

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.346 OF 2004

VINAYAK NARAYAN DEOSTHALI ...APPELLANT

VERSUS

C.B.I.

...RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred under Section 10 of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 (for short “the Special Court”) against the Judgment and Order dated 20th January, 2004 passed by the Special Court constituted under the said Act in Special Case No.1 of 1997 in R.C. No.9 (BSC)/94/BOM.

2. In the wake of report of enquiry committee constituted by the Reserve Bank of India under the Chairmanship of Shri Janki Raman to enquire into the allegation of unauthorized

diversion of public funds belonging to certain public sector banks and financial institutions by employees of such banks and institutions in collusion with some brokers, the Act was enacted for constitution of a Special Court for trial of criminal offences in respect of transactions during the period 1st April, 1991 to 6th June, 1992 as provided under the Act. The object of the Act was speedy recovery of public money allegedly diverted in security transactions and to punish the guilty and to restore confidence and credibility of the banks and the financial institutions.

3. The Special Court was to try notified persons jointly with other connected persons. One of such named persons was the broker- Harshad S. Mehta who died during the trial. The appellant was Assistant Manager of the UCO Bank, Hamam Street Branch who was jointly tried with Mehta on the allegation that during the period 12th March, 1991 to 24th April, 1991, he diverted funds of the Engineering Export Promotion Council (for short "EEPC") amounting to Rs.7.75 crores to the private account of Harshad

S. Mehta. Though the said funds were transferred back to the EEPC, conduct of the appellant amounted to offences under Sections 120-B, 409, 467, 471 of the Indian Penal Code and Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

4. The charge has been held proved by the Special Court. It may be noted that the appellant's conviction by the Special Court for abusing his official position in relation to five other transactions involving diversion of funds to the account of late Mehta, has been earlier upheld by this Court in Criminal Appeal No.1141 of 1999 decided on 14th January, 2003 reported in **Ram Narayan Popli vs. Central Bureau of Investigation**¹ We also find reference to the conviction of the appellant by the Special Court in two other cases giving rise to the filing of Criminal Appeal No.687 of 2006 and Criminal Appeal No.335 of 2005 in this Court.

5. In the present case, charges against the appellant as framed by the Special Court are as follows :

"FIRSTLY: That during the period from August, 1990 to April 1991, you the accused abovenamed, working as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai did enter into a criminal conspiracy with Harshad Shantilal Mehta, original accused No.1 (since

¹ (2003) 3 SCC 641

deceased), a Share, Stock and Securities Broker, Mumbai, the object whereof was to illegally divert the funds of Engineering Export Promotion Council (EEPC) to the extent of Rs.7.75 crores to the Current Account No.1028 of the aforesaid Harshad Shantilal Mehta (since deceased), maintained with UCO Bank, Hamam Street Branch, Mumbai, in the name of M/s Harshad S. Mehta, and thereby to obtain undue pecuniary advantage to the said Harshad Shantilal Mehta (since deceased), by you the accused abovenamed misusing your official position as a Public Servant by corrupt or illegal means, under the garb of Securities transactions, camouflaging the same as if the transactions were of UCO Bank, while knowing or having reason to believe that the transactions were in fact of the said Harshad Shantilal Mehta and that you thereby committed an offence punishable under Section 120-B of the Indian Penal Code and within my cognizance.

SECONDLY: That in pursuance of the said criminal conspiracy and in the course of the same transaction, on or about 123, 1991, the said Harshad Shantilal Mehta (since deceased), while purporting to act as a Broker of UCO Bank, dishonestly issued two contract notes to EEPC, Mumbai, showing purchase of 692 lakh units of UNITS 1964 Scheme at Rs.14.4585 per unit on ready forward basis for the sale of the same securities on 22.03.1991 on their behalf at Rs.14.50628 per unit as also issued false Delivery Orders to the EEPC instructing them to receive the delivery of the aforesaid securities from UCO Bank and also issued another Delivery Order of even date to UCO Bank to deliver the said securities to EEPC knowing or having reason to believe that UCO Bank could not deliver the said securities to EEPC in the absence of the UCO Bank holding any such securities on account of the said Harshad Shantilal Mehta (since deceased) and in furtherance of the said conspiracy, and during the course of the same transaction, you

the accused abovenamed, being a Public Servant, and having been entrusted with the funds or dominion over the funds of or under the control of UCO Bank, Hamam Street Branch, Mumbai, dishonestly issued a Cost Memo dated 12.03.1991 in respect of the aforesaid sale of the said securities for a total sum of Rs.99,99,988.20, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and also committed the offence of forgery by issuing BR NO.111/91 of UCO Bank on the instructions of the said Harshad Shantilal Mehta (since deceased) knowing or having reason to believe the same to be false document, by fraudulently signing and issuing the said BR, knowing or having reason to believe that the said BR was not backed by securities, and in consideration thereof having received Bankers Cheque No.054053 dated 12.03.1991 drawn on State Bank of India, Cuffe Parade Branch, Mumbai, from EEPC for Rs.1 crore issued in favour of UCO Bank, obtained undue pecuniary advantage in favour of the said Harshad Shantilal Mehta (since deceased), without any public interest and committed Criminal Misconduct by crediting the proceeds of the said Cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta with UCO Bank, Hamam Street Branch, Mumbai without any instructions in that behalf from the issuing Bank, and in furtherance of the said criminal conspiracy and during the course of the same transaction you the accused abovenamed dishonestly received the credit of the said amount knowing or having reason to believe the same to be stolen property viz, the property in respect of which an offence of Criminal breach, of Trust had been committed and that you thereby committed offences punishable under Section 120B of the Indian Penal Code read with Sections 409, 411, 467, 471 of the I.P.C. and sections 13(2) read with

13(1)(c) and 13(1)(d) of the Corruption Act, 1988 and within my cognizance.

THIRDLY: That in pursuance of the said criminal conspiracy - and during the course of the same transaction, on or about 12.03.1991 you the accused abovenamed, acting in your official capacity as Assistant Manager, UCO Bank, Hamam Street Branch Mumbai, dishonestly and fraudulently issued a UCO Bank Cost Memo dated 12.03.1991 in respect of the aforesaid ostensible sale of the said securities for a total sum of Rs.99,99,980.20, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and further, dishonestly issued UCO Bank BR No.111/91 favouring EEPC knowing or having reason to believe that the same was not backed with securities and that you the accused abovenamed thereby committed an offence punishable under Section 120-B read with Section 467 of the Indian Penal Code and within my cognizance.

FOURTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 12.03.1991 you the accused abovenamed used the abovesaid forged BR No.111/91 a genuine by forwarding the same to EEPC and that you thereby committed an offence punishable under Section 120-B read with Section 467 read with 471 of the Indian Penal Code and within my cognizance.

FIFTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 12.03.1991, you the accused abovenamed, being a Public Servant and working your capacity as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, and in such capacity having been entrusted with the funds or dominion over the funds of or under the control of UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Banker's Cheque

No.054053 payable to UCO Bank and drawn on the State Bank of India, Cuffe Parade Branch, Mumbai, for an amount of Rs.1 crore, in violation of express or implied contract touching the mode of discharge of such trust, credited the same directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta, with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby committed an offence punishable under Section 120-B read with Section 409 of the Indian Penal Code and within my cognizance.

SIXTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 12.03.1991, you the accused abovenamed, being a Public Servant, by abusing your official position as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai and by corrupt or illegal means, having received an Account Payee Banker's cheque No.054053 for Rs.1 crore, payable to UCO Bank drawn on State Bank of India, obtained for the said Harshad Shantilal Mehta (since deceased) obtained undue pecuniary advantage without any public interest, and committed criminal misconduct by illegally crediting the proceeds of the said cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) with UCO Bank, Hamam Street Branch, Mumbai, in the name of M/s Harshad S. Mehta without any instructions in that behalf from the issuing Bank, and that you thereby committed an offence punishable under Section 120-B of the Indian Penal Code read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, and within my cognizance.

SEVENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 12.03.1991,

you the accused abovenamed, being a Public Servant, by abusing your official position as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai having received an Account Payee Bankers Cheque No.054053 for Rs.1 crore, payable to UCO Bank drawn on State Bank of India, dishonestly misappropriated the said funds by crediting the proceeds of the said cheque directly into the Current No.1028 maintained by the said Harshad Shantilal Mehta (since deceased), with UCO Bank, Hamam Street Branch, Mumbai, in the name of M/s Harshad S. Mehta, without any instructions in that behalf from the issuing Bank, and that you thereby committed and offence punishable under Section 120-B of the Indian Penal Code read with Section 13(2) read with 13(1)(c) of the Prevention of Corruption Act, and within my cognizance.

EIGHTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991, the said Harshad Shantilal Mehta (since deceased), while purporting to act as Broker for UCO Bank, dishonestly issued two Contract Notes to EEPC, Mumbai, showing, purchase of 35 lakh units of UNITS 1964 Scheme at Rs.1500 per unit on ready forward basis for the sale of the same securities on 08.05.1991 on their behalf at Rs. 15.11096 per unit and also issued false Delivery Orders to the EEPC instructing them to receive the delivery of the aforesaid securities from UCO Bank and also issued another Delivery Order of even date to UCO Bank to deliver the said securities to EEPC knowing or having reason to believe that UCO Bank could not deliver the said securities to EEPC in the absence of the UCO Bank holding any such securities on account of the said Harshad Shantilal Mehta (since deceased), and in furtherance of the said conspiracy, and during the course of the same transaction, you the accused abovenamed being a Public Servant, and having been entrusted with the funds or dominion over the

funds of or under the control of UCO Bank, Hamam Street Branch, Mumbai, dishonestly issued A Cost Memo dated 23.04.1991 in respect of the aforesaid sale of the said securities for a total sum of Rs.5.25 crores, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and also committed the offence of Forgery by issuing BR No.153/91 of UCO Bank on the instructions of the said Harshad Shantilal Mehta (since deceased) knowing or having reason to believe the same to be false document by fraudulently signing and issuing the said BR knowing or having reason to believe that the said BR was not backed by securities, and in consideration thereof having received Banker's Cheque No.054337 dated 23.04.1991 drawn on State Bank of India, Cuffe Parade Branch, Mumbai, from EEPC for Rs.5.25 crores in favour of UCO Bank obtained undue pecuniary advantage in favour of the said Harshad Shantilal Mehta (since deceased) without any public interest and committed criminal misconduct by crediting the proceeds of the said Cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby committed offence punishable under Section 120-B of the Indian Penal Code read with Sections 409, 471 of the Indian Penal Code and Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, and within my cognizance.

NINTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991, you the accused abovenamed acting in your official capacity as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, dishonestly and fraudulently issued a UCO Bank Cost Memo dated 23.04.1991 in respect of the aforesaid ostensible sale of the said

securities for a total sum of Rs.5.25 crores, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and further dishonestly issued UCO Bank BR No.153/91 favouring EEPC or having reason to believe that the same was not backed with securities and that you the accused abovenamed thereby committed an offence punishable under Section 120-B read with Section 467 of the Indian Penal Code and within my cognizance.

TENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991, you the accused abovenamed used the abovesaid forged BR No.153/91 as genuine by forwarding the same to EEPC and that you thereby committed an offence punishable under Section 120-B read with Section 467 read with Section 471 of the Indian Penal Code and within my cognizance.

ELEVENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991 you the accused abovenamed, being a Public Servant and working in your capacity as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, and in such capacity having been entrusted with the funds or dominion over the funds of or under the control of UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Banker's Cheque No.054337 payable UCO Bank and drawn on the State Bank of India, Cuffe Parade Branch, Mumbai, for an amount of Rs.5.25 crores, in violation of express or implied contract touching the mode of discharge of such trust, credited the same directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta, with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby committed an

offence punishable under Section 120-B read with Section 409 of the Indian Penal Code and within my cognizance.

TWELTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991 you that accused abovenamed, being a Public Servant, by abusing your official position as an Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Banker's Cheque No.054337 for Rs.5.25 crores payable to UCO Bank drawn on the State Bank of India, dishonestly misappropriated the said funds by crediting the proceeds of the said cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta, with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby committed an offence punishable under Section 120-B read with Section 13(2) read with 13(1) of the Prevention of Corruption Act, and within my cognizance.

THIRTEENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 23.04.1991 you the accused abovenamed, being a Public Servant, by abusing your official positional as an Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Banker's Cheque No. 054337 for Rs.5.25 crores, payable to UCO Bank and drawn on the State Bank of India, Cuffe Parade Branch, Mumbai, dishonestly misappropriated the said funds crediting the proceeds of the said cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta, with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby

committed an offence punishable under Section 120-B read with Section 13(2) read with 13(1)(c) of the Prevention of Corruption Act, and within my cognizance.

FOURTEENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 24.04.1991 the said Harshad Shantilal Mehta (since deceased), while purporting to act as a Broker of UCO Bank, dishonestly issued to Contract Notes to EEPC, Mumbai, showing purchase of 10 lakh units of UNITS 1964 Scheme at Rs.15.00 per unit on ready forward basis for the sale of the same securities on 29.04.1991 on their behalf at Rs.15.04110 per unit as also issued false Delivery Orders to the EEPC instructing them to receive the delivery of the aforesaid securities from UCO Bank and also issued another Delivery Order of even date to UCO bank to deliver the said securities to EEPC knowing or having reason to believe that UCO Bank could not deliver the said securities to EEPC in the absence of the UCO bank holding any such securities on account of the said Harshad Shantilal Mehta (since deceased), and in furtherance of the said conspiracy, and during the course of the same transaction, you the accused abovenamed, being a Public Servant, and having been entrusted with the funds or dominion over the funds of or under the Control of UCO Bank, Hamam Street Branch, Mumbai, dishonestly issued a Cost Memo dated 24.04.1991 in respect of the aforesaid sale of the said securities for a total sum of Rs.1.50 crores, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and also committed the offence of Forgery issuing BR No.16B/91 of UCO Bank on the instructions of the said Harshad Shantilal Mehta (since deceased) knowing or having reason to believe the same to be false document by fraudulently signing and issuing the said BR knowing or having reason to believe that the said BR was not backed by securities and in

consideration thereof having received Banker's Cheque No.054353 dated 24.04.1991 drawn on the State Bank of India, Cuffe Parade Branch, Mumbai, from EEPC for Rs.1 crore issued in favour of the UCO Bank, obtained undue pecuniary advantage without any public interest for the said Harshad Shantilal Mehta (since deceased) and committed Criminal Misconduct by crediting the proceeds of the said Cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank and that you thereby committed offence punishable under Section 120-B of the Indian Penal Code read with Sections 409, 467, 471 of the Indian Penal Code and Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, and within my cognizance.

FIFTEENTHLY: That in pursuance of the said criminal conspiracy and during the course of the same transaction, on or about 24.04.1991, you the accused abovenamed, acting your official capacity as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, dishonestly and fraudulently issued a UCO Bank Cost Memo dated 24.04.1991 in respect of the aforesaid ostensible sale of the said securities for a total sum of Rs.1.50 crores, knowing or having reason to believe that UCO Bank had no such transaction with EEPC and further dishonestly issued UCO Bank BR No.168791 favouring EEPC knowing or having reason to believe that the same was not backed with securities and that you the accused abovenamed thereby committed an offence punishable under Section 120-B of the Indian Penal Code read with Section 467 of the Indian Penal Code and within my cognizance.

SIXTEENTHLY: That in pursuance of the said criminal conspiracy and during the course

of the same transaction, on or about 24.04.1991 you the accused abovenamed used the abovesaid forged BR No.168/91 as genuine by forwarding the same to EEPC and that you thereby committed an offence punishable under Section 120-B read with Section 467 read with 471 of the Indian Penal Code and within my cognizance.

SEVENTEENTHLY: That in pursuance of the said criminal conspiracy 24.04.1991 you the accused abovenamed, being a Public Servant and working in your capacity as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, and in such capacity having been entrusted with the funds or dominion over the funds of or under the control of UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Bankers Cheque No.054353 payable to UCO Bank and drawn on the State Bank of India, Cuffe Parade Branch, Mumbai, for an amount of Rs.1.50 crores, in violation of express or implied contract touching the mode of discharge of such trust, credited the same directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) in the name of M/s Harshad S. Mehta, with UCO Bank, Hamam Street Branch, Mumbai, without any instructions in that behalf from the issuing Bank, and that you thereby committed an offence punishable under Section 120-B of the Indian Penal Code read with Section 409 of the Indian Penal Code and within my cognizance.

EIGHTEENTHLY: That in pursuance of the said criminal conspiracy 24.04.1991, you that accused abovenamed, being a Public Servant, by abusing your official position as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, and by corrupt or illegal means having received an Account Payee Banker's Cheque No.054353 for Rs.1.50 crores, payable to UCO Bank and drawn on the State Bank of India, obtained undue pecuniary

advantage without any public interest for the said Harshad Shantilal Mehta (since deceased) and committed criminal misconduct by illegally crediting the proceeds of the said cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) with UCO Bank, Hamam Street Branch, Mumbai, in the name of M/s Harshad S. Mehta, without any instructions in that behalf from the issuing Bank, and that you thereby committed an offence punishable under Section 120-B of the Indian Penal Code read with Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, and within my cognizance.

NINETENTHLY: That in pursuance of the said criminal conspiracy 24.04.1991 you the accused abovenamed, being a Public Servant, by abusing your official position as Assistant Manager, UCO Bank, Hamam Street Branch, Mumbai, having received an Account Payee Banker's cheque No.054353 of Rs.1.50 crores, payable to UCO Bank drawn on State Bank of India, dishonestly misappropriated the said funds by crediting the proceeds of the said cheque directly into the Current Account No.1028 maintained by the said Harshad Shantilal Mehta (since deceased) with UCO Bank, Hamam Street Branch, Mumbai, in the name of M/s Harshad S. Mehta, without any instructions in that behalf from the issuing Bank and that you thereby committed an offence punishable under Section-120B of the Indian Penal Code read with Section 13(2) read with 13(1)(c) of the Prevention of Corruption Act, and within my cognizance."

6. The EEPC was set up to promote export of engineering goods and services under the Ministry of Commerce. It was operating a scheme called the International Price

Reimbursement Scheme (for short "IPRS") with the object of neutralizing price of steel for domestic exports at par with the international market where prices were lesser. The scheme envisaged compensating the exporters by way of reimbursement of the price difference. The funds received by the EEPC through Joint Plan Committee ("JPC") were kept with the State Bank of India at Calcutta. PW-3, Girish Chandra an officer of EEPC was running the scheme. Apart from the said funds, other source of available funds with the EEPC was sale of premises at Tardey, Mumbai to shift the office to rented premises in World Trade Centre which was considered to be more suitable. Sale proceeds were kept with the State Bank of India, Cuffe Parade Branch. During the period between 12th March, 1991 and 24th April, 1991, PW-3 issued three cheques in favour of the UCO bank where the appellant was posted. Without instructions from EEPC, the said amount was transferred to the private account of late Mehta. Though the EEPC received contract notes and delivery orders in respect of the three transactions and the documents were signed by PW-3, but this was under a mistaken thought that he was merely signing a format prescribed by the Bank. Thus, the appellant

abused his position in collusion with Mehta resulting in transfer of public funds to private account of an individual unauthorisedly. Forged Bank Receipts (BRs) were issued by the Bank to EEPC in lieu of physical delivery of securities, without such securities being in existence. PW-4, Arup Mohan Patnaik, an officer of CBI, after investigation, lodged the FIR on 30th November, 1994. Investigation was further conducted by PW-13, Mr. S.K. Sareen, Inspector CBI, who collected documents from EEPC, UCO Bank and State Bank of India and also recorded statements of witnesses. He filed charge sheet against late Mehta and the appellant.

7. Apart from producing the documents, the prosecution relied upon the oral evidence of Mr. Chhadisingh-PW-1, Mr. Maitra-PW-2,

Mr. Girish Chandra-PW-3, Mrs. Sudha Kubal-PW-4, Mr. Ankur Gupta-PW-5 and Mr. Babaji Firoz-PW-6, all of them working with EEPC in the Regional Office at Mumbai in different capacities; Mr. B.D.

Raut-PW-7; Mr. Aarsiwala-PW-8 working with State Bank of India;

Mr. Anjaria-PW-9; Mr. Pinjani-PW-10 and Nilam Keni-PW-12

working with UCO Bank, Hamam Street Branch, Mumbai, in different capacities. Rest of the witnesses are Mr. Jain-PW-11, the Hand Writing Expert; Mr. Patnaik-PW-14, who lodged the FIR and Mr. S.K. Sareen-PW-13 is the Investigating Officer and had filed charge sheet against the accused.

The accused led defence evidence and examined DW-1- Mr. Atul Manubhai Parekh, who was working in the office of Harshad Mehta at the relevant time and Mr. Pradeep Anant Karkhanis-DW-2, who was working in the UCO Bank as a Senior Manager at the relevant time.

8. Stand of the appellant is that the deposit in the account of late Mehta was not on account of dishonest intention of the appellant. The Bank had been offering facility to brokers for security transactions by charging commission. Transactions were between brokers and the counter party. All the documents were prepared in normal course of banking.

9. The Special Court rejected the defence of the accused and held that transfer of funds to private account of late Mehta was without any authorization by the EEPC. It was observed:-

"The entire evidence in this regard has gone unchallenged. The defence of the accused is, however, that Hamam Street Branch of UCO Bank was having such securities transactions on behalf of the clients and they were going on since 1987, much before he joined the said branch in 1989. According to him there were eighteen brokers getting such routine facility. This facility was temporarily stopped for the period between May, 1991 and March, 1992 and in March, 1992, similar facility was continued to be given to the brokers. His defence is that the aforesaid three transactions were between EEPC and HSM. No contract notes were ever sent to UCO Bank. The Head Office was aware of such transactions. While admitting that all the vouchers, cost memos and BRs related to the aforesaid three transactions were prepared at his instance in his branch. His defence is that those were performed in normal course of banking business. He states that he is innocent and acting as per the procedure adopted by the bank.

The charge against the accused is that he had conspired with HSM for diverting the funds of the EEPC, the public money, to HSM with dishonest and fraudulent intention, the object of which was to give benefit of such diverted money to HSM. It is also the charge against the accused that he had no authority either from the EEPC or from the Bank Authorities to credit the amount of the aforesaid three bankers' cheques issued by SBI in favour of the UCO Bank, to the HSM's account No.1028 and, therefore, the accused had misused his official position as a public servant, namely, the Manager in Securities Department of Hamam Street Branch of UCO Bank, at Mumbai.

The accused is also charged for having issued BR's in respect of these transactions without there being any backing of physical securities for issuing such BRs and, therefore, it is

alleged that the accused had prepared the documents like cost memos and BRs by forging them and by using them as genuine.

Since all the three transactions have been proved having taken place in the manner aforesaid, it is clear that EEPC had transferred their funds from their account in SBI to UCO Bank for the purpose of their short term investments. The evidence of Girish Chandra-PW 3 clearly shows that as per the instructions and circulars issued by the Central Government, he had authority to make investments of the surplus funds of EEPC, either in nationalized banks or in Government Securities or Government approved securities and he had no authority to transfer the funds of the EEPC for the benefit of any individual, including HSM. From the aforesaid transactions, it is clear that all the three bankers' cheques issued in favour of the UCO Bank were credited into the account of HSM, being Account No.1028. The transactions also show that the accused had issued cost memos against EEPC for the transactions of sale of securities shown therein. When the cheques were received the amount were credited to the account of HSM. There were instructions under the delivery notes issued by HSM to the UCO Bank that UCO Bank should deliver to EEPC certain number of units 1964 scheme, as shown in the delivery orders, at the indicated rates to UCO Bank. The accused, therefore, had acted as pr the instructions of HSM. However, this was contrary to the contract notes issued by HSM to EEPC, which clearly indicated that in all the three transactions HSM was acting as broker. Indication in the contract notes is that HSM had purchased certain number of units of 1964 scheme for and on behalf of the EEPC and the delivery orders issued to EEPC as also to UCO Bank, indicated that EEPC has to receive the said Units from UCO Bank and UCO Bank had to hand over those units to EEPC. This clearly indicates that HSM was acting as a Broker and

he was not the principal nor the counter party to those transactions. Even then, UCO Bank had treated HSM as principal i.e. counter party having direct contact with EEPC. The accused, therefore, credited the amount received from SBI on behalf of the EEPC to the account of HSM. In any event, the bankers' cheques drawn on SBI, Account EEPC, were in fact in favour of the UCO Bank only and not in favour of any other party. Therefore, the accused could only have credited those amounts under those three cheques only in UCO Bank account and nobody else's account. There were apparently no instructions from EEPC in that behalf. It, therefore, clearly shows the meeting of mind of the accused and HSM in illegally diverting the EEPC's funds to HSM's account and giving undue pecuniary advantage to HSM. Therefore, the prosecution has established that it is a criminal conspiracy between the two, the object of which was to illegally divert the funds of EEPC, totally amounting to Rs.7.75 crores to the current account of HSM in Account No.1028, enabling the HSM to obtain undue pecuniary advantage of the same and that the accused had misused his official position as public servant by camouflaging the transaction as securities transaction.

It is also established that the accused issued BRs in lieu of the physical delivery of securities, when the securities were not available with the Bank at all. The burden to prove that the BRs were not backed by the physical securities is on the prosecution. However, it is a negative burden to be discharged and it is therefore lighter burden to discharge. The witnesses namely, PW 10 Pinjani and Mrs. Kini-PW 12 have stated that they used to maintain register for sale and purchase of the securities. But they did not state that there were securities physically available with the bank when cost memos and BRS were issued by the accused. Investigating Officer has spoken about no

securities being physically available with the bank. The evidence of Anjaria-PW 9 also indicates that no register of Units 1964 Scheme was maintained either security-wise or broker clientwise. This established non existence of securities where accused issued BRs to back them. Above evidence is sufficient to discharge the burden. It is pertinent to note that even it is not the defence that physical securities were available to back the BRs. Therefore, it is established that BRs were issued without the backing of physical securities and in lieu of physical securities.

It is undisputed position that HSM was dealing in securities. DW 1 Atul Parekh has spoken about the delivery orders having been issued from the office of HSM in respect of all the three transactions and that those were the transactions of HSM. He has also stated that the letter at Exhibit A-2(3) was written by Girish Chandra-PW 3 to Pankaj Shah, along with this letter he had also sent bankers' cheques drawn in favour of the UCO Bank for Rs.1 crore. Girish Chandra - PW3 has admitted to have written this letter. He however, states that the cheque was issued in favour of the UCO Bank and not in favour of HSM. The letter mentions about discussion with Pankaj Shah and Girish Chandra-PW3 on 11.3.1991 regarding investment of Rs.1 crore, for the period between 12.3.1991 and 22.3.1991 @ 14%. The letter also mentions about reversal of the transaction on 22.3.1991 and sending back the bankers cheque along with accrued interest. It is submitted on behalf of the accused that this indicated that the transaction was between EEPC and HSM as counter party. However, the fact remains that the cheque of Rs.1 crore was not issued in favour of HSM but it was in favour of UCO Bank only. It is further to be noted that EEPC had not issued any instructions to UCO Bank for debiting the amount of Rs.1 crore in the account of HSM. In absence of these details, it

cannot be said that HSM was the counter party or principal with whom EEPC had direct transactions. On the contrary it indicated that the payment of the cheque of Rs.1 crore was to be made to UCO Bank. If this; is so, at the most HSM can be said to be only broker and nothing else. Even then the accused, on receiving the cheques in respect of these three transactions, credited the amount to the account of HSM, was totally illegal.

Under these circumstances, the accused could have credited the amount of three cheques into the account of UCO Bank only and not in the account of HSM. In this regard it is also vehemently submitted on behalf of the accused that there is an indication from letter dated 12th March, 1991 written by Girish Chandra to Pankaj Shah, who was working in the office of HSM that there were some talks between Girish Chandra- PW 3 and HSM with regard to their short term investment and in respect of the said two transactions also there appears to have been some talk between the two. Even so, there is no evidence to indicate that EEPC or Girish Chandra-PW 3 for that matter, had direct dealing with HSM as a counter party or principal. All the bankers' cheques issued by EEPC through SBI were in favour of the UCO Bank alone, without any further instruction to UCO Bank for depositing those amounts in the account of HSM. There is no evidence to show that the EEPC had direct transactions with HSM, as a counter party. This being so, the accused did not have any authority to divert EEPC's funds to the account of HSM and in doing so he had committed illegality. The accused similarly did not have any authority to act for or on account of HSM with the EEPC as counter party. The contract note and delivery orders issued by HSM, on the contract note and delivery orders issued by HSM, on the contrary indicate that UCO Bank was principal. The cheques issued by EEPC were also in favour of UCO Bank. Under the circumstances, it was clear that the

cheques issued by EEPC in favour of the UCO Bank were in favour of the UCO Bank alone and were not to be transferred to anybody else's account, including HSM. Therefore, the accused had no authority to transfer or divert EEPC's funds to the account of HSM and, therefore, he had committed illegality, obviously with an intention to give HSM undue pecuniary advantage of those funds. These circumstances, therefore, clearly establish the criminal conspiracy between the accused and HSM as also. The object of illegally diverting the EEPC's funds to the account of HSM enabling HSM to obtain undue pecuniary advantage by the accused by misusing his position as public servant by corrupt or illegal means, showing the transactions to be the securities transactions of HSM camouflaging the same as if the transactions were of UCO Bank."

10. We have heard learned counsel for the parties.

11. The contentions raised on behalf of the appellant is that the documents in question were prepared by Mehta and the money was handed over by the EEPC to Mehta. No loss was suffered by the EEPC nor any gain was made by the appellant. The appellant had no dishonest intention and acted as officer of the Bank in routine.

12. Learned counsel for the CBI supported the impugned order.

13. The question for consideration is whether conviction of the appellant is sustainable on the basis of evidence on record.

14. We find that the following facts are undisputed and clearly stand established on the record :

“(i) The EEPC is functioning under the control of Ministry of Commerce to help export of engineering goods and services. It was operating International Price Reimbursement Scheme with a view to neutralize the price of Steel for domestic exporters. It had funds for disbursement. Further it had funds on account of sale of office. IPRS was being operated by PW 3, Girish Chandra. He made a deposit of a sum of Rs.7.75 crores with the UCO Bank by way of three cheques in favour of the UCO Bank.

(ii) The appellant acting as Assistant Manager of the UCO Bank transferred the amount to the account of Mehta which was apparently in collusion with Mehta without any authority by EEPC. He issued Bank Receipts in lieu of physical delivery of securities without such securities being in existence.

(iii) The EEPC never instructed purchase of securities through Mehta nor allowed the transfer of the amount in question to Mehta but the EEPC was made to sign documents under a mistaken belief at the instance of the appellant.”

15. PW-3, Girish Chandra who represented the EEPC fully supported the prosecution version of having made deposit with the Bank and having not authorized the diversion of the said amount in favour of any private party. The said evidence has been duly accepted by the Special Court. The appellant unauthorisedly credited the amount to Mehta's account by

abusing his position in conspiracy with Mehta. The accused also issued bank receipts for security transactions without physical existence of securities which amounted to forgery. It is thus, safe to infer the abuse of position by the accused-appellant in conspiracy with and to the benefit of Mehta. Diversion of public funds by the accused amounted to criminal breach of trust by committing forgery/use of forged documents as well as offence under the provisions of the Corruption Act. PW-10, Pinjani and PW-12, Mrs. Kini who were maintaining register for sale and purchase of securities could not show that the securities in question were physically available with the Bank when the bank receipts were issued by the accused which could be done only if securities were available. The Special Court thus rightly held the charge to be proved. It was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorized conversion of public funds to private funds of an individual. Issuing of Bank receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual. Patent illegality cannot be defended in the

name of practice or direction of higher authorities. *Mens rea* is established from the fact that false Bank Receipts were issued for non-existent securities.

16. Thus, the offences of conspiracy, forgery, misappropriation and corruption stand established. It is not necessary to discuss the ingredients of the said offences in detail as the matter has been gone into earlier by this Court in respect of the appellant himself in the reported judgment in **Ram Narayan Popli (supra)**. We may only quote the conclusions arrived at in the said case:

“About the offence of conspiracy :

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

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

be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." [See *State of Kerala v. P. Sugathan* [(2000) 8 SCC 203]- (SCC p. 212, para 14)]

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

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About the offence of criminal breach of trust :

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

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

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About the offence of forgery :

374. *In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however small.*

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

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About the Corruption Act :

379. Section 13(2) of the PC Act is intended to deal with aberrations of public servants. In view of the finding that A-1, in furtherance of criminal conspiracy, in his capacity as a public servant abused his position by causing and/or allowing MUL's funds to be utilized for the wrongful gain of A-5, provisions of Section 13(1)(c) read with Section 13(2) are clearly applicable. Similar is the position vis-à-vis A-3."

17. In view of above, we are unable to interfere with the conviction of the appellant. The same is affirmed. However, having regard to totality of circumstances, we are of the view that ends of justice will be met if sentence of imprisonment is reduced to the period already undergone. We order accordingly.

18. The appeal is disposed of.

JUDGMENT.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI
DECEMBER 2, 2014