conspiracy in detail in R. Venkatkrishnan v. Central Bureau of Investigation (Criminal

Appeal 76 of 2004 decided today) we need not deal with it hereat once again.

We may however notice that this court most recently in Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. v. C.B.I. through its Director, 2008 (14) SCALE 240 after taking recourse to law governing the field noted thus:

“55. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.”

TRANSACTIONS

To properly appreciate the prosecution's case, we must deal with all the ten transactions in some details hereinafter.

FIRST TRANSACTION

The first transaction relates to a bankers cheque bearing No. 56643 dated 20.05.1991 for a sum of Rs. 2 crores issued by the Bank of Karad in favour of Andhra Bank. Admittedly, the account of Accused No. 3 was credited with the said amount on 18.05.1991 itself even though the Cheque bears the date the 20th, on the basis of the credit voucher signed by Accused 1 and Accused 2.

The said credit voucher had been prepared by Kamble (PW 12). Mr Ramtake (PW 18) who at the relevant time was working in the Current Account department had received the said voucher on the 18th and had accordingly made the posting of Rs. 2 crore in the account of Accused 3.

It appears that while making the posting in the current account of Accused No. 3, PW 18 entertained a doubt. He verified from the Transfer Scroll and from the consolidated credit voucher the dates of the bankers cheques, since though the date on the bankers cheque was 20/05/1991 however the credit voucher had been received on the 18th itself.

The learned Special Judge in his impugned judgment opined that the cheque was not in physical possession of Andhra Bank. Reference in this regard must also be made to Exhibit 27 which was prepared in the Bank of Karad, which also goes to show that the cheque was issued on 20/05/1991.

This banker's cheque had been issued at the instance of A.D. Narottam and his account was debited on 20/05/1991. If the Cheque had been issued by Andhra Bank on the 20th, serious doubt arises as to how the credit voucher for the same could have been prepared on 18/05/1991.

Mr. Sastry (PW 22) in his evidence categorically stated that the bankers' cheques are never post-dated since they relate only to that particular days transaction. The evidence of Mr. Bhalla (PW-23) is in the following terms:

“Post dated banker's cheque cannot be issued as per the practice followed in the Andhra Bank.”

Kamble (PW 12) in his evidence stated that neither in the BCR Register of 20/05/1991 nor in the Transfer Scroll of the said date, he found any entry made as regards the aforementioned cheque for the credit or debit voucher for Rs. 2.00 crores. In the transfer scroll of 20/05/1991 as also the debit voucher, details of the said cheque were not found. They could be found only in the Transfer Scroll of 18/05/1991. The debit voucher also bore the same transfer scroll number being number 21.

Indisputably the Transfer Scroll Register (Exhibit 140) as also the credit voucher, show that the amount was to be credited to the account of

Accused No. 3. The credit vouchers, therefore, were prepared on 18.05.1991 although it bore the date 20.05.1991. Even the BCR Register for 20.05.1991 (Exhibit 139) does not show receipt of the cheque.

Appellants, however, contend that although the cheque was dated 20.05.1991, the same had been received on 18.05.1991 on the basis of which the credit voucher was prepared and sent for the purpose of posting, as per the practice of giving instant credit which, in our opinion, is not worth any credence. It is not in dispute that the normal banking practice is that an entry of each cheque would be made immediately in the BCR Register. Had, thus, the cheque been received on 18.05.1991, mention of it should have been found therein. There are no details in the entry as to whom the credit should be given to or the name of the drawer bank, the cheque number or the date of the cheque, which admittedly are required to be entered into the register on receipt of a Bankers Cheque. Such details were furnished only in the BCR Register dated 20.05.1991. The credit and debit vouchers, thus, should have contained the details of the cheque. Credit Voucher (Exhibit 136) and Debit Voucher (Exhibit 137), however, do not contain such details, and even the name of the drawer bank does not find mention.

The only thing which has been mentioned is that the amount of the bankers cheque is to be credited to the account of Accused No. 3 Hiten P. Dalal.

Mr. Raje (PW-3), who was heading the Securities Department in the Bank of Karad, categorically stated that the cheque was issued on 20.05.1991, under his signature. The credit voucher of Bank of Karad is also dated 20.05.1991. Sampada Ambre (PW-2) in his evidence stated that the entry with regard to the said cheque was made in the DD Sold Register only on 20.05.1991. Sarmalkar (PW-5), who was also an officer of Bank of Karad, and who had made an entry as regards the said cheque in the account of Mr. A.D. Narottam (Exhibit 73(1)) made a similar statement that his account had been debited for Rs. 2 crores on that date.

Our attention, however, was drawn to a purported admission made by Mr. Raje that sometimes, Mr. Narottam used to give post-dated cheques and the staff would prepare the required documents on the next day. Mr. Narottam has not been examined by the defence. As the witness categorically stated that the said cheque was issued on 20.05.1991 itself, after making an entry in the DD Sold Register and debiting it in the account of Mr. Narottam, the question of issuance of the post dated cheque would

not arise. The said purported admission does not relate to the cheque in question.

Moreover, as indicated hereinbefore, the entries made in the BCR register, consolidated credit voucher (Exhibit 132) are clear pointers to the fact that the cheque was received by Andhra Bank only on 20.05.1991. The cheque for a sum of Rs. 2 crores of Bank of Karad also finds mention in the bank schedule dated 20.05.1991 and not in the Bank Schedule dated 18.05.1991. It would bear repetition to state that PWs 22 and 23, furthermore stated that bankers cheques are never post dated.

Moreover, if an account is overdrawn, it amounts to and overdraft and for the same, the account holder is liable to pay interest. No interest was charged from the account of A 3 in this regard. Loss to the bank on account of interest was Rs. 20,274/-

Therefore, we are of the opinion that the involvement of Accused Nos. 1, 2, and 3 as regards the said transaction has sufficiently been established by the prosecution.

SECOND AND THIRD TRANSACTION

So far as the 2nd and 3rd transactions are concerned they involve bankers cheques bearing Nos. 664786 dated 5/7/1991 amounting to Rs.29 lac and 664785 dated 5/7/1991 for Rs. 71 lac issued by the Bank of Karad in favour of Andhra Bank.

Indisputably a single credit voucher for Rs. 1 crore authorising the crediting of the said amount into the account of accused No.3 was issued by accused No.2. The corresponding debit voucher dated 05.07.1991 was also for Rs. 1 crore and it was in the handwriting of Accused No. 2 and signed by both accused No. 1 and 2. This transaction was also included in the list of exceptional transactions for 05.07.1991. Therefore, it is clear that on 05.07.1991 Accused No. 2 authorised the current a/c department to give credit of the amount of Rs. 1 crore to the account of Accused No. 3.

The finding of the learned Special Judge, relying on or on the basis of the evidence of PW-2, Sampada S. Amre, that the said cheques were received on only 6/7/1991 in the clearing department and sent for clearance on that day, even though the amount had been credited with A3 on the 5th itself, cannot be sustained.

The question before the judge was whether the said Cheque had really been received by the Funds department on the 07/07.1991. For this the

learned Special Judge also found that in the BCR Register dated 5/7/1991 as also the transfer scroll, no details of the said cheques had been given, although in the BCR Register dated 6/7/1991 two separate entries of the cheques giving details like name of the bank, cheque numbers, dates and amounts had been mentioned. The forwarding letter of the drawer bank has not been exhibited. From the daily register it appears that the cheque for Rs. 29 lacs and 71 lacs appear as the last entries [Exts. 28(1) and 28(2)]. The transfer scroll also show that the said banker cheques were sent at the end of the day. They find mention in Exhibit 153 at the places marked Exts. 153(1) and 153(2). Even in Ext. D-28 of Andhra Bank dated 5th July, 1991 they had been shown as the last entries. From Exts. 153(1) and 153 (2) it further appears that the transactions in relation to the said cheques were entered into on 5th July, 1991 as the last transactions of the day. They had been forwarded to the current account department as has been mentioned earlier. The amount of both the cheques were clubbed together to make it Rs. 1 crore in toto. From these documents, it is evident that proceeds of the cheques were credited to the account of accused No.3 on 5th July, 1991 itself. From Ext. A-1(14), Current A/c. Register, ALPM II, it would furthermore appear that posting of the cheques was done by the Current Department at Sl. 179.

The fact that the cheques were dated 5th July, 1991 is not in dispute. It is also not disputed that the voucher Ext.151 was prepared on 5th July, 1991.

PW-15, Ragvinder Sarkar, stated :-

“Unless and until the cheque issued in favour of Party are cleared, in clearing and the account of the drawee with the RBI is credited to the account of that bank with RBI, credit of the amount of that cheque is not given to the account of that party.”

Although according to him, the said cheques were not sent for clearance on that date as per the schedule, in his cross-examination he stated:-

“20. [...] The amount is credited to the account of the client by making entry in his current account. We do not maintain any Clearing Register in Clearing Department with regard to the cheques received from the Funds and Investment Department. There was no procedure to maintain such Register.”

He further accepted that there was no practice of issuing acknowledgement to the Funds Department for receiving cheques from them or vice versa.

According to him the Clearing Department does not accept cheque from the Funds Department once the bank schedule is sent to the Service Centre. He furthermore stated :-

“Functioning of the clearing department was to send for clearing whatever cheques are received from the Funds and Investment Department or from other department. No department can get the cheque cleared by sending them directly to the service centre by-passing the Clearing Department.”

The Learned Special Judge should have given proper attention to the evidence of Mr Kher (PW 1) an agent, Mr Raju (PW 3) who was working as the Manager, and Sudhakar Ali (PW 4) the clerk working with the Bank of Karad which show that both these cheques had been prepared and issued as per the instructions of AD Narottam on 05.05.1991. The learned Special Judge placed unnecessary reliance on the entries in the BCR Register of Andhra Bank to prove the fact that the cheques had not been received on 05.05.1991.

Only because the total amount of the cheques and the name of the drawer bank had been entered without the cheque numbers, this by itself would not lead to the conclusion that the cheques were not received on the

day as it has not been disputed that the cheques used to be received by the Funds Department upto 3.00 p.m. The learned Special Judge in arriving at the said finding ignored the working of the Current Account Department. It furthermore failed to make a distinction between cleared credit and uncleared credit. Those credits which come within the purview of cleared credit would be known only at the end of the day as all transfers which come within the purview of the “exceptional transactions” were known to the high ups of the bank. The practice of instant credit stands accepted.

The current account officers knew the distinction between cleared credit and uncleared credit. If the credit was uncleared, it would be posted as such and no withdrawal would be permitted unless there was authorization by officers and managers of the operation. The funds department indisputably does not control the posting of credit (both as cleared and uncleared credit) and also does not control withdrawal against uncleared credit. These functions are discharged by the Current Account Department.

The guilt of the appellants must be adjudged on the basis of all the materials brought on record. The only lacunae which has been pointed out that the details of the cheques had not been mentioned in the BCR Register and the amount of both the cheques had been clubbed together.

PWs. 11 and 12 were the best persons to state before the Court as to whether the said cheques were received on those days or not. PW-13, Sunil Pore, Clerk in the Clearing Department and PW-15, Ragvinder Sarkar, Office in the Clearing Department stated that they had no knowledge as to when the cheques were received. The prosecution, thus, failed to bring on record any clinching evidence to show that the cheques were received only on 6th July, 1991 and not a date prior thereto.

We may at this stage also notice the statement of PW-4, Sudhakar A. Ail, Clerk in the Securities Department, Bank of Karad, which reads :-,

“I do not know when Mr. Raje handed over the cheque and the covering letter, Ex. 12 and 17 to Mr. Narotam. It is not correct to say that Mr. Raje used to comply with the directions of Mr. Narotam giving go by to the Banking rules and regulations.”

PW-12, Rajendrakumar V. Kamble had made the said entry. According to him it came within the purview of the bank practice. He further stated that as the Clearing Department refused to accept the cheques on 5th July, 1991 they were returned to the Funds Department where they were separately recorded and a separate BCR was prepared and sent to the Clearing Department. According to the said witness it was a practice of the

bank to send refused cheque through a separate voucher so as to make it distinct.

It is furthermore important to note that because of the urgency, details, such as the cheque number, date and beneficiary remained to be entered in the BCR Register.

The learned Special Judge has also ignored the documents on record which demonstrate that in respect of several other transactions the authenticity and bona fides of which are not in dispute, the details of the RBI cheque were not to be found in the BCR Register. This is apparent from Exhibits [141, 154, 146] and hence absence of certain details by itself may not give rise to an inference that the cheque had not been received.

Moreover if mere absence of details in the current account credit voucher was enough to give rise to an inference that the cheque in fact had not been received, the officers of the current account department would have raised a query thereabout and would not have authorized posting credit in the clients accounts.

In our opinion the learned judge erred in coming to the conclusion that the total amount of the two cheques was written in the BCR Register and in

the current account credit voucher and the two cheques were in fact not received on 05.07.1991. He ignored that some times, the total amount of the cheques was written without specifying the amount of the individual cheque.

It has been ignored by the special judge that had the Funds Department sent the current account credit voucher without there being a cheque, the same could have been easily discovered as the cheque in question facilitated high value transactions. In respect of high value cheques a separate record in the form of “Exceptional transactions” is maintained. The Exceptional transactions are verified and signed by the Chief Manager, Bhalla and also verified and signed by the Current Account officer. Had there been any irregularity on the part of the Funds Department the same would have been noted both by the current account officers and the Chief Manager, Bhalla and they would obviously have raised an objection.

The learned judge of the Special Court has wrongly not attached any importance to the exceptional transactions record on the ground that there are too many transactions and therefore officers concerned are not expected to scrutinize the said list. This inference was against the evidence on record which show that there used to be only a few exceptional transactions every

day (at the most 7 to 8 in a day) and it is impossible that the officer signing the said note would not note the transactions in question.

The learned judge seems to have mixed the exceptional transactions with the transaction listing, which contains all the transactions of the day sent to the current account department. However exceptional transactions are very few in number and the very purpose of maintaining separate vouchers for such transactions is to bring to the attention of the superior officers for their authorization.

The ALPM manual clearly requires the manager to scrutinize the exceptional transactions to ensure that there has been no unauthorized use of discretionary power and to sign the exceptional transactions list after proper scrutiny.

The Special Court, in our opinion, committed an error in opining that the cheques were not received on 5th July, 1991. Furthermore the Current Account Department, could not have given credit for the two cheques since the computer system had an inbuilt mechanism which would not allow credit therefor before the clearance. It was, thus, for the Current Account Department to take necessary steps either for obtaining proper authorisation or to deny mutual operation in respect thereof.

It is, therefore, evident that the prosecution has merely shown some irregularities. The learned Special Judge has drawn inference, although there exists a missing link as regards the date of receipt of the cheques and the date of preparation of the vouchers. It must be borne in mind that we are dealing with a case where conspiracy is alleged.

There is no direct evidence of conspiracy, there are only circumstantial evidence. The approach of this court for recording an order of guilt against an accused on the basis of circumstantial evidence is well known.

In C. Chenga Reddy v. State of A.P., [(1996) 10 SCC 193], this Court held :-

“46. [...]In our opinion none of the circumstances relied upon by the prosecution connect the appellants with the crime alleged against them. The circumstances have not been proved beyond a reasonable doubt and the circumstances taken collectively cannot be said to be compatible only with the hypothesis of the guilt of the appellants and totally incompatible with their innocence. Under the circumstances we are of the opinion that the prosecution has not established the case against the appellants beyond a reasonable doubt. ”

This Court further held :-

“52. [...] There have been some irregularities committed in the matter of allotment of work to the appellant or breach of codal provisions, circulars and departmental instructions, for preparation of estimates etc. and those irregularities give rise to a strong suspicion in regard to the bona fides of the officials of the department and their link with the appellant, but that suspicion cannot be a substitute of proof. The courts below appear to have drawn inferences by placing the burden of proving innocence on the appellant which is an impermissible course. In our opinion none of the circumstances relied upon by the prosecution against the appellant can be said to have been proved satisfactorily and all those circumstances, which are not of any clinching nature, even if held to be proved do not complete the chain of evidence so complete as to lead to an irresistible conclusion consistent only with the hypothesis of the guilt of the appellant and wholly inconsistent with his innocence. The prosecution has not established the case against the appellant beyond a reasonable doubt.”

Thus, as the fact that the cheques were not received on 5th July, 1991 has not been proved, there is no reason as to why benefit of doubt should not be given to the accused herein.

Moreover in our opinion the practice of instant credit stands accepted.

The practice has been established though the evidence of Sastry (PW 22) and of (PW 23) Bhalla. Thier evidence clearly shows that this practice

was known to the head office and to all the superiors officers of the Bank. It is also not in dispute that the payment against Bankers cheques is 100% guaranteed. The accused have followed the practice that was in vogue for a long time.

The learned Special Judge has ignored and has not taken into account the documentary evidence on record, which shows that the cheques in respect of transaction 2 and 3, were received on the dates on which the transaction was made. We are therefore of the opinion of giving the benefit of doubt should be given to all the accused as regards transaction Nos.2 and 3.

FOURTH TRANSACTION

The fourth transaction relates to bankers cheque No.078398 dated 17.09.1991 amounting to Rs.61,84,925.59 ps. which was issued by Canbank Financial Services Limited, a sister concern of Canara Bank in favour of Andhra Bank. As per the evidence of PW 10 Vernekar on 17.09.1991 Canbank Financial Services Limited of Bangalore purchased 11% Bihar Loan for a total amount of Rs. 6184925.59/- from the Andhra Bank, Fort Branch, Mumbai. A 3 was the broker for this transaction. CANFIN had issued

Bankers Cheque dated 17.09.1991 for the aforesaid amount in favour of Andhra Bank; A3 being the beneficiary thereof.

The credit voucher for the said sum for the purpose of crediting the amount in the account of accused No.3 was signed by accused No.2. The amount was credited in his account on the basis thereof. Bankers cheque, however, was received in the Clearing Department on 18th September, 1991.

The learned Special Judge noticed that there was no entry of the said cheque in the Bank Schedule dated 17th September, 1991 and entry of the said account is contained in Bank Schedule dated 18th September, 1991. On the basis of the said purported irregularity it was found by the learned Special Judge that the bankers cheque in question was not in physical possession of Andhra Bank.

We may, however, notice that PW-11, Hemlata G. Nair, in her evidence categorically stated that entries in respect of bankers cheques were made on that date and the debit and credit vouchers are prepared and a consolidated debit voucher was also prepared on that date. She further stated that entries were made in due course of business on 17th September, 1991. Ext.163, the clearing schedule which was prepared on 18th September, 1991 shows that the same was presented in high value clearing at 12 noon.

The Special Judge ignored the practice that in the event the cheque had not been sent to the Service Centre for clearance the same used to be returned to the Funds Department and used to be sent again on the next day with a separate voucher.

The BCR Register dated 17.09.1991 indicated that there was an entry with regard to the said Cheque not only as to the amount of the Cheque but also of the Cheque number, date and name of the A3 being the beneficiary thereof. Furthermore there was no entry of the said Cheque on the 18.09.1991.

The learned Special Judge could not have rejected the defence of the accused that the Cheque had in fact been received very late on 17.09.1991 and was therefore sent along with a single credit voucher to the clearing department but the clearing department returned it and therefore it was sent on 18.09.1991 i.e on the next day to the clearing department again with a single credit voucher. The only ground on which the learned judge rejected the defence was that in the normal course of the banking business the Cheque should have been included in the very first consolidated credit voucher which was sent to the clearing department on the 18.09.1991 but it

was sent along with a single credit voucher which goes on to show that it had been received quite late on 18th itself.

The said reasoning in our opinion is not acceptable.

The learned judge has overlooked the fact that the said cheque was sent in high value clearing i.e at 12 O'clock on 18.09.1991, i.e., before 2.45 pm. The clearing schedule of the high value clearing is at [Exhibit 163]. Therefore, with respect, the learned Judge wrongly held that the cheque dated 17.09.1991 was received on 18.09.1991 at 2.45 pm. The learned judge had also ignored the material brought on record that on 18.09.1991 there was no entry of the said cheque in the BCR Register, and therefore it stands established that the cheque was sent to clearing department on 17.09.1991. The clearing department could not present the said cheque on 17.09.1991 but had presented it on 18.09.1991 in the high value clearing. Hence, the single BCR credit voucher was resubmitted on 18.09.1991 upon intimation by clearing department of presentation of the said cheque in high value clearing.

We have noticed in some details hereto before the functionings of the departments of the bank and the banking practice. on the basis thereof the

learned judge should have given benefit of doubt to the accused with respect to this transaction too.

FIFTH AND SIXTH TRANSACTIONS

These two transactions relate to the cheques for Rs. 75 lacs from the Bank of Karad and Rs. 86,62,500/- from ANZ grindleys Bank. Both the said cheques are dated 6.11.1991. They were realized only on the 8.11.1991; 7.11.1991, being a Bank holiday,

PW2 Sampada Ambre states that the first bankers cheque was issued on 6.11.1991 at the request of Sri AD Narottam by debiting his account with Rs. 75 lacs as per his statement of account pertaining to the securities transaction.

To the similar effect is the evidence of Kanchan (PW 9) of the Standard Chartered Bank which shows that the cheque for Rs.86,62,500/- was issued by the ANZ Grindlays Bank in favour of Andhra Bank relating to the transaction of Mr BR Chhada who had purchased five lacs equity shares of HCL limited from A3.

The BCR Register in this regard discloses all the requisite details including the cheque number. The voucher made in regard to the said cheque

was signed by accused No. 4. The debit voucher was signed by Accused Nos. 1 and 2.

We need not go into the details of the said transaction since the learned Special Judge has already given the benefit of doubt to the accused that the said cheques had been received in the funds department on 06.11.1991 on the basis of clear entries made in the BCR Register and the transfer scroll giving the details of the cheque. We do not find any reason to interfere with the said finding. We agree with the observations of the Special Judge that all the evidence on record would only go on to show that the cheques had in fact been received on the 6.11.1991.

The next question which arises for our consideration is as to whether the said cheque had been sent for the clearing department on the date of its receipt itself or on 08.11.1991.

The learned Special Judge in regard to the said question has clearly held that the two cheques were sent to the clearing department on the 8th only and not on the 6th.

The learned Special Judge, however, in our opinion, erroneously rejected the argument advanced on behalf of the appellant that the said

cheques were sent along with a single voucher but they were returned and therefore were again sent back to the clearing department on 08.11.1991. As long as there is the slightest opportunity of two views possible, in our opinion, the one in favour of the accused must be adopted.

All the materials on record were required to be considered having regard to the fact that 7.11.1991 was a bank holiday and accordingly the credit voucher could only have been sent on the 8.11.1991

In our opinion, the learned Special Judge was, with respect, wrong in concluding that even though the two cheques were probably received on 06.11.1991, they were not sent for clearing on 06.11.1991.

In our considered opinion, despite evidence leading to the effect that cheques were received on 06.11.1991, the finding to the contrary was clearly erroneous. We are, therefore, of the opinion that the prosecution has not been successful in establishing the involvement of the accused as regards these transactions.

SEVENTH TRANSACTION

So far as the seventh transaction is concerned, a bankers cheque bearing No. 22687 dated 13.11.1991 for a sum of Rs. 2,37,29,750/- was

issued by the Standard Chartered Bank in favour of Andhra Bank. Although a credit voucher for the entire sum should have been prepared, a credit voucher only for a sum of Rs. 1.50 crores authorizing the amount to be credited in the account of Accused No. 3 was prepared. It was signed by Accused No. 4 Ramesh Vardraya Shenoy. The Current Account of the Accused No. 3 was credited on the same day on the basis of the said credit voucher. The said amount was duly credited in his account, as would appear from Exhibit 195.

It is not in dispute that the credit of Rs. 1.50 crores was given on an ad hoc basis. Had such credit not been given, the account of Accused No.3 would have stood overdrawn by Rs. 1,39,86,304/-. The amount of difference, viz., 87,29,750/, however, was credited on the next day, i.e., on 14.11.1991. The credit voucher was again signed by Accused No. 4. Indisputably, the said bankers cheque was received on 14.11.1991 and sent for clearance on the same day. No interest was charged thereupon. In the said transaction, bank suffered a loss of Rs. 9,760.27 by way of interest.

A finding of fact has been arrived at by the learned Special Judge that the bankers cheque was not in physical possession of the officers of the Andhra Bank on 13.11.1991 stating:

“58. From this evidence, it clearly appears that the Cheque / Pay Order [Exhibit – 40] was not received in the Andhra Bank on 13.11.1991 and the same was not forwarded to the Clearing Department for clearance i.e. for ensuring the credit of that cheque. On 14.11.1991 there is entry in the B.C.R. Register of the entire amount of the cheque i.e. Rs. 23729750/-. On that day credit voucher [Exhibit – 78] was prepared for the amount of the difference between the amount of the cheque and the amount of Rs. 1.5 crores which was credited on 13.11.1991 to the account of Hiten P. Dalal. The credit voucher, therefore, is for Rs. 872975/-...”

No adequate or sufficient explanation in regard thereto was furnished by the concerned appellants. Admittedly, there was no entry in the BCR register with regard to the said cheque. There are no details in the Current Account Credit Voucher.

It has been submitted by the learned counsel appearing on behalf of the appellants that the cheque was received late on 13.11.1991 but was not sent for clearance. It was furthermore submitted that the BCR Register was not exhibited in the evidence.

From the records as also the findings of the learned Special Judge, it is evident that the cheque was not received in the Funds Department on 13.11.1991. The entry of this cheque finds place as per Exhibit 77 only on

14.11.1991. The details of the said transaction shows that the beneficiary thereof was the Accused No. 3 and other details have also been mentioned therein. The credit voucher, according to Hemlata Nair (PW-11) was sent to the Current Account Department under the signature of the Accused No. 4. Ordinarily, it should have contained the details, but, as noticed hereinbefore, it was only for a sum of Rs. 1.50 crores. A debit voucher (Exhibit 75) was issued wherein it was stated:

“To receive 1.50 crores cheque, but received cheque for Rs. 23929750 – erroneously not presented in the clearing. Presented on 14.11.1991.”

Mention of both the credit and debit vouchers finds place in Scroll Register (Exhibits 76(1) and 76(2)). The Transfer Scroll entries (Exhibits 76(3) and 76(4)) also show that the credit as against the cheque at Exhibit 40, that was given to the account of Accused No. 3, was only Rs. 1.50 crores although the cheque was for a sum of Rs. 2,37,29,750. Although the cheque was not sent to the clearing department for clearance on 13.11.1991, a pay order/ cheque (Exhibit 82) was issued in favour of Standard Chartered Bank for and on behalf of Accused No.3 upon debiting the amount mentioned therein.

In the aforementioned state of affair, the learned Special Judge rightly arrived at the conclusion that the cheque might not have been in the physical possession of Andhra Bank on 13.11.1991. Even Sunil Pore (PW-13) in his evidence categorically stated that the consolidated credit voucher was received from the Funds Department on 13.11.1991 (Exhibit 128) in terms whereof 14 instruments had been received from the Funds Department. The bank schedule which was marked as Exhibit 159 showed that the total amount of the said transaction tallied with the consolidated credit voucher (Exhibit 128). However, the bank schedule also did not include the amount of the cheque / pay order of the Standard Chartered Bank.

It is difficult to conceive that such a transaction could be cleared by the Accused bonafide. It was evidently done with an object of giving an ad hoc credit of Rs. 1.50 crores to Accused No.3 which he must have badly needed on 13.11.1991. Otherwise, as it would appear not only from the evidence of Ms. Hemlata Nair (PW-11) but also from that of Mr. Ramteke (PW-18), that his account would have been overdrawn on that day by Rs. 1,39,86,304.44. Mr. Bhalla (PW-23) in his evidence stated that no reference in relation to the transaction was made to him. Mr. Sastry (PW-22) also in

his evidence categorically stated that the amount was overdrawn, and therefore, it attracted levy of interest.

The debit voucher dated 13-11-1991 is for 1.5 crores and is signed by both A-1 and A-4. It is not difficult to infer that A1 has also played an equally active role in ensuring an ad-hoc credit of Rs. 1.5 Crore into the Account of Accused No. 3. In her evidence, Ms. Hemlatha Nair has identified the signature of A1 in the debit voucher (Ext. – 75). Therefore, it is not difficult to perceive that A-1 is involved in this transaction.

The learned counsel for the appellant would contend that the error was an inadvertent one and as the said error was detected, it was re-submitted on the next day. We do not think that the said explanation is sufficient. We, therefore, are of the opinion that the involvement of the concerned appellants – Accused No. 3 and 4 is established beyond any doubt with regard to the said transaction.

EIGHTH TRANSACTION

The Eighth transaction pertains to Cheque No. 193889 dated 04-12-1991 for Rs. 7 Crore issued by Bank of Karad, Fort Branch, Bombay. [Ext.32] PW2, Ms. Sampada Ambre, who was working in Bank of Karad

during the time of the transaction, in her evidence, affirms that she had prepared the said Cheque and that was signed by PW-5, Mr. Sarmalkar.

It is being claimed on behalf of the Petitioners that the said Cheque was received by Andhra Bank on 04-12-1991.

A perusal of the record reveals that the Cheque was dated 04-12-1991. The amount for the same was credited to the Account of Accused on 04-12-1991 but the Cheque was presented for clearing only on 05-12-1991. However the irregularities in the records should have been subjected to close scrutiny to determine collusion, if any, between the Accused persons for the purpose of serving a common object.

In her deposition, Mrs. Hemalatha Nair, (PW-11) Clerk, Funds Department of Andhra Bank, Fort Branch, states that she had prepared the Credit Voucher [Ext. 85] dated 04-12-1991 for Rs. 7 Crore favoring C.D. No. 4819 and the Debit Voucher [Ext. 86] dated 04-12-1991 for the same amount on being instructed by her officer.

Curiously, both the entries only mention of a Cheque received from Bank of Karad, without any reference to its number or date. She also deposed that the vouchers were scrolled at Scrl. No. 12 on Pg. No.90 of the

Transfer Scroll Register [Ext 88(1) and (2)] and authorized by Accused No.1.

As per Katta Hari Babu [PW-17], on the basis of the same credit voucher, he credited to the account of Accused No.3, an amount of Rs.7 crores. The same is corroborated by his Statement of Account of the same date. [Ext. 195 (11)] However, according to Mr. Sunil Pore, PW-13, in the Bank Statement dated 04-12-1991, no entry of the said Cheque may be found. Similarly, a perusal of the Cheque Clearance Register of Andhra Bank Dt. 04-12-1991 also reveals that there is no mention of the Cheque issued by Bank of Karad in it.

Further in her deposition, Ms. Hemalatha Nair, (PW-11) states that the said Cheque was received by Andhra Bank only on 05-12-1991 and that at Pg. 122 of the BCR Register, dated 05-12-1991, an entry with all the details of the said Cheque was made.

As per her evidence, on 05-12-1991, the consolidated Credit Voucher which included the Cheque amount of 7 Crores was prepared by Shailendra Rane and was sent to the Clearing Dept. for clearing. The BCR Register, dt. 05-12-1991, which tallied with the Consolidated Credit Voucher prepared by Sri. Shailendra Rane on the same day, was initialled by Accused No. 2.

She deposed further that on 05-12-1991, as per the instructions of accused No. 2 and 5, she prepared the BCR Debit Voucher which does not include the Cheque amount of Rs. 7 Crore. She identified the handwriting, signatures and initials of herself, Accused No.1, 2 and 5.

Had the said credit been not given, the account of the Accused No. 3 would have been overdrawn by Rs.3,01,92,461.90. No interest was charged as a result whereof the bank suffered a loss of Rs. 45,547.90.

Thus, it is evident that the amount of the cheque was credited to the account of Accused No.3 on 04-12-1991, even without having the same in the possession of the bank. It is also clear from the perusal of the records that certain irregularities are present in the records pertaining to the cheque which, undoubtedly involved Accused No. 1 and 2. We are, thus, of the opinion that Accused No.1 and 2 have undoubtedly assisted in ensuring the credit of Rs. 7 Crore in the account of Accused 3.

The allegation against Accused No.5 is only regarding signing by him the Consolidated Debit Voucher for a lesser amount even when it was not tallying with the total amount of the cheques recorded in the BCR Register on 05-12-1991.

Accused No. 5, contended that he had done so because the amounts were not tallying with and was less by seven Crores. His further contention was that the Consolidated Credit Voucher was prepared by Ms. Hemalatha Nair and put up to him for his signature, and he signed it keeping with the requirements of double entry system and to avoid double debit as the same had already been debited on 04-12-1991.

We may also notice that accused No.5 was acquitted by the Trial Court in respect of transaction dt. 16-12-1991 despite the Consolidated Debit Voucher not tallying with the total as reflected in the BCR Register. Thus, being only involved in these two transactions having similar facts, and being acquitted in one, he is, in our view, entitled to the same benefit in the other transaction too. Benefit of doubt given in respect of one transaction would apply on all fours to the other, as both of them are of similar nature. Further, it also needs to be considered that the prosecution has not been able to produce any evidence to prove Accused no.5's involvement in the conspiracy. Therefore we are of the opinion that the learned Special Judge erred in holding that accused no.5 was a party to the conspiracy with regard to the instant transaction.

NINTH TRANSACTION

It related to a bankers cheque bearing No. 231381 dated 16.12.1991 for a sum of Rs. 8,80,95,890.41 drawn on the Standard Chartered Bank in favour of Andhra Bank. The entry in BCR Register of 16-12-1991 (Ext. 91) has an entry with full details of the said cheque including the cheque number and the date. However, the beneficiary is shown as “Current Account ABFS” instead of Accused No.3. A credit voucher was prepared for the aforementioned sum which was signed by Accused Nos. 1 and 2. Accused No. 3’s account was credited on 16.12.1991. The banker’s cheque, however, was received in the Clearing Department on 17.12.1991 and sent for clearing on that day. Had the credit of Rs. 8,80,95,890.41 not been given, the Accused Nos. 3’s account would have been overdrawn by Rs. 3,88,54,765.49.

The evidence brought on record clearly indicate that the cheque was received on 16.12.1991. It is possible that the cheque was received late and the same was sent with a single credit voucher. As the Clearing Department refused to accept the same, it was once again sent to the Clearing Department with the consolidated voucher (Exhibit 122) on 17.12.1991. The learned Special Judge opined that if the cheque was received on 16.12.1991, the same should have been sent to the Clearing Department for

clearance on the same day and as such the learned Judge has inferred that the cheque must have not been received before 3.00 p.m. Had the credit voucher been returned, as has been contended, it was obligatory on the part of the concerned appellants to intimate the Current Account Department so as to enable them to, through posting of the credit voucher give credit to the account of the Accused No. 3. It was evidently not done. In the said transaction, loss of interest to the bank was for Rs. 57,324.

The learned trial judge has rejected the contention of the accused that the cheque was received late and it was sent to the clearing department with a single credit voucher and since the clearing department refused to accept the same, it was once again sent to the clearing department with a consolidated credit voucher (Ext. - 122) on 17-12-1991 on the grounds that even if it was true, it was the duty of the accused No. 1 and Accused No. 2 to immediately intimate the Current Accounts department to withhold posting of the credit voucher for giving credit in the Accused 3's account.

In relation to this transaction also, it appears to us that the learned Special Judge failed to consider the practice of "Clear" and "Unclear Credit" to which we have already made reference hereinbefore and for the sake of brevity, we restrain ourselves from elaborating thereon once again.

However, we are constrained to mention that is difficult to accept that a mere failure to intimate the current accounts department to withhold posting when there existed a mechanism of clear and unclear credits, would be sufficient to establish conspiracy. We do not, therefore, agree with the learned special judge's finding with respect to this transaction also and, therefore, of the opinion that benefit of doubt should be given to all the accused herein.

TENTH TRANSACTION

The tenth transaction related to a banker's cheque bearing No. 102956 dated 7.04.1992 for a sum of Rs. 4.00 crore drawn on Bank of Karad Ltd. in favour of Andhra Bank. The credit voucher was prepared for the aforementioned sum which was signed by the Accused No. 2. Accused No. 3's account was credited on 7.04.1992. The bankers cheque was received on 8.04.1992 in the Clearing Department and was sent for clearing on the same day. Had credit of Rs. 4.00 crore not been given, Accused No. 3's account would have been overdrawn by Rs. 2,77,95,280.95. Loss to the bank on account of interest was Rs. 26,027.

The finding arrived at by the learned Special Judge is that the cheque was issued on 8.4.1992. It appears that on the day on which the cheque was issued, there was no sufficient balance in the account of Shri A.D. Narottam. His account was debited only on 8.4.1992.

The evidence of Mr. Raje (PW-3) is that he had signed the cheque on 7.4.1992. He also signed the forwarding letter (which was marked as Exhibit 17) on the same day. Credit voucher was, however, prepared by Sudhakar Ali (PW-4) on 8.4.1992.

It is not in dispute that this transaction pertained to purchase of securities from Andhra Bank for Mr. A.D. Narottam, who was a share broker. As would appear from the evidence of Sudhakar Ali (PW-4), an inter-bank credit voucher was prepared on the same day on which the cheque was issued.

In his evidence, Mr. Sarmalkar (PW-5) also stated that as Mr. Narottam did not have sufficient amount in his credit, the cheque as also the forwarding letter was actually issued on 8.4.1992 although they were bearing the date 7.4.1992.

The BCR Register (Exhibit 105) also did not show that there was any entry in regard to the said cheque on 7.4.1992. No such entry is found even on 8.04.1992. The rubber stamp of Clearing Department, however, showed the date to be 8.04.1992. The corresponding debit voucher (Exhibit 98) also provides the details of the said cheque. The credit voucher (Exhibit 100) on the basis whereof the said sum of Rs. 4.00 crores was credited to the account of Accused No. 3 on 7.04.1992, however, did not mention the other details of the cheque of Bank of Karad. It mentioned the name of the bank as Standard Chartered Bank which is evidently not correct. The said credit voucher was signed by Accused No. 2. Therefore, the basis on which the credit voucher was prepared on 7.04.1992 has not been explained.

Contention of the appellant that in the credit voucher, the name of the bank was wrongly mentioned as the Standard Chartered Bank in stead and place of Bank of Karad cannot be accepted. Even the BCR Register does not show that a cheque for the aforementioned amount has been received. The bank schedule dated 7.04.1992 also does not indicate receipt of such a cheque from either of the said banks on 7.04.1992. The consolidated credit voucher also does not bear any entry. It, therefore, appears that the said credit voucher was wrongly prepared for a sum of Rs. 4.00 crores

mentioning the name of the drawer bank as Standard Chartered Bank. False entry was also made in the Transfer Scroll (Exhibit 102) showing the name of the drawer bank as Reserve Bank of India. Even in the BCR Register of 8.04.1992, no entry is found as regards the said cheque (Exhibit 12). The amount of the said cheque was, however, included in the consolidated voucher dated 8.04.1992 (exhibit 106) which was sent to the Clearing Department. The bank schedule dated 8.04.1992 also shows the receipt of the cheque which was forwarded for clearance on the same day.

It is, therefore, evident that the concerned accused were not aware about exactly where the money came from. It is wholly unlikely that the experienced bank officers would make such a glaring mistake with regard to the name of the bank as credit vouchers and debit vouchers are prepared only on the basis of the cheque as also the forwarding letter.

Katta Hari Babu (PW-17) in his deposition stated that had the said amount not been credited, Accused No. 3's account would have been overdrawn by the amount of Rs. 2,77,95,280.95.

Thus, it is evident that Accused 2 prepared the credit voucher dated 07-04-1992 [Ext. – 100] for the purpose of giving credit to the account of

Accused 3 for the furtherance of the objectives of the conspiracy between them.

APPLICATION OF THE PRINCIPLES OF CRIMINAL CONSPIRACY

Applying the said principles to the facts and circumstances of the present case it must be held that with respect to the transactions involved in the present case, the ultimate beneficiary was Hiten P. Dalal (Accused No.3). Amount received from different banks by the Andhra Bank were credited to his account as a result whereof the cheques issued by him in favour of third parties could be honoured. But for the said credits made in his account, it would have been overdrawn on a few occasions.

The nature of transactions, the manner in which the same had been dealt with, and the fact that some of the officers of the Andhra Bank, employed in the Funds Department and authorized to get the amounts in question credited to the account of Hiten P. Dalal, had facilitated the same although the bankers' cheques in question had in some cases not even been received by the Bank clearly establish the factum of conspiracy.

An officer of a bank holds a position of trust. Each one of them, keeping in view the nature and extent of duties required to be performed, is

expected to do so not only in terms of statutory directions, but as also the directions issued by the Reserve Bank of India and his own employer. Documents for the purpose of giving credit in the account of a customer would indisputably be required to be prepared on the basis of the cheque receipts. It cannot be prepared in anticipation of receipt of a cheque; firstly, because the amount of the cheque, the name of the drawee and other particulars would not be known to them; secondly, the bank is required to maintain a large number of registers to put in place a sound banking system. All precautions must be taken to prevent a fraud or deceit on the part of a customer.

Therefore, the fact that, credit and debit vouchers were prepared and other registers were filled up, although the cheques were not in physical possession of the bank, in our opinion, clearly establishes the existence of a criminal conspiracy between the ultimate beneficiary, on the one hand, and some of the officers of the bank, on the other.

A debit or credit voucher furthermore is not prepared in piecemeal or in instalments. Bank officers are not supposed to know the immediate requirement of an account holder.

An analysis of the facts of the case clearly demonstrates that a conspiracy had been hatched between the accused 1,2, 3 and 4 its object being that accused Nos.1, 2 and 4 who were the manager and officers working in the Funds Department and had dominion over the funds of Andhra Bank connived with A3 to prepare credit and debit vouchers authorising the Current Account department to credit those cheques to the account of Accused No.3 and, thus, affording him to take pecuniary advantage of the public money of the Bank, without some of the cheques in question having even been received by the bank and thus dishonestly enabling A3 to make withdrawals from his account No.4819 against the said credit afforded to his account. Such things would not have been possible but for meeting of mind amongst the accused involved herein.

It is not in dispute that A3 was a broker in securities transaction through the Funds and Investment Department of Fort Branch, Andhra Bank. From these circumstances it is clear that there existed a conspiracy between A1, A2 and A4 the object of which was to obtain undue pecuniary advantage for A3. The said act of the accused had been in violation of the guidelines issued by Andhra Bank.

As we have noted hereinbefore on a thorough discussion, in relation to all the ten transactions in detail we have not been able to find any conclusive evidence as regards the involvement of Accused No. 5 in the offence of criminal conspiracy.

The conduct of the accused, keeping in view the aforementioned finding of fact, being clear and explicit; in our opinion, the ingredients of conspiracy as enumerated under Section 120A of the Indian Penal Code must be held to have been clearly established only against A 1, A2, A3 and A4.

PREVENTION OF CORRUPTION ACT

Further A1, A2, A4 and A5 have also been charged and convicted for the offence under s. 13(1)(c) and s. 13 (1) (d) of the Prevention of Corruption Act by the special court below. It is undisputed that accused No. 1 was working as Manager and others accused as officer in the Funds Department of the Fort Branch. Andhra Bank is a Nationalised Bank and, therefore, they are 'Public servants' within the meaning of section 21 of the IPC.

The Accused, particularly A1 and A2 had dominion over the funds of the Bank, and they misappropriated the funds of Andhra Bank by issuing credit vouchers to the current account department for getting the amounts credited to the account of A3, in some cases when the cheques were not received or sent for clearance.

Prevention of Corruption Act, 1988 replaced the prevention of Corruption Act, 1947. The new Act was enacted 'to consolidate and amend the law relating to the prevention of corruption and for matters connected there with. Relevant portions of S. 13 which provide for Criminal Misconduct by a public servant read as under:

“13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct, -

[...]

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he, -[...]

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

[...](2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

Section 13 in general lays down that if a public servant obtain for himself or for any other person, any valuable thing or pecuniary advantage he would be guilty of criminal misconduct and sub-section (2) thereof prescribes of the punishment for such misconduct.

The ingredients of clause (c) of the said section are that the public servant must dishonestly or fraudulently misappropriate or otherwise convert to his own use or allow any other person to misappropriate or otherwise convert for his own use any property. Such property must have been entrusted to such public servant or must be in the alternative under his control as a public servant. Further such conversion or misappropriation must be done with a dishonest or fraudulent intention. If the said three conditions have been satisfied then the public servant would be guilty of an offence under clause (c) of the section 13(1). That is to say that if there is a dishonest or fraudulent intention on the part of a public servant and he with that intention misappropriates or otherwise converts for his own use or allows any one else to misappropriate or otherwise convert for his own use,

any property which has been entrusted to him or is under his control as a public servant.

Further clause (d) of the said section of which the accused herein have also been charged deals with a similar kind of a situation. The public servant must in this case by abusing his position as a public servant, obtain for himself or for any other person any valuable thing or pecuniary advantage to be liable for criminal misconduct under the section.

The accused in the present case indisputably had dominion over the funds of the bank. They through their acts facilitated misappropriation of the funds to the account of A3. Without the assistance provided by the other accused, the main accused herein A3 would not have been able to withdraw from his account amounts of money to which he was not entitled to under law. The accused herein being public servants had an additional responsibility of ensuring that the funds of the public were not misappropriated in any manner or form, what so ever.

A3 did not have over draft facility or any overdraft limit sanctioned to him. A3 could not have overdrawn his account . he was facilitated to do so by A1, A2 and A4.

Since we have not been able to find adequate evidence of the involvement of A 5 in the transactions we hereby acquit him of all charges under the Prevention of Corruption Act.

It is, therefore, beyond the purview of any doubt that A1, A2 and A4 being public servants were guilty of offences under s. 13(1)(c) r/w 13(2) as also s. 13(1) (d) r/w 13(2) of the said Act.

OFFENCES RELATING TO MAKING OF FALSE DOCUMENTS

The learned special judge has also charged all the accused A1, A2 , A4 and A5 for offences under s. 467, 471 and 477 A of the IPC. S. 467 deals with the forgery of valuable securities and wills etc. and is reproduced below:

“467. Forgery of valuable security, will, etc.—

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term

which may extend to ten years, and shall also be liable to fine.”

Section 471 which deals with using as genuine a forged document has been reproduced below:

“471. Using as genuine a forged document or electronic record—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

Section 477 A reads as under:

“477A. Falsification of accounts.—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular of any material particular form or in, any such book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation-It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.”

These three offences deal with substantially what is known as forgery, defined in Section 463 or making of a false document which is provided under Section 464. It is reproduced heretobelow:

“Section 464. Making a false document—A person is said to make a false document or false electronic record-

First-Who dishonestly or fraudulently-

- (a) Makes, signs, seals or executes a document or part of a document;
- (b) Makes or transmits any electronic record or part of any electronic record;
- (c) Affixes any digital signature on any electronic record;
- (d) Makes any mark denoting the execution of a document or the authenticity of the digital signature,

With the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose

authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alterations.[...]"

A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been

made with the intention of causing it to be believed that they were made by or under the authority of some one else.

The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e because of intoxication or unsoundness of mind etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

The learned Special Judge, therefore, in our opinion, erred in holding that the accused had prepared a false document, which clearly, having regard to the provisions of the law, could not have been done.

Further the offence of forgery deals with making of a false document with the specific intentions enumerated therein. The said section has been reproduced below.

“463. Forgery.—Whoever makes any false documents or electronic record part of a document or electronic record with, intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Dr. Vimla v. Delhi Administration, [1963] Supp 2 SCR 585]

Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will etc. or Section 471, i.e., using as genuine a forged document or Section 477-A, i.e, falsification of accounts. The conviction of the accused for the said offences is accordingly set aside.

CRIMINAL BREACH OF TRUST

The next charge we shall deal with is one arising under Section 409 of the IPC with which the accused herein have also been convicted of by the special judge. The punishment for criminal breach of trust by a public servant is provided under Section 409. However we must herein make reference of definition of criminal breach of trust simplicitor which reads as under Section 405:

“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’.”

The punishment for criminal breach of trust is provided in Section 406. Punishment for aggravated forms of criminal breach of trust is provided in Section 407 to Section 409.

The terms of the section are very wide. It applies to one who is in any manner entrusted with property or dominion over property. The section does not require that the trust should be in furtherance of any lawful object. The section provides inter alia, that if such a person dishonestly misappropriates or converts to his own use property entrusted to him he commits criminal breach of trust. There are separate offences by which criminal breach of trust may be committed. This section requires :

- 1) Entrusting any person with property or with dominion over property.
- 2) That person entrusted (a) dishonestly misappropriates or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation –
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
 - (ii) of any legal contract made touching the discharge of such trust.

In Onkar Nath Mishra and Ors. vs. State (NCT of Delhi) and Anr., [(2008) 2 SCC 561] this court noted that in the commission of the offence of criminal breach of trust, two distinct parts are involved. 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 misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

Criminal breach of trust by a public servant has been dealt with under Section 409 which reads as under:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Since we have dealt with the said issue in detail in K Venkatkrishnan v. Central Bureau of Investigation (Criminal Appeal 76 of 2004 decided today), we need not deal with it here again.

However, it is important to mention here that more recently this court in State of Punjab v. Pritam Chand and Ors., 2009 (2) SCALE 457 opined:

“The ingredients of offence under Section 405 are (i) entrusting any person with property or with dominion over the property, (ii) the person entrusted (a) dishonestly misappropriated or converted to his own use the property or (b) dishonestly used or disposed of the property or willfully suffered any other person so to do in violation (i) of any direction of law prescribing mode in which such mode is to be discharged or (ii) of any legal contract made touching the discharge of trust.”

Further, more the court in Sharon Michael and Ors. v. State of Tamil Nadu and Anr., 2009 (1) SCALE 627 noted thus:

“Ingredients of Section 409 of IPC read as under:

- (i) The accused must be a public servant;
- (ii) He must have been entrusted, in such capacity, with property.
- (iii) He must have committed breach of trust in respect of such property.”

Therefore, in view of the principles of law extracted above in our opinion there is no doubt that the offences relating to criminal breach of trust stands established against the accused. They were the officers in the Funds Department of Andhra Bank. In the said capacity they had been entrusted with the funds of the Bank. In that sense they had dominion over a thing. The money which was transferred to the account of A3 was the money

belonging to the Bank. Only the said accused had the power to transfer it to the account of A3.

In the present case, the same has been done dishonestly to cause wrongful gain to A3 and in the process wrongful loss has been caused to the Bank. The instruments based on which the funds of Andhra Bank were transferred to the account of A3 were not physically available with Andhra Bank at the time the accused persons authorized the transfer of the funds of Andhra Bank to the account of A3.

A3 also utilized the said credit given and accordingly even cheques issued by him were honoured. Had it not been for the credits given on the relevant dates his account would have been overdrawn. Interest was not charged from A3 and was not debited from his account and loss was therefore caused to the bank.

Moreover, it must be noted in this respect that Banking norms and established practices and procedures would contain directions of law prescribing the mode in which the trust is to be discharged. The expression direction of law in the context of sections 405 and 409 would include not only legislations pure and simple but also directions, instruments and circulars issued by an authority entitled therefor.

The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A3 and loss to the Bank would bring the action within Section 409 IPC.

Established banking norms are binding on an officer of the Bank in the matter of discharge of the trust i.e. in dealing with the money entrusted to him. He is required to follow the same and that would be an implied term of his contract of service as an officer of the bank. The accused before us here acted in breach of the same.

We are therefore of the opinion that the prosecution has sufficiently been able to prove the involvement of A1, A2 and A4 as regards the offence of criminal breach of trust.

OFFENCE RELATING TO RECEIVING STOLEN PROPERTY

The main accused herein, Hiten P Dalal, has in addition also been convicted u/s 411 which deals with dishonestly receiving stolen property.

The said section has been reproduced below:

“411. Dishonestly receiving stolen property.—

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term

which may extend to three years, or with fine, or with both.

Stolen property as used in this section has been defined in section

Section 410 :

“410. Stolen Property.—Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designed as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.”

Section 410 accordingly defines stolen property. A property is stolen for the purpose of this section when its possession is transferred by theft, extortion, robbery, dacoity or criminal breach of trust or which was obtained under misappropriation committed whether in India or outside.

An extended meaning is given to the words ‘stolen property’ which are used in the four subsequent sections. Not only things which have been stolen, extorted or robbed but also things which have been obtained by

criminal misappropriation or criminal breach of trust are within the meaning assigned to these words.

We will not delve into this matter in detail because, as has already been noted, Accused A1, A2 and A4 here, were involved in the offence of criminal breach of trust and accordingly the funds which were transferred to the account of A3 falls within the definition of stolen property.

Section 411 provides punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property.

We must bear in mind that A3 had entered into a criminal conspiracy with A1, A2 and A4. He would in that respect be deemed to have known that the property in question was stolen property.

This section as also the succeeding sections are directed not against the principal offender e.g. a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore outside the scope of this section. Accordingly the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this

section. However in the present case the principal offender i.e. A1, A2 and A4 have been held guilty of a 'criminal breach of trust' therefore the conviction of A3 would be even more clearly established from the facts and circumstances of the present case.

It must be noted in this respect that this section requires two essentials:

- a) Dishonest receipt or retention of stolen property.
- b) Knowledge or reason to believe at the time of receipt that the property was obtained in the ways specified in the section

The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it.

It is the duty of the prosecution in order to bring home the guilt of a person under Section 411 to prove:

- (1) that the stolen property was in the possession of the accused.
- (2) That some person other than the accused had possession of the property before the accused got possession of it and

(3) That the accused had knowledge that the property was stolen.

It has therefore in our opinion been conclusively established by the prosecution that the A3 was guilty of an offence under Section 411, since he had dishonestly received stolen property.

SENTENCING AND CONCLUSION

We may also place on record that as the CBI has not preferred any appeal against the quantum of sentence, this Court cannot impose a higher sentence.

Since we have acquitted accused No. 5 Mir Nagvi Askari of all the charges against him the order of sentence passed against him is hereby quashed.

Since we have acquitted all the accused of offences under Section 467 read with Sections 120, 471 read with Section 120B as well as section 477A read with 120-B of the Indian Penal Code, the sentence passed by the learned Special Judge against all the accused as regards the said offences is hereby quashed.

The Main accused herein A 3, Hiten P Dalal has been found guilty of offences punishable under Section 120B and 411 read with Section 120B. He is hereby sentenced to suffer rigorous imprisonment for 6 months and to pay a fine of Rs. 50,000 and in default to suffer Rigorous imprisonment for one month.

So far as the sentence for the offences punishable under s. 409 r/w section 109 of the Indian Penal Code and Section 13 (1) (c) and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act read with Section 109 of the Indian Penal code is concerned, we agree with the conclusion arrived at by the learned Judge that no special sentence needs be passed against him in this respect.

We affirm the sentence imposed by the learned Special Judge with regard to the offence under the Prevention of Corruption Act.

Accused 1, Rachakonda Dhankumar, Accused 2, Suratkal Kamat, and Accused 4 Ramesh Vardaya Shenoy are sentenced to suffer RI for one month each and to pay Rs. 1000/- in fine and in default to suffer RI for seven days each for the offences punishable under Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act read with Section 120-B of the IPC.

Similarly, the accused are also sentenced to suffer RI for one month and to pay a fine of Rs. 1000/- each in default to suffer RI for seven days each for offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act read with Section 120B of the IPC.

Further Accused 1, Rachakonda Dhankumar, Accused 2, Suratkal Kamat, and Accused 4 Ramesh Vardaya Shenoy are sentenced to suffer RI for 6 months each and to pay fine of Rs. 5000/- each , and in default to suffer RI for one month each for offences punishable under Section 120B and Section 409 read with Section 120B of the IPC.

All substantive sentences are directed to run concurrently. Each accused should be given the benefit of set off for the period for which he has already undergone imprisonment in this case. So far as the payment of fine is concerned, a period of 2 months time is given to all accused persons, to deposit the same.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

New Delhi;
August 7, 2009

