CASE NO.:
Appeal (crl.) 1097 of 1999

PETITIONER:
RAM NARAIN POPLI

RESPONDENT:
CENTRAL BUREAU OF INVESTIGATION

DATE OF JUDGMENT: 14/01/2003

BENCH:
M.B. SHAH & B.N. AGRAWAL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003(1) SCR 119

The Judgments/Order of the Court were delivered

SHAH, J. The entire prosecution version is around the following five transactions entered into by Maruti Udyog Limited (hereinafter referred to as 'MUL'), through United Commercial Bank (hereinafter referred to as "UCO Bank') wherein Harshad S. Mehta A-5 is payee or recipient of the amount, which are mentioned hereunder:-

Trans.	A-5	Dates	Days	Rate of Interest %	Amt. Rs.	Amount Repaid (Rs)	No. From To
01.	Lent	24.01.91 25.02.91	32	12.75	4,99,45,000	5,58,250	5,05,03,250 to MUL
Remarks-MUL delivered 35 lacs Units of UTI to A5.							
02.	Borrow-ed	13.03.91 25.03.91	12	16.75	10,11,50,000	5.56,995	10,17,06,200
Remarks-UCO gave BR to MUL for 70 lacs Units.							
03.	Borrow-ed	18.03.91 22.03.91	5	21.00	10,83,75,000	3,11,775	10,86,86,775
Remarks-UCO gave BR to MUL for 75 lacs Units.							
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04.	Borrow-ed	24.04.91 26.04.91	2	26.25	7,62,45,000	1,09,650	7,63,54,650
Remarks-UCO gave BR to MUL for 51 lacs Units.							
-05.	Borrow-ed	02.05.91 07.05.91	5	25.00	10,39,50,000	2,99,090	10,42,49,090

Remarks-Number of Units not known but only value stated in chargehseet.

Undisputedly, (a) the receipt and the payment of amount was for a fixed period; (b) interest rate was fixed and was received or paid as agreed; (c) for the first transaction, before receiving the money, MUL gave UTI units as a security; for 2nd, 3rd and 4th transactions UCO bank issued Banks Receipts (BRs); (d) the transactions are squared-up on fixed date i.e. the amount is repaid on date fixed; (e) commission/brokerage is received and credited by the UCO Bank for which there are credit entries in the account books; (f) there is no loss to the MUL and the UCO Bank; (g) accounts of UCO Bank are audited, no objection is raised by internal or external auditors; and (h) accounts of MUL are also audited and there is no objection raised by the internal or external auditors to such transactions; (i) no suggestion that any accused gained by such transactions except that A-5 got loan.

On the basis of the aforesaid special features of the prosecution story,

the Special Court, Bombay under Special Court (Trial of Offences Relating to Transactions In Securities) Act, 1992, (hereinafter referred to as the "SCAM Act") in Special Case No.6 of 1994 [RC.2(A)/93-ACU-VII] tried five accused for the offences of cheating, criminal breach of trust, forgery by using forged documents, abuse of public offices and dishonest misappropriation of the public funds under Section 120B read with Sections 420, 409, 467 and 471 of the Indian Penal Code (IPC) and Section 13(lXc) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PC Act"). A-l Pramod Kumar Pritam Lal Manocha, A-2 Ambuj Sushil Kumar Jain and A-3 Vinayak Narayan Deosthali were separately charged under Section 13(1)(c) read with Section 13(2) of the PC Act as also under Section 489 of IPC. For being a Bank employee, A-4 Ram Narayan Popli was also charged under Section 409 of IPC. A-3 in addition was charged for the offence punishable under Section 420 IPC for cheating MUL and was also charged under Section 471 read with Sections 467 and 468 of IPC for fradulently and dishonestly using letter-heads and BRs of UCO Bank, Hamam Street Branch, Bombay knowing the same to be false and forged documents as also forging certain documents to be used as valuable securities. A-5 Harshad Shantilal Mehta was also charged for the offence punishable under Section 403 of IPC.

By judgment and order dated 27th/28th September, 1999, the learned Special Judge acquitted accused No.2 and convicted accused Nos.l, 3, 4 and 5 as under:-

1. "A-l Pramod Kumar Pritam Lal Manocha, A-3 Vinayak Narayan Deosthali, A-4 Ram Narayan Popli and A-5 Harshad Shantilal Mehta are convicted being the parties to criminal conspiracy alongwith Mr. Mohan D. Khandelwal (PW23) between the period of April - May, 1989 to May, 1991 in Bombay and Delhi, the object of which was to divert the surplus funds of MUL lying with its account in Canara Bank, Sansad Marg, New Delhi branch to the account of A-5 HSM with ANZ Grindlays Bank, Sansad Marg, New Delhi branch and thereby committing offences of criminal breach of trust fraudulently using forged documents, abuse of public offices, dishonest appropriation of the amount of Rs.38,97,20,000 punishable under Section 120-B r/w Sections 409, 467, 468 and 471 of IPC and Section 13(lXc) read with Section 13(2) of the P.C. Act, 1988.

2. ACCUSED NO.l Pramod Kumar Pritamlal Manocha-

(i) A-l is convicted for furtherance of criminal conspiracy in his capacity as a public servant viz. being Deputy Manager (Finance) of MUL at the relevant time, for causing and/or allowing MUL’s fund wrongfully to be gained by A-5 HSM, being an offence punishable under Section 13(l)(c) read with 13(2) of the PC Act, 1988;

(ii) A-l is convicted for offence punishable under Section 409 of IPC for committing criminal breach of trust in respect of property of Maruti Udyog Limited, Delhi, then Government company of 35 lakhs Units of UTI, valued at Rs.4,99,45,000 by dishonestly and in violation of specific directions of the Board of Directors of MUL, delivering the same to Mr. Mohan D. Khandelwal (PW23) in knowing that Mr. Khandelwal was an Attorney of accused no.5 Harshad S. Mehta;

(iii) A-l is convicted for offence under Section 409 of IPC for committing criminal breach of trust in respect of MUL’s property viz. Canara bank’s bankers cheque no.645585 dated 13.3.1999 (Ex.13) for a sum of Rs.l 0,11,50,000 drawn in favour of Grindlays Bank and made payees A/c only, by dishonestly delivering the same to Mr. Anuj Kalia (PW16) knowing that the said Mr. Anuj Kalia was an employee of accused no.5-HSM;

(iv) A-l is convicted for offence under Section 409 of IPC for committing criminal breach of trust in respect of MUL’s property viz. Canara Bank’s Bankers Cheque No.863260 dated 2.5.1991 (Ex.36) for a sum of Rs.l0,39,50,000 drawn in favour of Grindlays Bank and made payees A/c only

by dishonestly delivering the same to Mr. Anuj Kalia (PW-16) knowing that the said Mr. Anuj Kalia was an employee of accused no.5 - HSM;

3. ACCUSED NO.3 Vinayak Narayan Deosthali-

(i) A-3 is convicted for an offence under Section 13(lXc) read with Section 13(2) of PC Act in furtherance of criminal conspiracy, in his capacity as a public servant viz. being Asstt. Manager of UCO Bank, Hamam Street Branch, Bombay which is the Government of India undertaking being a nationalised bank for abusing his position as a public servant and allowing use of funds of MUL to be wrongfully gained by A-5;

(ii) A-3 is convicted under Section 467 of IPC in furtherance of criminal conspiracy, he on or about 23.1.1991 at Bombay having forged a letter dated 23.1.1991 (Ex.58) with the dishonest intent of authorizing remittance of MUL's funds of Rs.4,99,45,000 to Bank of America, New Delhi by accused No.5 to MUL, Delhi and further dishonestly authorizing the delivery of valuable securities of 35 lacs of units of UTI belonging to MUL to Mr. Mohan D. Khandelwal, an attorney of A-5;

(iii) A-3 is convicted under Section 468 IPC for having forged letter dated 23.1.1991 of UCO Bank, Hamam Street Branch, Bombay intending that the same could be used for cheating;

(iv) A-3 is convicted under section 471 r/w section 467 and 468 of IPC for having forged a letter dated 23.1.1991 (Ex.58) of UCO Bank, Hamam Street Branch, Bombay knowing it to be a false and forged document;

(v) A-3 is convicted under Section 467 of IPC for having forged on or about 13.1.1991 the document to be a valuable security with the banker receipt No.1121 dated 13.3.1991 (Ex.38) for Rs.l0,11,50,000 with intent to make MUL believe the UCO Bank, Hamam Street Branch, Bombay was holding 70 lacs units of UTI for the face value of 7 crores and which UCO Bank was to deliver to MUL;

(vi) A-3 is convicted under Section 468 of IPC for forging valuable security with Bankers Receipt No.l 121 dated 13.3.1991 (Ex.38) of UCO Bank for the sum of Rs.l0,11,50,000 in the name of MUL with the intent that the said document should be used for cheating;

(vii) A-3 is convicted under Section 471 r/w sections 467 and 468 of IPC for dishonestly using forged bankers receipt No.1121 for the sum of Rs.10,11,50,000 (Ex.38) as genuine;

(viii) A-3 is convicted under Section 467 of IPC for having forged at Bombay the letter dated 13.3.1991 (Ex.60) on the letter head of UCO Bank, Hamam Street Branch, Bombay with the intent to dishonestly authorize remittance of funds of MUL amounting to Rs.l0,11,50,000 to Grindlays Bank knowing that the said remittance was meant to cause wrongful gain to A-5;

(ix) A-3 is convicted under Section 468 of IPC for having forged the letter dated 13.3.1991 (Ex.60) intending that it should be used for cheating;

(x) A-3 is convicted under Section 471 r/w Sections 467 and 468 of IPC for having fraudulently and dishonestly used the letter dated 13.3.1991 (Ex.60) as genuine knowing it to be false and forged document;

(xi) A-3 is convicted under Section 467 of IPC for having forged BRs for Rs.l0,83,75,000 (Ex.39) with the intent to make MUL believe that UCO Bank was holding 75 lacs units of UTI of the face value of Rs.7,50,00,000 which UCO Bank, Hamam Street Branch, Bombay was to deliver to MUL;

(xii) A-3 is convicted under Section 468 of IPC for having forged valuable security viz. BR No.1132 dated 18.3.1991 for Rs.l0,83,75,000 (Ex.39) of UCO Bank intending that it should be used for cheating;

(xiii) A-3 is convicted under Section 471 r/w Sections 467 and 468 of IPC for dishonestly using the BR No.l 132 dated 18.3.1991 for Rs. 10,83,75,000 (Ex.39) as genuine;

(xiv)A-3 is convicted under Section 467 of IPC for having forged valuable security of UCO Bank, Hamam Street Branch, Bombay viz. BR No.166 dated 24.4.1991 for Rs.7,62,45,000 (Ex.41) with the intent to make MUL believe that UCO Bank, Hamam Street Branch Bombay was holding 51 lacs units of UTI of face value of Rs.5,10,00,000 with UCO Bank to be delivered to MUL;

(xv) A-3 is convicted under Section 468 of IPC for having forged valuable security being BR No. 166 dated 24.4.1991 for Rs.7,62,45,000 (Ex.41) with the intent to make MUL believe that it should be used for cheating;

(xvi)A-3 is convicted under Section 471 r/w Sections 467 and 468 of IPC for having fraudulently and dishonestly used the said BR dated 24.4.1991 (Ex.41) as genuine knowing it to be a false and forged document;

4. ACCUSED NO.4 Ram Narayan Popli-

(i) A-4 is convicted under Section 409 IPC for having dishonestly credited banker's cheques No.645532 dated 25.2.1991 for sum of Rs.5,05,03,250 (Ex.28), 646402 dated 18.3.1991 for Rs. 10,83,75,000 (Ex.32) and 863237 dated 24.4.1991 for Rs.7,62,45,000 favouring Grindlays Bank into the account of accused no.5 HSM with Grindlays Bank, New Delhi instead of crediting the said Cheque into the account of Grindlays Bank, New Delhi;

5. ACCUSED NO.5 Harsh ad Shantilal Mehta-

(i) A-5 is convicted under Section 403 of IPC for having dishonestly misappropriated four bankers' cheques to wit:-

(a) Cheque No.645585 dated 13.3.1991 for Rs.l0,11,50,000, (ii) cheque no.646402 dated 18.3.1991 for Rs. 10,83,75,000, (iii) cheque no.863237 dated 24.4.1991 for Rs.7,62,45,000, (iv) Cheque no.863260 dated 2.5.1991 for Rs. 10,39,50,000 [Exs. 30, 32, 34 and 36] aggregating to Rs.38,97,20,000 drawn by MUL on its bankers viz. Canara Bank, Sansad Marg Branch, New Delhi in favour of Grindlays Banks.'

Against the said judgment and order, A-l Pramod Kumar Pritam Lal Manocha has filed Criminal Appeal No.l 117 of 1999, A-3 Vinayak Narayan Deosthali has filed Criminal Appeal No. 1141 of 1999, A-4 Ram Narayan Popli has filed Criminal Appeal No. 1097 of 1999 and A-5 Harshad Shantilal Mehta has filed Criminal Appeal No. 1150 of 1999. Against the acquittal order of A-2 Ambuj Sushil Kumar Jain, Central Bureau of Investigation has filed Criminal Appeal No.521 of 2000.

It is to be stated that pending hearing and disposal of these appeals A-5 expired on 31.12.2001. Normally, appeal would have abated against him. However, his wife filed Criminal Misc. Petition No.574 of 2002 on 16.1.2002 for continuing the said appeal. By order dated 24.1.2002, we granted such permission and appeal is heard on merits.

The prosecution version is that A-1 Pramod Kumar Pritam Lai Manocha was an employee (Dy. Manager) of MUL-a government Company as provided under Section 6(l)(vii) of the Companies Act; A-2 Ambuj Sushilkumar Jain was also an employee (Senior Executive) of MUL, who joined MUL on 19.4.1989; A-3 Vinayak Narayan Deosthali was an employee (Assistant Manager) of UCO Bank at Hamam Street Branch, Mumbai; A-4 Ram Narayan Popli was an employee (Officer attached to the Remittance/ Clearance Section) of ANZ Grindlays Bank, Delhi Branch; and A-5 Harshad Shantilal Mehta was a financial broker operating in money market and securities. In short, it is the prosecution version that A-1 to A-5 entered into a criminal conspiracy to siphon off the funds of MUL in favour of A-5 for which afore-quoted five transactions

took place, even though there was prohibition on granting loan by MUL to individuals. It is stated that A-l and A-2 were working closely and they had dominion over the property of MUL. A-1 used to place the proposal before the Board and obtain approval for the investments. A-l and A-2 used to give instructions on the basis of which letters addressed to banks were prepared. It is alleged that they misappropriated the property in violation of the law as well as their duty (express and implied) by making it available for use of A-5. This is on account of the fact that they were authorised to invest the money in the defined securities in a transaction with Public Sector Undertakings only. They, however, knowingly entered into a series of transactions, which had the result of making the funds of MUL available to A-5. It is also the prosecution version that they [Al, A2 and A3] being public servants during the material time, abused their position and thereby conferred a pecuniary advantage upon A-5 and in any event while holding office as a public servant obtained a pecuniary advantage for A-5 against public interest. Thus, they were charged with an offence u/s 13(1) (c) of the PC Act.

It is further stated by the prosecution that A-l alongwith A-3, A-4 and A-5 conspired to obtain funds from MUL under the pretence that the funds were being drawn for purchasing securities from UCO Bank but diverted these funds to the accounts of A-5 for which A-l and A-2 played the role of misrepresenting to MUL and withdrawing the funds. A-3 forged documents which helped A-l to secure the release of monies from MUL. A-l conspired alongwith A-3 and A-4 for making money available to A-5, who became the prime beneficiary of the money. The bankers' cheques were handed over, on the instructions of A-l and A-2, to Anuj Kalia an employee of A-5.

SUBMISSIONS -

Learned senior counsel Mr. Ram Jethmalani appearing for A-5 at the outset submitted that from the aforesaid five transactions, it is apparent that the investment/loan was for a short period. Yield - interest is at a higher rate. According to him, the amount is received and paid on due dates. There is no loss to MUL or to the UCO Bank and the Bank has received commission for the said commercial transactions. First transaction is loan taken by the MUL through UCO Bank from A-5 on the basis of 35 lacs of UTI units given by MUL to A5 through UCO Bank. It is his submission that in view of these facts it is apparent that prosecution is motivated and the conviction of the accused requires to be set aside.

For the prosecution, it is the contention of the learned Solicitor General Mr. Harish N. Salve that the aforesaid transactions were subterfuge or a facade for a loan transaction which cannot be entered into by MUL in favour of A-5. It is his contention mat in the background of the resolutions passed by the Board of Directors of MUL and on the basis of the guidelines issued by the RBI, MUL could not give loan to A-5 and, therefore, there was a conspiracy between A-l and A-5 for diverting the funds of MUL by having subterfuge of sale or purchase of units of UTI by the UCO Bank to MUL. In furtherance of the said conspiracy, for 2nd to 5th transactions, A-l got issued cheques by the Canara Bank in favour of Grindlays Bank which in turn transferred the said amount in account of A-5, first at Delhi and thereafter at Bombay. ANZ Grindlays Bank's Bombay Branch issued cheque to UCO Bank at Hamam Street and from there the amount was paid to A-5.

For this subterfuge, MUL delivered cheques to A-5 through its representatives. If the transaction was between MUL and UCO Bank, the cheque would have been delivered to the representative of UCO Bank either at Delhi or at Bombay. If there was a loan transaction between the MUL and A-5 then there was no necessity of issuing cheque in favour of Grindlays Bank at New Delhi and transferring the said amount to UCO Bank. It is the prosecution version that as the transactions were not genuine and as loan could not be given to A-5 in his individual capacity, it was given to A-5 by creating forged documents.

He pointed out that after receiving the cheques issued by Canara Bank on behalf of MUL in favour of Grindlays Bank, the same were immediately encashed on the same day and thereafter Grindlays Bank, New Delhi again transferred the same to its Bombay branch in favour of A-5. Thereafter, A-5 gave cheques to UCO bank. This itself indicates that as the transactions were not genuine, irregular and illegal procedure was adopted for encashing the cheques. Therefore, this is a case of misappropriation and forgery. Further, if there was genuine sale of units by UCO Bank to MUL, the transactions would have been straight forward between UCO Bank and MUL. It is the prosecution version that brokering by bank is not allowed and, therefore, to contend that commission was paid to UCO Bank is not a just ground for holding that there was no misappropriation or forgery. If there was a genuine transaction then the cheques would not have been issued in favour of Grindlays Bank for so-called expeditious movement of funds. If a person acts in a manner which is sinister or contrary to law then it cannot be said that the transaction was as per the commercial practice. It is a case of forgery because certain sets of documents are created where there is no real or genuine transaction. It is also contended that A-3 was not having any authority to purchase or sell units on behalf of the Bank. Secondly, he got letters. Exs.58, 60 and 61 typed outside the office and nobody knows wherefrom the said letters were got typed and this would not be in normal course of business. This would be a most relevant factor for judging whether his act was dishonest or not. A-3 wrote a document, which he had no authority to write, with a specific motive to enable the transaction to be completed and money pulled out of MUL and he issued Bank Receipts (hereinafter referred to as 'BRs') without having security, namely, having UTI units. The learned counsel admits that there is no direct evidence on record to establish that BRs were issued without possessing the units but inference can be drawn that the same were issued without holding units as A-3 has not maintained any record for this purpose.

Contra, Mr. Jethmalani, learned senior counsel submitted that despite the voluminous record consisting of 40 massive volumes, the case remains a simple one. Admittedly, five transactions took place between MUL and A-5 during the period from end of January to beginning of May, 1991. As per the first transaction, A-5 lent money to MUL. Loan period was for a period of 32 days and the interest rate was 12.75%. MUL returned the loan amount on due date with agreed interest. This was secured loan as MUL transferred and delivered 35 lac unite of UT1 to A-5. Though, formally it was an out and out sale by MUL to A-5, it was understood that this was only to secure repayment of the loan on due date.

It is the case of A-5 that except for first transaction he borrowed money from the MUL because MUL had surplus funds which MUL were to invest and make substantial profits out of investment. A-5 returned the borrowed amount on due date with interest in each transaction. All the said four transactions were backed by BRs as collateral security and the BRs were backed by requisite number of units. Loan was for a short period e.g. 2nd transaction was for 12 days, 3rd was for five days, 4th was for two days and 5th for five days. Interest rate was also high i.e. 16.75%, 21%, 26.25% and 25% respectively.

It is his submission that it is absurd to suggest that A-5 committed any offence or offences, but the prosecution is a piece of political revenge against A-5 for disclosing certain facts to the press against the political leaders. He contends that transactions were loan transactions because in all these transactions the rate of interest and number ;f days for which the loan was being advanced was settled before die money and the units changed hands. This is consistent only with the transaction being a loan transaction. He also submitted that mainly the prosecution case in the FIR dated 15.4.1993 which was lodged after preliminary enquiry which started from 15.9.1992 as well as in the charge-sheet submitted by the CBE on 15.12.1994 was that MUL gave loan to A-5 at a lower rate of interest and suffered toss.

The learned senior counsel submitted that FIR was lodged after investigation for seven months and charge-sheet was submitted after more than one year and eight months, which itself indicates mat CBI knew that there was no case to be put up before a Court and the investigation was kept alive for sordid and dishonest motive. He pointed out that-(I) the CBI itself understood that the FIR was based upon the one single allegation that MUL should have received more interest than it actually received. The charge-sheet nowhere states that at the time of the FIR the nature of these five transactions was misunderstood or that they changed their mind after investigation; (2) paragraph 4 of the charge-sheet expressly confirms that the first transaction was loan transaction inasmuch as it is averred that MUL borrowed the amount at a higher rate of interest at 12,75% per annum for 32 days against physical delivery of 35 lacs Units of the UTI; (3) paragraph 5 of the charge-sheet refers to the transaction of 13th March, 1991 which describes it as an investment of 10 crores and odd from MUL for a period of 12 days at the interest rate of 16,75% per annum. This is nothing but a loan to Harshad S Mehta; (4) paragraphs 6,7 and 8 contain similar descriptions of the remaining transactions.

He further submitted that cheques were drawn in favour of Grindlays bank for expeditious transmission of amounts to A-5, the loan transactions were only for a few days and if couple of days are lost in realising the amounts through normal banking practice, the accused was to lose lacs of rupees. For this, he relied on evidence of prosecution witnesses that such facilities were available only in foreign banks,

He contended that there is no evidence on record that Grindlays bank or the Canara bank had any objection to this course of dealing. He further contends that there is no question of conspiracy to siphon off the surplus funds of MUL as the amount was lent on security and repaid with interest on due dates. He contends that prosecution has tried to prove the theory of so-called absurd conspiracy by the sole evidence of approver PW23 and has failed to prove the same miserably. He pointed out that before taking loan, units of UTI were deposited or were with the UCO Bank and there is no evidence on record to establish that units were not with the UCO bank at the time when the BRs were issued. It is his submission that in a criminal prosecution it is absurd to suggest that defence has to prove that BRs were obtained without sufficient security. The prosecution witnesses of the UCO Bank have admitted that necessary record was not maintained by the bank because of heavy pressure of work.

It is a!so submitted that for similar transactions RC.8(BSC)/94/Bom, was lodged and a report was submitted before the Court stating that there was no case against the accused. After investigation, it was discovered that the BRs were indeed backed up by the securities, hence the CBI filed closure report dated 11.11.1994 Ex.A-S-116 before the High Court and the said report was accepted on 17.3.1997. That order was upheld by this Court. However, the CBI proceeded with this prosecution for an oblique motive.

In written submissions filed on behalf of A-5, it has been further stated that the charge against A-5 reads as under: -

"That you accused no.5 in furtherance of the aforesaid conspiracy did \007 dishonestly misappropriate 4 banker’s cheques to wit. Cheque No.645585 dated 13.3.1991, cheque no.646402 dated 18.3.1991, cheque no.863237 dated 24.4.1991 and cheque no.863260, dated 2.5.1991 aggregating to Rs.38,97,20,000 drawn by MUL on its bank to wit the Canara Bank, Connaught Place Branch in favour of the ANZ Grindlays Bank and you thereby committed an offence under Section 403 of the IPC."

It is contended that the point of determination is - whether this charge is legally sustainable. In other words whether borrowing money on four occasions and returning it on the due date with interest is an offence under Section 403 of the IPC? The answer to this point is - a resounding

No.

The learned senior counsel further submitted that following are the ingredients of the offence charged above: -

(i) that the accused appropriated the cheques to himself; (ii) that the appropriation was a misappropriation; (iii) that it was dishonest

He submits that the first ingredient is satisfied-A-5 appropriated the cheques or their proceeds to himself. A person misappropriates only when he appropriates property to himself which in fact belongs to somebody else and he does so without that person's consent. Grindlays bank had not negotiated the loan for itself. Cheques were being issued for the purpose of lending money by MUL to A3. The cheques and their proceeds were meant for the accused and it was the accused who was receiving it by a pay order in the name of Grindlays Bank. It is not the prosecution case that the amount was in fact meant for Grindlays bank but it is the prosecution case that the amount was meant only for A-5.

It is argued that when in the four transaction the loan was advanced by MUL to A-5, it was done every time by a pay order. Under that pay order issued by the Canara Bank, it was to pay a sum of money to Grindlays bank. Grindlays bank acknowledged the receipt. This pay order had been given by the Canara Bank to an employee of A-5. The very fact that this was so handed over shows that Canara Bank must have received instructions from their own customer that the cheque be handed over not to an employee of Grindlays bank but to some other person.

Further, it is submitted that the contention of the prosecution that the Grindlays bank should have first credited the amount to itself and then after some interval paid to its customer A-5, is without any substance as what has been done was only to expedite the payment so that the large amount of interest which was to be paid by A-5 may not go waste. What the Grindlays bank did was to provide a laudable legitimate banking service. In any event, every trifling departure from practice does not make the transaction illegal. At worst it is unusual, but not irregular. For this, it is submitted that PW12 Ashok Monga, Asstt. Manager, ANZ Grindlays Bank has fully supported the existence and propriety of this practice. The kind of pay order like Ex.30 has never been held to be a cheque. To hold it to be a cheque would lead to some absurdity. Section 128 of the Negotiable Instruments Act lays down that when a cheque is crossed, the banker on whom it is drawn shall not pay it otherwise than to banker. It is obvious that if the payee is itself a banker he cannot be expected to present it to another banker for collection. Grindlays Bank cannot open an account with some other bank and cash its Pay orders in that account. Even paying a crossed cheque otherwise than through a bank only renders the bank liable for negligence if somebody suffers a loss. If the banker is certain who the beneficiary of the cheque is, it may well pay out in the certain belief that no loss will occur. It is a manifestly untenable proposition that a criminal breach of trust or misappropriation thereby takes place. Even if it is assumed that the cheque was property of Grindlays bank, the bank cannot be said to have committed any offence by passing on its property to anybody it likes. By allowing the proceeds to be credited to the account of its true customer, the Bank is neither guilty of negligence nor of any criminality. Similarly, no officer of the bank could be held liable for the same and there is no question of any liability for A-5. There is no evidence that Grindlays bank or the Canara bank had any objection to this course of dealings. Certainly there was no intention to cause wrongful loss to anybody because no loss has been caused and no unlawful means were used.

Learned senior counsel referred to the decision in Dr. Vimla v. Delhi Administration, [1963] Suppl. 2 SCR 585 and submitted that unlike the above case, every thing in the present case is above board, there is no deceit, there is no falsehood and suppression of truth.

It is contended that an approver's evidence cannot be accepted without corroboration and certainly not when it is in conflict with the unchallenged testimony of another prosecution witness. There was no justification for the Court to come to the conclusion that it is accused no.5 who is responsible for these pay orders being credited directly in his account. Of course, it is without prejudice to the arguments that the amount is not directly put into his account.

It is contended that even though it was necessary to recall PW16 for the cross-examination on the new falsehoods which were introduced through the examination-in-chief and cross-examination of PW23, but the learned Judge dismissed the application filed on behalf of A-5 and it has caused incalculable damage. The illegality is of such vital importance that it vitiates the entire trial and judgment.

The charge of conspiracy against A-5 is legally and factually absurd, false and frivolous. The alleged conspiracy is supposed to have originated in April/May, 1989. The sole prosecution witness who deposed about the alleged meeting of April/May, 1989 is approver PW23. The evidence discloses that PW23 had stated a willful falsehood in deposing about the said meeting. His own sworn testimony unambiguously establishes that the meeting alleged by him to have taken place could not and did not take place. According to him, the alleged meeting took place either in April or May, 1989 at the office premises of MUL, K.G. Marg, New Delhi. He is categorical that A-5 visited New Delhi once in April or May, 1989. In his cross examination on behalf of Al and A-2, he states that: "I cannot say about the frequency of visits of A-5, but I recollect he having visited Delhi once sometime in April, May, 1989."

PW23 makes passing reference to A-2's presence at the alleged meeting so that it could be said that it was a condonable lapse of memory on his part. On appreciation of his evidence, it cannot be said that he had an understandably vague memory regarding A-2's presence; on the contrary, his deposition evidences vivid details about the role and participation of A-2 at the said meeting. Since A-2 could not even be present at the meeting as he was not employed with MUL on that date, it is abundantly clear that PW23 has deposed falsely about the meeting. If A-2 could not have been present at the meeting, PW23's insistence that A-2 was so present, leads to the irresistible inference that his deposition regarding the alleged meeting is totally concocted.

It has come on record that PW23 disclosed regarding the alleged meeting, only on 10.8.1994. Indeed, the very suggestion by PW23 that a police officer who interrogated him would not question him about the circumstances of five transactions is absurd and incredible. The said meeting being a crucial aspect of the instant prosecution ought to have been referred to in the very first statement of PW23. The fact that it was not so referred to conclusively established that the meeting never took place and reference to it in PW23's later statement of 10.8.1994 and in his judicial confession recorded u/s 164 CrPC was at the instance of the CBI to whose suggestions he readily acceded in view of an agreement to make him an approver. It is further contended by the learned counsel for the appellant that in fact no such meeting ever took place and consequently, the conspiracy charge insofar as it is alleged to have commenced from April/May, 1989 is unsubstantiated by any evidence and in fact falsified by it as-

(a) the veracity of PW23 has been destroyed in cross examination. He denied his taped conversation and feigned ignorance of police statement. He suppressed truth from the JPC.

(b) Para 160 at page 294 of the impugned judgment, contains a legal error. The learned Judge treats as corroborative evidence what in law and common sense is not corroborative evidence at all. Learned Judge has held that evidence of Khandelwal is corroborated from what followed thereafter in the form of various transactions between MUL and A-5. It is contended

that the conspiracy of 1989 cannot be corroborated by transaction in 1991.

(c) In charge no.l, one of the objects of the conspiracy is alleged to be 'dishonest misappropriation'. This has obviously reference to the 34th charge against A-5. On the facts this charge cannot be established. For the same reason the charge u/s 409 IPC against A-5 cannot stand. The other section mentioned is 420. The learned Judge has recorded no conviction under this charge and all the accused against whom this charge was framed are deemed to be acquitted of this charge.

The charge of conspiracy is cooked up to cover first three transactions which were prior to 1st April, 1991. Further, the RBI's Circular dated 09.9.1992 Ex.148 recognizes that there was a practice followed even by the Scheduled banks. When tanks follow a particular practice they do so at least in the bonafide belief that the practice did not violate any law. If a practice is illegal, it may not convert that which is illegal into legal but it certainly provides for bonafides and absence of dishonesty. From this circular, it is clear that the scheduled banks were being advised against a practice which might put them in difficulty. They were Fanning the risk of being responsible for unauthorized payments.

MOTIVATION BEHIND THE INSTANT CASE:

There are several salient features of the instant prosecution which clearly show that the entire investigation has been dishonest.

it is almost Me to suggest that the SCAM Act was promlgated with a view to recover public monies lost by certain banks and financial institutions in securities where such losses arose as a result of such transactions. It is equally trite to state the contrary proposition that where there were no losses at all, the institution of the Special Court was wholly unnecessary and the Special Court was not to try such transactions even if they amounted to some technical offences. If the aforesaid two propositions are correct, then, there is simply no justification for the instant prosecution.

The Joint Parliamentary Committee (IPC) succinctly set out the dimensions of the scam in its report. The Committee highlighted various irregularities and fraudulent transactions undertaken by the Banks and Financial Institutions etc. in the six reports submitted by it

Yet, inspite of all the above mentioned features peculiar to the instant case, the charge sheet m the present case was one of the earliest to be filed against A-5. to view of the palpable lack of nexus between fee instant prosecution and legislative intent in enacting the SCAM Act the question can arise as to why the CBI chose to investigate and prosecute the instant case, This question has a clear answer that the CBI cheose to pursue the instant case and other cases in which PW23 had acted on behalf of A-5 in New Delhi in transactions with public sector undertaking to intimidate and blackmail PW23 for not supporting A-5's public declaration from June, 1993 onwards that he had paid the sum of Rs.1 crore to the then Prime Minister at his residence in Delhi. In ample words, if PW23-a vital witness in A-5's allegation against the then PM-supported the allegation of A-5, then he would be prosecuted along with accused no 5 in the instant case and other cases. If he cooperated and did not support A-5, he would be granted a pardon in the said cases. The forum in which the cooperation of PW23 was sought for was in proceedings before the JPC which inter alia was to inquire into A-5 's allegation against Shri Narsimharao. the then Prime Minister. Following consequences of events conclusively establish the quid pro quo referred to between the CBI and PW23.

(a) in June, 1992, PW23 met the then Director CBI. This is admitted by PW23. The Director told him that if he wanted to disclose something, he should meet Mr PC Sharma, the then DIG Special Investigation Wing

(b) PW23 met Mr. Sharma on a number of occasions thereafter.

(c) JPC was informed by Mr, Sharma that PW23 was sent to him as a 'source'. What was the source disclosed to Mr. Sharma has not been revealed by the latter to the JPC as he did not want to betray his source,

(d) Notwithstanding the fact that PW23 first met the CBI as a source, a preliminary enquiry was registered in the instant case on 15.9.1992.

(e) 13 members of the JPC in a separate note have described this change in status of PW23.

(f) On 17th February, 1993. A-5's advocate addressed a letter to CBI about 4 cash withdrawals from banks in Bombay and Delhi between 2nd and 4th November, 1991 which according to him were politically sensitive in the extreme and stated that details of these would be revealed if A-5 was given assurance of complete protection from political harassment or persecution.

(g) Although the CBI replied A-5's letter on 25.2.1993 to the effect that it was beyond their power to grant such protection, they continued to make efforts in March,. 1993 to obtain A-5's narration on the said cash withdrawals. It is only after they failed to obtain such a narration that the FIR in the instant case was filed on 15.4.1993.

(h) The FIR of dated 15.4.1993 did not cite PW23 as an accused, despite the fact that PW16 was cited as an accused in the FIR. (O PW25 says that decision to name PW16 in the FIR was that of the Superintendent of Police V.D. Maheshwari and the investigating agency and that he had to agree with that decision. Further, they decided not to cite PW23 as an accused in the FIR,

(I) The evidence of VD Maheshwari as a court witness completely corroborates the fact that the FIR was registered not because the investigating agency had applied its mind and such application had revealed to it that the case prima facie disclosed offences which deserved to be investigated but was to extort PW23's support in connection with the conditional disclosures that A-5 offered to make. Thus in his cross-examination on behalf of A-5, he does not even remember the following-

(5) whether he questioned A-5 before the FIR was registered;

(ii) whether he interrogated any of the other accused in the instant case before the FIR was registered;

(Hi) whether he interrogated PW23;

(iv) whether he discussed the matter with the IO;

(v) whether me IO submitted any written report on the outcome of the preliminary enquiry;

(vi) whether at the time of registration of the FIR he had determined the role of PW16;

(vii) why PW23 was not named as an accused in the FIR which came to be registered;

(viii) whether he personally referred to any documents before deciding to register the FIR.

All the above circumstances reveal the non- application of mind which the investigating agency displayed in filing the FIR. The only circumstance that Maheshwari recalls is that the decision to lodge the FIR was a unanimous one.

(j) The investigation concluded on 4.11,93 when the IO PW2S recommended the prosecution of all die accused including PW23. Although the investigation had ostensibly concluded, no charge sheet was filed. Obviously, the CBI was awaiting the outcome of the event.

(k) The JPC prepared its report in December 1993. In January 1994, the said report was made public. The report disclosed that PW23 fulfilled his part of the bargain with the CBI refusing to support A-5's public claim that the cash withdrawals made by him in November 91 were utilized for paying a sum of Rs.l crore to the PM, which claim became public by virtue of a press conference held on 16.6.1993.

(1) In the very next month after the publication of JPC report, a charge-sheet was filed in a case dealing with the funds of Power Finance Corporation in which A-5 and PW23 were cited as accused.

(m) On 26.5.1994 PW23 made an application u/s 306 read with S.164 Cr.P.C. that his judicial confession be recorded and that he be made an approver in the instant case before the Ld. Special Judge, New Delhi who was seized of the charge-sheet in the PFC case. That application was rejected.

Thereafter, on second attempt, after his arrest on 10.8.1994, his confessional statement was recorded by another Magistrate and not by the Special Judge who rejected the application for pardon in PFC case.

(n) Ld. CMM assigned the case for recording of confession to PW20 Dr. Ramkrishna Yadav, M.M., New Delhi who ultimately recorded the judicial confession (Ex.139) of PW23 on 21.10.1994.

Ultimately, the application for grant of pardon was accepted by the same Magistrate.

Very soon, after the said pardon was granted, the charge sheet was filed on 6.12.1994 i.e. within a period of six weeks from the pardon being granted.

(o) The absence of any loss to MUL in the instant case, the absence of proof whether A-5 made any gain in the instant case; the fact that the transactions took place at a time in which three of them were beyond the time period for which the Special Court exercises jurisdiction; the fact that all five transactions were prior to the RBI circular of 26.7.1991; the allegation of A-5 against the then PM; the abdication by the IO of the powers and discretion vested in him by the CrPC to his superiors in the CBI in the matter of proceeding with this case; the total non-application of mind of those superiors in lodging the FIR on 15.4.1993; the untenability of the charges both in law and in fact against all the accused, the manifest incompetence and negligence in investigation on the part of the CBI and the attempt to wilfully suppress material and politically sensitive documents in the case all indicate that the present case far from sub-serving the objects for which the Special Court was established, is a colossal waste of public time and money, a travesty of justice and an unfortunate reminder of how individuals subvert our criminal justice system by causing institutions like the CBI to file cases which are only vehicles to subserve their own private interests.

Lastly, the learned senior counsel for A-5 submitted that not only A-5 and others charged alongwith him be acquitted of all charges, but strictures against the investigating agency for bringing the system of criminal justice administration into disrepute be passed.

Before dealing with the contentions raised by the learned counsel for A-S and CBI and before narrating submissions made by the counsel for rest of the accused, we would first refer to: -

A. Allegations in the FIR and charge-sheet

B. Relevant Part of the Report of the Joint Parliamentary Committee (JPC).

A. ALLEGATIONS IN THE FIR AND CHARGE-SHEET.

The FIR was recorded on 15.4.1993 by the CBI after Preliminary inquiry which started on 15.9.1992, wherein it is inter alia stated as under:-

(i) During Jan., 1991 to May, 1991 Shri Pramod Kumar was functioning as Dy. Manager (Finance) and Shri Ambhuj Jain was functioning as Sr. Executive in the Corporate Finance Cell at the Corporate Office of MUL, New Delhi, and they were having control and dominion over the surplus funds of MUL which they were handling for investments with various agencies. These investments were being made in each case with the specific approval of a Sub Committee for investments consisting of Shri R.C. Bhargava then CMD MUL and S. Natrajan, then Director (Finance) MUL. During this period MUL was a public sector undertaking and these officials were public servants.

(ii) S/Shri Promod Kumar and Ambhuj Jain entered into a criminal conspiracy during the period from January 1991 to May 1991 at Delhi and Bombay with V.N. Deosthali an officer of UCO Bank, Hamam Street Branch, Bombay, R.N. Popli of ANZ Grindlays Bank, Delhi and Sh. Harshad S. Mehta a broker, his employee Anuj Kalia and certain other unknown persons with the object to misappropriate the said surplus funds of MUL and to provide pecuniary advantage to Sh. Harshad S. Mehta out of the funds to be invested by MUL by abusing their official position as public servants.

(iii) In pursuance to the said criminal conspiracy, Shri V.N. Deosthali wrote a letter on 24.1.91 to MUL to effect physical delivery of 35 lacs units of UTI to Sh. Mohan Khandelwal, the attorney of Sh. Harshad S. Mehta and an amount of Rs.4,99,45,000 was credited to the account of MUL in Bank of America at Delhi out of the account of Sh. Harshad S. Mehta. This amount was borrowed by MUL at higher interest rate of 12.75% per annum for 32 days against physical delivery of 35 lac units of UTI. The physical delivery of 35 lac units was taken by Sh. Anuj Kalia on the basis of receipt given by Sh. Mohan Khandelwal on the letter head of Sh. Harshad S. Mehta. After expiry of 32 days the principal amount together with interest totalling to Rs.5,05,03,250 was refunded by MUL on 2.5.91 for this refund Sh. Ambhuj Jain obtained banker’s cheque in favour of ANZ Grindlays Bank out of the account of MUL in Canara Bank, Sansad Marg, New Delhi and the cheque was delivered to Sh. Anuj Kalia, an employee of Sh. Harshad S. Mehta. Although the said cheque was in the name of ANZ Grindlays Bank, Shri R.N. Popli, officer of ANZ Grindlays Bank, Sansad Marg, New Delhi with oblique motive credited the same into the account of Shri Harshad S. Mehta and then transferred it to his account in Bombay.

(iv) The transactions of 13th March, 18th March, 1991 and 24th April, 1991 are referred to in para 5. The said paragraph itself recites the number of days and the rate of interest. For these investments, Banker’s cheques were obtained by SI Shri Pramod Kumar and Ambhuj Jain from the account of MUL in Canara Bank, Sansad Marg, New Delhi in the name of ANZ Grindlays Bank and the same were collected by Shri Anuj Kalia who deposited the same into the account of Shri Harshad S. Mehta in ANZ Grindlays Bank, Sansad Marg, New Delhi. As these Banker’s cheques were in the name of ANZ Grindlays Bank, they should have been credited into the account of the bank but Shri R.N. Popli in connivance with his co-conspirators, credited the same into the account of Shri Harshad S. Mehta unauthorisedly. On reversal of these investments the amounts were credited in the account of MUL from the account of Shri Harshad S. Mehta.

For the above investments, Shri V.N. Deosthali issued bogus bank receipts unauthorisedly in pursuance of the said conspiracy.

With regard to the 5th transaction dated 2.5.1991, similar averments are made in paragraph 7.

(v) The enquiry into the said PE disclosed that MUL, Delhi during the said period had invested its huge surplus amounts with other banks and public sector undertakings on higher rate of interest. Similarly, during the same period other public sector undertakings had invested their funds at much higher rates then the rate of interest on which MUL had made aforesaid four investments.

(vi) S/Shri Pramod Kumar and Ambhuj Jain in pursuance of said conspiracy misappropriated funds of MUL by abusing their official position as public servants in as much as they invested the funds of MUL at lower rate of interest and thereby caused pecuniary advantage to the co-conspirators and corresponding loss to the MUL.

In the charge-sheet submitted on 15.12.1994, similar allegations are reiterated. Learned senior counsel Mr. Jethmalani pointed out that-(1) Paragraph 4 of the charge-sheet expressly confirms that the first transaction v. as loan transaction inasmuch as it is averred that MUL borrowed the amount at a higher rate of interest i.e. at 12.75% per annum for 32 days against physical delivery of 35 lacs Units of the UTI; (2) paragraph 5 of the charge-sheet referring to the transaction of 13th March, 1991 describes it as an investment of 10 crores and odd from MUL for a period of 12 days at the interest rate of 16.75% per annum. (3) paragraphs 6, 7 and 8 contain similar descriptions of the remaining transactions. (4) Para 3 of the FIR is the basis for conspiracy during the period from January 1991 to May 1991.

From the contents of the FIR it appears that A-l and A-2 were investing surplus funds of MUL with various agencies. These investments were made in each case with the specific approval of Sub-committee for Investment consisting of Mr. RC Bhargava, the then Chairman and Managing Director (CMD), MUL and S. Natrajan then Director (Finance), MUL. Allegation in the FIR is that for the First transaction MUL borrowed the amount at higher rate of interest of 12.75%. With regard to the remaining transactions it is alleged that MUL gave funds to A-5 at a lower rate of interest and thereby pecuniary advantage accrued to the borrowers and MUL suffered corresponding loss. Same is the position in the charge-sheet.

Further, there cannot be any dispute that the FIR and the charge-sheet is the basis in a warrant triable case. Charges were also framed on the basis of FIR as well as other material produced by the investigating agency. The CBI itself understood that MUL should have received more interest than it actually received. The charge-sheet nowhere states that at the time of lodging of the FIR the nature of these five transactions was misunderstood.

Further, in the FIR as well as in the charge-sheet it is stated that conspiracy between the accused for the alleged transaction took place during the period from January 1991 to May 1991.

B. RELEVANT PART OF THE REPORT OF JOINT PARLIAMENTARY COMMITTEE (JPC).

JPC noticed the findings of Janakiraman Committee’s Report submitted in May 1992 that unscrupulous brokers in collusion with certain bank officials had manipulated securities transactions of banks and financial institutions for their own purpose in a variety of ways and in clear violation of the established rules, guidelines and prudent business practices. Parliamentary Committee also noticed (i) number of irregularities including extensive use of BRs for ready forward transactions, (ii) issuance of number of BRs on the basis of one outstanding BR and issue of BRs having no backing of securities, (iii) facilitating the brokers to take temporary position in Government securities without involvement of their funds by putting the transactions through brokers account and issuing BRs on behalf of brokers. For the BRs, the Committee observed as under:

4.6 "The three instruments widely misused in the irregular transactions were (1) Bank Receipts (BRs); (2) Subsidiary General Ledger (SGL) transfer forms; and (3) Bankers cheques. BR is a non-transferable unstamped trust receipt issued by a bank selling securities when it is not able to effect physical delivery of the securities sold even after the receipt of the purchase consideration for reasons such as the securities are lying at another centre. In terms of the B.R., the seller bank undertakes to hold the security on trust for the purchaser for the short period till delivery and it is generally considered valid for 90 days or till delivery is effected whichever is earlier. In the inter bank market, a large number of transactions in securities were being concluded by means of BR deliveries (instead of physical delivery of securities sold); however, there was no uniformity in the format of the BR and there were also not set guidelines for its usage. B.R. does not find a place in the Banking Regulation Act, 1949. It was only on the 6th May, 1991 that IBA issued a circular prescribing a format and laying down certain broad guidelines and recommending its adoption by member banks and other financial institutions like IDBI/IFCI/ ICCI/NABARD etc. The RBI for the first time inter alia issued instructions to banks in this regard in their Circular of 26.7.1991 (Appendix-IX). A similar receipt issued by a non-banking financial company is termed 'Security Receipt' (SR) and such receipts also came to be freely used in security transactions.

4.32 The Committee is led to the conclusion that the BR system has been considerably misused. Every step should, therefore, be taken to prevent recurrence of such things in future. There is need for reforms of the BR system, for example, by way of reduction in the period of its validity and imposing of severe penalties for its misuse.

MANIPULATIONS TO FAVOUR BROKERS

CREDITING OF CHEQUES TO BROKERS' ACCOUNTS

12.14 The scrutiny of securities transactions in a number of banks revealed that some banks were even handing over Account payee cheques drawn in favour of other banks to the brokers who got them credited to their account ostensibly to assist the latter in transferring funds quickly to meet their obligations. As per informal understanding and in the name of market practice, the payee-bank used to credit the proceeds to the accounts of the broker constituents who brought the cheque to it for collection. These practices were in gross violation of the instruction that the accounts of banks with RBI, should be utilised only for genuine inter bank transactions and not for transfer of funds to their clients. The total amount diverted to the brokers accounts and the ultimate disposal of funds has not been determined. Some instances are however given below.

12.15 In respect of investment transactions between PFC and UCO Bank during the period July, 1990 to May, 1991, 16 bankers cheques totalling Rs.394.23 crores were unauthorisedly issued in favour of ANZ Grindlays which were irregularly credited to the account of HSM.

ROUTING OF TRANSACTIONS

12.24 Many brokers e.g. HSM, HPD, ADN, Excel & Co., NKA etc. used some of the banks as 'routing' banks which carried large volume of securities transactions for them. Thus Andhra Bank, UCO Bank, BOK, Bank of Madura and ABFSL carried transactions of the value of over Rs.77,000 crores for brokers and others during April, 1991 to May, 1992. These banks, thus, provided special privilege to a select few brokers by lending their names to the transactions of these brokers totally disproportionate to the income derived and exposed themselves to great risk by irregularly issuing their own BR or SGL transfer forms against BR received or to be received in their favour.

SINGLE POINT CLEARANCE

12.28 In the case of SBI, it was noticed that HSM had been unauthorisedly given the facility of collection and credit of the bankers cheques by SBI as per his instructions. The Bombay Main Branch of SBI acting as the agent of SBI Caps had debited SBI Caps account and unauthorisedly credited funds to the account of HSM instead of making payments to named banks/ institutions. Cheques drawn on UCO Bank had been credited to the current account of the same broker.

12.29 The Committee noticed in this connection that HSM had requested the Bombay Main Branch twice by his letter dated 19.8.91 and 10.01.92 for acceptance of bankers cheques from banks/organisations brought by him or his representative and issuance of bankers cheques there against. In fact, the broker wanted that the facility of 'single point clearance' whereby the activities of issuance and acceptance of bankers cheques in their account may be conducted through the Securities Division of the SBI Main Branch Bombay instead of the Personal Banking Division in the same branch where he had the account. This facility had enabled HSM to put through the transactions through the Securities Division itself and also to get bankers cheques in favour of SBI credited to his account and issue of cheques against the credits. The SBI in a note furnished to the Committee stated that the letter dated 19.8.91 was not traceable but the letter dated 10.01.92 did make a reference of the same. The Committee, however, obtained a copy of the letter dated 19.8.91 from HSM. In this letter, HSM while requesting for the facility of obtaining bankers cheques against presentation of bankers cheques in bank's favour argued that there would be no outlay of any funds by the bank. On the contrary, a good amount of sum will be left in current account for the bank to enjoy the float.

12.30 In his letter dated 10.01.92, ine broker repeated his request and stated:

"to facilitate a single point clearance, we have to request you to let the activities of issuance and acceptance of Banker's Cheques be conducted by the Securities Division. This will facilitate us to meet the deadlines of inter-bank clearing timings."

14.21 The Committee note that the PSUs were the single largest source of surplus investible funds around Rs.36,000 crores between April 1990 and December 1992 only. In the investment of these funds guidelines and instructions were routinely flouted and no norms were observed. Neither DPE nor the Ministries concerned took any steps to ensure the compliance of their guidelines. Even the Ministry of Petroleum and Natural Gas which had made a review of investment of surplus funds by the PSUs under its administrative control in May 1990 closed its eyes knowing fully well that PSUs were investing with the foreign banks despite the guidelines of DPE that PSUs could have normal banking transactions only with nationalised banks.

PLACEMENT OF FUNDS FOR SHORT PERIODS-

14,98 The PSUs have placed funds with banks and finance companies for very short periods, sometimes for only a few days and even for one day implying supply of funds for speculative purposes to earn higher return. These banks/finance companies issued BRs for the amount received. The PSUs after the maturity of investments returned the BRs and got their moneys along with the yield which was agreed to at the time of placement of funds. Thus these transactions were in the nature of ready forward deals instead of genuine investment transactions which was in contravention of RBI guidelines issued on 11.4.1988 which stated that sale and purchase of securities with the same party and for identical or similar amounts were construed as tacit arrangements which was in contravention of the instructions prohibiting buy back arrangements with non-bank clients.

DIVERSION OF FUNDS TO BROKERS-

14.114 While most of the PSUs/Organisations denied before the Committee about utilising the services of brokers, the Committee found that in some cases inquiries/investigations by CBl/internal auditors clearly established nexus between brokers, officers of PSUs/ banks resulting in syphoning of funds of PSUs to brokers. !t is reported that 22 PSUs had placed funds to the extent of over Rs. 12,000 crores through Harshad S. Mehta which were syphoned of to him and his groups of Companies. Some instances are given below; -

(ii) In the case of Maruti Udyog Limited, it was found, that funds of MUL meant for purchase of units from UCO bank were credited into the individual accounts of HSM. There is a financial involvement of Rs 33.63 crores.

(iii) ....

(iv) ....

17.48 On 16th June, 1993 Shri Harshad Mehta held a press conference in which he issued a copy of an affidavit of 24th February, 1993 and briefed the press of the details of the 4 specific withdrawals of 2nd and 4th November, 1991 and its subsequent disbursement. In a press conference held on the same day he released a copy of an affidavit dated 24th February, 1993 alleging that these were in connection with payment of Rs. 1 crore to the P.M. on 4.11.1991.

18.5 HSM was summoned by the Committee again on 30.6.1993. During evidence when his attention was drawn to the inherent contradictions between what he had deposed before the Committee earlier and that given in the press conference he stated that he had been 'discrete' about the information given by him to the Committee.

From the aforesaid part of the report, it is apparent that-

(a) Some banks were even handing over account payee cheques drawn in favour of other banks to the brokers who got them credited to their account ostensibly to artist the latter in transferring funds quickly to meet their obligations. As per informal understanding and in the name of market practice, the payee bank used to credit the proceeds to the accounts of the broker constituents who brought the cheque to it for collection.

(b) Routing of transactions facility was given to many brokers including A-5.

(c) Single Point Clearance claimed by A-5 and given by SBI.

(d) PSUs were investing the funds against the guidelines and instructions.

(c) PSUs were investing funds for short periods for few days and even for one day implying supply of funds for speculative purposes to earn higher return.

(f) In the investment of these funds guidelines and instructions were routinely flouted and no norms were observed. Neither DPE nor the Ministries concerned took any steps to ensure the compliance of their guidelines.

RELEVANT PART OF EVIDENCE-

In the present case, the evidence runs into more than 40 volumes. However, at the time of hearing of this matter, on behalf of A-5, five transactions in question are admitted. Hence, it is not necessary to refer to or consider the evidence pertaining to the transactions in question. If the prosecution and defence had concentrated on the real issues for

determination before the Special Court, it would have saved the Court's time in recording evidence at such a length. Unfortunately, a practice is developed in criminal/ civil cases not to admit any document and thereby to prolong the litigation with impunity. For the purpose of deciding these appeals, it is necessary to only refer to relevant part of evidence which learned counsel for the parties have relied upon.

For this purpose, we would divide the evidence and submissions as under:-
[On behalf of] -

(a) MUL;

(b) UCO Bank;

(c) ANZ Grindlays Bank;

(d) other relevant witnesses, such as. PW16 Anuj Kalia, PW23 Mohan D. Khandelwal (Approver) and PW25 1.0. etc.

(a) WITNESSES FROM MUL [PW1, PW3 and PW4]

PW1 Brijendra Singh Bhargava stated that he was Legal Advisor of MUL and at the relevant time Company Secretary and also internal legal advisor for the Company. It is his say that during May, 1989 to May, 1991 Mr. R.C. Bhargava was the Managing Director and Shri S. Natrajan was the Director (Finance). During the said period, MUL had several bankers, such as, Canara Bank, Bank of America and Bank of Tokyo. At that time, A-l Pritam Lai Manocha was Deputy Manager, Corporate Finance and one of his duties was deployment of funds of MUL. He had power and authority to sign cheques on behalf of MUL and to operate its account. Mr. S. Natrajan was superior officer to A-l.

A-2 was also an employee of MUL since 1989. It is his say that surplus funds available with MUL used to be invested with the public sector undertakings and the Board of Directors had delegated the powers of deployment of funds to the sub-committee constituted by it. Such sub-committee comprised of Managing Director and Director (Finance), which would have final say in the deployment of funds, but there was a practice reporting the same to the Board of Directors in its meeting. The Corporate Finance department used to put up proposal for fund deployment before sub-committee. The sub-committee would then take decision one way or the other. He has produced relevant documents and the resolutions passed by the Board as well as the sub-committee.

It is his say that he was broadly aware of the activities of Funds Investment Committee for the placement of funds. His office was also a section of Corporate Finance, which was located in a big open hall and they all were sitting adjoining to each other. Only the Director (Finance) was having closed cabin in the said hall, which has transparent glasses.

It is his further say that the fact that MUL was having surplus funds was well known in the finance market and the large amount used to remain idle in the bank. Company felt that there was need of optimum utilization of surplus funds to get best possible returns. It is his say that four transactions of investment were approved by the sub-committee consisting of Mr. R.C. Bhargava and Mr. S. Natrajan and there was also discussion with him in respect of dis-investment of units of UTI on 24th January, 1991. It is his say that the investment and dis-investment transactions were placed before Board of Directors for information and Board had not raised any objection.

In cross-examination, when he was asked whether he was aware that the representatives of the brokers representing the counter parties used to contact officials of the Corporate Finance Department, he stated, "according to him, the Director of Finance might be knowing about the same."

He also admitted that there was a system of internal audit and a statutory audit and aforesaid transactions would be covered by the same. Comptroller and Auditor General of India had also audited the account of MUL for the period in question and they had made their comments as 'nil', which means they made no comments in respect of said five transactions.

He admitted that MUL has not lodged any complaint/FIR with the CBI nor made any complaint to anyone about the said transactions and according to him no loss was caused to the MUL in the said five transactions.

He admitted that after CBI enquiry, the management of MUL did not take any action against Al and A2 as it felt that A-l and A-2 were not guilty. The performance of A-l was appreciated and he was subsequently promoted to the next level. He was also granted one additional increment. For that purpose, the relevant letters written by Mr. R.C. Bhargava, Chairman-cum-Managing Director of MUL are produced on record. He has also admitted that A-2 Ambuj Sushilkumar Jain was also promoted by the management on considering his performance and merits.

He further admitted that Joint Parliamentary Committee (JPC) was constituted by the Parliament for the purpose of inquiring into various securities transactions and MUL was required by the JPC to clarify certain queries in respect of its securities transactions including those transactions which are subject matter of this case. It is his say that he was associated along with Director (Finance) Mr. A.R. Halasyam and Mr RC Bhargava, Chairman-Cum-Managing Director for the preparation of the reply to be given to the JPC. Besides, some officials from Corporate Finance were also associated in the process of preparation of replies. Reply was based on the information and record furnished and made available by Corporate Finance. It is his say that Mr. R.C. Bhargava was summoned by JPC.

Next witness from MUL-PW3 Mr. Agharam Ramakrishnan Halasyam was the General Manager (Finance) since 1985 till the end of 1989; in 1991 he was promoted as Chief General Manager (Finance) and thereafter was promoted as Director (Finance) from 1st June, 1991. According to him, in 1991 MUL used to have surplus funds, which were invested in UTI and PSU bonds. It also disinvested the same when funds were required. This was done by the Corporate Finance Cell. For this purpose. Corporate Finance Cell used to get quotations from different banks for different kinds of securities and Finance Cell used to evaluate quotations received from the banks in terms of yields. After such evaluation, Director (Finance) used to be apprised and then a decision would be taken depending upon the best yield possible. Thereafter, an agenda used to be put up to the Director (Finance) for a final decision and that A-l used to convey such offers to Director (Finance) orally. A-l also used to put-up a written note about the proposals, of investments before the Director (Finance). It is his say that such deals were directly discussed with the counter party and such investment deals were not put through any individual by MUL on principal to principal basis He stated that in respect of five transactions being the subject matter of this case, he was not having any personal information. However, when he took over as a Director (Finance), the same policy about the placement of funds continued. It is also his say that BR held by MUL is discharged when the duration of investment gets over. He admitted that looking at the BR of UCO Bank (Ex.41 dated 24.4.1991) for identification, no suspicion would arise on the face of it. With regard to all five transactions, he stated the same thing. In further cross-examination, he admitted that issuance of BR necessarily indicates that the bank issuing it would be holding the security covered under the said BR. The BR would also acknowledge the receipt of monies from MUL for the purchase of security. He further agreed that in respect of three transactions dated 13th March, 1991, 18th March,'1991 and 24th April, 1991, the payments made from MUL were for buying securities and securities were received and the subsequent delivery of the securities involved receipts of payment by MUL. For these transactions, MUL had also received the payments with agreed yield. In the

last transaction of May, 1991, MUL made payment for the purchase of securities. In the said transaction, MUL had received money with agreed yield. In respect of disinvestment transaction dated 24.1.1991 MUL delivered the securities against the payment and on reversal received the securities and made the payment.

He further admitted that MUL had not suffered any monetary loss in any of the five transactions. In the five transactions there was optimum yield and utilization from the point of investment by MUL. MUL used to have large amount of surplus funds for investment. Every day there used to be such investment transactions for and on behalf of MUL on short term basis. This fact was well known in the financial market. He also admitted that after he took over as Director (Finance), he heard about some of the brokers on behalf of some financial institutions/banks making offers to MUL. Such services included delivery of securities, delivery of offers and other connected documents including delivery of BRs. He further stated that essentially most of the offers in respect of placement of funds which MUL used to receive were on telephone. In case of investment for a short period i.e. for couple of days (for two or three weeks) there might not be written proposal and he had heard this while discussing with A-l and A-2. He also admits that with regard to the JPC, he was concerned with the queries received by the MUL and their response. One Mr. Surender Singh was then the concerned Secretary. He was a Director of MUL representing Government of India. He himself and the Managing Director had occasion to discuss with him about the queries received as also the response that MUL was to make. Response which MUL gave was with the approval of Mr. Singh.

This witness has proved the agenda notes and resolutions passed by the Sub-Committee of MUL.

Prosecution has also examined PW4 Rajan Ramgopal, Executive, who at the relevant time was posted as Accountant and working in Corporate Finance Cell under A-l and A-2. In examination-in-chief, the witness has stated that MUL through its Finance Cell used to deploy its surplus funds in Inter Corporate Deposit with Public Sector Undertakings and also invest in securities through Banks and also through brokers quoting on behalf of the banks. For this purpose, the office was receiving telephone calls directly from the banks as also from brokers acting on behalf of the banks. Similarly, MUL also used to make calls for the enquiries to the banks as also the brokers. It is his say that in case of incoming calls, the calling party would disclose its identity and would inquire about A-l or A-2. In case both being busy then he used to take down the particulars furnished by the calling party and then pass on to A-l or A-2. The calling party would ask whether MUL has any surplus funds for deployment in securities. They used to pass on the said message to A-l or A-2 and inform what the other party had offered.

He also states that the name of broker did not figure or reflect on the record of MUL in the event of transaction of investment being through the Broker. It is his further say that PW2 Mr. Meda Sai Swaroop, who was the concerned Manager of the Canara Bank after preparing bankers' cheque as per their instructions would hand over the same to him and he in turn used to hand over the cheque to the representative of the said bank or brokers' representative. It is his say that because of pressure of work, they were not going to the respective banks and instead handing over the bankers cheque to the representative of the bank or to the broker under the instructions of either A-l or A-2. In cross-examination, he admits that during the relevant period foreign banks used to effect transfer of monies from one city to another much faster than the national banks and they were able to do so during the banking hours of the same day. He came across transactions where SBI Capital Market Services had done transactions both of receiving monies and paying it to them on the date of maturity which payments were made or reused through Bank of America. He further states that the brokers who used to contact them on behalf of their bank clients and financial institutions during the relevant period were:-DSP Financial

Services, Hemdev & Sons, B.D. Agarwal & Co. and one Mr. Asit Mehta. Finally, he admits that writing contained on all the vouchers and its language was his and he used expression as either 'through UCO bank' or 'through ANZ Grindlays bank' because transactions in question were between MUL and the concerned banks. He failed to give any explanation as to why he did not use the expression 'with bank' instead of 'through bank"

(b) WITNESSES FROM UCO BANK (PW7, PW14, PW21 and DW.A-3(2) AND PW2 FROM CANARA BANK).

PW7 Mr. Pradip Anant Karkhanis is a dismissed employee of UCO Bank. He is one of the accused in a security scam related case being case no.5 of 1996 pending on the file of Sessions Court, Greater Bombay. He had worked in the Hamam Street Branch during the period July 1976 to September 1980 and September 1990 to April 1992. During his second posting, he worked as Sr. Manager and was over all in-charge of the said branch. It is his say that he was not familiar in detail with the working of the security department of the said branch. The security department used to attend the security transactions on behalf of the head office ay also on behalf of the clients -which also included brokers. The branch was not concluding deals in the security transactions, in case where such transactions were on behalf of their bank and the same used to be concluded by the Head Office. The transactions in securities included both sale of such securities by UCO Bank as also purchase. It was only the Head Office which was concluding deals of sale of the securities, inviting the proposals etc. As per instructions of the head office, Hamam Street branch used to receive the sale proceeds and deliver the securities to the purchasing bank. The branch used to receive instructions in respect of such concluded deals from the head office over telephone. During the relevant period there were no hard and fast rules and any officer including the witness used to receive such telephonic instructions from the head office in respect of security transactions. The securities sold by their bank were not delivered in a physical form and their branch used to issue mostly SGL Forms. In case of some of the financial institutions, the delivery used to be in a physical form of security. During his tenure in Hamam Street Branch in one or two cases BRs were issued. As per format of a BR at least two authorized officers were required to sign the BR. There were three types of head office accounts with their branch i.e. Director Head Office (DHO), Inter Branch Transaction and Block Account. It was not permissible to use the said accounts for any individual. While working in Hamam Street Branch, sometimes he came across few brokers including Harshad S. Mehta whom he met once in his office along with Mr. S.V. Ramnathan, the then Divisional Manager of the bank. He never came across transactions known as buy back or ready forward. He came across transactions known as switch transactions, wherein security is received from one bank and delivered to the other bank. During the relevant time, a doubt was entertained in respect of switch transactions, the Zonal Manager and Divisional Manager took the decision to stop the said practice. After one week, the Divisional Manager phoned Hamam Street Branch and asked them to resume such transactions. Accused no.3 was not authorized to conclude transactions in security on his own on behalf of the bank. On seeing the letter dated 23rd January. 1991 addressed to MUL, containing signature of A-3, it is his say that it was not within the authority of A-3 to address such letters. He agreed that Switch transactions were the transactions conducted by the UCO Bank for buying and selling the securities on behalf of its clients including brokers. The negotiations in respect of such transactions were conducted by the clients directly with the counter party. UCO Bank used to act as a routing bank in such transactions. The said transactions were done through the brokers' accounts and were not treated as transactions of UCO Bank. He did not know whether such transactions were ever undertaken by their head office. The Hamam street branch used to conduct its transactions on the instructions of the head office and under the instructions of its clients on their behalf. UCO Bank used to undertake such transactions on behalf of its clients on charging its commission and that the bank had made substantial profit by undertaking such transactions. In 1990, he noticed that the bank has

conducted such transactions for about 9 brokers. In January, 1990, Mr. Barve who was also one of the Managers in Hamam Street Branch informed the Divisional Manager and Zonal Manager the names of 18 such brokers for whom UCO Bank was doing switch over transactions. Because of increase in deposits, Hamam Street Branch of UCO Bank was upgraded from medium to large branch. He has further stated that the bank was charging the commission for routing such switch over transactions but did not agree that it was so doing for lending its name as suggested. According to him, routing transaction means-UCO bank used to receive bank receipts from one bank and against it the bank used to issue BRs to other bank. It is also his say that in some cases their bank received bankers cheques from one bank and UCO bank issued its bankers' cheques to another bank. Whenever switch over transactions used to take place under the instructions of the brokers, the brokers' instructions to receive or deliver securities were sent to the counter party along with the cost memos and BRs. The BRs and cost memos used to be of UCO bank. The brokers instructions used to be on the letter head of the broker. The purpose of sending brokers instructions along with various documents to the counter party was to put it on a proper notice.

It is his further say that although he was overall in charge of Hamam Street branch of UCO bank all the debit and credit vouchers of that branch were not being received by him every day. He was familiar with what is meant by 'day book' which was kept and maintained by the bank. All the debit and credit vouchers would be reflected in the said 'day book' on particular day including in subsidiary book. Such 'day books' used to come to him every day. He knew that securities transactions on behalf of brokers were taking place but he had no detailed particulars thereof. By going through the debit and credit vouchers it was not possible to get such details or particulars of such transactions. Credit voucher in a security transaction would contain the particulars such as a nomenclature of security, face value, rate etc. The name of the counter party may not necessarily be reflected in such vouchers. He might have seen some credit vouchers but he did not remember. He did not remember whether the names of the counter party were mentioned in those vouchers which he might have seen. It is his further say that there used to be 30 to 40 switch over transactions every day. The strength of the staff available in the said department was adequate enough to handle the volume of work in such transactions. Such transactions were to be completed on the very same day during the banking hours. There used to be auditing of the Hamam street branch. This auditing used to be done by internal auditors, external auditors and also by the statutory auditors. Between September, 1990 to April, 1992 during his tenure one internal inspection and one statutory audit took place in respect of Hamam Street branch. He had gone through both these audit reports and no adverse comments were made over the switch transactions.

PW14 Prem Shanker Joshi, who was Assistant Chief Officer in Merchant Banking Division, situated at YWCA Building, Madam Cama Road, Bombay, stated that in the year 1992, he was transferred as Manager in Security Section of Hamam Street Branch of UCO Bank and thereafter he was promoted as Sr. Manager in the year 1993. To a question-What was the nature of the business conducted by the security cell?, - he replied - as far as Hamam Street Branch was concerned, the said branch used to conduct the security transactions on behalf of their head office as well as on behalf of clients. Mr. Harshad S. Mehta was one such client. In case of sale transactions on behalf of their clients, they used to get written instructions from their clients, having necessarily their accounts with the bank. Such written instructions would be addressed to the Branch Manager. The instructions being for the sale of the security, they were ascertaining from their clients about the availability of the security with the bank or the time of delivering of security to the bank. On receipt of the security, they were preparing a cost memo as per instructions of their client as contained in his instructions letter. The officers working in the security department were authorised to sign the cost memos and such authorised officer used to sign the same. Their bank was receiving payment in

accordance with the cost memo from the counter party and on receipt of such payment they were delivering the security in question to the counter party. Without security in the hands of the bank, they were not preparing the cost memo and sending it to the counter party. He admitted that UCO Bank, Hamam Street branch can issue a BR while dealing on behalf of its client in the security transactions provided there is a back up security of the client. He further stated that BR should not be issued on behalf of the client in absence of security or back up security. In case of security transaction on behalf of the client, they credit the sale proceed receipt into the account of client. They were preserving and keeping the original letters so received from the client and instructions received from the head office by telex or fax messages. In respect of security transactions executed for and on behalf of head office, Hamam street branch used to debit and/or credit direct head office account (shortly known as 'DHO account'). It is his further say that the officer working in Hamam Street branch could not enter into any purchase transaction in security on behalf of head office without instructions from head office. Similarly, on behalf of the client, the officer working in Hamam Street branch could not enter into a purchase transaction in security without instruction of a client. He admitted that Hamam Street branch of UCO Bank was not maintaining security account, either security wise or otherwise, of the clients. However, the record in respect of security transactions put through head office was maintained in the Hamam Street Branch in a Security Register. On perusing the BRs Exs.38, 39 and 41(1), he admits that the said BRs were issued in respect of Security Transaction put through on behalf of the Head Office or the client.

It is his further say that for head office transactions they used to give expressions such as HID i.e. Head Office Instructions to Deliver and HIR i.e. Head Office Instructions to receive. For clients transactions they were using expression of ID i.e. instruction to deliver i.e. sale and IR instructions to receive i.e. purchase on behalf of clients. On seeing Ex.34, he stated that there is an inscription at the left hand top corner reading as 'Payees Account only' and that being so, the said instrument has to be deposited in the account of Payee named in the said instrument i.e. UCO Bank. Such instrument like the pay order shown to him cannot be deposited in the account of any third party. Payer bank has to give covering letter instructing them to deposit the said pay order into the third party account, if so required. Such instruction letter containing instructions of the payer bank are preserved along with other related records such as vouchers in their office. On seeing the delivery order Ex.A-3(2), he stated that the said letter is the letter of instruction received from A-5 Harshad S. Mehta addressed to UCO Bank without the name of its branch. By reading the said letter, it is noticed that the same contains instructions to UCO Bank.

PW21 Mr. Makarand Vasant Shidhaya joined UCO Bank on 8.5.1972. He has stated that he was named as one of the accused in five Security related scam cases along with the other accused which are on the file of Special Court. On 1.10.1982 he was promoted as an officer. During January, 1991 to May, 1991, he worked as an officer in Hamam Street Branch in security department. During the said period, V.N. Deosthali, A-3 also worked in the said branch as an officer. He himself and A-3 were empowered and authorized to sign BRs, bankers cheques and all other related vouchers for and on behalf of their bank. The head office used to conclude its deals in Securities, and Hamam Street Branch used to execute the security deals of their head office as per advice received from zonal office, MBD Department and Division Office. No officer or an employee working in Hamam Street Branch was authorized to conclude any security deal on behalf of their head office. Officers working in Hamam Street branch were not dealers and their job was only to execute the security transactions of the head office as per their instructions. One Harshad S. Mehta (A-5) had his current account with their branch and he was knowing him. He came across a person by name Mr. Pankaj Shah working with Harshad S. Mehta, who sometimes used to come to Hamam street branch in connection with brokers security transactions. // is

his further say that no record in a form of security ledger or security register broker wise was kept and maintained in respect of security transactions of their broker clients. Initially, there used to be such record but because of increase in the transactions in security on behalf of their broker clients in large numbers, the practice of maintaining of such record was discontinued. There were no guidelines formulated or received in this regard in their branch. On seeing Ex.106, xerox copy of the delivery order dated 25.2.1991 on the letter head of A-5 Harshad S. Mehta, it is his say that the same is delivery order of Harshad S. Mehta addressed to UCO Bank containing instructions to deliver 35 lakhs units of UTI to MUL. The question put to the witness was-whether the above document (Ex.106) is the sale of the security by the broker client or the purchase? To that, he replied-by the said delivery order Harshad S. Mehta has instructed UCO Bank to deliver 35 lakhs units to MUL. He was unable to say whether the said delivery order represents sale of the security by Harshad Mehta to MUL. On seeing the carbon copy of credit voucher of UCO Bank, Hamam Street Branch dated 13.1.1991, he stated that the same is in the handwriting of Mr. V.N. Deosthali (A-3) and also bears his signature under the caption of Asstt. Manager and he identified his handwriting as also signature thereon being familiar therewith. The same also bears initials of Mr. H.L Naik, the cashier of the branch.. He further identified the signature of A-3 Deosthali on a debit voucher dated 13.3.1991 of UCO Bank, Hamam Street Branch, being the commission from various securities. He was further shown BRs of UCO Bank and he stated that the same were issued by the UCO Bank, Hamam Street Branch and have been signed by him in the caption of accountant and he signed the said BRs after he found the contents thereof to be true. With regard to the BR dt.29.4.1991 containing signature on its reverse, it is his say that the signature on the reverse of BR signifies reversal of the BR meaning thereby that the counter party had received the security and obligation of UCO Bank, who had issued the said BR stood discharged.

DW-A3(2) Mr. Sekharipuram Vasudevan Ramnathan-Chief Officer, UCO Bank stated that he joined services of UCO Bank at Calcutta in the year 1969 as Probationary Officer. In June, 1990 he was brought to Bombay Office as Divisional Manager in its Nariman Point Office and he worked at the said office till October, 1992. Thereafter, he was transferred to Bhuvaneshwar, Orissa. Since February, 1993 he has been under suspension. On seeing the letter dated 8.1.1991 written by Divisional Manager to Senior Manager, Hamam Street Branch, he stated that the letter bears his signature as being writer of the said letter and he identified the same. He also identified the initials of Karkhanis on the same and stated that he was working as Senior Manger in the said UCO Bank’s branch at Hamam Street. On seeing letter dated 17.3.1992 written by D.M. to Zonal Manager, Zonal Office, General Admn. Department, Bombay, he stated that he was the author of the said letter and the same bears his signatures.

He has further stated that he is one of the accused in Special Case No.l of 1993 on the file of the Special Court. In connection with the said case Mr. Bhaskar Raichoudhary the then Zonal Manager in the rank of DGM was arrested in Special Case No.l of 1993 who later on was turned to be an approver. There is no departmental proceeding or inquiry instituted against him either by UCO Bank or Central Vigilance Commission in that matter. A question was put to him-What was pre-condition to use BRs in the security transactions and how transactions in securities by means of BRs used to be put through at the relevant time.

His answer to the above query was that-the bank would issue its BR only against back up of another BR i.e. the BR issued by other banks in favour of UCO Bank stating therein that the said issuing Bank held the securities in question with it. BRs could be issued on bank’s own behalf as also on behalf of its customers. When UCO Bank is selling its security on its own, it would issue its BR favouring the counter party bank. In case of purchase by UCO Bank the process would be vice a versa i.e. other counter party bank would issue its BR favouring UCO Bank. When UCO Bank would act for a

customer while issuing its BR, same position would exist as far as back up of the security except that it would debit or credit, as the case may be in the customers account. No bank can issue its BRs in the name of any party other than banks and financial institutions.

On seeing letter dated 8.1.1991, he stated that UCO Bank had stopped the routing transactions facility to all the brokers and its customers earlier to the said letter. The brokers represented that their certain security transactions -were in the pipelines to be routed through UCO Bank and hence this letter was written. Since there were no definite guidelines, they had certain apprehensions i.e. when pay orders for purchase and sale did not come in time, they might not be able to send them in time and the clearing may go against them. Therefore, routing facility of the brokers/customers was stopped by the UCO Bank. He further stated that no officer of UCO Bank working in Hamam Street Branch was authorised to lend or borrow monies on behalf of UCO Bank.

He explained the routing facility as-routing transactions is the transaction in which purchase and sale of the securities was done by the bank as an agent of its customer for a commission. The Routing facility was offered to many brokers including A-5 in the year 1991 and such brokers availed of the said facility. Such routing facility was already in practice even before he joined as Divisional Manager in June 1990. Some banks were offering such facilities. He was an accused in two special cases before the Special Court and the said cases did not relate to the security transactions concerning routing facility. He further stated that a bank can issue its BR against physical security and SGLs held by it in addition to the BRs which it may hold. He was aware about a meeting between the officers of RBI and the officials of all the banks about reconciliation of outstanding banks receipts. To his knowledge, there were no outstanding BRs against UCO Bank. One Mr. R. Venkatakrishnan, the then GM, Treasury and Investment Management Department attended the said meeting on behalf of UCO Bank.

Letter dated 8.1.1991 (Ex.231) written by the Divisional Manager, UCO Bank, Divisional Office, Bombay to the Senior Manager, Hamam Street Branch for switch transactions reads thus-

"Re: Switch Transactions.

We refer to your letter No.BR:002:91 dated 1.1.1991 on the subject matter.

After stoppage of the switch transactions by us, all the Brokers called on us as well as Zonal Manager and Zonal Manager had also discussion in this regard with Mr. Venkatakrishnan, General Manager, subsequently, based on the discussions Deputy General Manager and the undersigned had with all the brokers and based on the understanding that Branch will never run into a difficulty and day on account of switch transactions and because the brokers have already entered into contracts with various banks to route the transactions through UCO bank on various dates up to end of March, 1991, it was decided to resume the switch transactions on the following terms:

(1) The resumption is temporary and that bank after having detailed discussion further with individual brokers and after discussion with various bankers who are dealing in switch transactions and who are not dealing in switch transactions may discontinue routing this transaction through UCO Bank depending upon our findings.

(2) The brokers will give us an advance list of transactions they are going to put through.

(3) They will deliver the pay orders well in time to the Branch so that this can be sent in clearing in time. If there is a delay in receiving the pay orders, bank will be perfectly in order to refuse to accept the same and allow the transaction. In case on account of any brokers delay, bank is

put into difficulty the concerned broker will be paying interest to the bank at call money market rate for one day on the amount transacted on his behalf.

(4) Bank may at its discretion increase the commission which is only Rs.300 per crore at present.

(5) Special case should be taken that clearing particularly on Saturdays does not go against us on account of switch transactions. In fact, it will be better to avoid switch transactions on Saturday.

(6) Only straight forward transaction either on SGL or BR should be routed through Bank and the brokers will have to give an undertaking to this effect.

In the meantime, the undersigned is contacting the brokers separately and is having discussions with them. Two such brokers have already had discussions with the undersigned. Shortly the matter will be discussed with a couple of other brokers also. You are advised to contact other banks through whom such transactions are routed and have detailed discussions with them regarding their experience, the commission they charge, the modus operandi and their opinion why other banks are not entering the field. You are also advised to contact other banks who are not having such transactions and have discussion with them with a view to find out why inspite of profitability in this area they are not entertaining this and give at your report at an early date."

PW2 Meda Sai Swaroop, who was the Manager in the Parliament Street branch of Canara Bank at New Delhi, stated that after preparing the bankers' cheque, the same would be handed over as per instructions contained in the instructions letter or to the bearer of that lener. He has identified the signatures of Anuj Kalia, to whom the bankers' cheque was handed over. It is his say that in all the cheques in question there were cross lines on the left hand top corner of the said pay order which indicate that the amount of the said pay order was to be credited into the account of payee only as named therein i.e. Grindlays Bank. On the right hand top corner of the said pay order, 'not transferable' was also printed. This would show that it was only the payee of the said pay order which was entitled to receive the credit of the said pay order. In the cross-examination, he has stated that he was sure that payee banker i.e. Grindlays Bank had received the credit under the said pay order and that Canara bank was not concerned as to what Grindlays bank did with the proceeds of the said pay order.

(c) WITNESSES FROM ANZ GRINDLAYS BANK

[PW9, PWI1, PW12 and PW15 AND also PW22 Ex. RBI Officer]

PW9 Ravi Saluja, was an employee of ANZ Grindlays Bank. During the period 1990 till May, 1991 he was posted at Karol Bagh branch of the said bank as an officer. It is his say that ANZ Grindlays bank has a department known as clearing department and he is acquainted with the procedure of clearing department. He has stated about the procedure how the clearing aspect is processed. According to him, the account holder of the bank is required to deposit the cheque meant for clearance by filling in slip known as pay-in-slip or deposit slip mentioning particulars such as the date of the deposit, name of the account holder, the nature of account, the account number, the amount of the deposited cheque, the name of the bank, its branch and number of the cheque to be deposited. The cheques so received for clearance were then sent to the clearing department for further processing. The said department would verify and tally the particulars as appearing in the pay-in-slip and the related cheque. The centralized branch then would make the consolidated statement and arrange to send the cheques received for clearance to the clearing house of RBI. There is also category of cheque known as bankers' cheque, that is to say, a particular bank issues its cheques in favour of another bank. In such a case, the issuing

bank can use the format of pay order also. If such bankers cheques are made payees account only then the same are not transferable. On seeing Ex.28, he stated that it is inter bank cheque in favour of Grindlays bank issued by Canara bank bearing stamp 'Payee A/c only' and 'not transferable'. There is a rubber stamp of Grindlays bank on its reverse indicating that the said banker's cheque is cleared. // is his say that Grindlays bank would dispose off the proceeds of the said cheque as per the covering letter, ft is his further say that without instructions of Canara Bank, Grindlays bank could not credit the amount of the pay orders Ex.28 and Ex.30 to any third party's account. He identified A-4 R.N. Popli, an employee of Grindlays bank, but stated that he was not aware about his posting during the relevant period i.e. from the year 1990 to 31.5.1991.

PW11 Suraj Amarnath Tandon, Assistant Manager of ANZ Grindlays Bank, stated that from March, 1990 to March, 1992 he worked as Second Officer, Front Office in Sansad Marg branch. It is his say that on the receipt of the instruction letter of the customer, their bank used to put its rubber stamp in token of receipt of such letter indicating date and time of its receipt. On seeing the letter, Ex.73, dated 26.4.1991 of Harshad S. Mehta addressed to the Manager Grindlays Bank, he has stated that by that letter Harshad S. Mehta (their account holder) instructed them to issue a bankers cheque for a sum of Rs.7,63,54,650 favouring Canara bank for the benefit of MUL. As per the said letter, they issued bankers' cheque on the date itself for the amount as mentioned above and handed over the same to the bearer of the said letter, Mr. Anuj Kalia, who has received and acknowledged the receipt of the said pay order by signing the same at the right hand bottom corner of the said letter. A debit voucher in respect of issuance of the said pay order was prepared with one original and one carbon copy. The original was sent to Mr. Harshad S. Mehta and carbon copy thereof was retained in their office.

PW12 Ashok Kumar Anant Ram Monga, Asstt. Manager, Grindlays Bank stated that during the year 1991 he was posted in Sansad Marg branch. He identified A-4 R.N. Popli as the person who also worked in the said branch along with him as officer in charge, clearing department. He was overall in-charge of the said branch along with the Manager and in that capacity, he used to have supervision over the working of the concerned clearing department. He was shown bankers cheque Ex.28 favouring Grindlays bank, having rubber stamp in the left hand top corner reading as 'Payee Account only' and on the right hand side top corner reading as 'Not transferable'. The witness stated that since the Canara Bank is the drawer of the said cheque and the Grindlays bank who is the payee in respect of the cheque bearing endorsement 'not transferable' and 'payees account only', therefore, cheque irrespective of whoever may have deposited, Grindlays bank would not credit the amount of the said cheque into the account of any third party other than in its own account. It is his further say that the entry in respect of the amount as reflected in Ex.71 (3) in statement of account and in the said pay in slip will have to be authorised by the officer in charge of the clearing department who was at the relevant time A-4 as the amount involved was more than a lakh of rupees. He could not identify the initials appearing on the said pay in slip, who authorised the said entry. He stated that in these types of transactions, two authorizations were required, the first authorization related to giving credit to the third party which is generally given by Branch Manager marketing department who are known as Relationships Manager or Account Manager and lastly the Funds Manager. Only after the first authorization has been received the officer in-charge would proceed to indicate his second authorization by authorising transactions for posting on computer system i.e. the pay in slip is authorised to be used as authorised voucher for posting on computer system. During the period when the transactions covered by Ex.28, took place there was a market practice followed by various banks to present bankers cheques through a Special Clearance settlement which is known as inter bank settlement. The objective of drawing the bankers cheque was to provide speediest or fastest clearance of such instruments which was not possible through other clearing settlements

available to the customers, namely, MICR. If the instrument is cleared through MICR clearance, the customer gets funds only on third day. The other settlement introduced by RBI in the year 1985 in response to the needs of the business community as a mode of faster settlement or cheques, also took minimum two days to provide clearance of cheques. He was shown entry Ex.71(4) dated 13.3.1991 into the accounts of Harshad S. Mehta. He stated that the then officer in charge of clearing department had authorized the said entry to be made in the statement of account. He could not recall the name of the said officer who was in charge of clearing department. He agreed that in 1991-92 there was a practice of crediting the proceeds of the bankers' cheques into the account of third party other than its payee. However, it was extended to only certain high networth customers like British Airways, Classic Financial Nizhewan Travels and Harshad Mehta Group, which list is not exhaustive and he came across the instances in case of the said parties where their bank had allowed such credits. He further agreed that RBI had never taken any action against the Grindlays bank in respect of five pay orders shown to him earlier. He was aware that RBI possessed the power to take action against any errant bank. The Grindlays bank had not received any complaint from MUL for crediting the amounts of said five pay orders to the account of third party. When the instrument like pay order is drawn favouring Grindlays bank then the same has necessarily to be deposited in Grindlays bank account with RBI. He was asked about the category of customers regarded as High Networth customers. He replied-such classification is generally given by the concerned manager of the bank having regard to the deposits maintained by the customer or other business potentials. Any officer working in the branch of their bank having any doubt was certainly approaching the Branch Manager for clarification and if he could not answer then it was being taken to the Area Manager. The services to be extended to the customers like high networth customers would be decided by the branch manager. Such decision could not be taken by the concerned officer who attended such customers. In the cross-examination, it is his say that all the five pay orders, which were shown to him being Ex.28, 30, 32, 34 and 36 were sent for inter Bank Clearance by the Grindlays bank. The amount of these pay orders was debited into the account of the issuing bank and credited into the account of Grindlays bank. The account of the issuing bank and payee are with the RBI He admitted that it is only after credit of the proceeds of the said five pay orders in to the Grindlays bank account that the proceeds thereof in turn were credited into the account of A-5.

PW15 Mr. Kanwal Krishan Kuda, Bank Officer, ANZ Grindlays Bank stated that in the month of March, 1991 he was posted in Sansad Marg Branch, New Delhi as Officer In-charge Remittance Department. He identified A-4 R.N. Popli as the person working in the same branch in different department of the bank. It is his further say that he is also one of the accused in a case which has been instituted by the CBI in the Court of Special Judge at Delhi being CBI Case No.RC-2A/92 ACU-(I) which is still pending. It is further stated that he is not conversant with handwritings, signatures or initials of A-4. The activities which they carried out in the Remittance Department were Remittance of funds from one branch to another branch or another bank, cheque collection, cheque purchases, standing orders etc. During the course of his work, he came across Payees Account Cheque, Pay-in-Slip, debit vouchers and credit vouchers. With regard to the credit voucher dt.26.4.1991 into the account of Harshad S. Mehta, it is his say that the same was approved by him and it bears his initials. The entry appearing therein is correct and the same was prepared on the basis of credit advice received from the RBI. It is his further say that Grindlays Bank did not receive any instructions from RBI for crediting the amount of the two vouchers shown to him earlier into the account of Harshad S. Mehta. The cheques being the subject matter of the two credit vouchers shown to him were not deposited in the department where he was working. The same were deposited in the treasury department in the same branch. It was the treasury department to which they used to send the said cheques for clearance. He could not recollect who was or who were the concerned officers of the treasury department who would be giving such instructions

as there were many such officers. The instructions were conveyed to him orally and he considered the same to be in proper order.

PW22 V. Rangarajan is an ex-employee of RBI. He joined R.B.I. in 1961 as a Junior Officer and retired in 1997. It is his say that in December, 1990 he was elevated to the position of Additional Chief Officer and was posted in Department of Banking Operations and Developments (DBOD). It is his say that the commercial banks have their account with RBI. Individual persons are not eligible and entitled to open their account in any form with the R.B.I. The bankers cheque/pay order issued by one bank favouring other bank are negotiated as under:-

"The payee bank would deposit the cheque for clearance in clearing house and RBI would settle the payment thereof by giving credit into the account of payee with RBI."

The witness was further questioned-Is it permissible to deposit an account payee bankers' cheque favouring another bank in the account of unnamed persons as per the clearing house rules? The witness replied - Clearing House rules relate to the settlement of cheque issued by one bank in favour of another bank and therefore the accounts of both the banks are involved in this transaction.

For highlighting the submission made by the learned counsel for the accused, we would refer to the relevant questions and answers given by this witness-

"Q. The practice of crediting proceeds of the Bankers cheques to third parties is not prohibited by any Banking law or any guideline, rule or circular of the RBI.

A. (Witness refers to portion of the circular Ex. 148 in para 2 reading as under in answer to the said question;

'If any bank credits the account of a constituent who is not the payee named in the cheque without proper mandate of the drawer, it does so at its own risk and will be responsible for the unauthorised payment'.

Q. (Witness is referred to portion of his deposition in para 18 on page 495 in question and answer form (witness is questioned). Whether the practice of crediting the proceeds of Bankers cheques to unnamed beneficiaries was not violative of any specific banking law or any RBI circular or guideline on the subject?

A. The same would not violate any Banking law as I understand. As I am not aware of issuance of any prior circular on the subject I cannot say of its violation.

Q. The circular Ex.148 was issued with the approval of the then Governor of RBI who was Mr. Venkataramana at the relevant time.

(Witness is again referred to portion of Circular Ex.148 in the second para reading as:

'If an bank credi.....for the unauthorised payment'.

Q. Does the use of the word 'Unauthorised' referred to the fact that: the issuing bank may not have authorised the payee bank to credit the amount into the account of third party?

A. Yes. The said aspect has been further clarified in the said circular (Witness refers to the following portion of the said circular) reading as:-

'In the case of 'account payee' cheques wherein a bank is a payee, the payee bank should always ensure that there are clear instructions for

disposal of proceeds thereof from the drawer of the instrument'.

The Circular dated 09.9.1992 Ex.148 issued by the Reserve Bank of India reads thus:-

'September 9, 1992. Bhadra 18, 1914 (Saka)

The Chairman/Chief Executives of

Scheduled Commercial Banks (excluding RRBs)

Dear Sir,

Payment of cheques/pay orders

It has come to our notice that banks have undertaken large value transactions with third parties on a significant scale by means of cheques drawn on their accounts maintained with Deposit Accounts Department of Reserve Bank of India (RBI) in the names of other banks maintaining accounts with the RBI. As banks are aware, the facility of maintaining accounts with RBI has been granted mainly to enable banks to fulfil their statutory obligations, settlement of transactions with RBI/Government, settlement of inter-bank transactions or adverse clearing balances. It is reiterated that the accounts maintained with RBI should be utilised only for these purposes and not for facilitating credit to accounts of third parties.

2. It has also been revealed during investigations that banks have credited cheques drawn in their favour by other banks marked 'Account Payee' to the accounts of constituents even when they are not named in the cheques as the beneficiaries. In the case of cheques not having been drawn in the names of constituents nor containing 'any' direction to pay to the constituents the proceeds thereof, or having any other independent direction to that effect, the amount cannot be paid to the constituent. If any bank credits the account of a constituent who is not the payee, in the cheque without proper mandate of the drawer, it does so at its own risk and will be responsible for the unauthorised payment. Payment systems require that the legal requirements laid down in the various relevant laws are fully observed. In the case of 'Account Payee' cheques wherein a bank is a payee, the payee bank should always ensure that there are clear instructions for disposal of proceeds thereof from the drawer of the instrument. If there are no such instructions, the cheque should be returned to the sender. RBI reiterates the position that crediting of proceeds of such cheques to parties otherwise than in pursuance of clearly delineated instructions of issuer of such cheques is unauthorised and should not be done under any circumstances. Banks cannot and also should not invoke market practice in justification of doing that, which is not supported by law or recognised banking practice. These instructions should be carefully noted. Banks which indulge in any deviation from these instructions would invite severe penal action.

Kindly acknowledge receipt of this letter.

Yours faithfully,

Sd/-

(V. Rangarajan)

Addl. Chief Officer'

(d) OTHER RELEVANT WITNESSES INCLUDING EVIDENCE AGAINST A-5:

[PW23, PW25, PW16, CW1 and DW5(8)

Learned senior counsel appearing on behalf of A-5 stated that the evidence led by the prosecution for establishing the five transactions is not required to be dealt with as he admits on behalf of A-5 that in four transactions the amount was taken by A-5 and in first transaction he gave loan to MUL but as loan was given, he has not committed any illegality in taking loan from MUL through UCO Bank. In this view of the matter, it is not necessary to discuss the evidence with regard to the receipt of the money by A-5 through UCO Bank. However, we would refer to the evidence of PW23, PW25, PW16, CW1 and DW5(8) pertaining to A-5 and other accused.

PW23 Mohan Das Khandelwal, a Share broker, who is approver in this case stated that after doing B.Sc., MBA, he worked with Delhi Cloth & General Mills Co. Ltd. and State Bank of India upto the year 1986. Thereafter, in 1990 he got membership of Delhi Stock Exchange. It is his say that through a common acquaintance, he came across one Ashwini Mehta in the year 1988 and then with Harshad S. Mehta (A-5). Ashwin Mehta is the younger brother of A-5. It is his further say that Ashwin Mehta was looking for a qualified person who could assist him in research activities in the share market and he called him to come to Bombay to meet Harshad Mehta and accordingly he went to Bombay somewhere in December, 1988 (when for the first time he met A-5). The purpose was to enable him to have a set up in Delhi. He met A-5 at his residence and office. In the meeting, they decided to associate with each other for the purpose of carrying out research in-share market and companies in Delhi. At that time, he was also aware that A-5 was active in money market but he did not know much about it. A-5 wanted to set up his business in Delhi and for that purpose wanted to find out suitable place for his office and also establish the office in Delhi. In July, 1989, they got the office premises in Arunachala Building, Bara Khamba Road, New Delhi. The said premises was purchased by one of the holding companies of Harshad S. Mehta. During his visit to Bombay, he came to know the company as M/s Growmore Research & Assets Mangement Ltd., which was an umbrella company to give the corporate identity and the office to be set up in Delhi. The said office premises were acquired with the full knowledge of A-5 who provided money for the same.

It is his further say that he came across a person Anuj Kalia. He was recruited as Executive in the said company somewhere in June or July, 1990. Initially, when he met Mehtas in the year 1989, the business activities which were thought over were research activities on Delhi based companies as well as little bit of operations of Delhi Stock Exchange. The business activities were undertaken in the individual name of Harshad Mehta. Share market operations were undertaken in the name of Harshad S. Mehta which was his proprietary concern, he being a member of Bombay Stock Exchange. After it was decided to set up office in Delhi as stated earlier, A-5 made another trip to Delhi somewhere in April or May, 1989. In this trip, A-5 spoke about the activities in money market. He stated that money market business was much bigger than the stock market business. He also told him that there were many P.S.U. Companies in Delhi; these PSUs had large investable surplus funds with them and that such large funds of PSUs in Delhi could be invested in banks at Bombay. A-5 wanted him to keep liaison with certain PSUs. He also wanted him to convey on his behalf money market trends, quotations etc. to such PSUs. He was supposed to convey the same to the functionaries of the PSUs who were concerned in the investment of the funds. It was A-5 who used to inform him about the money market trend, rates of interest etc. which he wanted him to convey to the functionaries of the PSUs. A-5 was mostly in Bombay and he used to convey him the same over telephone.

It is his say that a number of accounts with various banks were opened in Delhi in the name of Harshad Mehta, in the name of his company and other concerns including the account in the name of Ashwin S. Mehta. He was one of the authorized signatories, being a Power of Attorney holder, to operate the said accounts except one of the accounts which was opened in Citibank. He received the authority for the operation of some accounts which were in the name of Harshad S. Mehta. Usually Mr. Anuj Kalia used to attend to the

bank's work.

During his visit to Delhi in April/May, 1989, A-5 made reference to MUL and told that MUL had surplus investable funds as a PSU and they were very active in money market. On his request, he fixed an appointment of A-5 with accused no.1, who was the concerned functionary in the investment of funds. He was not knowing the exact date and time but it was during A-5's visit to Delhi in April/May, 1989. A-l and A-2 were present in the meeting which took place in the office of MUL. It is his further say that he saw and heard Harshad Mehta introducing himself in the said meeting as a Member of Bombay Stock Exchange who was very active in money market and that he wanted to deal with MUL. He also informed that he had lot of contacts with the banks in Bombay and he could offer to MUL excellent deals in the money market.

Question was put to the witness-Did he (Mehta) indicate the method by which he could work out the said offers between MUL and the banks in Bombay?

Witness replied-A-l at that time stated that the MUL could not deal or involve the brokers. A-5 stated that the deals would be between MUL and banks, structured and suggested by him and his name would not appear in the books of accounts of MUL and that is what he stated.

It is his further say that A-5 stated that he would stand to gain by way of commission and/or brokerage from the banks and that MUL would benefit by getting better deals. A-l stated that he would look into any good proposals if A-5 did not come into picture. The said meeting lasted for half an hour. He agreed that in connection with the said meeting transactions took place between MUL and any banks at the behest of A-5.

The first transaction was in January 1991. At that time, Harshad Mehta was in Bombay and he was in Delhi. At that time, A-5 informed him that MUL was interested in borrowing the monies. He told him that the securities which MUL would offer were units of UTI, the bank lending the money would be UCO Bank, Hamam Street Branch, Bombay and that offer in that respect would come from the said bank who would be showing it as an offeror.

It is further say of the witness that he came across a person named V.N. Deosthali (A-3). He was an officer working in UCO Bank in its Hamam Street Branch at Bombay. He learnt about the same from A-5. At subsequent stage, he had occasion to meet Deosthali (A-3). He heard the name of Deosthali in the year 1990, it may be even early in the year 1989 in connection with some other transactions with some other PSUs. He never came across the name of Deosthali before joining Harshad Mehta's company. In the year 1989 or 1990, he heard the name of Deosthali from Harshad Mehta. He identified A-3 sitting in the Court.

In January 1991 he received the letter Ex.58 of UCO Bank, Hamam Street Branch, Bombay, dated 23rd January, 1991. As per the said letter, he was to collect 35 lacs units of UTI from MUL. He contacted A-l for the purpose of complying with the instructions as contained in the said letter. Anuj Kalia was deputed by him to collect the said security.

Instructions for transferring the proceeds of the pay orders of Canara Bank favouring Grindlays Bank into the account of Harshad S. Mehta in his account in Bombay were given by him but he did so as per instructions which he received from Harshad Mehta. He gave instructions in his official capacity being in charge of Delhi office and also as per instructions of Harshad S. Mehta.

He had no knowledge as to whether the Canara Bank, Parliament Street 'Branch issued any instructions to the ANZ Grindlays Bank to credit the proceeds of the said pay order Ex.36 and the said proceeds of which were credited into the account of Harshad S. Mehta with Grindlays Bank. As per his knowledge, the amount involved in four transactions referred to by him

earlier, which were credited into the account of Harshad S. Mehta were reversed at later stages.

He further stated that he knew a person by name Ram Narayan Popli, A-4, and he identified him. In the year 1991, A-4 was working with ANZ Grindlays Bank, Parliament Street Branch, New Delhi. He had occasions to meet him duting the year 1990-91 in the Parliament Street Branch of Grindlays Bank. The purpose of meeting was in connection with the operation of the accounts of Harshad S. Mehta with the banks. He was not aware what was his official designation at that time, but to his knowledge he was working in the Remittance Department of the said bank in its Parliament Street Branch office. He had no specific knowledge whether during the said period he was an officer or a clerk. Whenever, he used to meet A-4, he used to have talk in connection with remittances which were to be received from Bombay or remittances which were to be made from Delhi to Bombay branch and he requested him to expedite the process of the said work. A-4 appeared to be very cooperative.

On seeing Ex.203, which is a letter written by the witness expressing his desire to make confessional statement, he stated that he was taken to the Court of Chief Metropolitan Magistrate, Delhi. Mr. Bhatnagar was also present at that time. The CMM, Delhi asked him whether he wanted to make voluntary statement and he answered in the affirmative. The CMM assigned the matter to other Metropolitan Magistrate Mr. Yadav.

In further cross-examination, he stated that the visit which he stated earlier accompanied by A-5 in MUL was in its office at Kasturba Gandhi Marg, New Delhi. The meeting took place in a hall type premises. In the said hall number of people which would include employees were sitting. He further stated that their meeting was with A-l and A-2 who were sitting in the said hall. He was not known to the other employees of MUL who were sitting in the said hall. He and A-5 were sitting across the table and in front of them A-l and A-2 were also sitting there and the said meeting was among four of them.

He was arrested by the CBI in this case. It was in the month of August 1994 but he does not recollect the exact date. As far as he remembered, it was on 10th of August 1994. He presumes that CBI officer recorded his statement on 10th of August, 1994, which was read over to him and he found the same having been correctly recorded. Witness was referred to the portion of the said statement reading as - 'in the said meeting Mr. Harshad S. Mehta, accused no.l and accused no.2 were present'.-The witness stated that his statement before the Court is correct. If in his statement recorded by CBI, he has not mentioned about the presence of accused no.2 in the said meeting then it may be that he had not stated about the same.

He agreed that Harshad S. Mehta elaborated to A-1 and A-2 about excellent deals in the money market. A-1 showed interest in the deployment of funds of MUL in the money market in the said excellent deals as stated by A-5. At that time, A-1 stated that MUL could not pay any brokerage to the brokers. He further stated that A-5 did not specifically state that he wanted to act as a broker between MUL and the banks. It is correct that A-5 stated in the said meeting that he would get his brokerage from the concerned banks. A-1 stated that he did not want to mention the name of Harshad Mehta as broker in the books of MUL. A-2 was absolutely quiet during the said meeting. Al said that he would be open to any good suggestions and offers or proposals in the money market.

Witness was shown Pay Order Ex.34 dated 24.4.1991 and was questioned-on what basis ANZ Grindlays Bank credited the proceeds of the said pay order in the account of Harshad S. Mehta with them?

The witness replied-ANZ Grindlays bank usually used to credit the amount on the basis of covering letter of Harshad Mehta issued by Delhi Office. In some case, ANZ Grindlays bank has also credited the proceeds of pay orders

on the basis of pay-in-slips by which pay orders were deposited.

The covering letters which used to be normally given to ANZ Grindlays bank were given to Anuj Kalia which were pre-signed but he cannot say whether Anuj Kalia delivered such letters along with the said pay order to the said bank. He did not inform A-1 and A-2 or any other personnel of MUL that proceeds of the said pay order were credited into the account of Harshad S. Mehta in ANZ Grindlays Bank.

A suggestion was put to the witness that because officials of MUL knew that the transactions were with Harshad Mehta and not with UCO Bank, the MUL's officials contacted him and not UCO Bank.

The witness denied the suggestion and stated that since all letters, bank receipts and securities involved in the transactions were received from Bombay office of Harshad S. Mehta through the Delhi Office, the officials of MUL contacted him. He stated that he cannot say whether the officials of MUL contacted UCO Bank, Bombay.

He denied the suggestion that he deliberately chose to forget the transactions of 1990 to connect the transactions of 1991 in this case with the alleged meeting of 1989.

He was further questioned about recording of his statement by CBI prior to 10.8.1994.

He replied that CBI officials had called him earlier on number of occasions and questioned him and he gave them answers to such questions. He could not recollect whether CBI officials recorded his statement/s or not.

He again stated that on 10.8.1994 he was arrested. He was summoned by CBI on two occasions in June, 1993 for interrogation in this case. He was first called on 1.6.1993 and then again on 15.6.1993. Mr. B.C. Bhatnagar called him on both the occasions. On 1.6.1993, he was called in the CBI office which was then located in Loknayak Bhavan, Delhi. He had received written summons at that time. The summons mentioned about the MUL's case. He could not recollect the exact time when the process of recording of his interrogation commenced and ended but it was during the office hours between 10 am to 5 pm. The process of interrogation continued on when the officer Mr. Bhatnagar questioned him and he gave answers to his questions. He could not recollect whether Mr. Bhatnagar at that time went on recording his statements. On being shown para 32 of his deposition recorded by Mr. Bhatnagar under Section 161 CrPC, he stated that by reading the statement, he can say that he had not mentioned specifically the said fact in his statement before the CBI. He was further referred to his statement recorded on 15.6.1993 wherein he stated that 'earlier on arrival to office on 4.11.1991 (FN) Shri Harshad S. Mehta had told him that he had to attend a meeting with PM on that day'. The witness denied having made such statement before the CBI.

PW25 Mr. B.C. Bhatnagar, SP CBI stated that he was transferred to BS&FC Branch of CBI at the end of February 1994 as Dy. S.P. At that time, he was working in Delhi. Case No.RC.2(A)/93-ACU.VII was entrusted to him soon after the registration of FIR of this case in 1993 itself. The FIR of this case was registered by Shri V.D. Maheshwari, who was the SP, CBI and Incharge of ACU (VII) Unit. Mr. Maheshwari had entrusted this case to him for investigation. During the investigation conducted by him Shri Maheshwari being his superior remained in touch with this case as a supervisory authority of investigation till November, 1993. Inspector O.P. Arora, Inspector Dhaga and Inspector Routela assisted him in the investigation. Pursuant to the orders from the headquarter of CBI, the papers were handed over by him to Dy. S.P. Mr. Panwar. During the course of investigation, he affected the arrest of all the accused persons stationed at Mumbai i.e. Harshad Mehta and V.N. Deosthali. He also enquired about the status of MUL. The requisite information was received by him from Mr. BS

Bhargava, the Company Secretary of MUL vide document Ex.21

During the course of investigation, one Mohan Khandelwal was arrested by Dy.S.P. Shri Panwar. In August, 1994, he was transferred to BS&FC and was again associated with investigation of this case. Mr. Verma, the then SP, Mr. JN Prasad, working as SP and Mr. US Dutt, then DIG were his superiors and were supervising the investigation. On or about 31st August, 1994, Mr. Mohan Khandelwal gave him a letter Ex.203, which was discussed by him with his superiors. It was decided that in case Mr. Khandelwal discloses the full facts he may be taken as an approver and his statement may be got recorded.

He further stated that he did not take possession of the visitors register of MUL during investigation. He also did not ascertain that MUL at all maintained such a register or not. He had ascertained the date of joining of A-2 with MUL as 19.4.1989 and that during the month of May, 1989 A-2 was on an orientation programme at the factory at Gurgaon. Except the statement of Mohan Khandelwal, he was not aware when A-S visited Delhi during the month of April-May, 1989. He secured the statement of Mohan Khandelwal with regard to the presence of A-l and A-2 and about the fact of the meeting in April-May, 1989.

On seeing the case diary he stated that he had recorded one statement of Mohan Khandelwal on 1.6.1993. Prior to 15.6.1993, he had not recorded any statement of Anuj Kalia. Between 15.4.1993 to 15.6.1993 he had not interrogated Anuj Kalia.

In cross-examination, the witness stated mat he does not remember if during the course of investigation, he had checked up the various records of Grindlays Bank, Sansad Marg Branch where A-4 was working and particularly between February 1991 to May 1991. He also does not remember if he had made any application/request for production of documents to the said bank during the said period and that he had conducted any search and seizure from the said bank with regard to the documents like attendance register, duty roster or any other similar document showing the presence of particular officer at particular time. He agreed that he neither saw nor took into possession any such record dated 25.2.1991, 13.3.1991, 18.3.1991, 24.4.1991 and 2.5.1991 with regard to the presence of A-4 in the concerned bank on these dates.

He further stated that it is wrong to say that due to the five transactions in question no pecuniary loss has been caused to MUL. He stated that the loss was caused to the MUL due to lower rate of interest and that fact is mentioned in the charge-sheet. In further cross-examination, the witness stated that during the course of investigation MUL never complained of any pecuniary loss to it. MUL also did not disclose if it had filed any case of recovery against ANZ Grindlays Bank, Sansad Marg Branch, New Delhi, for any loss. During the course of investigation, he had not visited any other bank except the Grindlays bank to ascertain the procedure of inter banking clearance. He had examined the transactions of high value inter banking clearance prior to February 1991. These transactions pertained to the high network customers of the bank. He had also checked the high value transactions of inter banking clearance pertaining to high network customers of the bank between February, 1991 to May, 1991.

After May 1991 he had not examined such kind of transactions of the bank. He could not remember as to how many transactions of the kind of nature referred to above were examined by him prior to February, 1991.

He agreed that he did not check up the record and the procedure of inter banking clearance of the cheques of high value of the high networth customers of Bank of America, Hong Kong and Shenghai Banking Corp., Standard Chartered Bank or any other foreign bank. He denied that he had deliberately not checked the said procedure with other banks as it would have shown that the Grindlays Bank was also adopting the same procedure as

followed by other banks during the relevant period for inter banking clearances of high value cheques. He also denied the suggestion that he had deliberately not checked up with Grindlays bank with regard to the attendance and posting etc. of A-4 with the obvious purpose that such records would have falsified the case of the prosecution in relation to A-4.

He also denied the suggestion that on 31.8.1994 Mohan Khandelwal was under tremendous pressure due to rejection of his application by the Special Judge and the fact was in his knowledge and that the accused had no other choice except to toe the line of CBI and to become an approvor -. He was not aware of Mohan Khandelwal being involved in five or six other cases of scams at the relevant time.

He also stated that it was one of the significant factor in the investigation that toss had been caused & MUL During the course of preliminary enquiry he had collected information which indicted pecuniary loss to MUL Out of the five transactions in qaestion, & the first one was & borrowing by MUL whereas the remaining four were lending by MUL, the loss was caused to MUL because MUL paid higher of interest in comparison to the rate of interest paid by othor PSUs on borrowing. He does not remember as to what rate of interest was paid by MUL but it is mentioned in the charge-sheet He had seen the charge sheet, It does not carry any mention of other PSUs. There is also no list showing the rate of bonowing by other PSUs. admitted that the rate of interest in the market fluctuates from day to day and hour to hour, He investigated on the aspcct as to on what rate of interest other PSUs borrowed on 23.11.1991. He had not reocorded the statements of any person from those PSUs. But he collected the data showing the borrowing rat of interested. He had collected such data from GAIL, Indian OIL and ONGC etc, but it has not been made part of the charge-sheet, the reason being oversight. He silted that it was Wrong to suggest that the said data was deliberately suppressed because it would not indicate any loss to MUL. At that time, he did not consider it necessary to record the statement of the concerned officials of the PSUs.

He could not renumber if the had recorded the statement of any official of MUL on the point of loss. He does not recollect if MUL had other borrowing on that day and if so at what rate.He agreed that MUL had not lodged any FIR with regard to any of the five transactions in question.

He had recorded the statement of R.C. Bhargav and Natrajan during investigation to ascertain if any other higher authority of MUL was also involved in the case. On the basis his conclusion was that A-1 and A-2 were liable for their acts as mentioned in the charge-sheet So far as Mr Bhargav and Mr. Natrajan were concerned, they were found not involved directly, they ware involved not criminally but for approving the proposal put by A-1 and A-2, The proposal put by A-l and A-2 was a criminal act Mr, Bhargav and Mr. Natrajan were not aware that the investment in fact has been made with A-5 through UCO Bank. Mr. Bhargav and Mr. Natrajan had bonafidely accepted the proposal put up by A-l and A-2. A-l and A-2 were the person who were responsible for investing the amount with the banks for the benefits of MUL. The approval by Mr. Bhargav and Mr. Natrajan was with the application of mind.

Following Question was put to the witness-

(Q.) Do you now understand the distinction between ’advancing to’ and ’advancing through’?

(A) Yes, when the advance is made to a person directly it is ’advance to’ and when there is a mediator then it is ’advance through’.

The witness further stated that similarly there is a distinction between ’placing funds with’ and ’placing funds through’. On seeing Ex.23, wherein the placing of funds through UCO Bank is mentioned, he stated that so far

as this document is concerned the funds were placed through UCO Bank and not to UCO Bank. Similarly, in Ex.24 the word used is 'through'. In these two documents even after the use of the word 'through', his conclusion was that the placement of funds by MUL was with UCO Bank and not with a third person. The witness further clarified that the placement of funds was with UCO Bank which offered the sale of units available with them and the contents of the resolutions in Ex.23 and Ex.24 should be read with the Agenda Note and the letter of offer by UCO Bank. According to him, after the placement of funds with UCO Bank, the Bank would not be acting illegally if it places those very funds with a third party. He admitted that in Ex.24 MUL had adopted a resolution on the same day placing the funds with M/s Can Bank Financial Services for investment in bonds/units/government securities. He denied that he and the Investigating Agency have protected Mr. Bhargav and Mr. Natrajan. He could not remember if he had recommended the prosecution of Mr. Bhargav and Mr. Natrajan or that the Investigating Agency rejected that recommendation for extraneous reasons.

The decision to name Anuj Kalia in the FIR was of Mr. Maheshwari and the Investigating Agency and he had agreed. The decision to drop him from the list of accused was his and that of investigating agency. After recording statement of M. Khandelwal under Section 164 Cr.P.C. it was decided to drop him from the list of accused. Till that time, he was an accused. It was the decision of Mr. Maheshwari and the Investigating Agency not to cite M. Khandelwal as an accused at the time of FIR. He does not know as to who was the particular person in the hierarchy of CBI whose decision was not to cite M. Khandelwal as an accused in the FIR. As an IO, he was at the bottom of the hierarchy i.e. SP and then his DIG, Joint Director, Additional Director, Special Director and the Director. He had in fact not made any conclusion as to whom should be made the accused. He had only given his findings of the preliminary enquiry. During the course of preliminary enquiry, he had learnt that Anuj Kalia was the person who took the cheques of these five transactions to and fro, the bank and delivered them in Delhi. He had mentioned the role of Anuj Kalia in the report submitted to his SP. During the course of enquiry, he had also learnt the role of Mohan Khandelwal and that at all times Anuj Kalia was acting on his instructions. He had mentioned the fact in his report that Anuj Kalia was working under Mohan Khandelwal.

In further cross-examination, he stated that A-3 was implicated on account of the overt acts done by him as mentioned in the charge-sheet. One of the overt acts of A-3 was issuing irregularly the bank receipts. Although the issuance of bank receipts was an usual and common practice being followed by UCO Bank under instructions from Head Office and on behalf of their clients, A-3 issued Bank Receipts single handedly. He did not remember if A-3 was not in the branch of UCO Bank when the last two transactions took place or that between 15.4.1991 to 15.5.1991 he had been transferred to Hingna branch in Maharashtra. He agreed that he had not implicated the officer who played the role of A-3 during last two transactions. He did not remember if the said officer was Mr. Shidey who performed the role of A-3 after his transfer. On seeing the bank receipts Ex.A-5 (17) to Ex.A-5 (29), he stated that he had not seen the same during the course of investigation of this case. Those documents were not seized in this case.

He agreed to the suggestion that the statement dated 15.6.1993 of Mohan Khandelwal was not a statement connected with mis case. He did not remember if the statement dated 15.6.1993 came to be recorded only because a day earlier i.e. on 14.6.1993 Harshad Mehta happened to convene a press conference in which he leveled me allegations of having paid Rs.One crore to Narsimha Rao, the then Prime Minister and in which Mohan Khandelwal was a vital witness. He did not know if the said statement dated 15.6.1993 had been brought to the notice of Mr. Narasimha Rao and his advisors.

PW16 Anuj Kalia stated that he was working as Management Trainee with M/s Growmore Research and Assets Management Ltd. at New Delhi. While working in

the said company and in connection with the work of mat company, he came across a person by name Harshad S. Mehta. It is stated that the said company namely M/s Growmore Research and Assets Management Ltd. was a family concern of A-5. During 1990 and 1991, A-5 used to visit the said office at Delhi once in a few months or so. During the said period, A-5 was stationed in Mumbai. It is further say of this witness that he got himself appraised of the nature of the business of the said company which was to conduct the research in Stock Market and to make investments in stock market and similar services of broker.

The witness further stated that during his visits to Grindlays bank in connection with the work of their company, he came across an officer by name R.N. Popli, (A-4) working with the said branch of Grindlays Bank. and that A-4 was attached to Remittances Department. Sometimes, he also worked in other department.

The witness also stated that in connection with the office work, he had occasion to visit the office of MUL situated at Kasturba Gandhi Marg, New Delhi on few occasions. On seeing the letter Ex.58 issued by the UCO Bank on 23.1.1991 addressed to MUL, New Delhi, he stated that he had an occasion to handle the said letter. The said letter was given to him by Mohan Khandelwal. At that time, he was also given one more letter by Mr. Khandelwal (witness was shown Ex.A-5(l) being receipt dated 24.1.1991 on the letter head of Harshad S. Mehta). Along with the said letter shown to him, Mr. Khandelwal gave him this document also. He was instructed by Mr. Khandelwal to go along with both these documents to the office of MUL and collect the envelope containing units of UTI from that office.

The witness stated that he had an occasion to collect bank pay order from the office of MUL while working in the said company. He did so under the instructions of Mr. Mohan Khandelwal. He was instructed by Mr. Khandelwal to go to the office of MUL and meet either A-l or 2 and collect the banker’s cheque and then deposit the same into the account of Harshad S. Mehta with Grindlays bank, Sansad Marg Branch. He was not appraised and he was also not aware in respect of what transaction the said payment was made for as he was simply told to collect the cheque.

On seeing the pay-in-slip dated 25.2.1991 [X-18 (Ex.100)] of ANZ Grindlays bank, the witness stated that the same is pay in slip on the printed format of ANZ Grindlays Bank. The same is written in his handwriting and he identified the same. The initials therein appear to be of A-4 but he was not sure about the same. He filled in the said pay-in-slip for depositing the bankers’ cheque issued by Canara Bank, Parliament Street Branch as per instructions of Mr. Khandelwal. The said pay-in-slip is the detached part from its counter foil which remains in the book. The rubber stamp of the Grindlays Bank dated 25.2.1991 appearing therein was put by the said bank when the cheque was deposited. Such rubber stamp was also put by the said bank on the counter foil of the said pay-in-slip.

On seeing Ex.26-MUL’s instruction letter dated 25.2.1991-the witness stated that it is the letter on the strength of which he collected the pay order Ex.28. The same bears his signature at two places marked as Ex.27(l) and 27(2) in the said letter. Handwritten portion thereon reading as "Mr. Sai Swaroop Please deliver the cheque to Mr. Anuj Kalia" is the handwriting of A-2 and he identified the same being familiar therewith. He identified the signature thereon marked as Ex.26 (2) as that of A-2 Ambuj Jain.

Further, on seeing Ex.101-covering letter dated 25.2.1991 on letter head of Harshad S. Mehta addressed to the Manager, Grindlays Bank, New Delhi-the witness stated that the hand written part of the said letter was written by him in his own handwriting and he identified the same. The same has been signed by Mr. Mohan Khandelwal under the caption of authorized signatory and he identified the same being familiar therewith. He wrote the said

letter under the instructions of Mr. Mohan Khandelwal. The said letter was written for depositing the bankers' cheque of Canara Bank mentioned therein into the account of A-S as such letters used to be written for depositing bankers cheques into the said account.

On seeing Ex.102-detached part of pay-in-slip of Grindlays bank dated 13.3.1991-the witness stated that the same was in his handwriting and he prepared the same for depositing bankers' cheque of Canara Bank, Parliament Street Branch, as per its number and amount mentioned therein into the account of A-5.

On seeing Ex.76, the witness stated that he wrote the said letter under instruction of Mohan Khandelwal. He handed over the letter Ex.76 along with pay-in-slip Ex. 102 and Ex.30 to A-4 in Grindlays Bank. He handed over the instruction letter and pay order to A-4 because A-4 was handling the said work and he was also instructed by Mr. Khandelwal to do so.

On seeing Ex.32, 78 and 103 being Canara Bank's pay order dated 18.3.1991 favouring Grindlays Bank, Pay-in-slip dated 18.3.1991 and instruction letter dated 18.3.1991, the witness stated mat the said documents co-relate to each other and he handed over the same to A-4 as he was the concerned officer handling the said work and he was also instructed by Mr. Khandelwal to do so. It is his further say that X-18 pay-in-slip dated 24.4.1991 of ANZ Grindlays Bank was filled in by him and it relates to the deposit of bankers' cheque of Canara Bank, Sansad Marg Branch of the number and amount mentioned therein into the account of A-5. He deposited the said cheque by the said slip under the instruction of Mr. Khandelwal.

On seeing Ex.26, which is an instruction letter dated 25.2.1991 of MUL to Canara Bank, Parliament Street Branch, the witness stated that he read the name of Mr. Sai Swaroop in the said letter in a portion which has been marked as Ex.26(3). Mr. Sai Swaroop was the Manager of Canara Bank attached to Parliament Street Branch at that time. He had occasions to meet the said officer few times. He further stated that for collecting the letter Ex.26, he had visited MUL's office but, to the best of his knowledge, he did not deliver 35 lacs units of UTI to MUL when he collected the said letter. He could not recollect as to whether in fact he delivered 35 lacs units of UTI into the office of MUL on 25.2.1991.

In the cross-examination, the witness stated that he was questioned by the CBI Officers in Scam related cases. He does not recollect exactly but somewhere in july or August, 1992 he first time came to be questioned. He had received a process at that time from the CBI Officer. He does not remember the name of the officer who questioned him. He denied the suggestion that in the CBI Office he was told to implicate A-4 in this case and that he would not be implicated in this case.

To the question that-during February and May, 1991 A-4 was not working in Remittance Department in Grindlays Bank in its branch at Sansad Marg,-he replied that he was not knowing about his department but he knew where he used to sit in the said branch.

CW1 Mr. Vishnu Deo Maheshwari, SP CBI stated that during the years 1991, 1992 and 1993 he was supervising investigation of cases relating to anti corruption offences. In the year 1992-93 Mr. Amod Kanth, the then DIG was his superior. Mr. B.C. Bhatnagar, the then Dy. S.P. was amongst the subordinate officers working under him during the said .period. He was asked to explain about his precise role in the process of supervision/investigation of the MUL's case. He stated that he discussed the evidence collected by Mr. Bhatnagar who was the I.O. of the case as also with senior officials; examination or interrogation of witnesses and to assess the documents collected as abo the statements of witnesses and to discuss with I.O. as well as senior officers. Besides supervision of the investigation of the case, the then DIG Mr. Amod Kanth ordered to examine one Mr. Mohan Khandelwal with the assitance of I0 about the MUL's security

transactions as well as cash withdrawals during 1991-92 from the accounts of A-5. Accordingly, he recorded the statement of Mr. Khandelwal on 15.6.1993 in presence of I0 at Delhi. He stated that FIR was registered on 15th April, 1993. It is his say that to ascertain whether any departmental irregularity was committed or any criminal offences were committed, the CBI instituted the preliminary enquiry. He admitted that mere is no statutory provision which permits or allows the investigating agency like CBI to institute and conduct preliminary enquiry as has been done in this case prior to the registration of crime. He did not know why the said statement dated 15.6.1993 of Mr. Khandelwal was not furnished and or included along with the papers accompanying the charge sheet submitted before the Court. He did not instruct the investigating officer of this case not to include the said statement along with the charge sheet. So long as he handled the case, the said statement dated 15.6.1993 formed part of the record of mis case. He further stated that the source information did not disclose commission of any offence. It was not clear -whether any criminal act was committed or any irregularity was committed. He did not remember any other role of Mr. Khandelwal that was discovered during the said period but the fact that he was the constituted Attorney was discovered. He further did not remember as to why Mr. Khandelwal was not named as accused in the FIR. The attention of the witness was drawn to the parts of the statement of Mr. Khandelwal recorded on 15.6.1993 by him, which are as under:-

(i) For withdrawal of 25 lacs the self cheque signed by him was given to Shri Anuj Kalia who brought the cash to the office and delivered to him when Shri Harshad S. Mehta was also present in the office.

(ii) The VIP suit case containing the said cash brought by Shri Anuj Kalia was handed over to Shri Harshad S. Mehta who took it in the Honda Car of Shri Sunil Mittal and took away the money to some place not known to him.

(iii) Visited at ANZ Grindlays Bank along with Shri Anuj Kalia.

(iv) The cheque was encashed and cash was brought to the office but the suitcase containing cash remained in the office NE 118.

(v) At about 3-4 p.m. Shri Harshad S. Mehta came to office in the car of Shri Sunil Mittal and the suitcase containing cash lying in NE 118 car was shifted to the car of Shri Sunil Mittal.

(vi) He, Sunil Mittal and Harshad S. Mehta went to residence of Shri Sitaram Kesari, party Treasurer.

(vii) There he remained along with them in the front room.

(viii)Later Shri Harshad S. Mehta and Sunil Mittal went inside the connected room and the suitcase containing the cash was picked up by somebody from the Bungalow (Residence of Shri Sitaram Kesari) and taken inside that room.

(ix) While returning from that room Shri Kesari asked Harshad S. Mehta to write amount towards donation to Congress Party funds;

(x) Harshad S.Mehta initialed in the note book produced by Shri Kesari.

(xi) Then all three of them returned to office from where he remained in the office and Shri Harshad S. Mehta along with Sunil Mittal proceeded to Hotel;

(xii) Similar heavy cash withdrawal was also done on 4.5.1992 when Rs.20 lacs were withdrawn from the same bank.'

The witness was questioned-whether the said evidence of Mr. Khandelwal denying the recording of his said statement was true? The witness replied 'No'. He had recorded the said statements. He said that Mr. Khandelwal in

his said statement recorded by him on 15.6.1993 had made the statement as above at SI. Nos.(i) to (xii).

On the basis of the aforesaid statement, question was asked to the witness that-whether he realised that the said statement disclosed the material requiring or warranting separate and independent enquiry in certain aspects which were not covered or directly related to the evidence of the case which he has registered as per the FIR? To this question, he replied that he did realise so and thereafter DIG Mr. Amod Kanth conducted some enquiry with Mr. Sitaram Kesari who revealed that he did not recollect about the donation to the party.

DW5(8) Atul Manubhai Parekh stated that he is dealing with Pharmaceuticals and chemicals since about last two years. Prior thereto, he was in the employment of A-S from June 1990 till June 1992. He was Asstt. Vice President and looking after settlement of money market transactions of A-5. He used to sit at Nariman Point Office, Bombay of A-S. He then stated that deals in money market transaction in security transactions used to take place during the day for and on behalf of A-S. His duty was to confirm about the delivery of the securities both delivery on behalf of A-S as also receipt on behalf of other parties.

Regarding the procedure of settlement of the deals and about his role, the witness stated that after feeding the computer, the contract notes and delivery orders were generated from the computer and handed over to him. On receipt thereof, he used to depute the delivery boys to the concerned banks for the purpose of collecting or receiving the deliveries of the securities. After collecting the securities, the same used to be sent to UCO Bank, Hamam Street Branch, Bombay. The delivery boys would deliver the securities and men collect the bankers cheques from UCO Bank and deliver again the said bankers cheques to the banks from where they had earlier collected the securities in question.

UCO bank, Hamam Street Branch, Bombay was giving routing facility for money market transactions to various brokers which included his master A-5.

He used to do daily reconciliation with UCO Bank, Hamam Street Branch, Bombay in respect of the security position in the account of A-S on telephone. After confirming the position of the balance of the securities in a form of BRs held by UCO Bank in the account of A-5, he would pass on the same to the dealers of A-5. Without holding the securities by way of BRs, UCO Bank would not issue BRs for and on behalf of A-5.

Apart from BRs the securities in the physical form of A-5 would also lie with UCO Bank, Hamam Street Branch, Bombay. Whatever securities received either by BRs, SGLs or physical for and on behalf of A-S, the same used to remain with UCO Bank, Hamam Street Branch, Bombay. There used to be generally surplus balance of securities in the account of A-S with UCO bank, Hamam Street Branch, Bombay.

He agreed to the suggestion that UCO Bank, Hamam Street Branch, Bombay issued its BR in respect of 70 lacs units of UTI on 13.3.1991 in respect of the second transaction favouring MUL. He was in Bombay when A-5 was arrested. He was also arrested by CBI in RC Case No.8(A)/92. He was aware that A-5 was kept in the CBI custody for well over 90 days. He was not knowing whether A-5 was under CBI custodial interrogation.

ALLEGED CONSPIRACY

In this case, conspiracy is the basis for convicting the accused. Special Court has mainly relied upon the evidence of PW23 for holding that prosecution has established conspiracy on the basis of so-called meeting between A-1, A-2, A-5 and PW23 Mohan Khandelwal in the month of April/ May, 1989. For conspiracy, it is the prosecution version that A1 to A5 entered into a criminal conspiracy to siphon-off the funds of MUL in favour of A-5

and afore-quoted five transactions took place, even though there was a specific bar of granting loan by MUL to individuals.

Mr. Mahesh Jethmalani who appeared as amicus curiae for A-3, submitted that the conspiracy charge is not tenable for the following reasons:-

(a) It is absurd to suggest that the conspiracy took place in 1989 and the first overt act in pursuance of that conspiracy took place in March, 1991. The link between the conspiracy of 1989 and the first overt act of March, 1991 is further broken by the fact that 13 other transactions took place in the year 1990 between A-5 and MUL. All these transactions have been brought out in cross-examination of PW23 and the relevant documents have been proved by the defence through their defence witnesses.

(b) There can not be a conspiracy to siphon-off surplus funds when the overt acts show that nothing of that kind happened even once; monies were lent on security and repaid with interest on the due date.

(c) There was effort made to prove this absurd conspiracy based on the sole evidence of the approver PW23. Now in this very case it has been held by the previous Bench that the pardon granted to the approver by the Magistrate was invalid. Where the pardon granted is without jurisdiction the use of the evidence may not affect the validity of the entire proceedings by reason of the curative provisions of Cr.P.C. but certainly the evidence becomes inadmissible. It is significant that the Solicitor General during his long arguments never once relied upon the evidence of the approver.

(d) The veracity of PW23 has been destroyed in cross-examination. He denied his taped conversation and feigned ignorance of one police statement. He suppressed truth from the JPC. Even if the evidence of PW23 is taken at its face value, it does not disclose any conspiracy viz. an agreement to commit an illegal act

(e) It is well-settled that an approver is not worthy of credit and his evidence must be corroborated in all material particulars through independent evidence. The conviction cannot be based on sole evidence of an approver. It is submitted that in the instant case there is no corroboration of the so-called conspiracy through any independent evidence; in fact the evidence of approver himself does not disclose any conspiracy as alleged in the charge.

Learned senior counsel Mr. Jethmalani also referred to a note recorded by 13 Members of JPC, wherein it is stated as under -

".....The CBI’s treatment of Shri Mohan Khandelwal, first as a

’source’ and thereafter as an accused is mystifying, to say the least No satisfactory explanation about this was ever forthcoming’.

It is submitted that from the aforesaid note inference is obvious - the registering of preliminary enquiry in this case and other cases was an attempt to threaten PW23 for not disclosing to the public what he had informed to Shri Sharma, DIG Special Investigation Wing privately. The registering of the cases had the desired effect-PW23 did not reveal his knowledge to anybody because me agency to whom he had revealed it from June, 1992 onwards, had chosen not to use the information but to investigate cases in which he could be roped in. Obviously, the filing of cases against PW23 intimidated him sufficiently not to divulge the information he was aware of. He submitted that this is crystal clear from the evidence of CW1 Mr. V.D. Maheshwari wherein he has stated that Mr. Khandelwal in his statement dated 15.6.1993 disclosed that after withdrawing large amount from the bank, A-5 along with Sunil Mittal went at the residence of Mr. Sitaram Kesari, Congress Party Treasurer and handed over the said amount to him. To suppress this, Mr. Khandelwal was made

approver.

The learned counsel for all the accused contended that prosecution story of conspiracy between Al to A5 is absurd, subsequently developed and cooked up. It is contended mat one of the purposes for developing the story of conspiracy hatched in the year 1989 might be for seeing that the offences are tried by the Special Court. It is contended that under Section 3(2), the offence which took place between first day of April, 1991 and on or before 6th June, 1992 could only be tried by the Special Court. The transactions of giving loan by A-5 on 24.1.1991 to MUL and borrowing by A-5 on 13.3.1991 which was repaid on 25.3.1991 and third transaction for which amount was received on 18.3.1991 and repaid on 22.3.1991, would not be covered by sub-section (2) of Section 3 of the SCAM Act. Hence, it is submitted that the allegation of conspiracy between the accused since 1989, apart from being unreliable, is cooked up.

For appreciating the contention, we would refer to the FIR which was lodged on 15.4.1993. In the FIR, (in para 3) it has been mentioned that-

'S/Shri Pramod Kumar and Ambhuj Jain entered into a criminal conspiracy during the period from January, 1991 to May, 1991 at Delhi and Bombay with V.N. Deovasthali an officer of UCO Bank, Hamam Street Branch, Bombay, R.N. Popli of ANZ Grindlays Bank, Delhi and Shri Harshad S. Mehta, a broker, his employee Anuj Kalia and certain other unknown persons with the object to misappropriate the said surplus funds of MUL and to provide pecuniary advantage to Shri Harshad S. Mehta out of the funds to be invested by MUL by abusing their official position as public servants.'

Similar allegations were made in the charge-sheet, which was filed on 15.12.1994 which reads as under:-.

'The investigation has further revealed that Pramod Kumar (A-l) and Ambhuj Jain (A-2) entered into a criminal conspiracy and were member of the same during the period from January, 91 to May, 91 at Delhi and Bombay with V.N. Deosthali (A-3), then Asstt. Manager UCO Bank, Hamam Street Branch, Bombay, R.N. Popli (A-4) of ANZ Grindlays Bank, New Delhi, Harshad S. Mehta (A-5) a broker and Mohan Khandelwal an attorney of Harshad S. Mehta, with the object to misappropriate the surplus funds of MUL and to provide pecuniary advantage to Harshad S. Mehta (A-5) by abusing their official position as public servants.'

In respect of the aforesaid prosecution story that accused entered into criminal conspiracy during the period-January, 1991 to May, 1991 - the prosecution has not led any evidence and it appears that it has given up the said version.

On the contrary, prosecution led evidence to the effect that there was conspiracy either in April or May, 1989 between Al, A2 and A5 and for that purpose it relied upon the evidence of approver PW23 Mohan D. Khandelwal, who was associated with A-5 for the purpose of carrying out research in share market and companies in Delhi somewhere in the month of February or March, 1989. During his visit to Delhi in April/May, 1989, A-5 made reference to MUL and told that MUL had surplus investable funds as a PSU and they were very active in money market. It is the say of PW23 that A-5 desired that he should fix an appointment with A-l who was the concerned functionary in the investment of the funds by MUL. Therefore, a meeting was fixed in the month of April/May, 1999 which took place in the office of MUL in Delhi. In the said meeting, A-5, A-l and A-2 were present. In the meeting, A-5 stated that he wanted to deal with MUL and that he was having lot of contacts with the banks in Bombay and could offer to MUL excellent deals in the money market. Relevant talk which transpired in the said meeting is as under. -

'Ans. 34. The accused no.l at that time stated that the MUL could not deal or involve the brokers. Mr. Harshad S. Mehta stated that the deals would be

between MUL and banks, structured and suggested by him i.e. Mr. Harshad S. Mehta. Mr. Mehta would not appear in the books of accounts of MUL and mat is what he stated.

Ans. 35. Mr. Harshad S. Mehta stated that he would stand to gain by way of commission and/or brokerage from the banks. He also stated that MUL would benefit by getting better deals.

Ans. 36. The accused no. 1 stated that he would look into any good proposals if Mr. Harshad Mehta did not come into picture.'

From the aforesaid evidence, it is absolutely clear that there was no conspiracy to indulge in any illegal activity. As per the evidence of this witness, A-l stated that he would look into any good proposals if A-5 did not come into picture. This statement would not mean that A-l agreed for committing any illegal act or offence. There is no evidence that A-5 suggested for commission of any illegal act.

In further cross-examination, this witness has admitted that he was not sure when A-5 visited New Delhi, but he visited New Delhi once in April or May, 1989 and the meeting took place in the office of MUL at New Delhi. The attention of the witness was also drawn to the hand written entry in the visitors' register of the ONGC, New Delhi for the period 25.2.1989 till 4.11.1989, which reveals that A-5 was present in Delhi on 10.4.1989 and even assuming that A-5 stayed there for one week, as stated by the witness, his stay would be up to 17.4.1989.

On the basis of the aforesaid evidence, it has also been rightly contended that the story developed by the prosecution that A-2 was present during the said meeting is, on the face of it, absurd. For this purpose, it has been pointed out that by an office order dated 4.4.1989 Ex.Al and Ex.A2 (5), A-2 was appointed and thereafter he joined the MUL on 19.4.1989 as Junior Officer on probation. He was sent for refresher course from 1st May. In this set of circumstances, it would be difficult to believe that a raw junior officer who was on probation would take part in alleged meeting and be a party to conspiracy of dealing in MUL funds illegally or irregularly.

Further, PW23 has developed a story after his arrest on 10.8.1994 that A-2 was present in the meeting. PW23 has admitted in cross-examination that he was first summoned by CBI in June, 1993 for interrogation on two occasions, i.e. on 1.6.1993 and 15.6.1993. In further cross-examination, he admitted that neither he could recollect the exact date and time of the meeting which took place in the premises of MUL nor remember the month of the meeting. The witness has also stated that if in the statement recorded by the CBI, he has not mentioned about the presence of A-2 in the said meeting, then it may be, he has not stated about the same. The public prosecutor admitted that it was an omission in the statement recorded by the CBI with regard to the presence of A-2. From the aforesaid admission in the cross-examination, it is apparent that A-2 was not present during the meeting and that the prosecution story with regard to the alleged meeting appears to be doubtful. In any case, approver PW23 does not assign any role to A2 in the said meeting.

It is also to be noted that the alleged meeting took place in an open hall where other employees of MUL were sitting in close proximity of A-l and A-2 and one of the employees was PW-4 Rajan Ramgopal who joined the Corporate Finance Cell of MUL sometime in the year 1986 as deposed by him. He stated that he used to work directly under A-l and that he himself, A-l, A-2 and Jagdish Kumar used to sit in a common hall; A-l had his table with chairs meant for visitors and by the side of it and in front of him, there was a common table where A-2 used to sit; he (PW4) used to sit opposite to A-2; to the side of A-2, Mr. Jagdish Kumar used to sit and one Mr. Shrinivasan used to sit next to him. Thereafter, he states that while working with Corporate Finance Cell of MUL, he had not heard the name of Harshad Mehta and that he had never seen the said Mr. Mohan Khandelwal. Similarly, PW8

Jagdish Kumar who was working in the Corporate Finance Department of MUL from 1981 to 3.5.1991 has not at all deposed about the alleged meeting. The other employee who was also working in the said room is not examined by the prosecution, therefore, it is submitted that PW23 has uttered a blatant falsehood when he deposed before the court that alleged meeting took place in the premises of MUL in the month of April or May, 1989. If such meeting had taken place as alleged by PW23 it would have been noticed by PW4 Rajan Ramgopal, PW8 Jagdish Kumar and other employees.

From the aforesaid discussion, it is apparent that approvers' statement for establishing conspiracy does not inspire any confidence.

Further, the evidence led by the prosecution itself destroys the so-called conspiracy hatched in April/May 1989 because the reply of A1 as stated by PW23 in the meeting was limited to the extent that MUL could not deal with or involve the brokers and that he would look into any good proposals if A5 does not come into the picture. From this statement, no inference can be drawn that there was any conspiracy to misappropriate MUL funds or commit fraud or to commit any illegal act Further, for the prosecution version that Al and A2 entered into a criminal conspiracy with other accused between January 1991 to May 1991 as stated in the FIR (which was recorded after preliminary inquiry) and in the charge-sheet (virtually filed after more than two years of the preliminary inquiry), no attempt is made to prove the same. Subsequently developed prosecution version that conspiracy was hatched in April/May, 1989 on the basis of approver's evidence appears to be unreliable and baseless.

Next question would be (even though not argued) - Can we draw an inference from the transactions in question that there was any such conspiracy from January, 1991 to May,1991 between accused?

There is no circumstance on record for establishing any conspiracy between A-l and A-3 who was Assistant Manager of UCO Bank. There is nothing on record to show that A-1 or A-2 had any talk with A-3 or A-4 with regard to the alleged conspiracy and that they were party to it.

However, let us consider that five transactions mentioned above took place and as MUL could not lend money to A-5 directly, the transactions took place under the name of and through UCO Bank and in four transactions UCO Bank in turn gave the said amount to A-5. It is pointed out that as there was conspiracy, A1 and/or A-2 gave Account Payee cheques issued by Canara Bank on behalf of MUL payable to Grindlays Bank to Anuj Kalia representative of A-5. Grindlays Bank deposited the said amount in the account of A-5 at Delhi and thereafter transferred the same to the account of A-5 at Bombay. Subsequently on the same day, it was transferred to UCO Bank and UCO Bank gave cheque to A-5.

From the nature of aforesaid transactions, whether conspiracy can be inferred? It is true that apparently transactions are not simple. It casts serious doubt with regard to functioning of Banks and MUL. But as against this, the evidence which is brought on record by the prosecution establishes that these were routing/switch transactions. PW14 Assistant Chief Officer, UCO Bank has stated that in case of security transactions on behalf of the client, they credit the sale proceeds receipt into the account of the client. PW-7 Karkhanis has specifically stated that Hamam Street branch on each day used to have 30-40 such transactions and such transactions were to be completed within the banking hours. DW-A3(2) Mr. Ramnathan, who was the Divisional Manager of UCO Bank at Bombay Office has produced on record the letter dated 08.1.1991 Ex.231 written by him indicating resumption of switch transactions and that letter was written after discussing the subject with various authorities including brokers, Zonal Manager and also with General Manager and Dy. General Manager of UCO Bank.

it appears that such irregular and unjustified banking practice had

developed. But in view of the evidence for such routing/switch transaction developed by the banks/brokers, it cannot be inferred that there was any conspiracy between Al, A2 and A3 or A4 and A5. As stated above, this irregular practice is also discussed by JPC. The JPC had arrived at the conclusion that scrutiny of securities transactions in a number of banks revealed that some banks were even handing over account payee cheques drawn in favour of other banks to the brokers who got them credited to their account ostensibly to assist the latter in transferring the funds quickly to meet their obligations. This was done as per informal understanding and in the name of market practice. The payee bank used to credit the proceeds to the accounts of the broker constituents who brought the cheque to it for collection. The JPC also observed that routing of transactions of many brokers including A-5 had been carried out by banks. The banks were lending their names to the transactions of these brokers and exposed themselves to great risk by irregularly issuing their own BRs. Therefore, if this commercial practice was rightly or wrongly developed in various banks or the PSUs, it cannot be inferred that there was any conspiracy between the banks and PSUs or that there was conspiracy between A-l, A-2, A-3, A-4 and A-5.

Further, in the present case, there is no evidence on record that BRs were issued by the UCO Bank without being backed by the security namely UTI Units.

In this set of circumstances, it would be difficult to hold mat prosecution has proved the charge of criminal conspiracy under Section 120-B of IPC against the accused.

I would also state that it is not properly understood by the prosecuting agency that by introducing or adding a new story in a criminal prosecution, in most of the cases, it adversely affects or destroys the prosecution case. Not only it creates doubts with regard to that part of the prosecution version but on occasions casts doubt about the motive. Result is-under our criminal jurisprudence, benefit of doubt may go to the accused.

Once we arrive at the conclusion that the prosecution has failed to prove the criminal conspiracy, the conviction of the accused under Section 120-B of IPC requires to be set aside.

JURISDICTION OF THE SPECIAL COURT UNDER THE SCAM ACT.

At the outset, it is to be stated that accused were tried under the SCAM Act which was preceded by an Ordinance promulgated on 6th June, 1992. In the year 1992, it was noticed that there was a scam in the stock exchange as there was sudden rise or fall of prices in the stock market and large number of persons who were trading in stock exchange were losing their money. Some of them were experienced gamblers at the stock exchange and most of them were laymen. As per the Statement of Objects and Reasons of the Act, large scale irregularities and malpractices were noticed by the Reserve Bank of India (RBI) in relation to transactions in both the Government and outer securities indulged in by some brokers in collusion with the banks and financial institutions. The irregularities and mal-practices noticed by the RBI were with regard to diversion of funds from banks and financial institutions to individual accounts of certain brokers. Hence, the SCAM Act was enacted which provides for establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto. The object of the Act is to deal with situation mentioned above and in particular to ensure speedy recovery of huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions. Under Section 5 of the SCAM Act, Special Court is to be established and one or more sitting Judges of the High Court would have jurisdiction in respect of any offence referred to in sub-section (2) of Section 3 of the SCAM Act. Section 3(2)

reads thus:-

'3. Appointment and functions of Custodian.-

(1) .....

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992, notify the name of such person in the Official Gazette.'

Hence, under the Act, jurisdiction of the Special Court is limited for offences relating to transactions in securities after the 1st April, 1991 and on or before 6.6.1992 and the Court is required to follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases before a Magistrate. Sections 6 and 7 inter alia provide that the Special Court would have exclusive jurisdiction to take cognizance of or to try such cases as are instituted before it or transferred to it as provided.

Further, it is to be clearly understood that the Act does not create any new offence nor brings about any change in the procedure or raises any presumption pertaining to an offence punishable under the IPC or P.C. Act, which is to be tried under the Act. Therefore, the offences pertaining to misappropriation, criminal breach of trust or fraud and forgery are required to be established by the prosecution on the touchstone of ingredients laid down under the relevant provisions of Indian Penal Code and by following the Evidence Act. Hence, for conviction under Section 403 and/or Section 405 IPC the prosecution is required to establish the ingredients of said sections beyond reasonable doubt. Therefore, as the prosecution has failed to establish the conspiracy, the jurisdiction of the Special Court would be limited only for the transactions which took place after 1st April, 1991. In the present case, only two transactions, i.e., dated 24.4.1991 and 2.5.1991 would be covered.

CASE AGAINST A-l AND A-2

In this case, as the prosecution has failed to establish criminal conspiracy, we are required to consider the prosecution case against each accused for the acts committed by them and to find out whether they have committed any offences.

The case of the prosecution against A-l and A-2 is as follows:-

(a) A-l and A-2 misappropriated the property in violation of the law as well as their duty (express and implied) by making it available for use of A-5. This is on account of the fact that they were authorised to invest the money in defined securities in a transaction with Public Sector Undertakings only. They, however, knowingly entered into a series of transactions, which had the result of making the funds of MUL available to AS.

(b) A-l and A-2 were also admittedly public servants during the material time. They abused their position and thereby conferred a pecuniary advantage upon A-5 and in any event while holding office as a public servant obtained a pecuniary advantage for A-5 against public interest. Thus, they were charged with an offence u/s 13(1)(c) of the PC Act.

It is also pointed out that the evidence given by die prosecution witnesses of the MUL inter alia establishes the following-

(a) A-l was the Deputy Manager and A-2 was senior executive working closely with him.

(b) That MUL had taken a decision to invest its funds with PSUs. In fact it was clarified that investment would only be in PSU bonds.

(c) A-l used to place the proposals before the Board and obtain approvals for the investments in question.

(d) MUL did not engage services of brokers for its transactions.

(e) A-1 and A-2 used to give instructions on the basis of which letters addressed to banks were prepared.

(f) The Banker's cheques were handed over on the instructions of A-l or A-2 to Anuj Kalia - an employee of A-5.

(g) The vouchers prepared in MUL clearly suggest that transaction was between MUL and UCO Bank. This has also been stated by PW4 in his cross-examination. In the circumstances, it is submitted that it is very clear that the transaction, which was authorised, was a transaction in securities directly with UCO Bank.

(h) The fact that the pay order was being given to Grindlays Bank in a transaction with UCO Bank was brought to the notice of A-1 by PW4 to which A-l's reply was that it was the problem of UCO Bank.

(i) The contention that A-l was instructed by UCO bank to issue the pay order in favour of Grindlays Bank is unacceptable for the simple reason that in the fourth and the fifth transaction pay order continued to be issued to Grindlays Bank without any direction from UCO bank.

(j) In any event, there was no authorisation to purchase any securities from any brokers. There was no mention of the monies being given on loan to any broker. It bears emphasis that surplus funds were many times invested in securities in buy back transaction, in that the arrangement would be to purchase a security and then resell it within a stipulated time after the identified period at a price which would include the cost of purchase plus the stimulated interest. This transaction was considered as placement of funds with PSUs. The witnesses have clearly stated that the only authorisation for placement of surplus funds was PSUs and not private person.

CHARGES AGAINST A-2

(a) He was present in the meeting held in April/May, 1989.

(b) He signed letter dated 25.2.1991 for issuing a pay order in the name of ANZ Grindlays bank and also wrote in his own handwriting to Canara Bank that the pay order might be handed over to one Mr. Anuj Kalia (PW16) [Ex.26-first transaction).

(c) He signed letter dated 18.3.1991 for issuing pay order in the name of ANZ Grindlays Bank (Ex.31-third transaction)

(d) He signed letter dated 24.4.1991 for issuing a pay order in the name of ANZ Grindlays bank (Ex.33-4th transaction).

(e) He discharged a bank receipt after the money was received by MUL on 26.4.1991 (Ex.41 4th transaction).

The learned senior counsel Mr, Jain appearing on behalf of A-2 submitted thus:-

For Charge (a)-

The prosecution has miserably failed to establish conspiracy sought to be proved by examining PW23 Mr. Khandelwal. This submission requires to be accepted as discussed above.

For Charge (b)-

A2 signed the letter dated 25.2.1991 (Ex.26) in routine manner and the same was put up by PW4 under the instructions of Al, who confirms the same in his statement under Section 313 CrPC.

For Charge (c)-

The letter dated 18.3.1991 was written by PW8 after the decision with regard to investment had been taken by the sub-Committee and conveyed to A-l. In his statement under Section 313 Cr.P.C., A-l admitted that MUL got issued banker's cheque dated 18.3.1991 favouring ANZ Grindlays Bank as per written instructions of UCO Bank. A2 signed the said letter being authorised signatory. PW8 in his entire deposition has nowhere mentioned that the letter was written under instructions of A2. The said document can not be said to have been signed by A2 with any criminal intent and as such this circumstance cannot be used against A2 for implicating him in the offences alleged.

For Charge (d)-

Letter dated 24.4.1991 was also written by PW8 after the decision for investment had been taken by sub-Committee and conveyed to Al and Al confirmed that MUL got banker's cheque dated 24.4.1991 issued in the name of ANZ Grindlays bank in respect of transaction between MUL and UCO Bank. A2 signed the letter being authorised signatory.

For Charge (e)-

No charge has been framed against A2 in respect of any BR. Since the prosecution had cited document Ex.41 during arguments before this Court, the same is being replied to by A-2 as under:-

"A2 saw this BR at the time of discharge as authorised signatory after MUL had got the money back and the transaction had got reversed. When PW4 who was the custodian of all records of every transaction and was maintaining BRs, put up the said BR for discharge before A2 for signing after MUL had got the money back, he signed the same in a routine manner."

Under the circumstances, it is submitted that no criminality can be imputed against A2 for signing this BR as an authorised signatory after the reversal of the transaction. Hence, it is submitted that this circumstance also cannot be held against A2.

Learned senior counsel further submitted that as there is no evidence against A-2, the Special Court had rightly acquitted him and in the appeal also learned Solicitor General appearing on behalf of CBI has not pointed out any material evidence to hold that the judgment and order passed by the Special Court calls for any interference in acquittal appeal.

He referred to Ex.26 and submitted that the said document is signed by him but as deposed by PW4 the said document was authored by PW4 and approved by A-1 and, therefore, it cannot be held that he did anything wrong in mentioning in the said letter that cheque may be handed over to Anuj Kalia. It is his submission that even handing over of cheque to a person who had brought 35 lacs of units for being delivered to MUL cannot be termed in any way as dereliction of duty.

Learned senior counsel Mr.Sundaram on behalf of A-1 has given detailed written submissions and has inter alia submitted that the prosecution has failed to establish that-

(a) A-l mis-represented to the sub-committee of the MUL regarding transfer of funds to UCO Bank on UCO Bank's instructions through Grindlays Bank;

(b) A-l mis-represented to the sub-committee by not putting to their knowledge the resolution of the Board dated 4th May, 1989;

(c) The charge of conspiracy is fabricated one;

(d) There was no mens rea for the alleged criminal breach of trust on the part of A-1;

(e) In any case, it would be totally unjustified to hold that Al was having any dominion over MUL's properties. There is no mis-representation nor any loss to the MUL. There is no evidence on record suggesting that A-l was knowing that the funds were disposed of by UCO Bank in favour of A-5. MUL has given funds to the UCO Bank and it is not the function of MUL to verify from UCO Bank as to how the said funds are utilised;

(f) The charges under the provisions of Section 13(1)(c) of PC Act and Section 409 of IPC are without any foundation;

(g) The evidence of PW7 and PW14, both officials from UCO Bank have deposed that they could not differentiate whether BRs and letters pertaining to the relevant transactions shown to them pertain to a transaction conducted on behalf of their bank or on behalf of the client broker, and

(h) Prosecution has failed to examine material witnesses, i.e., Mr. R.C. Bhargava, Chairman-cum-Managing Director and Mr. S. Natrajan, Director (Finance), even though they were available all-throughout and who were examined by the JPC and IO.

FINDINGS:

I would first refer to the resolution dated 4th May, 1989 of the MUL for investment of surplus funds and also the resolutions for investment for the five transactions in question, which are proved and produced on record. In that resolution, the Board of MUL laid down guidelines for investment of surplus funds by MUL, which read thus:-

"Resolution dated 4.5.1989 (Ex.9)

BOARD AGENDA ITEM NO.17 -

INVESTMENT OF SURPLUS FUNDS BY MUL

1.0 In terms of the existing guidelines from the Board, MUL has been loaning its surplus funds to Central Public Sector Undertakings consistent with the terms and conditions of the approval accorded by the Central Government u/s 370 of Companies Act, 1956.

2.0 A Sub-Committee comprising the Managing Director and Director (Finance) has been delegated the authority by the Board to facilitate taking faster decision in this regard. The details of investment made are placed in the Board meeting for information.

3.0 Of late, the number of PSUs, who have surplus funds wanting to loan funds to PSUs has increased. Some PSUs, who were earlier requiring temporary accommodation are now in a position to give funds. As a result of this, there is an increasing competition between PSUs affecting the yield on such loaning of funds.

4.0 In an effort to maximise yield on surplus funds, it is proposed to invest funds in the units of UTI, Central Govt. securities, public sector bonds either through scheduled banks or directly. These investments, at times, are expected to fetch a higher rate of return than what is available on loaning of funds to PSUs without involving any risk as to the return of

the principal and/or yield.

5.0 It is, therefore, proposed that the Board may permit the Sub-Committee formed by it for the purpose to invest surplus funds of the company from time to time in the purchase of units of UTI, Central Government and State Govt. Securities, public sector bonds either through scheduled banks or directly.

6.0 In March, 1989, MUL invested surplus funds in PSU Bonds, Units of UTI and Central Govt. Securities as contained in the Annexure. The Board may kindly accord ex post facto approval for such investments made to utilise the opportunity of high yield during such periods.

7.0 The Board may kindly approve proposals in paras 5.0 and 6.0 above."

Much has been contended that the Board resolution dated 4.5.1989 (Ex.9) passed by the Board of Directors of MUL prohibits granting of loan in favour of individuals and, therefore, transactions by A-5 with MUL are illegal and against the policy of MUL and, therefore, A-5 misappropriated, even though temporarily, the amount of MUL. T'he afore-quoted resolution inter alia provides that it was open to the MUL to invest the surplus funds in the UTI units through scheduled banks or directly. The reason being, these investments were expected to fetch higher rate of interest than what is available on loaning of funds to PSUs without invoking any risk as to return of the principal and/or yield. It is also provided that Board has permitted the sub-committee to invest surplus funds of the Company in the purchase of units of UTI either through scheduled banks or directly. It is admitted position that on the basis of the resolution, sub-committee was constituted consisting of Chairman-cum-Managing Director and Director (Finance) for the purpose of investment

It is also proved that all the five transactions took place after the sub-committee passed appropriate resolutions.

RESOLUTIONS OF THE SUB-COMMITTEE

Resolutions along with agendas are: - (1) Ex.22 dated 01.2.1991, (2) Ex.23 dated 13.3.1991, (3) Ex.24 dated 18.3.1991, (4) Ex.40 dated 24.4.1991 and (5) Ex.42 dated 02.5.1991. Relevant part of resolutions is reproduced hereunder:-

(1) Ex.22 dated 01.2.1991

"MARUTI UDYOG LIMITED (CORPORATE FINANCE)

No.MUL/FIN./CF/91. 1st February, 91.

Sub:- Funds Management

1.0 In November and December Maruti has placed lot of money in Government Securities/Units and PSU Bonds through Banks. These investments have been made for a period of 3 months to 6 months on assured yield ranging from 16.25% to 22% per annum.

2.0 During the last week of December and in January, the receipt of payments were relatively less. Maruti was required to borrow funds or withdraw money from PSU's. One of the options available for borrowing was to sell our investments to other banks with a understanding to buy back these investments after a gap of 30 days or so. This amounts to borrowing of funds at low rates, as Maruti will continue to get advantage of the high assured yield. The bank with whom we have earlier invested the funds and the bank from whom we borrow the funds need not necessarily be the same bank.

In our documentation we have to show the borrowing as sales of our

investments. Therefore, it is proposed to show such borrowing as reduction in our investments. This has been discussed with Company Secretary also who is agreeable for such treatment.

3.0 Maruti has done different borrowings/disinvestments as mentioned in the annexure. Some of these have been done to place funds with other PSU's. Even though the rate of interest charges to the PSU's is lower than our cut-off rate yet these will result in additional interest advantage ranging from 1 to 2.5% p.a. for Maruti.

4.0 Maruti will have an interest advantage of approximately Rs.27.00 lacs against such disinvestment made for meeting our funds requirement and for placement of funds with other PSU's.

5.0 We have placed the following funds in different dates:

Date of Arrangement	Party's Name	Amount Rs. in Crores	Interest Rate p.a.	Period
23.01.91	NFL	15.00	13%	30 days
30.01.91	MFL	10.00	14%	30 days
30.01.91	ILFS	5.50	16.25%	Till 2.5.91

Submitted for kind approval for placement of funds and borrowings mentioned the enclosed statement.

Sd/-

(PRAMOD KUMAR) DEPUTY MANAGER (FINANCE)

Sd/- (S. Natrajan) DIRECTOR (FINANCE)

Sd (R.C. Bhargava) CMD"

(2) Ex.23 dated 13.3.1991

"AGENDA NOTE FOR THE MEETING OF COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS TO BE HELD ON 13.03.1991.

We have received a proposal for investment of Rs. 10.00 crores in Units through UCO Bank for a period of 12 days. The expected yield will be 16.75% per annum.

Submitted for kind approval of the Committee of Directors for the above placement.

MINUTES OF THE MEETING OF THE COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS HELD AT THE REGISTERED OFFICE ON 13.3.1991.

PRESENT

Shri R.C. Bhargava -Chairman & Managing Director

Shri S. Natarajan -Director (Finance)

Item No. 1 Confirmation of the minutes of the last

Meeting held on 11.3.91.

The minutes of the last meeting held on 11.3.91 were confirmed.

Item No.2 The Committee passed the

following

Resolution:-

"RESOLVED that Maruti may place funds in Units through UCO Bank aggregating to Rs. 10 crores for a period of 12 days at an expected yield of 16.75% p.a"

The resolution was put to vote and carried unanimously.

Sd/- Sd/-

R.C. BHARGAVA S. NATARAJAN

CHAIRMAN & MANAGING DIRECTOR DIRECTOR (FINANCE)"

(3) Ex.24 dated 18.3.1991

AGENDA NOTE FOR THE MEETING OF COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS TO BE HELD ON 18.03.1991.

1.0. We have received a proposal for investment of Rs. 14.45 crores in Units/Government Securities/PSU Bonds through Can Bank Financial Services for a period of 43 days. The expected yield is 25% per annum.

2.0. We have received a proposal for investment of Rs. 10.84 crores in Units through UCO Bank for a period of 5 days. The expected yield will be 21%p.a.

Submitted for approval of the committee of Directors for the above placement.

MINUTES OF THE MEETING OF THE COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS HELD AT THE REGISTERED OFFICE ON 18.3.1991.

PRESENT

Shri R.C. Bhargava -Chairman & Managing Director

Shri S. Natarajan -Director (Finance)

Item No. 1 Confirmation of the minutes of the last

Meeting held on 15.3.91.

The minutes of the last meeting held on 15.3.91 were confirmed.

Item No.2 The Committee passed the following

resolutions:-

"RESOLVED that Maruti may place funds with M/s Can Bank Financial Services for investment in Bonds/Units/ Govt. Securities' aggregating to Rs. 14.45 crores for a period of 43 days at an expected yield of 25% p.a."

"RESOLVED FURTHER that Maruti may place funds through UCO Bank for investment in Units aggregating to Rs. 10.84 crores for a period of 5 days at an expected yield of 21% p.a."

The resolution was put to vote and carried unanimously.

Sd/- Sd/-

R.C. BHARGAVA S. NATARAJAN

CHAIRMAN & MANAGING DIRECTOR DIRECTOR (FINANCE)

[4) Ex.40 dated 24.4.1991

AGENDA NOTE FOR THE MEETING OF COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS TO BE HELD ON 24.04.1991.

1.0 We have received a proposal for investment of Rs.7.50 crores in Units through Grindlays Bank for a period of 2 days. The expected yield is 26.25% per annum.

2.0 We have received a proposal for investment of Rs.30.00 crores in Units/PSU Bonds/Government Securities through Bank of America for a period of 29 days with effect from 2.5.91. The expected yield will be 23% p.a.

Submitted for approval of the committee of Directors for the above placement.

MINUTES OF THE MEETING OF THE COMMITTEE OF DIRECTORS HELD ON 24.4.1991 FOR PLACEMENT OF FUNDS AT THE REGISTERED OFFICE.

PRESENT

Shri R.C. Bhargava -Chairman & Managing Director

Shri S. Natarajan -Director (Finance)

Item No.l Confirmation of the minute of the

Meeting of the Committee of Directors held on 22.4.91.

The minutes of the last meeting held on 22.4.91 were confirmed.

Item No. 2 The Committee passed the following

resolutions:-

"RESOLVED that Maruti may place funds with M/s Grindlays Bank for investment in Units aggregating to Rs.7.50 crores for a period of two days at an expected yield of 26.25% p.a."

"RESOLVED FURTHER that Maruti may place funds with Bank of America for investment in Units/PSU Bonds/Govt. Securities aggregating to Rs.30 crores for a period of 29 days beginning 2.5.91 at an expected yield of 23% p.a."

The resolutions were put to vote and carried unanimously.

Sd/- Sd/-

R.C. BHARGAVA S. NATARAJAN

CHAIRMAN & MANAGING DIRECTOR DIRECTOR (FINANCE)

MARUTI UDYOG LTD.

(Corporate Finance)

24.4.91 Investment -with UCO Bank for 2 days.

The Committee has approved placement of Rs.7.50 crores with Grindlays bank for 2 days at an expected yield of 26.25% p.a. Subsequently UCO Bank agreed to accept this funds at the same rate and there was a certain reluctance on the part of Grindlays Bank to accept the fund beginning 24.4.91. Accordingly, the placement has been done with UCO Bank.

Submitted for ex-post facto approval please.

Sd/-

(PRAMOD KUMAR) DY. MANAGER (FINANCE)

Sd/-D(F) Sd/- CMD

(5) Ex.42 dated 02.5.1991.

AGENDA NOTE FOR THE MEETING OF COMMITTEE OF DIRECTORS FOR INVESTMENT OF FUNDS TO BE HELD ON 30.04.1991.

1.0 We have received a request from UCO Bank for placement of Rs. 10.00 crores in units. The placement will be for a period of 5 days with effect from 02.5.91. The expected yield will be 21% per annum.

2.0 We have received a request from Bank of America for placement of Rs. 15.00 crores in Units. The placement will be for a period of 7 days with effect from 2.5.91. The expected yield will be 22% per annum.

3.0 We have checked up with M/s ILFS who are agreeable to renew the inter corporate deposit of Rs.5.50 crores @ 22% per annum for a period of 5 days with effect from 02.5.91.

Submitted for kind approval of the committee of Directors for the above placements.

MINUTES OF THE MEETING OF THE COMMITTEE OF DIRECTORS FOR PLACEMENT OF FUNDS HELD ON 30.4.91 AT THE REGISTERED OFFICE.

PRESENT

Shri R.C. Bhargava -Chairman & Managing Director

Shri S. Natarajan -Director (Finance)

Item No.l Confirmation of the minute of the last

7Meeting held on 26.4.91.

The minutes of the last meeting held on 26.4.91 were confirmed.

Item No.2 The Committee passed the following

resolutions:-

"RESOLVED that Maruti may place funds with UCO Bank for investment in Units aggregating to Rs.10 crores for a period of five days w.e.f. 2.5.91 at an expected yield of 21% p.a."

"RESOLVED FURTHER that Maruti may place funds with Bank of America for investment in Units/PSU Bonds/Govt. Securities aggregating to Rs. 15 crores for investment in Units for a period of seven days w.e.f. 2.5.91 at an expected yield of 22% p.a."

"RESOLVED FURTHER that Maruti may place funds with M/s Infrastructure Leasing and Financial Services Limited by renewal of the inter corporate deposit of Rs.5.50 crores @ 22% p.a. for a period of five days w.e.f. 2.5.91."

The resolutions were put to vote and carried unanimously.

Sd/- Sd/-

R.C. BHARGAVA S. NATARAJAN

CHAIRMAN & MANAGING DIRECTOR DIRECTOR (FINANCE)

The aforesaid resolutions reveal that proposals for investment of funds in units through UCO Bank for a specified period with an expected yield were received and it was resolved that MUL may place funds in units "through UCO Bank" as per the proposal.

As against this, in Ex.42 dated 2.5.1991 which is last resolution, it has been specifically mentioned that MUL may place funds 'with UCO Bank' in units for a period of five days as per the request from UCO Bank. The change of wording in the last resolution clearly indicates that funds were placed with UCO Bank for investment in units for a period of five days with expected yield of 21% p.a. In previous three cases, if in reality the funds were placed with UCO Bank then the phrase 'through UCO Bank' would not have been used. This change of phrase reveals that the nature of transactions was known to the Directors and that units were to be purchased for a limited period through UCO Bank and for the last transaction the amount was placed with UCO Bank. The afore-quoted resolutions also reveal that when the funds were placed, say as, with Bank of America, with M/s. Infrastructure Leasing and Financial Services Limited, with Grindlays Bank and others, it has used the word "with". However, when the purpose is otherwise, it has used the word "through", say as, through Can Bank Financial Services, through Bank of America etc.

Further,, in the resolutions, the period of investment which is only for few days (i.e. 12, 5, 2 and 5) is mentioned. It also mentions expected yield at 16.15%, 23%, 21%, 26.25% and 25% which would indicate that as a matter of fact nature of such transaction was nothing but loan. Purpose of having UTI units was to secure repayment of loan, that is to say, in case of failure to repay on due date, the units would stand forfeited. It is also clear front para 2 of the resolution Ex.22 dated 1st February, 1991 that during the last week of December and in the month of January, 1991, the receipt of payments by MUL was relatively less and it was required to borrow funds or withdraw money from PSUs. However, in the documentation, the borrowings were required to be shown as sales of investments. The relevant part of resolution reads as under:-

".....in our documentation we have to show the borrowing as

sales of our investments. Therefore, it is proposed to show such borrowing as reduction in our investments. This has been discussed with Company Secretary also who is agreeable for such treatment."

This would indicate that whatever may be the documentation of purchase or sale of UTI units, the same would not reflect the true and real nature of transaction. Admittedly, in the case of borrowing, MUL was preparing documents so as to reveal that the transactions were sale of investments, may be in the UTI Units or other such securities.

Further, PW4 Mr. Rajan Ramgopal specifically admits that the name of the broker did not figure or reflect on the record of MUL in the event of transaction of investment being through broker. He has also admitted that MUL was investing its funds in securities through banks and also through brokers quoting on behalf of the banks.

Further, mere is nothing on record to indicate that Mr. R.C. Bhargava, Chairman-Cum-Managing Director and Mr. S. Natrajan, Director (Finance), MUL who have passed the resolutions for investment of funds, did not know that the funds were meant for A-5. They were throughout monitoring the transactions in question but are not examined by prosecution for reasons best known to it This course adopted by a premier investigating agency in

such a serious case, if there was real fraud or misappropriation, appears to be unusual. PW25 Investigating Officer Mr. Bhatnagar has admitted in his evidence that he recorded the statements of Mr. R.C. Bhargava and Mr. Natrajan during the investigation to ascertain if any other higher authority of MUL was involved in the case and found that they were not involved "directly". It is his say that the proposals put up by A-1 and A-2 were approved by Mr. Bhargava and Mr. Natrajan but they were not aware that the investment in fact has been made with A-5 through UCO Bank. They had bonafidely accepted the proposals put up by A-l and A-2. It is difficult to imagine that Superintendent of Police, CBI would not be aware of the Evidence Act which stipulates that he cannot depose on behalf of aforesaid two responsible persons of MUL i.e. the Chairman and Managing Director of MUL and Director (Finance) of MUL. Whether they were aware of the fact that investment of the MUL funds was with A-5 through UCO Bank could have been deposed only by them and not by Investigating Officer.

Apart from these salient lapses, from the evidence of PW1 Bhargava, who was Legal Advisor to the company, it emerges that-

(a) The five transactions were not only sanctioned by the subcommittee consisting of Managing Director and Director (Finance) but were also approved by the Board;

(b) Brokers representing the counter parties used to contact officials of the Corporate Finance department and the Director (Finance) might be knowing about the same, that means Mr. S. Natrajan was knowing about the same;

(c) No objection was raised during the internal or statutory audit. Comptroller and Auditor General of India had also audited the account.

(d) MUL has not lodged any FIR nor made any grievance with regard to the said transactions;

(e) After CBI enquiry, A-l and A-2 were promoted for their better performance; and

(0 To the JPC necessary replies were given by the Board and Mr. RC Bhargava was summoned by the JPC.

(g) Mr. Bhargava, Chairman-Cum-Managing Director and Mr. Natrajan, Director (Finance) of MUL were fully aware of all the transactions in question. PW4 also admits that-

(a) MUL used to invest in securities through brokers quoting on behalf of the banks on the basis of telephone calls;

(b) The name of broker did not figure or reflect on the record of MUL in the event of transaction of investment being through the brokers;

(c) Medasai Swaroop, the concerned Manager of the Canara Bank after preparing the cheques would hand over the same to him and he would in turn hand over the cheque to the representative of the bank or the brokers;

(d) Because of the pressure of work he was not going to respective bank but the cheques were handed over to the representative of the bank or to the broker under the instruction of either A-l or

A-2;

(e) During the relevant period foreign banks used to effect transfer of money from one city to another much faster than the national banks and they were able to do so during banking hours of the same day;

(0 The brokers who used to contact on behalf of the bank’s clients and

financial institutions during the relevant period included Mr. Ashwin Mehta;

(g) The writing contained on all the vouchers and its language was his and he used expression as either "through UCO bank" or "through ANZ Grindlays bank".

PW3 Halasyam, Chief General Manager (Finance), who was promoted as the Director (Finance) from 1st June, 1991 has also stated that-

(a) A-l used to put a wiitten note about the proposals for investments before the Director (Finance). With regard to the five transactions in question, in cross-examination, he admits that he did not have any personal information.

(b) He admitted that looking at the BRs of UCO Bank, on the face of it, no suspicion would arise and that issuance of BRs necessarily indicates that bank issuing it would be holding the security covered under the said BR. The BR also would acknowledge the receipt of monies from MUL for the purchase of security,

(c) He agreed that MUL had not suffered any monetary loss in any of the five transactions and got optimum yield and utilization from the point of investment by MUL.

(d) He also admitted that with regard to the queries raised by the JPC, he and the Managing Director had discussed the same and he had given response of MUL to JPC after getting approval from Mr. Singh.

In that para-wise reply to JPC, it is inter alia stated as under:-

"l(b). The Government has not issued any guidelines in regard to the investment of surplus funds.....In an effort to maximise the yield

on surplus funds, the Board of Directors in its meeting held on 4.5.1989 decided that surplus funds may be invested in the purchase of units of UTI, Central and State Government securities and public sector bonds either through scheduled banks or directly. Pursuant to this decision, MUL has been investing surplus funds through scheduled banks/wholly owned subsidiaries of nationalised banks. The Sub-Committee of the Board earlier nominated for PSU placements was authorised by the Board for investments in these securities. Among others the meeting held on 4.5.89 was attended by Secretary, Finance and Secretary Industry. All the investments were made with the prior approval of the Sub-Committee and placed before the Board for information.

2(b). To the best of our knowledge, RBI has not issued any guidelines which are applicable to companies incorporated under the Companies Act for investment of surplus funds. MUL has complied with all the rules and regulations prescribed under the Companies Act, 1956 for investments of funds. Therefore, the question of any violation does not arise.

2(c). One or more Govt. Directors have always been attending the Board Meetings of MUL. There has not been any dissent on any such investments.

4(e). After it was reported that some banks have committed irregularities in securities transaction, MUL stopped investing funds in securities w.e.f. 30.S.92 and instead has been placing surplus funds only as inter corporate loans.

4(g). The investments of these funds were authorised by the Committee of Directors consisting of Managing Director and Director (Finance) within the parameters approved by the Board in its meeting held on 4.5.89.

5.1 ....As per the joint Venture agreement dt. 2nd October, 1982 amongst

Government of India, Suzuki Motor Corporation and Maruti Udyog Limited, Maruti is to be managed as a commercial enterprise with a view to providing its shareholders with a reasonable return on their equity investment in Maruti. Maruti used both nationalised and foreign banks to optimise the yield.

5.2 These transactions were reported to the Board and none of the Directors had objected to this as they were not considered to be irregular.

7. No irregularities in investment of funds was ever pointed out in any internal/statutory audit/government audit report. For the first time, in Government auditor's review of accounts dated 28th August, 1992, it was observed that investments through foreign banks -were not in conformity with BPE guidelines.

9(a). In all such transactions of purchase of units, funds were transferred to UCO Bank, Bombay by way of banker's cheques in favour of ANZ Grindlays Bank strictly in accordance with the written instructions regarding remittance of funds by UCO Bank, Bombay. The funds were not credited by Maruti to the individual account of Mr. Harshad Mehta. Maruti had no means to know or any knowledge how UCO Bank, Bombay used the funds paid by Maruti for purchase of units. The fact that the funds were credited by UCO Bank came to the notice of MUL in October, 1992 when CBI started the enquiry. There is absolutely no connivance between any Maruti official and Mr. V.N. Deosthali of UCO Bank or Mr. Harshad Mehta. These investments were made to optimise returns for the company and were made through a public sector bank. Maruti had no reason to suspect that the public sector bank was not doing things in the straight forward manner. In the first transaction, Maruti sold units worth Rs.5 crores to UCO Bank, Bombay and received the money on 24th January, 1991. Maruti, thereafter bought back the units after 32 days and the total cost of funds for this period amount to 12,75% per annum. Other four transactions were for investment of Rs.1O.52 crores, Rs, 10.84 crores, Rs.7.62 crore and Rs. 10.39 crores for period of 12 days, 5 days, 2 days and 5 days with the expected yield of 16.75%, 21%, 26.25% and 21% p.a. respectively. In the circumstances, there is no need for the company to take any action.

10(a) The letters from UCO Bank, Bombay were addressed to Maruti Udyog Limited and were received in the Finance Department Maruti Udyog Limited followed the written instructions of UCO Bank, Bombay regarding the remittance of funds through ANZ Grindlays Bank. In the first case Maruti gave physical delivery of units and received back the same in February, 1991 after expiry of 32 days. In respect of other 4 investments which were only for very short periods no physical delivery of units was taken. Maruti received Bank Receipts from UCO Bank, Bombay for all transactions of investment except for the last investment of Rs.10.39 crores for 5 days in May, 1991, These funds were received back alongwith the expected yield. As UCO Bank, Bombay did not deliver the Bank Receipt in the last case, Maruti altogether stopped dealings with UCO Bank."

The aforesaid para-wise reply given by the MUL to JPC establishes that-

(a) Such transactions were an effort to maximise the yield on surplus; funds. Maruti Udyog is a joint venture company and is to manage as a commercial enterprise with a view to provide its shareholders reasonable return on their equity investments in Maruti.

(b) The investment of these funds were authorised by the Committee of Directors consisting of Managing Director and Director (Finance).

(c) The transactions were reported to the Board and none of the Directors had objected to this and they were not considered to be irregular.

(d) For the first time in Government Auditors Review of Accounts dated

28th August, 1992, it was observed that investments through foreign bank were not in conformity with BPE guidelines.

(e) In all such tran, actions of purchase of units funds, funds were transferred to UCO Bank, Bombay by way of bankers' cheques in favour of ANZ Grindlays Bank strictly in accordance with written instructions regarding remittance of funds by UCO Bank, Bombay.

(f) There is absolutely no connivance between any Maruti official and Mr. V.N. Deosthali of UCO Bank or Harshad S. Mehta.

(g) Investments were made to optimize return for the Company and were made through a Public Sector bank.

(h) Funds were received back along with expected yield.

(i) In the circumstances, there is no need for the Company to take any action against the officers.

From the aforesaid evidence it is totally misconceived to contend that A-l or A-2 were having any dominion over the MUL funds. The aforesaid assertions by the MUL before the JPC would certainly mean that Al or A2 have not done anything dishonestly with the intention of causing wrongful gain to AS or wrongful loss to MUL or that Chairman and Managing Director Mr. Bhargava or the Director (Finance) were not knowing about such transactions through UCO Bank.

What can be stated from the evidence discussed above is:-

(1) Resolutions used the phrase "through UCO Bank" whenever necessary. It also used the words 'with UCO Bank' or 'with Bank' which ever is the Bank as per the nature of the transaction.

(2) Admittedly documents maintained by MUL do not reveal true state of affairs. Apart from oral evidence, this is reflected in the Resolution Ex.22. '

(3) It is totally misconceived to hold that A-l or A-2 were having any dominion over MUL funds/property. Funds were to be invested as per the decision of the Sub-Committee consisting of Chairman-cum-Managing Director and the Director (Finance). They were having dominion over such property. A-l or A-2 were only required to carry out the directions issued by the Sub-Committee.

(4) Resolutions passed by the Sub-Committee were approved by the Board. None objected to it.

(5) Even after inquiry by the CBI, in reply given to JPC, MUL has made its position clear that the funds were invested as a commercial transaction for getting optimum yield. All the witnesses on behalf of MUL stated that MUL has not suffered any loss in the said transactions.

(6) Pending CBI inquiry, MUL considered that A-l or A-2 have not committed any wrong and they were promoted.

(7) Issuing of cheques by Canara Bank in favour of Grindlays Bank was as suggested by the UCO Bank (A-3).

(8) Further this was a commercial practice adopted by many banks for transmitting the funds at the earliest. This practice rightly or wrongly was developed with the PSUs and financial institutions.

(9) PW4 Rajan Ramgopal admits that MUL used to invest in certain securities through brokers and the name of the broker did not figure or reflect on the record of MUL.

(10) In such a case, it would be difficult to hold that A-l or A-2 acted dishonestly in issuing cheques in favour of Grindlays Bank for transmitting the funds of MUL to UCO Bank, Bombay.

(11) No objection was raised during internal or statutory audit despite the fact that Comptroller and Auditor General had also audited the accounts.

For the reasons stated above, neither A-1 nor A-2 can be convicted for the alleged offences. No doubt A-2 is already acquitted by the Special Court.

CASE AGAINST A-4

Before discussing the prosecution case against A3, I would deal with the prosecution case against A-4 who was working in the Clearing Department of Grindlays Bank, New Delhi.

A-4 is convicted under Section 120B r/w Sections 409/467/468/471 of IPC and Section 13(2) of the PC Act. The appellant was convicted for substantive offence under Section 409 IPC for-

(a) having credited bankers cheque no.645532 dt.25.2.1991 for a sum of Rs.5,05,03,250 issued by Canara Bank favouring Grindlays Bank into account of A-5 [the amount was paid by A-5 through UCO Bank to MUL];

(b) having credited bankers cheque no.646402 dt. 18.3.1991 for a sum of Rs. 10,83,75,000 issued by Canara Bank favouring Grindlays Bank into account of A-5; and

(c) having credited bankers cheque no.863237 dt.24.4.1991 for a sum of Rs.7,62,45,000 issued by Canara Bank favouring Grindlays Bank into account of A-5.

In support of charges, prosecution has relied upon the evidence of 4 witnesses of Grindlays Bank, i.e., PW9 Ravi Saluja, PW11 Suraj Tandon, PW12 Ashok Monga and K.K. Kuda PW15 and PW22 Mr. V. Rangarajan, an employee of Reserve Bank of India.

It is contended on behalf of prosecution that from the evidence of witnesses of ANZ Grindlays Bank, the following stands proved-

(a) That A-4 was the officer in charge of the clearing department. (PW12)

(b) The entries in respect of these transactions would have to be authorised by the officer in charge of the clearing department- in view of the amount involved-and, therefore, it would be authorised only by A-4 (PW12).

Mr. Dwivedi, learned senior counsel appearing on behalf of A-4 submitted there is no evidence against accused for the offence for which he is convicted. It is his contention that with regard to the handing over of cheque of Grindlays Bank, there is no evidence except that of Anuj Kalia PW16 that he accepted the said cheque and forwarded it for encashment. But that would not mean that he was in any way party to any fraud.

Next he submitted that prosecution witnesses themselves deposed before the Court that the cheques received by the Grindlays Bank were deposited in me account of Grindlays Bank and not in the account of A-5. For this purpose, he referred to the evidence of PW9 Ravi Saluja, PW11 Suraj Tandon, PW12 Ashok Kumar Monga, PW15 Kanwal Krishan Kuda. He further submitted that even witness from Canara Bank PW2 Meda Sai Swaroop has also deposed that cheques were credited in the account of Grindlays Bank. He also referred to evidence of PW14 Mr. Prem Shanker Joshi. He relied upon evidence of DW5(8)

Atul Manubhai Parekh.

Finally, he has drawn our attention to the evidence of PW25 Mr. B.C. Bhatnagar, the Investigating Officer, who deposed that there were number of officers involved, and referred to the part of PW25's deposition, wherein he stated that-he does not remember if he had made any application/request for production of documents to the said bank during the said period. He did not remember if he had conducted any search and seizure from the said Bank with regard to the documents like attendance register, duty roster or any other similar document showing the presence of particular officer at particular time.

For considering the contentions raised by the learned counsel for the parties, I would refer to what emerges from the evidence of the relevant witnesses:-

PW9 Ravi Saluja states that the cheques so received by the ANZ Grindlays Bank for clearance were sent to the clearing department for further processing. The said department would verify and tally the particulars as appearing in the pay in slip and the related cheque. The centralized branch of ANZ Grindlays Bank then would make the consolidated statement and arrange to send the cheques received for clearance to the clearing house of RBI. There is also a category of cheque known as bankers' cheque, that is to say, a particular bank issues its cheques in favour of another bank. In such a case, the issuing bank can use the format of pay order also. On seeing Ex.28, he stated that it is inter bank cheque in favour of Grindlays bank issued by Canara bank bearing 'Payee A/c only' and stamped 'not transferable'. There is a rubber stamp of Grindlays bank on its reverse indicating that the said bankers cheque is cleared. He states that Grindlays bank would dispose-of the proceeds of the said cheque as per the covering letter. He identified A-4 R.N. Popli, an employee of Grindlays bank, but stated that he was not aware about his posting during the relevant period i.e. in the year 1990 to 31.5.1991.

PW12 Ashok Kumar Anant Ram Monga states that he was overall in charge of the ANZ Grindlays Bank branch along with the Manager and in that capacity he used to have supervision over the working of the concerned clearing department. He states that in these types of transactions there are two authorizations required, the first authorization relates to giving credit to the third party which is generally given by Branch Manager, Marketing Department who is known as Relationship Manager or Account Manager and the Funds Manager. The objective of drawing the bankers cheque was to provide speediest or fastest clearance of such instruments which was not possible through other clearing settlements available to the customers, namely, MICR. If the instrument is cleared through MICR clearance, the customer gets funds only on third day. The other settlement which is high valued settlement which was introduced by RBI in the year 1985 in response to the needs of the business community as a mode of faster settlement also took minimum two days to provide clearance of cheques. He was shown entry Ex.71(4) of dated 13.3.1991 into the accounts of Harshad S. Mehta. He stated that the then officer in charge of clearing department had authorized the said entry to be made in the statement of account. He could not recall the name of the said officer who was in charge of clearing department. He agreed that in 1991-92 there was a practice of crediting the proceeds of the bankers cheques into the account of third party other than its payee. However, it was extended to only certain high networth customers like British Airways, Classic Financial Nizhewan Travels and Harshad Mehta Group which list is not exhaustive and he came across the instances in case of the said parties where their bank had allowed such credits. The Grindlays bank had not received any complaint from MUL for crediting the amounts of said five pay orders to the account of third party. He was asked about the category of customers regarded as High Networth customers. He replied-such classification is generally given by the concerned manager of the bank having regard to the deposits maintained by the customer or other business potentials. The services to be extended to the customers like high

networth customers would be decided by the branch manager. In the cross-examination, it is his say that all the five pay orders which were shown to him being Ex.28, 30, 32, 34 and 36 were sent for inter Bank Clearance by the Grindlays bank. The amount of these pay orders was debited into the account of the issuing bank and credited into the account of Grindlays bank. The accounts of the issuing bank and payee were with the RBI. He admitted that it is only after credit of the proceeds of the said five pay orders into the Grindlays bank account that the proceeds thereof in turn were credited into the account of A-5.

He further stated that during the relevant period i.e. in the year 1990-91, to his knowledge, some other banks in this country were also following such practice. There was no prohibitory order, direction, or guidelines from the RBI prohibiting the banks to follow such practice during the relevant period i.e. 1990-91. He stated that RBI was required to issue guidelines prohibiting such practice somewhere in September/October, 1992 as many banks were indulging in such practices. It is his say that RBI has never taken any action against the Grindlays bank in respect of Five pay orders shown to him earlier. He also stated that Grindlays bank had not received any complaint from MUL for crediting the amounts of said five pay orders to the account of third party. It is his say that Grindlays Bank has not received any complaint or claim in respect of said five pay orders from Canara Bank, UCO Bank or Harshad S. Mehta. The said parties have also not initiated any action in any court of law in respect of negotiation of said five pay orders at any time.

We would refer to the following few relevant questions and their answers given by this witness:-

"Q. Having received the funds under the Pay order payee bank would credit its proceeds into the account of the party depositing the said pay order?

A. When the instrument like pay order is drawn favouring Grindlays bank then the same has necessarily to be deposited into pits i.e., Grindlays Bank Account with RBI.

Q. Would it be correct to say that if any bankers cheque is made payees account and non transferable then in the ordinary course the payee bank cannot credit the proceeds thereof in to the account of third party?

A. Yes

Q. If your customer gives the instruction for giving credit of the proceeds of such pay order to any third party then the same would be permissible?

A. Yes, i. the customer is in the list of high networth. To the Court:-

Q. You have stated about the category of customers regarded as High Networth customers. Could you elaborate?

A. Such classification is generally given by the concerned manager of the bank having regard to the deposits maintained by the customer or other business potentials.

Q. Such practice being in deviation of the usual practice, was the permission of the RBI obtained as far as your bank is concerned?

A. No.

Q. You have stated that RBI issued detailed guidelines somewhere in September - October, 1992 expressly prohibiting such practice of negotiation, does that not mean that RBI never approved of such practice?

A. Yes. (witness volunteers) RBI never objected to it and probably it might not be aware of such practice.

All the five pay orders which were shown to me being Ex.28, 30, 32, 34 and 36 were sent for inter Bank Clearance by the Grindlays Bank. It is correct that the amounts of the said pay orders were debited into the account of issuing bank and credited into the account of Grindlays Bank. The account of the issuing bank and payee bank are with the RBI. It is correct that it is only after credit of the proceeds of the said five pay orders in to the Grindlays Bank account that the proceeds thereof in turn were credited into the account of accused no.5."

PW15 Kanwal Krishan Kuda with regard to the credit voucher dt.26.4.1991 into the account of Harshad S. Mehta, states that the same was approved by him and it bears his initials. The entry appearing therein is correct and the same was prepared on the basis of credit advice received from the RBI. He could not recollect who was or who were the concerned officers of the treasury department, who would be giving such instructions as there were many such officers.

PW22 V. Rangarajan states that the bankers cheque/pay order issued by one bank favouring other bank are negotiated as under:-

"The payee bank would deposit the cheque for clearance in clearing house and RBI would settle the payment thereof by giving credit into the account of payee with RBI."

In view of the aforesaid evidence, it can be stated without any doubt that all the five pay orders namely Exs.28, 30, 32, 34 and 36 were sent for inter bank clearance by the Grindlays Bank. The amount was credited in the account of Grindlays Bank. Hence, it is established that the amount of "account payee" and "non-transferable" pay orders were only credited in the account of Grindlays Bank. In this set of circumstances, it is not necessary to discuss the relevant provisions of Negotiable Instruments Act that "account payee" "non-transferable" cheques cannot be credited in anybody else’s account. As such, the entire prosecution against A-4 was totally on an erroneous assumption that A-4 got the amount of "account payee" cheque bearing stamp "non-transferable" credited straightway in the account of A-5.

If the amount is credited in the account of Grindlays Bank, question is-how is A-4 liable? There is nothing on record to establish who directed that the said amount should be credited in the account of A-5.

The evidence led by the prosecution nowhere reveals that A-4 credited the said amount into the account of A-5. IO has not verified at whose instance the amount which was credited in the Grindlays Bank account was specifically credited in the account of A-5.

The evidence of PW12 Ashok Kumar Monga also reveals that there was a practice of crediting the proceeds of the banker’s cheques into the account of third party in case of high-networth customers like British Airways, Harshad Mehta’s group and others and such category of customers was generally given by the concerned Manager of the bank having regard to the deposits maintained by the customers or other business potentials. While convicting the accused, the trial court has not been able to segregate the fact that even assuming that what was done by Grindlays Bank was irregular that does not necessarily mean that it was done by the appellant. None of the witnesses of the bank have been able to clearly point out as to where the appellant was posted during the relevant period nor his initials are identified and nothing has been brought on record that he credited the said cheques in the account of A-5 or he was concerned with the credit of the said amount in favour of A-5. In the absence of any such evidence, the charge under Section 120B and substantive offences under Section 409 are not proved.

It is apparent from the testimony of I.O. that no effort was made to collect any material which would have shown where the appellant was posted during the relevant period nor any record like the duty register was seized by the I.O. He admits that in matters of debit and credit, various officers at different levels were involved. The prosecution has failed to produce any evidence oral or documentary which would go to show that the appellant had anything to do with the credit of the proceedings of the pay order into the account of A-5.

Hence, from the evidence as it stands, it cannot be stated that A-4 was in-charge of the clearing department and responsible for giving such credit in favour of A-5. In view of the aforesaid state of evidence, the conviction of A-4 for any offence including for the substantive offences under Section 409 IPC cannot be sustained.

CASE AGAINST A-3

The case of prosecution against A-3 is that:-

(a) He abused his position as public servant by allowing use of MUL's funds to be wrongly obtained by A-5 and, therefore, he is guilty of the offence under Section 13(l)(c) r/w 13(2) of PC Act.

(b) He fabricated a set of letters written on the letter head of UCO Bank representing fraudulently that UCO Bank was entering into a transaction with MUL. He also created a set of BRs (signed by him purporting to be an accountant although he was an Assistant Manager).

(c) His fraudulent misrepresentations of showing a transaction of purchase/sale of securities between UCO Bank and MUL were to enable A-l, A-2 and A-5 to misappropriate the funds of MUL. Therefore, apart from the charge of conspiracy against A-3, he is also charged with the offence under Sections 467,468 and 471 of IPC.

(d) He forged the BRs purporting to be the representation that a set of securities was being held by UCO Bank on behalf of MUL and the same had been sold by UCO Bank to MUL and thereby committed an offence under Section 467 IPC.

(e) He forged the letters and he dishonestly made and/or signed the documents with the intention of causing it to be believed mat such document was signed under the authority of UCO Bank. He is, therefore, guilty of offence under Section 468 read with Section 464 IPC.

(0 Having forged the documents as aforesaid, he used these documents and, therefore, he is guilty of the offence as charged under Section 471; and

(g) That the documents created by A-3 were intended to misrepresent the position of UCO Bank is also clear from the fact that the identification (which should have been put on the document were it a transaction for and on behalf of a client) was not so placed on the document. This is the evidence of PW14. The intention of A-3 to misrepresent to MUL that there would be a transaction between MUL and UCO Bank is clearly established.

It is contended on behalf of the prosecution that from the evidence of the witnesses following stands proved:-

(a) That the documents were not prepared in the normal course of business but outside the office. (PW6)

(b) That the UCO Bank's branch was not authorised to conclude deals (PW7). If there had to be a genuine transaction of sale of securities between the UCO Bank and MUL then that deal would have to be concluded between the Head Office of the bank and MUL.

(c) The Bank (as a corporate entity, and a Govt. Company) could not lend its name to a private broker to enable him to obtain funds from any other Public Sector Undertaking, the identity of the private broker being kept secret. This would constitute a clear deceit upon a Public Sector Company - since it was done not for any commercial purpose but to deceive the Public Sector Undertaking into placing its funds with that Bank. The question of the deal being on behalf of the broker legitimately and commercially did not arise.

(d) It is submitted that the evidence of the officers of the UCO Bank that the Bank would act for the brokers, is being misconstrued. The banker can, on behalf of the broker, undoubtedly undertake such activities as are common in commercial usage. However, it is obvious that such an activity should not be illegal, or to attain unlawful purposes i.e. to deceive another corporate entity. If MUL had authorised placement of funds only with PSUs, then it is obvious that it would not be in the interest of the UCO Bank to lend its name to a broker to obtain funds from a PSU - since it would constitute a deceit upon the other PSUs.

(e) A-3 wrote letters which constituted a clear representation to MUL that it was entering into a transaction with UCO Bank - it is apparent from the plain language of the letter. It is clear that A-3 would not be authorised to write such letters unless he had been permitted to do so by the Head Office. On this apparent tenor, the letter would commit the UCO Bank personally to a transaction of sale/purchase of securities and A-3 was not authorised to do so. The letters written by A-3, therefore, were purporting to be with an authority which he did not possess and purporting to commit the bank to an agreement thereby clearly being forgery. PW14 and PW21 also (employees of UCO Bank) have pointed out that only Head Office used to give instructions for deals on behalf of the Bank.

(f) That the documents created by A-3 were intended to misrepresent the position of the UCO Bank is also clear from the fact that the identification, which should have been put on the document that it was a transaction for and on behalf of a client, was not so placed on the document-this is the evidence of PW14. This intention of A-3, therefore, to misrperesent to MUL that there would be a transaction between MUL and UCO Bank is clearly established.

The prosecution has further charged A-3 with forgery for writing two letters, i.e. the letters (1) dated 23.1.1991 (Ex.58) (Charge nos.8, 10,11) and (2) dated 13.3.1991 (Ex.60) (Charge nos.17, 18, 19) on the letter-head of UCO Bank, Hamam Street Branch to MUL. Further, it was pointed out that A-3 could not have written the letters Ex.58, 60 and 61 on behalf of UCO Bank.

Mr. Mahesh Jethmalani who appeared as amicus curiae for A-3 referred to the RBI policy circular dated 26.7.1991 and submitted that the said circular nowhere prohibits the bank even after 26.7.1991 to act as broker on behalf of their clients. It only provides that banks cannot issue bank receipts. Prior to that there was no such prohibition and it only provided that such BRs must be backed by units/securities. He referred to the letter dated 13.3.1991 written by A-3 to MUL [Ex.60] and Ex.23, which is an agenda note for the meeting of the Directors for investment of funds to be held on 13.3.1991 and the resolution of the same date passed by the Chairman and the Managing Director as well as Director (Finance) of MUL. He submitted that in the letter dated 13.3.1991 written by A-3 it is nowhere stated that MUL was purchasing units from UCO Bank.

With regard to crediting of funds in A-5’s account, it is submitted on behalf of A-3 that the evidence on record discloses that it was not A-3 who allowed MUL funds to be wrongfully gained by A-5. MUL’s funds were credited into the account of A-5 allegedly by A-4. The funds were already credited to A-5’s account by Grindlays bank. New Delhi from where the same were

transferred under the instructions of PW23 to A-5's account in Grindlays Bank, Bombay. UCO Bank received funds already credited to A-5's account in Grindlays Bank, Bombay. Moreover, when UCO Bank received those funds from Grindlays Bank, Bombay, the same were received under credit advices, specifically directing UCO Bank that the proceedings of the said cheques were for the credit of A-5's current account No.1028 with UCO Bank. The credit advices for the five cheques are Ex.l26-A to Ex.l30-A. There was no illegality on the part of A-3 and further there is no evidence of any actual loss caused to anybody or of intention to cause loss to anybody. In the absence of any evidence of dishonest intent, the charge under the PC Act must fail.

It is submitted on behalf of A-3 that charges of forgery have been framed on the assumption that Exs.58 and 60 are forged. The accused is convicted in ignorance of the fact that banks were entitled in law to act as agents for their customers and in UCO Bank this facility was offered to several brokers including A-5 as it was a lucrative source of income to the Bank. For this, reference is also made to the evidence of PW7 Karkhanis, PW14 Prem Shanker Joshi and PW21 M.V. Shidhaya (both employees of UCO bank).

It is further contended that PW7 Karkhanis stated that the alleged letters could not be written by A-3. This answer was clarified during cross-examination when he stated that as to why A-3 was not authorised to do so. He says that A-3 was not supposed to write such letters on behalf of UCO Bank as the Hamam Street Branch could only transact business on behalf of brokers and could not transact business concerned with UCO bank's own investment. The fact of the matter however is that when A-3 addressed the letters, he was not dealing with the Bank's investment but with the securities transactions of A-5. There is no evidence that letters such as Ex.58 and 60 could not be written by the Hamam Street Branch of UCO Bank when it was dealing on behalf of its account holders in transactions in securities. On the contrary, addressing such letters would be a necessary part of the function of acting as routing agents for their account holders, inasmuch as, it is part of the function of an agent to communicate receipt and delivery instructions to the counter party. Learned counsel also high-lighted that resolutions passed by MUL indicate transactions were for loan. He also submitted that in the alleged meeting in April/May, 1989, if there was any such conspiracy then A-5 would not have acted as the broker for MUL in the year 1990. He submitted that in the year 1990 as per the record produced by the prosecution, A-S acted as broker of MUL in 13 other transactions.

Similarly, he pointed out the resolution Ex.24 along with the agenda and submitted that investment of Rs. 10.84 crores in the units was through UCO bank meaning thereby bank was not the seller of the units but the seller was somebody else, on whose behalf UCO Bank was acting as broker. Further, the investment was only for five days and expected yield was 21% per annum which normally no bank would pay.

He further referred to Ex.40 which is a resolution as well as agenda of the meeting which was held on 24.4.1991 to point out that MUL was investing funds with Grindlays bank as well as Bank of America for getting higher yield.

He referred to evidence of PW21 (Vol.6 page 1038 paragraphs 4 and 5) and pointed out that bank was agent and broker on behalf of its clients and for that it was getting commission and that commission was credited in the bank's account by debiting the same in the account of its clients. For this purpose, he referred to Vol.25 page 6895 and relevant vouchers.

Lastly, he submitted that A-3 is not at all connected with the 5th transaction which took place without BRs because at the relevant time he was transferred to another branch. For mis purpose, he referred to evidence of PW7, wherein it is stated mat A-3 was transferred from 25.4.1991 to 15.5.1991 during which period last transaction took place.

He submitted that for BRs Ex.38 dated 13th March, 1991, Ex.39 dated 18th March, 1991 and Ex.41 dated 24th April, 1991, A-3 has been erroneously charged for forging the BRs on the assumption mat UCO Bank did not hold the units (or which the BRs were issued. It is submitted that the charges proceed on an incorrect assumption that me BRs were issued on behalf of UCO Bank. BRs. were issued on behalf of A-5 and the same were backed up by more than adequate units belonging to A-5. The charge of forgery is accordingly misconceived and untenable.

He submitted that after RBI circular dated 26.7.1991, it was irregular for banks to issue BRs on behalf of their broker clients. Prior to that date, however, it was the practice of UCO Bank and other banks to issue BRs on behalf of their broker clients. It is submitted that the question which arises in the instant case is - whether the BRs issued by A-3 were backed up with units belonging to A-5? Although nine charges have been framed on this aspect, the CBI has undertaken no investigation whatsoever to discover whether the BRs were backed up by securities belonging to A-5. Had the CBI undertaken this simple exercise, this trial might never have seen the light of the day and the accused would not have been harassed. It is further pointed out that in an almost identical case (RC 8 (BSC)/94/Bom.), the CBI investigated the issue whether the BRs issued by UCO Bank (or A-3) were backed up by securities belonging to A-5. On discovering after investigation that the BRs were indeed backed up by securities, the CBI filed a closure report Ex.A-5-116 (p.6016 to 6032 vol.20) before the Court and the said report was accepted on 17.3.1997

It is also submitted that in any event, in the instant case, there is clear, precise and unrebutted evidence that each of the BRs issued by UCO Bank and signed by A-3 was backed up by units, belonging to A-5, in excess of the quantum of units for which BRs were issued. Not only are the charges pertaining to forgery of the BRs factually misconceived, as aforestated, but the charge of forgery is based on a misconception of law. A document containing a false statement is not a forged document.

It was next submitted that the argument of CBI that the letters were typed outside the office of UCO Bank does not mean that these are forged documents. The evidence of PW6 shows that in 1991 there was only one typewriter in Hamam Street Branch of UCO bank which was being used since 1983 and there was heavy work in the office and that 30 to 40 transactions of such work were daily carried out. In the circumstances, from the fact that document was typed outside the bank, 'dishonesty' cannot be attributed to the accused.

It is submitted that once the conspiracy charge fails, the first three transactions are outside the jurisdiction of the Special Court. A-3 is not concerned with the fifth transaction. Hence, in any case the conviction recorded for charges pertaining to the first three and 5th transactions must be set aside on this ground alone.

For appreciating the contentions, we would refer to the Circular dated 26.7.1991, issued by the Reserve Bank of India, which reads thus:-

"DEPUTY GOVERNOR

D.O.DBOD NO.FSC.46/C RESERVE BANK OF INDIA 469-91/92
CENTRAL OFFICE

SECRET BOMBAY.

26TH July, 1991. Dear Shri

Investment portfolio of banks Transaction in Securities

It is a matter for great concern for us that certain banks are engaged in

types of transactions in securities which they should not be undertaken. A list of such transactions is appended.

(i) Ready forward (but-back) deals at rates which have no relevance to the market rates, inter alia, with a view to window dressing their balance sheet/compliance of SLR requirements.

(ii) Double ready forward deals with a view to covering their oversold position in a specific security.

(iii) Sale transactions by issue of Bank Receipts (BRs)/SGL forms without actually holding the securities/without having sufficient balance in their SGL accounts.

(iv) Issuing BRs/SGL forms on behalf on their broker clients without safeguarding banks' interest

2. You may be aware that with a view to helping the banks to overcome various deficiencies in the longterm securities market and to enable them to manage their short-term securities market and to enable them to manage their short-term cash deficit/surpluses more efficiently, we have permitted banks to enter into buy-back deals in Government securities among themselves (and not with their non-bank clients). It was our expectation that such deals will be undertaken by the selling bank, only if it holds sufficient securities (either in the physical form or in SGL account), at market related rates and such deals will be properly reflected in their books of account. However, we observe that certain banks have been resorting to this type of transactions, without actually holding sufficient securities either in physical form or in their SGL forms for want of sufficient balance), at rates which have no relevance to market, with a view to window-dressing their profitability/maintenance of SLR requirement with the tacit understanding with the counter party banks. Some of the banks appear to be taking outright oversold position in securities and in their desperate bid to cover the oversold position in a particular/ securityfies enter into double ready forward deals and other banks oblige them in the matter.

3. Another disquieting feature observed is the extensive use of BRs by banks. It has been our intention to ensure that the banks do not undertake sale transactions in securities without actually holding them and do not issue BRs unless they are in a position to deliver the securities within a reasonable time. Contrary to our above expectation, banks have been issuing BRs freely (without regard to whether they will be in a position to deliver the securities there against within a reasonable time) and against an initial outstanding BR, a series of transaction are put through by further issue of BRs and in the final analysis only the BRs are exchanged and no security is delivered. Some of the banks have also been issuing BRs only on behalf of their broker clients, without verifying whether their broker clients hold the securities covered by the relative BRs.

4. It will be absolutely essential for your bank to frame and implement a suitable investment policy to frame and implement a suitable investment policy to ensure that operations in securities are conducted in accordance with sound and acceptable business practices. While evolving the policy you are requested to keep in view the following guidelines:

(i) Under no circumstances, the bank should hold a oversold position in any security, that is to say that no sale transactions should be put through without actually holding the security in its investment account.

(ii) All the transactions put through by bank either on outright basis or ready forward basis and whether through the mechanism of/ SGL Account or Bank receipt should be reflected on the same day in its investment Account and accordingly for SLR purpose, wherever applicable.

(iii) Transactions between your bank and another bank should not be put through the brokers' accounts. The brokerage on the deal payable to the broker, if any (if the deal is put through with the help of a broker) should be clearly indicated on the notes/ memorandum put up to the top management seeking, approval for putting through the transaction and operate amount of brokerage paid, broke-wise, should be maintained.

(iv) For issue of BRs, the banks should adopt the format prescribed by the IBA and should strictly follow the guidelines prescribed by them in this regard. Subject to above, the banks should issue BRs covering their own sale transactions only and should not issue BRs on behalf of their constituents including brokers.

(v) The banks should be circumspect while acting as agents of their broker clients for carrying out transactions in securities on behalf of brokers.

(vi) Any instance of return of SOL form, from the Public Debt Office of the Reserve Bank for want of sufficient balance in the account should be immediately brought to our notice with the details of the transactions,

5. We shall also be glad if a copy of the policy framework for undertaking transactions in securities approved by your bank's Board, is forwarded to us.

6. Please acknowledge receipt,

Yours sincerely,

Sd/-(A. Ghosh)"

As stated by PW7 that SGL Form (Subsidiary General Ledger Form) can be only between the persona whose name figure on the ledger and the bank. The advantage of SGL is that banks are required to maintain their balance and every bank's name is with the Public Debts Office with the RBI. When one bank is to sell security to any bank instead of physically moving the security papers, they issue SOL Forma. They debit one bank and credit other bank.

From the evidence and above Circular, the following emerges-

(a) Admittedly, the aforesaid Circular is issued after the five transactions were over.

(b) The aforesaid Circular specifically requests the banks to evolve investment policy to ensure that operations in securities are conducted in accordance with sound and acceptable business practices by keeping in view the guidelines mentioned in paragraph (4). Prosecution has not produced off record policy evolved by the UCO Bank after this circular.

(c) The Circular also specifically reveals that certain banks were engaged in type of transactions in securities which they should not be undertaking and list of such transactions inter alia includes the sale transactions by issue of BRs without actually holding the securities and secondly issuing of BRs on behalf of their broker clients without safeguarding bank's interest. Thereafter, the RBI directed to frame and implement a suitable investment policy to ensure that operations in securities are conducted in accordance with sound and acceptable business practices. RBI also requested that while evolving the policy the guidelines mentioned in paragraph 4 of the Circular should be kept in mind and the bank should issue BRs covering their own sale transactions only and should not issue BRs on behalf of their constituents including brokers. The banks should be circumspect while acting as agents of their broker clients for carrying out transactions in securities on behalf of brokers.

(d) These guidelines would indicate that till the date of issue of

guidelines banks were issuing BRs on behalf of their broker clients. It was their investment policy. Further, the restriction which was suggested for framing the policy was that banks should be circumspect while acting as agents of their brokers client for carrying out transactions in securities on behalf of brokers. This would also indicate that there was no prohibition that bank should not act on behalf of their broker clients for carrying out transactions in securities. In any set of circumstances, the aforesaid circular would reveal that till 26.7.1991 many banks were adopting the practice of issuing BRs on behalf of their broker clients and the transactions were undertaken in securities on behalf of their brokers. Hence, the RBI clearly recognizes that some banks were indulging in such transactions. What was objected by the said circular was that banks were issuing BRs without verifying whether their broker clients were holding the security covered by the relative BRs and thereafter the policy was suggested to all that BRs should be issued covering their own sale transactions and they should not issue BRs on behalf of their constituents including brokers. In this case, the aforesaid five transactions have taken place prior to 26.7.1991, therefore, assuming that UCO Bank has evolved such policy of not issuing BRs on behalf of its brokers as directed by the RBI, then also it would not mean that by issuing BRs prior to 26.7.1991, he has committed any irregularity. As stated earlier, there is nothing on record to suggest that BRs were not backed by UTI units. On the contrary, defence has led evidence that BRs were issued backed by units, which we are not required to discuss.

(e) There is no other prohibition under any law or guidelines and the learned Solicitor General was not in position to point out any other prohibition debarring the banks from issuing any BRs, particularly when the BRs were backed by necessary securities.

(0 Further, it is for the prosecution to establish that BRs were issued by A3 without being backed by UTI units. Admittedly, there is no such evidence. On the contrary, there is sufficient evidence on record that for the first transaction, MUL gave 35 lacs units for taking loan. As soon as amount was refunded on due date, the said units were also received from MUL by A-5. For the remaining three transactions admittedly BRs were received and this is also stated in the reply given by MUL to JPC. For the 5th transaction, as the BRs were not received by MUL, transaction was over within five days, but there is no evidence that UCO Bank was not holding the units for the said transaction. From the evidence on record it cannot be held that A-3 had issued BRs without being backed by sufficient number of securities i.e. UTI Units. No witness from the bank has stated that A-3 was required to maintain the account for such transactions. On the contrary, it has come on record that practice of maintaining register was dispensed with because of increase of such work with the bank. Witnesses from MUL have specifically stated that looking at the BR it would be difficult to say that BRs were issued without securities. PW3 Halasyam admitted that looking at the BR of UCO Bank (Ex.4 dated 24.4.1991), no suspicion would arise on the face of it. PW7 Karkhanis has specifically stated that UCO Bank used to act as a routing bank and that such transactions were done through the broker’s account and were not treated as transactions of UCO Bank.

(g) The evidence on record clearly establishes that for the 5th transaction A-3 cannot be held responsible, because at the relevant time he was transferred from Hamam Street Branch. This has been specifically sated by PW7 Karkhanis in his deposition. He has stated that in the month of April, 1991, accused no.3 was transferred from Hamam Street Branch to Hingha Branch near Nagpur. In the month of May, 1991, he was again called back to Hamam Street Branch but between 2nd May, 1991 to 7th May, 1991, A-3 was not in Hamam Street Branch. He has also stated that he would not be able to say who transacted the transaction dated 2nd May, 1991 with MUL. This also indicates faulty investigation. Hence, for the fifth transaction, between 2nd May to 7th May, it has been brought on record by the prosecution that A-3 was not working at the UCO Bank, Hamam Street Branch. At the relevant

time, he was transferred to Hingha Branch, Near Nagpur. Further, the resolution dated 30.4.1991 passed by the MUL clearly reveals that the funds were placed with UCO Bank for investment in units for a period of five days w.e.f. 2nd May, 1991 at an expected yield of 21% p.a. The prosecution has failed to prove that A-3 paid the said amount to A-5.

(h) The evidence of witnesses from the Bank reveals that such transactions were the commercial practice of the Bank-

(i) PW7 Karkhanis has stated that UCO Bank, Hamam Street Branch was doing business on behalf of brokers including A-5 Harshad S. Mehta. He admitted that Switch transactions were the transactions conducted by the UCO Bank for buying and selling the securities on behalf of its clients including brokers.

The negotiations in respect of such transactions were conducted by the clients directly with the counter party. UCO Bank used to act as a routing bank in such transactions. The said transactions were done through the brokers accounts and were not treated as transactions of UCO Bank. The Hamam street branch used to conduct its transactions on the instructions of the head office and under the instructions of its clients on their behalf. UCO Bank used to undertake such transactions on behalf of its clients on charging its commission and that the bank had made substantial profit by undertaking such transactions. As per Mr. Barve who was also one of the Managers, there were 18 such brokers. Whenever switch transactions used to take place under the instructions of the brokers, their instructions to receive or deliver securities were sent to the counter party along with the cost memo and BRs. The BRs and cost memos used to be of UCO bank. The brokers' instructions used to be on the letter head of the broker. The purpose of sending brokers instructions along with various documents to the counter party was to put it on a proper notice. It is his further say that per day there used to be 30 to 40 switch transactions. During the internal audit and statutory audit of the relevant period there were no adverse comments over switch transaction.

(ii) PW14 Prem Shanker Joshi has stated that as far as Hamam Street Branch of their bank was concerned, the said branch used to conduct the security transactions on behalf of their head office as well as on behalf of clients. Mr. Harshad S. Mehta was one of such clients. In case of sale transactions on behalf of their clients, they used to get written instructions from their clients, having necessarily their accounts with the bank. The instructions being for the sale of the security, they were ascertaining from their clients about the availability of the security with the bank or when he will deliver to the bank. On receipt of the security, they were preparing a cost memo as per instructions of their client as contained in his instructions letter. Without security in the hands of the bank, they were not preparing the cost memo and sending it to the counter party. He admitted that Hamam Street branch of UCO Bank was not maintaining security account, either security wise or otherwise, of the clients. BRs Exs.38, 39 and 41(1) were issued in respect of Security Transaction put through on behalf of the Head Office or the client. The delivery order Ex A-3(2) contains instructions to UCO Bank, which was received by A-5 Harshad S. Mehta without the name of its branch.

(iii) PW21 Mr. Shidhaya has stated mat one Harshad S. Mehta had his current account with their branch. He came across a person by name Mr. Pankaj Shah working with Harshad S. Mehta, who sometimes used to come to Hamam street branch in connection with brokers security transactions. No record in a form of security ledger or security register broker-wise was kept and maintained in respect of security transactions of their broker clients. Initially, there used to be such record but because of increase in the transactions in security on behalf of their broker clients in large numbers, the practice of maintaining such record was discontinued. BRs were issued by the UCO Bank, Hamam Street Branch and were signed by him in the caption of accountant after he found that the contents thereto were true.

With regard to BR dated 29.4.1991 containing signatures on its reverse, it is his say that signatures on reverse of BR signifies reversal of the BR meaning thereby that counter party had received the security and obligation of UCO Bank, who had issued the BR stood discharged

(iv) DW.A3(2) Mr. Ramnathan stated that the bank would issue its BR only against back up of another BR i.e. the BR issued by other banks in favour of UCO Bank stating therein that the said issuing Bank held the securities in question with it. BRs could be issued on bank's own behalf as also on behalf of its customers. When UCO Bank would act for a customer while issuing its BR, same position would exist as far as back up of the security except that it would debit or credit, as the case may be in the customers account. No bank can issue its BRs in the name of any party other than banks and financial institutions. For switch transaction, it is pointed out that on the representation and discussion of brokers they were continued. In case of delay, bank would charge interest at the market rate. Bank was also having discretion to increase commission. Letter dated 8.1.1991 Ex.231 also informs the concerned officer at Hamam Street Branch as under:-

"You are advised to contact other banks through whom such transactions are routed and have detailed discussions with them regarding their experience, the commission they charge, the modus operandi and their opinion why other banks are not entering the field. You are also advised to contact other banks who are not having such transactions and have discussion with them with a view to find out why inspite of profitability in this area they are not entertaining this and give your report at an early date."

For routing facility, he explained that routing transaction is the transaction in which purchase and sale of the securities was done by the bank as an agent of its customer for a commission. The routing facility was offered to many brokers including A-5 in the year 1991 and such brokers availed of the said facility. Such routing facility was already in practice even before he joined as Divisional Manager in June, 1990. Some of the banks were offering such facilities.

(i) ON THE POINT OF FORGERY-

Resolutions passed by the MUL reveal that MUL was placing funds through UCO Bank in units. This phraseology used in the resolution does not reveal true colour of the transactions that MUL was not purchasing and selling the Units from UCO Bank nor UCO Bank was selling or purchasing the units from MUL. It only meant that the transactions were through UCO Bank. Seller or purchaser was a third person. In mis set of circumstances, to say that A-3 prepared forged documents that UCO Bank was selling or purchasing the units is totally misconceived and is against the documentary record maintained by MUL.

Letters Exts.58, 59, 60 and 61 written by A-3 also do not reveal that UCO Bank was purchasing or selling units. The said letters are as under:-

"Ex. 58

January 23, 1991.

MARUTI UDYOG LTD.

11th FLOOR

JEEVAN PRAKASH

25, KASTURBA GANDHI MARG

NEW DELHI-110001

Dear Sirs,

This has reference to your sale of 35 lac Units for value dated 24th January, 1991 @ 14,27. We are arranging to remit the funds amount to Rs. 4,99,45,000 thru Bank of America, New Delhi. You are requested to hand over the physical delivery of the Units to Mr. Mohan Khandelwal, a specimen of whose signature is attested hereinbelow.

Thanking you,

Yours faithfully,

For UCO Bank,

Sd/-(Manager)

Signature of Mr. Mohan Khandelwal: sd

Attested

For UCO Bank, Sd (Manager)

Ex.59

February 22, 1991.

Maruti Udyog Ltd.

11th Floor,

Jeevan Prakash

25, Kasturba Gandhi Marg,

New Delhi-110 001.

Dear Sirs,

This has reference to your purchase of 35 lac units for value dated 25th February, 1991 @ Rs. 14,4295. Please arrange to remit the funds amounting to Rs. 5,05,03,250 thru ANZ Grindlays Bank, Sansad Marg, New Delhi.

Thanking you,

Yours faithfully,

For UCO Bank

Sd/-(Manager)'

Ex.60.

March 13, 1991.

MARUTI UDYOG LTD.

11th FLOOR

JEEVAN PRAKASH

25, KASTURBA GANDHI MARG

NEW DELHI-110001

Dear Sirs,

This has reference to your purchase of 70 lac Units for value dated 13th March, 1991 @ 14,4500. Please arrange to remit the funds amounting to Rs. 10,11,50,000 thru ANZ Grindlays Bank, Sansad Marg, New Delhi.

Thanking you,

Yours faithfully,

For UCO Bank,

Sd/-(Manager)

Ex. 61.

March 18, 1991.

MARUTI UDYOG LTD.

11th FLOOR

JEEVAN PRAKASH

25, KASTURBA GANDHI MARG

NEW DELHI- 110001

Dear Sirs,

This has reference to your purchase of 75 lac Units for value dated today @ 14,4500. Please arrange to remit the funds amounting to Rs. 10,83,75,000 through ANZ Grindlays Bank, Sansad Marg, New Delhi.

Thanking you, Yours faithfully,

For UCO Bank,

Sd/-(Manager)"

From letters Exhibits 60 and 61, it is apparent that A3 has not stated that UCO Bank was selling units. It only mentions that for the purchase of units mentioned in those letters, the amount to be remitted through ANZ Grindlays Bank, New Delhi. Evidence on record establishes beyond any doubt that A3 was authorized to deal on behalf of the broker clients and if the broker client had instructed that amount be sent through Grindlays Bank, writing of such letter would not mean that he has committed any fraud.

For the allegation of forgery, it is to be stated that in the instant case, A-3 has been charged with forging the BRs Ex. 38 dated 13th March, 1991, Ex. 39 dated 18th March, 1991 and Ex. 41 dated 24th April, 1991, on the ground that UCO Bank did not hold the units for which the BRs were issued.

All the transactions are based upon the documents, which stand proved by the evidence of various witnesses of MUL, who signed the documents. The transactions were through UCO Bank. Further, there is nothing on record to show that UCO Bank either purchased or sold the units to MUL. The charges proceed on an incorrect assumption that the BRs were issued on behalf of UCO Bank. The CBI has undertaken no investigation whatsoever to discover whether the BRs were backed up by securities belonging to A-5. Further, once it is held that the UCO Bank, Hamam Street Branch was entitled to deal

on behalf of their clients, then it would be difficult to hold that issuance of the said BRs by A3 was in any way forgery punishable under the Indian Penal Code. Issue of BRs on behalf of broker clients was part of commercial transactions. Routing facility was given by the bank as proved prior to RBI Circular dated 26.7.1991. Even RBI circular does not prohibit issuance of BRs if properly backed by the security. The evidence on record nowhere establishes that the Bank was not holding adequate securities before issuance of BRs. With regard to the alleged forged typing of letters outside the office of UCO Bank, there is evidence of PW6, which shows that in 1991 there was only one typewriter in Hamam Street Branch of UCO bank which was being used since 1983 and heavy work in the office and that 30 to 40 transactions of such work were daily carried out. In the circumstances, from the fact that document was typed out side the bank, 'dishonesty' cannot be attributed to the accused.

For this purpose, we would straightway refer to the decision rendered by this Court in Dr. Vimla v. Delhi Administration, [1963] Supp. 2 SCR 585 wherein this Court held thus:-

"To summarize : the expression "defraud" involves two elements, namely, deceit and injury to the person deceived, injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuiary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

In that case, one Dr. Vimla purchased a car in the name of her minor daughter Nalini, aged about six months. The price of the car was paid by her. The transfer of the car was notified in the name of Nalini to the motor registration authority. The insurance policy was transferred in the name of Nalini after the proposal form was signed by Dr. Vimla. Subsequently, when the car met with the accident, Dr. Vimla filed two claim forms as Nalini. She also signed the receipts acknowledging the compensation money as Nalini. Dr. Vimla and her husband were prosecuted under Sections 120-B, 419,467 and 468 of Indian Penal Code. The High Court convicted Dr. Vimla under Sections 467 and 468 of IPC. In that set of circumstances, this Court held thus:-

".....Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any non-economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in the name of her made minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term."

For arriving at the said conclusion, the Court further referred to Sections 463 and 464 of IPC and held as under:-

"The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the

offence of forgery relevant to the present enquiry are as follows, (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens-rea described in s.464 i. e., "fraudulently" and the intention to commit fraud in s. 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions menti6ned in s. 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions bearing on the subject. The second thing to be noticed is that in s. 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus :

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly".

"Fraudulently" is defined in s. 25 thus:

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is necessary enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of fraud" would include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not coexist."

Hence, it would be difficult to infer that A-3 did anything dishonestly, fradulently or to defraud.

(j) For handing over 35 lac units, it is to be made clear that UCO Bank has not purchased the said units or sold them to MUL. As the said units were sold by the broker clients to A-5 through UCO Bank, the units were required to be returned to A-5 and that would be clear from Exhibit 58. This function is considered by the Banks as routing function as explained by the witnesses of the bank which we have referred to earlier.

(k) The commission for the transactions on behalf of A-5 was credited in the bank account by debiting the same in the account of A-5. If really A-3 was acting on his own behalf and not on behalf of bank, the commission amount would not have been reflected in the bank’s account. Finally, one of the important circumstance required to be taken into consideration is : crediting of brokerage charges/ commission for the said transactions by the UCO Bank. If A-3 was having any guilty mind or dishonest intention, which

is essential for convicting him for the offence punishable under Section 409 or other Sections of IPC, he would not have seen that the brokerage charges/commission is credited in the account of the UCO Bank.

(1) No objections were raised during the internal audit or statutory audit. PW14 Joshi states that in case of sale transactions on behalf of their clients after obtaining written instructions and about the availability of security with the bank they were preparing cost memo and sending it to the counter party. This would also indicate that BRs would not be issued without verifying availability of security with the bank.

From the aforesaid discussion, it is required to be held that the prosecution has miserably failed to establish that A-3 had issued BRs without being backed by the sufficient security, namely UTI units; for the first transaction, UTI units were belonging to A-5 which MUL had given as security for the loan amount received by it and, therefore, A-5 was entitled to get it back; before issuance of the guidelines by the RBI, RBI had itself noted that many banks were issuing BRs on behalf of their brokers; there was no prohibition to the banks with regard to the issuance of the BRs. on behalf of their clients. Only thing which was required to be verified was whether there was sufficient security. The witnesses on behalf of bank have admitted that UCO Bank and other banks were giving routing facility to their clients and that routing transaction was a transaction in which purchase and sale of securities was done by the bank as an agent of its customer for a commission; resolutions by the MUL also reveal that the investment for the first four transactions was 'through UCO bank' and for the 5th transaction, the investment was 'with UCO Bank'; It was UCO Bank's investment policy to have such transactions. Hence, it cannot be stated that A-5 was having any dishonest intention; there is no allegation that A-3 gained by such transactions and there is no loss to the bank or to the MUL. No inference of 'dishonesty' or intention to defraud could reasonably be drawn. In this set of circumstances, it would be difficult to hold that A-3 committed any offence and A-3 requires to be given benefit of doubt.

CASE AGAINST A-5

Before dealing with the case against A-5, it is to be stated that allegations against him are serious. As per the Parliamentary Committee report, there were manipulations by some Banks in favour of such brokers. Parliamentary Committee has also noticed that scrutiny of security transactions in number of banks reveals that some banks were even handing over account payee cheques drawn in favour of other banks to the brokers who got them credited to their account ostensibly to assist the broker in transferring funds quickly to meet their obligations. Many brokers including Harshad S. Mehta (A-5) were getting routing facilities. Thus, banks provided special privilege to select few brokers by lending their names to the transactions of these brokers totally disproportionate to the income derived and exposed themselves to great risk by irregularly issuing their BRs. The Committee also noted that A-5 was also unauthorisedly given the facility of collection and credit of the banker's cheque by SBI as per his instructions. The Bombay Main Branch of SBI acting as the agent of SBI CAPS had debited SBI CAPS account and unauthorisedly credited funds to the account of A-5 instead of making payments to named banks. The cheques drawn on UCO Bank had been credited to the account of the same broker. For this purpose, the brokers wanted the facility of single point clearance whereby the activities of issuance and acceptance of bankers' cheques in their accounts may be conducted through the security division of the SBI's main branch, Bombay. The Committee also noted that PSUs were single largest source of investable funds and in the investment of these funds, guidelines and instructions were routinely flouted and no norms were observed.

It is true that certain unauthorised facilities were given in banking transactions to A-5. However, for convicting A-5, it should be proved beyond reasonable doubt that he had committed certain offences punishable under the Act. It is true that if any illegal practice or usage is

developed by banks or PSUs it would not be a good defence because illegality committed by a corporation or the concerned officer is required to be dealt with and punished if it is an offence in accordance with law. Take for illustration - collecting donation of unaccounted money, even if it is practice or usage, it would be an offence. This is sought to be brought out on record in the cross-examination of I.O. Bhatnagar that PW23 Khandelwal has given a statement before him that A-5 gave a VIP suitcase containing cash to Sitaram Kesari.

Further, we are required to decide the case on the touchstone of ingredients of the offence punishable under IPC and there cannot be any doubt that those who are found guilty should be punished but the conviction must be on the basis of established criminal jurisprudence and not on moral or equitable ground or impression created or gathered by the prosecuting agency. It is also true that in the present case, dealing in public funds was to a large extent but that would not itself be a sufficient ground for drawing any inference in favour of the prosecution particularly when there is no evidence on record that MUL or UCO Bank suffered any loss or any of accused Nos.l to 4 gained anything. On the contrary, there is evidence on record that UCO Bank got commission from the said transactions.

This Court in State (Delhi Admn.) v. Laxman Kumar, [1985] 4 SCC 476 at 505 observed as under:-

"Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical power of a litigating individual or the might of the ruler nor even the opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecutor is given an opportunity of supporting the charge and the accused is equally given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed mind of the Judge that leads to determination of the lis. If the cushion is lost and the court room is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for truth is stifled. "

Keeping the aforesaid principle in mind, I would deal with the prosecution case against A-5.

Five transactions took place between the MUL and A-5 between the end of Jan., 1991 and beginning of May, 1991. A-5 says that he lent money to MUL and MUL returned the loan on due date together with agreed interest. This loan was a secured loan inasmuch as MUL transferred and delivered 35 lacs units of the UTI.

The case of the prosecution is that there is an irresistible inference that A-5 was involved throughout in the case because:-

(a) the pay orders of Canara Bank were collected by his agent Mr. Anuj Kalia;

(b) the pay orders were deposited as if he was the payee, which is clear from the apparent tenor of the pay in slip;

(c) there are letters written by his agents/employees to ANZ Grindlays Bank asking them to credit the proceeds of the pay orders to his account;

(d) receipts had been given by his office in respect of the first transaction of 35 lacs units, which receipt found its way to the records of the MUL. In the face of this evidence, the defence of Al and A2 that they had no knowledge of the involvement of A-5 is patently untenable.

(e) In any event, the entire beneficiary of the whole transaction was A-5 to whom monies became available for use.

From the evidence on record, it is proved that-

1. Undisputedly there is no statutory prohibition that MUL or UCO Bank cannot grant loan to the individual.

2. In the present case, admittedly, there is no loss to the MUL or to the UCO bank.

3. It is not the prosecution version that accused Nos. 1,2,3 or 4 got any advantage or gain because of the five transactions. In any case, there is no evidence.

4. In first transaction, MUL took loan by handing over 35 lacs units of UTI. In other transactions, MUL gave the amount on the basis of bank receipts. Bank receipts were backed by the units. RBI directions which are issued in July 1991, nowhere prescribe that a transaction by the Bank on behalf of the broker clients if it is backed by the adequate securities is irregular or prohibited.

5. On behalf of MUL it has been stated before the JPC that the transactions were regular and there was no irregularity. No Officer of the MUL has stated before the Court that transactions were irregular.- Witnesses examined on behalf of MUL are PW1 Bhargava who was a Legal Advisor, MUL and Company Secretary, PW 3 Agharam Halasyam who was the General Manager (Finance) and PW4 Rajan Ramgopal who was working as Executive. All have stated that transactions were on the basis of resolutions passed by the Sub-Committee which were approved by the Board. If MUL Board decides to enter into such transactions, officers like A1 and A2 or A5 cannot be held guilty.

6. No Bank Officer has stated that the transactions were illegal or there was any irregularity. UCO Bank has received commission for the said transactions.

7. In such circumstances, there is no question of misappropriation of the amount by taking loan. In any case alleged gain to A-5 was of taking loan for a very short period which is repaid on agreed date with agreed interest. The loan was taken by pledging UTI Units. At the most, in the FIR it is stated that the amount was given to A5 at a lower rate of interest and that in the first transaction, he charged more interest. This contention is also without any substance because in first transaction A-5 only charged 12.75% interest for the amount. As against that in all subsequent four transactions, rate of interest given to the MUL was 16.75%, 21%, 26.75% and 25% respectively.

8. Presuming what is stated in FIR is true that lower rate of interest was charged, then also once it is loan transaction to A-5 there is no question of misappropriation of the amount by A-5.

9. The next question is - whether the Bank receipts were backed by units or not? For that purpose, prosecution has not led any evidence. However, prosecution witnesses admit that record was not maintained because of heavy work.

(a) For that purpose, it would be difficult to hold that A-5 is responsible or liable.

(b) Even for A-3 there is no evidence to the effect that A-3 was required to maintain such accounts.

(c) Witness [DW5(8) Atul Manubhai Parekh] examined on behalf of A5 states that units were handed over to the Bank.

10. For the aforesaid transactions also Bank has received brokerage charges which is reflected in the Bank accounts. Neither the auditors of the Bank nor the higher officers have raised any objection to such receipts. On the contrary as per the JPC report as well as RBI Guidelines, banks were indulging in such transactions. As deposed by the witnesses, these transactions were regular and routine transactions.

11. It is contended that in reality if it were loan transactions then there was no question of giving a facade of sale transactions and it establishes fraud. This submission cannot be accepted because of the resolutions of the MUL fixing days for repayment and the rate of interest meaning thereby if the amount is not returned on a particular date, the units would stand forfeited and for that limited purpose it is a sale transaction and if the amount is repaid with interest, units would be returned. Further, in case of sale or purchase of units, there would not be any question of payment of interest. Question of payment of interest would arise in cases of loan transaction.

12. As discussed above, resolutions passed by the MUL make clear distinction of investing the amount "with the bank" or "through the bank". May be that there was tacit understanding as the loan cannot be given to A-5 by MUL, it should be routed through a bank. For this transaction, UTI units were handed over to the bank, therefore, there is no question of any fraud or misappropriation. In any case, for this purpose, A-5 is not liable. The resolutions were passed by the MUL that the amount be given to UCO Bank for purchase/sale of units. Whenever the transactions were directed with the bank, the resolutions mentioned "with the bank" and in other places, it mentioned "through the banks". This would indicate that the Chairman-cum-Managing Director and Director (Finance) of MUL were having full knowledge that the transactions were loan transactions in favour of persons other than the UCO Bank.

Therefore, only question is - whether such transactions through the bank could be held to be an offence either under Section 403 or Section 405 of IPC. Relevant Sections are as under:-

403. Dishonest misappropriation of property.-Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

’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 wilfully suffers any other person so to do, commits "criminal breach of trust".

Sections 403 and 405 require dishonest misappropriation. The word "dishonestly" is defined under Section 24 1PC as under:-

"24. Dishonestly.-Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

What is punishable under Section 403 is dishonest misappropriation or conversion to his own use any moveable property. Further as per the Explanation, dishonest misappropriation for time being or for a short time is also misappropriation within the meaning of the section. Hence, for establishing the offence it is required to be proved that-

1. The property belongs to a person other than the accused.

2. The accused appropriated the said property or converted it to his own use. And,

3. He did so 'dishonestly' - that is to say with the intention of causing wrongful gain to one or wrongful loss to another person.

Allegations in this case are that firstly, accused appropriated cheques issued by Canara Bank in favour of Grindlays Bank to himself. Secondly, that appropriation was misappropriation and, thirdly, it was dishonest.

Further, essential ingredients required to be proved under Section 405 are-

1. Accused must be entrusted with some property or with any dominion over property,

2. He dishonestly misappropriates or dishonestly converts to his own use that property, or

3. 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, or

4. Willfully suffers any other person to do so.

In this case, an essential ingredient which is required to be established would be 'dishonest misappropriation or use'. For this, it is contended that A-5 took loan from MUL through UCO Bank. If it is established that he took loan from MUL through UCO Bank, then there is no question of misappropriation because property belonged to him as he was the owner of the said amount.

For this purpose, let us consider the prosecution case in the light of the following illustrations-

(A) Presume that A-5 received the amount by investment/ loan from UCO Bank by depositing UTI Units; or

(B) Presume that A-5 took loan from MUL directly by pledging UTI units.

In both the aforesaid cases, it cannot be held that the said transactions are illegal or irregular.

Then,

(C) There is a resolution by MUL that investment/loan cannot be made by MUL with any individual. Admittedly, there is no such statutory provision or rules prohibiting such investment. Resolution permits investment with banks/PSUs.

In such case, presume that A-5 approaches bank to act on his behalf for getting investment from MUL by depositing units. Bank writes letter for such investment, issues Bank Receipt, receives money, pays it to A-5 as agreed by charging brokerage which is considered to be a commercial transaction by a bank.

The question to be asked would be - whether any such transaction 'through' bank would be an offence?

Prima facie, there is no such law prohibiting such transaction nor it can be held to be an offence under any law. In such a transaction, there is no question of dishonest misappropriation. The Investigating Officer PW25 Mr. Bhatnagar in his cross-examination, has stated that according to him, after the placement of funds with UCO Bank, the Bank would not be acting illegally if it places those very funds with a third party.

However, the prosecution case is made out on the ground that as MUL was not giving any loan directly to individual (A-5), he manipulated and created subterfuge as if UCO bank was purchasing the UTI Units. For this purpose, on behalf of MUL cheques were issued by Canara Bank in favour of ANZ Grindlays Bank. Those cheques were deposited at Delhi Branch and the amount was transferred in the name of A-5 at Grindlays Bank's Bombay Branch. Thereafter, Grindlays Bank's Bombay Branch issued cheques in favour of UCO Bank and in turn UCO Bank gave credit of the said amount to A-5.

Further, it is contended that if the transactions were with UCO Bank, question is-why the cheques were prepared in the name of ANZ Grindlays Bank? -There was no necessity of doing so.

-Why the said cheques were handed over to the representative of A-5?

Prosecution contends that as it was subterfuge, this irregular method was adopted. Defence contends that it was known to MUL that amount was meant for A-5 and, therefore, this procedure was adopted for earliest release of funds in favour of A-5. By this method, UCO Bank Bombay Branch got the money on the same day. It is pointed out that Grindlays Bank was not at all concerned with money except for transmitting the same to its beneficiary.

At this stage, we would refer to the decision in Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin, AIR (1953) SC 478]. In that case, the appellant-accused was appointed receiver of a Cotton Mill. He demanded and received payment over and above the market price in respect of cotton bales allotted to a shopkeeper. He was charged for criminal breach of trust and misappropriating the extra money received by him without bringing it into the Mill's account. The Court dealt with the question- whether the extra money was given by the shopkeeper to the accused for and on behalf of the Mill or was given to him personally as a motive or reward for showing some favour. In that context, Court considered the definition of criminal breach of trust and held (in para 21) as under:-

"It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In the case before us, it is not disputed that if the sum of Rs.23,100 was paid by PW1 to the appellant by way of illegal gratification to induce the latter to make an allotment of cloth in his favour, there could be no question of entrustment in such payment. The payee would then receive the money on his own behalf and not on behalf of or in trust for anybody else. The criminality of an act of this character would consist in illegal receipt of the money and the question of subsequent misappropriation or conversion of the same would not arise at all."

Learned Solicitor General Mr. Salve contended that MUL had not decided at any point of time to lend money to A-5. The so-called transactions of lending money to A-5 or purchasing UTI Units from UCO Bank was mere pretence by giving a cover of ostensible sale of units to MUL. If really, there was a loan transaction between MUL and A-5, MUL would have issued pay order in favour of A-5, but in the present case, the pay orders - bankers' cheques were issued by the Canara Bank in favour of Grindlays Bank and the cheques were having endorsement of-crossed cheques, account payee, non-transferable. After receipt of the said cheques, surprisingly, officer of Grindlays Bank credited it in the account of A-5. Thereafter, A-5 again transferred it in his account in Grindlays Bank at Bombay. He again issued the cheque through Grindlays Bank in favour of UCO Bank and UCO Bank transferred the said amount in favour of A-5. He submits that if it was a real and genuine transaction of money lending by MUL in favour of A-5, parties would not have credited such subterfuge or pretence as if MUL was purchasing units from UCO Bank, Bombay Office.

It is his further contention that in any case A3 Deosthali had no authority to sell units to MUL. He pointed out relevant Sections of the Negotiable Instruments Act for contending that the amount of crossed A/c Payee Cheque having endorsement "non transferable" can not be paid to A-5. For this purpose, he referred to various provisions of Negotiable Instruments Act, 1881 (Chapter VI Section 78).

Learned senior counsel Mr. Jethmalani made it abundantly clear that he confines his submissions to the effect that A-5 had only loan transactions with MUL and the amount taken on loan was paid with interest and commission was paid to UCO Bank. The transactions are already squared up, hence there is no question of any offence being committed by A-5. He further makes it clear that considering the course of dealing it is apparent that there is consensus agreement that monies from MUL were received for customer namely A-5, from the customers' lender for handing over the same to the customer. Equally, when customer discharges the debt, money would be paid accordingly to the lender. He, therefore, submits that this was a tacit agreement between the parties.

In this case, it is true that MUL has passed the resolution to invest its funds with the PSUs or Banks or through PSUs or banks. The word 'through' would certainly mean that it is not with the banks. In any case, because of the resolutions passed by the MUL, it cannot be held that there was any prohibition for the MUL to invest its funds through the banks by giving loan to an individual. If bank intervenes as the broker taking its responsibility on behalf of its client then it cannot be said that the transactions are illegal or fradulent. For this purpose, in earlier paragraphs, resolutions passed by the MUL are referred. Resolution dated 4.5.1989 (Ex.9) specifically provides that to fetch higher rate of interest than what is available on loaning of funds to PSUs, the Board has permitted the Sub-committee formed by it for the purpose to invest surplus funds of the company from time to time in the purchase of units of UTI either through scheduled banks or directly. In any case, the Managing Director and Director (Finance) of MUL who had passed the resolutions for the transactions in question would have revealed the true nature of the transactions. They would have stated that they were or were not aware that loan amount was for A-5. It is admitted that they were examined by the Investigating Officer Mr. Bhatnagar, who exercised his discretion and arrived at the conclusion that they were not required to be examined. In criminal prosecution, in such a situation, if any reasonable doubt arises, benefit would be in favour of accused.

Further, adverse inference could have been drawn against A-5 if the amount was received by him without pledging any units with the bank. As discussed above, it is the contention on behalf of A-5 that UTI units were handed over to the bank and on that basis BRs were issued by A-3. For this purpose, witness is also examined. However, prosecution has failed to establish that BRs were issued without being backed by the units.

For the transfer of the amount from Canara Bank to UCO Bank at Bombay Branch via Grindlays Bank, it has come on record that such irregular unjustfiable practice had developed with certain banks. It has also come on record that even SBI had given such facility to A-5 (as per JPC Report). In such a state of prosecution evidence, it cannot be held beyond reasonable doubt that A-5 committed any offence punishable under Section 403 or abetted offence punishable under Section 405 of IPC or has abetted any commission of offence punishable under Section 468 r/w Section 464 IPC. For the cheque issued by the Canara Bank in favour of Grindlays Bank, there is nothing on record that monies were meant for Grindlays Bank. As pointed out by the learned counsel for A-5, the beneficial interest for the said amount remained in A-5. It is nobody's case that the UCO Bank itself has sold or purchased the units and was entitled to have the cheque amount, that is to say that ownership or beneficial interest in the property was not with UCO Bank.

With regard to first transaction, it is to be stated that it is nobody's case that UCO bank sold and thereafter re-purchased the units to MUL and therefore it was entitled to get it back from MUL. As soon as the amount was re-paid by MUL, original owner of the UTI units was entitled to get it back and that was done by A-5.

Further, document Ex.58 (Vol.26 page 7056) and Ex. A-5 (1) (Vol.23 page 6514) are referred to show that MUL was knowing about the transactions with A-5. Ex.58 is the letter dated 22nd January, 1991 written by UCO Bank to MUL requesting to hand over the delivery of units to Mr. Khandelwal; and Ex.A.5 (1) is the receipt dated 24.1.1991 issued by Mr. Khandelwal (an employee of A-5) on the letter-pad of A-5. Both these documents would also indicate that MUL was fully aware about the transaction with A-5.

Finally, an important contention raised by the learned counsel for the appellants that for the transaction nos.l to 3 i.e. transactions dated 24.1.1991, 13.3.1991 and 18.3.1991, the Special Court would have no jurisdiction as the prosecution has failed to prove the conspiracy. Admittedly, the said transactions had taken place prior to cut-off date prescribed under Section 3(2) of the SCAM Act, which is 1st April, 1991. In my view, the said submission requires to be accepted. However, it is not required to be discussed further in view of the finding that the prosecution has failed to prove beyond reasonable doubt that accused have committed any offence.

Finally, there is no loss to MUL or to the Bank but as the loan amount is given to A-5 by MUL through UCO Bank and as the loan is re-paid by A-5, it cannot be held that A-5 committed the offence of mis-appropriation.

Further, while deciding criminal matters, where heat is generated outside the Court room, it is the function of the Court to decide the matter after cool deliberation on the basis of existing law and criminal jurisprudence and the adjudicatory process should remain unaffected by such heat. Conviction or acquittal in a system wedded to rule of law should be in accordance with law only. As observed in the case of Laxman Kumar (supra) if the cushion is lost and the Court room is allowed to vibrate with the heat generated outside it, the adjudicatory process suffers and the search for truth is stifled. It is for the Parliament to enact laws to meet white-coloured illegalities or irregularities affecting the society.

What emerges from the discussion of the entire evidence which, to some extent, is reproduced in the earlier paragraphs is: -

(a) The SCAM Act does not create any new offence nor changes the procedure as prescribed in the Code of Criminal Procedure nor raises any presumption pertaining to an offence punishable under the Indian Penal Code or Prevention of Corruption Act. The offences of mis-appropriation, criminal breach of trust or fraud and forgery are required to be established by the prosecution on the basis of existing criminal jurisprudence, which requires that prosecution has to establish its case beyond reasonable doubt. Serious allegations would not be a ground for convicting the accused unless there is sufficient evidence to connect the accused with the crime.

Joint Parliamentary Committee found that many brokers used some of the banks as "routing" banks which carried large volume of securities transactions for them. The Bombay Main Branch of SBI acting as the agent of SBI Caps had debited SBI Caps account and unauthorisedly credited funds to the account of HSM instead of making payments to named banks/institutions.

The Committee noted that the PSUs were the single largest source of surplus investible funds around Rs.36000 crores between April 1990 and December 1992. In the investment of these funds guidelines and instructions were routinely flouted and no norms were observed. Neither DPE nor the Ministries concerned took any steps to ensure the compliance of their

guidelines. Even the Ministry of Petroleum and Natural Gas which had made a review of investment of surplus funds by the PSUs under its administrative control in May 1990 closed its eyes knowing fully well that PSUs were investing with the foreign banks despite the guidelines of DPE that PSUs could have normal banking transactions only with nationalised banks.

The PSUs have placed funds with banks and finance companies for very short periods, sometimes for only a few days and even for one day implying supply of funds for speculative purposes to earn higher return. These banks/finance companies issued BRs for the amount received. The PSUs after the maturity of investments returned the BRs and got their monies along with the yield which was agreed to at the time of placement of funds. Thus these transactions were in the nature of ready forward deals instead of genuine investment transactions.

(b) The prosecution version of conspiracy as stated in the FIR and the chargesheet is contrary to what has been tried to be proved by leading the evidence of witness, namely, Mr. Khandelwal PW 23. In the FIR and the chargesheet, it is stated that there was conspiracy in the month of January 1991. As against this, evidence which is led is to the effect that conspiracy was hatched in April/ May 1989. That evidence is found to be totally unreliable. Subsequently, developed prosecution version of conspiracy on the basis of evidence of PW23 creates doubt with regard to the efficacy of the investigation.

(c) There are no circumstances on record from which reasonable inference of conspiracy could be drawn as it was the practice adopted by some of the Banks and Public Sector Undertakings of short term investments of their extra funds. May be that the practice adopted by the banks or PSUs was unjustified or irregular.

(d) Jurisdiction of the Court under the SCAM Act is limited for the transactions in Securities after the First Day of April, 1991 and on or before 6th June, 1992. As the prosecution has failed to prove the conspiracy, the accused cannot be convicted by the Court for the transactions dated 24.1.1991, 13.3.1991 and 18.3.1991.

Remaining 4th and 5th transactions are on 24.4.1991 and 2.5.1991 for two days and five days respectively. Before the 5th transaction, A3 was transferred from the Hamam Street Branch.

(e) In the investment policy or lending policy as per the guidelines framed by the MUL in 1989 (Ex.9) use of phrase 'through Scheduled Banks' or 'directly' appears to be intentional. "Through Scheduled Bank' would indicate that the amount is not invested 'with the Bank'. Resolutions Exs. 22, 23, 24, 40 and 42 passed by the MUL for investment of funds as reproduced above also reflect the same thing, namely "through bank" or "with the bank".

(f) Resolution Ex.22 dated 1.2.1991 reveals how the documents were prepared to suit its purpose by the MUL. The relevant part of resolution reads thus-

".....In our documentation we have to show the borrowing as sales of our investments. Therefore, it is proposed to show such borrowing as reduction in our investments. This has been discussed with Company Secretary also who is agreeable for such treatment."

PW4 Mr. Rajan Ramgopal has admitted that the name of the broker did not figure or reflect on the record of MUL in the event of transaction of investment being through broker.

(g) In any case, A1 and A2 who are sought to be prosecuted are not responsible for the said policy. The policy is framed by the Board and as per the said policy, Sub-Committee headed by the Chairman and the Managing

Director of MUL and Financial Director has passed appropriate resolutions. It appears that they were in know of entire investments, but for the reasons best known to the prosecution, they are not prosecuted or examined as witnesses even though they were interrogated by the Investigating Officer.

(h) Al and A2 were promoted for their efficiency and good work. The same stand was taken by the MUL before the JPC despite knowing that there was so-called investigation by the CBI.

(i) MUL has not suffered any loss. On the contrary, it has received substantial interest for short term investment for a few days.

(j) UCO Bank has also earned commission which is reflected in its account.

(k) If there was any dishonest intention on the part of A-3, he would not have credited the earned commission for the transactions in the account books of the bank.

(1) No loss to the UCO Bank.

(m) Neither the MUL nor UCO Bank has lodged any FIR for so-called mis-appropriation or fraud.

(n) The prosecution has not even suggested that accused Nos.l, 2, 3 or 4 got any pecuniary advantage or gain by such transactions.

(o) Evidence led by the prosecution discloses that it was the practice of the Bank to issue BRs for such type of transactions.

It was the duty of the prosecution to carry out necessary investigation whether the BRs were backed by the units or not. If the Investigating Officer fails to discharge its duty, no inference can be drawn that BRs were not backed by security/units. Prosecution has miserably failed to prove that A-3 issued BRs without holding units as security or that BRs were not backed by units.

PW3 Halasyam, Chief General Manager (Finance) of MUL has stated that looking at the BRs of UCO Bank, no suspicion would arise and that issuance of the BRs necessarily indicates that bank issuing it would be holding the security covered under the BR.

(p) Mr. Ramanathan, Divisional Manager of UCO Bank at Bombay Office at the relevant time has produced on record letter dated 8.1.1991 Ex.231 written by him stating resumption of switch transaction after discussing the subject with various authorities including Zonal Manager, General Manager and Dy. Manager of UCO Bank.

(q) On the evidence as it is, at the highest it was a failure on the part of Al, A2 and A3 to perform their duties or observe rules of procedure in appropriate manner and may at the most be an administrative lapse.

(r) As discussed above, there is no evidence against A-2 and A-4 to connect them with the crime.

(s) A-4 is prosecuted without collecting any evidence against him that he was responsible for crediting the amount in the account of A-5. The prosecution has erroneously proceeded as if the amount of pay orders issued in favour of Grindlays Bank was directly deposited in the account of A-5.

(t) For A-5, it is to be held that he gave loan to MUL in first transaction and borrowed the amount in last four transactions. These transactions were carried out through UCO Bank. Therefore, assuming that those transactions were against the guidelines issued by the RBI, it would not mean that A-5 has mis-appropriated the amount. He repaid the amount on

fixed dates with stipulated interest. Question of payment of interest would arise in cases of loan transaction and normally bank would not borrow the amount at such a high rate of interest. The Bank has issued BRs and there is no evidence that BRs were not backed by the units. On the contrary, defence has led evidence to suggest that units were given as security.

(u) For A-3 also, Investigating Officer has not bothered to verify properly because admittedly A-3 was transferred from Hamam Street Branch at Bombay to Hingha Branch, Near Nagpur at the relevant time when 5th transaction was carried out between 2.5.1991 to 7.5.1991.

(v) As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional.

In the present case, it is very important to determine who is the controlling agent behind the act of the Company (MUL). If the Board of the MUL or the Management of the Bank were fully aware of such transactions, subordinates who carry out the transactions could not be held guilty as for the offences for which the accused are charged, mens rea must be proved. Therefore, those who are responsible for taking such decision, could be prosecuted, but not those who are only carrying out directions on the basis that it is a commercial policy of the Company (MUL) or the Bank. As stated before JPC, it was an effort to maximise the yield or surplus funds of MUL and there was no need for the company to take any action against the officers.

Hence, in my view, prosecution has failed to prove its case against the accused. In the result, Criminal Appeal No. 1097 of 1999 filed by Ram Narain Popli (A-4), Criminal Appeal No. 1117 of 1999 filed by Pramod Kumar Manocha (A-l), Criminal Appeal No. 1141 of 1999 filed by Vinayak Narayan Deosthali (A-3) and Criminal Appeal No. 1150 filed by Harshad S. Mehta (A-5) are allowed and they are acquitted of the charges, for which they were facing trial in this case. Criminal Appeal No.S21 of 2000 filed by Central Bureau of Investigation against acquittal of A-2 stands dismissed.

ORDER OF THE COURT In the result it is held that:-

(1) Criminal Appeal No. 521 of 2000 filed by the State against A2 Ambuj Sushil Kumar Jain is dismissed.

(2) Criminal Appeal No. 1097 of 1999 filed by A-4 Ram Narayan Popli is allowed and he is acquitted of all the offences alleged against him.

(3) Further, in view of the judgment rendered by the Majority, Criminal Appeal Nos. 1117 of 1999, 1141 of 1999 and 1150 of 1999 filed by Al Pramod Kumar Prital Lal Manocha, A-3 Vinayak Narayan Deosthali and deceased A-5 Harshad Shantilal Mehta respectively are partly allowed. The order of conviction awarded by the Special Court in respect of A1, A3 and A5 is confirmed. However, sentence of Al and A3 is reduced to the period already undergone.

Ordered accordingly.

ARIJIT PASAYAT, J. Notwithstanding my great respect for learned Brother Shah’s wisdom and erudition, I am unable to agree that some of the appellants i.e. A-l, A-3 and A-5 deserve to be acquitted. My reasons with which brother Agrawal also agrees, are as follows:

The present appeals relate to Special Case No.6/1994 which was one of the 32 cases filed by the Central Bureau of Investigation (in short the ’CBI’) under the provisions of Special Court (Trial of offences relating to

Transactions in Securities) Act, 1992 (in short the Special Court Act').

Before constitution of the Court under the Special Court Act several enquiries were made in relation to securities scam which allegedly broke out in May 1992 in various types of transactions relating to government securities. The basic allegation was that these transactions were made in active connivance with the officials of banks, financial institutions and shareholders. One Committee known as Jankiraman Committee was appointed by the Reserve Bank of India (hereinafter referred to as the RBI') under the chairmanship of one Shri R. Jankiraman, the then Deputy Governor of the RBI. The Committee submitted its report between May 1992 and April 1993. First report in point of time was submitted by the Committee in May 1992 and it was indicated that the amount involved was estimated to be about rupees 4,300 crores. The Government first promulgated an Ordinance which was replaced by the Special Court Act on 8th August, 1992.

When the matter was brought to the notice of both Houses of Parliament, a Joint Parliamentary Committee (in short the JPC) was appointed to enquire into the irregularities.

Prosecution version was that there were five transactions conducted between January 1991 to May 1991 involving Rs.43,96,65,000 purportedly as ready forward deals. The securities involved were units of Unit Trust of India (in short UTI'). Two stages were involved in the transactions; the first sale and purchase and the second reversal thereof. The bankers involved were United Commercial Bank, Hamam Street Branch, Bombay, Canara Bank, Sansad Marg, New Delhi, Bank of America, Bombay Branch and New Delhi Branch, ANZ Grindlays Bank, Sansad Marg, New Delhi and ANZ Grindlays Bank, Bombay Branch. The Government company involved was Maruti Udyog Ltd. (in short MUL').

The reports of the Janakiraman's Committee and the JPC were placed before the Trial Court and were exhibited as 237(1) and 237(2).

The basic allegation was that as a result of criminal conspiracy surplus funds of MUL had been deposited in Canara Bank, New Delhi and were diverted to the account of A-5, Harshad with Grindlays Bank, Delhi and finally to UCO Bank, Bombay. It was the prosecution's case that there was no authority of accused 1 - Pramod and accused 2 - Ambuj Jain to deal with A-5, Harshad and though he was the full beneficiary and he had been directly benefited from the transaction, a picture was presented as if he had nothing to do in the matter. Such illegal transactions were done with the aid and assistance and direct involvement of A-3 (Deosthali) and A-4 (Popli).

Accused Nos. 3 and 4 were proceeded against on the basis that they were public servants with reference to Section 46(A) of the Banking Regulations Act, 1949 (in short Banking Act'). The five accused-appellants were charged under Sections 409, 420, 467, 471 of the Indian Penal Code, 1860 (in short the IPC') and Section 13(l)(c) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (in short the PC Act').

Reference was made to various documents to show how the transactions were conducted and how documents were fabricated to facilitate use of the huge sums of money by A-5, Harshad. All the accused persons pleaded innocence.

The stand of accused No. 1, Pramod and accused No.2, Ambuj Jain was that they did not know the involvement of A-5. Additionally, A-l took a stand that A-5, Harshad is broker of UCO Bank. So far as A-3 was concerned though he did not deny authorship of several letters which were placed on record by the prosecution to show alleged commission of forgery, stated that the transactions were put through under mere routing facilities and in any event so far as the last two transactions were concerned, he was not working in the concerned branch. He took a stand that though the letters produced by the prosecution to show that forgery had been committed, as they were typed outside the office, the same was done due to pressure of

work. Accused 4 took the stand that he was totally unconcerned with the transaction. Accused No.5 took a stand that there was no meeting as alleged by the prosecution to present a case of conspiracy, and in any event he was totally unaware of the transactions and further, even accepting that there were some transactions they were under mere routing facility. Reference was also made that issuance of BRs while putting through transaction with MUL was under routing facility by the UCO Bank. They were illegally permissible and there was no prohibition for the same. There was adequate balance of securities money with UCO Bank at the relevant dates and UCO Bank issued its BRs relating to the impugned transactions favouring MUL. Finally, it was submitted that all the transactions were reversed and financial obligations were discharged and met, and no amount was due or outstanding under the transactions in question. Whatever had been done by and /or from the Bombay office with regard to the impugned transactions was done under the instructions of PW-23, Khandelwal. The transactions in the securities between him and MUL were conducted on principal to principal basis and the same were put through UCO Bank under routing facility extended to him by it and MUL in particular was very much aware of the said fact, namely that the transactions in question were directly between MUL and him and that the same were on principal to principal basis.

It was also pointed out that before the JPC there was no objection raised by the MUL as nothing was considered irregular.

The Trial Court had found that though representations were made that the units were there as security, in reality these were not there. The findings in this regard are reproduced below:

"All these would show that case as has been sought to put forthwith by Accused No. 5-HSM of there being sufficient balance of security namely, Units in his account with UCO Bank, to meet the commitments about 4 transactions being Nos. 2 to 5 with MUL, in the circumstances cannot be believed and accepted and therefore requires to be rejected outright."

Each of the five transactions needs to be examined separately.

Transaction No. I: This transaction dated 24.1.1991 involves 35 lacs units of UTI as security and it is ostensibly shown to have been purchased by MUL from UCO Bank, Hamam Street Branch, Bombay for a consideration of Rs.4,99,45,000. There was a reversal as agreed on 25.2.1991. Accused No. 3, Deosthali addressed a letter dated 23.1.1991 on the letter head of UCO Bank of the concerned Branch to MUL stating that arrangement for payment of consideration of the aforesaid sum would be made through Bank of America, New Delhi with a further request to MUL to hand over the physical delivery of the security to Mohan Khandelwal (PW 23). Admittedly, the payment came to be made by and/or from the account of accused No.5, Harshad. Bombay's office of A-5 by its letter to Bank of America, Bombay requested remittance of the amount by means of 1TRO to its Delhi Branch for crediting into the account of MUL, Delhi. Accordingly, Bank of America, (Bombay and Delhi branches) arranged the payment thereof to MUL. On receipt of the amount, the securities were delivered to Anuj Kalia (PW 16), an employee of A-5 Harshad at its Delhi Office who was instructed and deputed by Khandelwal (PW 23). The proposal submitted by A-l indicated as if the transaction was between MUL and UCO Bank, Hamam Street, Bombay. Nothing was mentioned about the role of A-5 who was operating from behind the screen. At the reversal stage, accused No.3, Deosthali addressed a letter dated 22.2.1991 (Exbt.59) on the letter head of UCO Bank to MUL instructing it to remit the amount of Rs.5,05,03,250 through Grindlays Bank, Delhi. Letter was addressed by MUL to its bankers Canara Bank, Delhi to issue a pay order favouring Grindlays Bank, The same was handed over to Anuj Kalia (PW 16). On instructions from Khandelwal (PW 23) the pay order was deposited directly into the account of Harshad (A-5) with Grindlays Bank, Delhi by handing over the same to A-4, Popli, the concerned officer of the Grindlays Bank. Letter was issued by the Delhi Office of A-5 instructing Grindlays Bank for remittance of the amount by TT to its Bombay Branch which was done on the same day. Then the

amount was paid by pay order to UCO Bank, Hamam Street Branch, Bombay and the amount was credited to the account of A-5.

A bare perusal of the method adopted shows that the same was disinvestments borrowing transaction between MUL and UCO Bank though it was reflected to be a transaction as if MUL had borrowed money from UCO Bank against the security as a ready forward deal, the consideration was actually provided by Harshad through the Bank of America. In fact, the interest that was paid by MUL did not go to UCO Bank but went ultimately into the account of A-5 Harshad. Exbt. 58 is the letter dated 23.1.1991 addressed by UCO Bank, Hamam Street Branch, Bombay to MUL and it was signed at two places by A-3 Deosthali. There was no dispute that A-3 had signed and addressed the letter.

Exbt. 54 is the letter dated 24.1.1991 addressed by the Bombay office of A-5 to the Manager of Bank of America, Bombay by which instruction was given to transfer the amount involved to New Delhi in the account of MUL. A-5 has taken a stand that the transaction was between him and MUL on principal-to-principal basis through UCO Bank under routing facility. The Agenda Note and the Resolution clearly show that MUL was not dealing with A-5 on principal-to-principal basis. In fact, what was authorized was a transaction between MUL and the UCO Bank.

Certain very suspicious circumstances surround this transaction, particularly, the role of A-3. The letter (Exbt. 58) was not typed in the office of the UCO Branch. The typist (PW 6) has categorically stated that he has not typed it. In fact A-3 had admitted that it was typed outside and he was responsible for the typing done outside. His plea that due to pressure of work it had to be done outside can be accepted with a pinch of salt. It was for PW-6 to say that there was pressure of work and, therefore, the letter was required to be typed outside. There was no other instance, except the cases involving A-5 and the other transactions to which reference shall be made subsequently, that the letter was typed outside. So far as reversal is concerned, the role of A-3 is very significant. The letter (Exbt. 59) was written by A-3. He accepted that he was the author and signatory of the letter. Exbt. No. 101 is a letter dated 25.2.1991 issued by the Delhi Office of A-5 to the Grindlays Bank, by which it was instructed to credit the proceeds of the pay order (Exbt. 28) to the account of A-5. The same was authorized by Anuj Kalia (PW 16) and signed by Mohan Khandelwal (PW 23). The current account number of A-5 was also mentioned in the letter.

From the statement of account of UCO Bank, Hamam Street Branch, Bombay (Exbt. 149) it is clear that there was no debit entry showing that the UCO Bank, Bombay have charged any commission for the transaction of 35 lakhs of units of UTI and there is also nothing to show that UCO Bank had charged any commission from A-5. From Exhibits 44 and 45 which are internal vouchers, it is clear that though names of Bank of America and UCO Bank have been indicated, there was no involvement of UCO Bank either in passing or receiving funds in its own account. On the contrary, evidence shows that in the first instance money was paid by A-5 through its bankers to MUL. There was nothing to show that the payment was made to MUL through Bank of America under the instructions of UCO Bank, Bombay. Similarly, at the stage of reversal, the amount paid by MUL directly came to be credited in the account of A-5 first in the Grindlays Bank, Delhi, then Grindlays Bank, Bombay and finally in the UCO Bank, Bombay. In all these three stages, the amount went directly to the account of A-5. There was no involvement of any UCO Bank in financial aspects of the transaction, if the Bank, as claimed by A-5, at all acted for him as routing bank in the transaction. On the contrary, there is no involvement of UCO Bank either on 24.1.1991 and 25.2.1991 either in passing or receiving funds in it own account. At the first instance, money was paid by A-5 through Bank of America to MUL. There is nothing to show that such payment was made under the instructions of UCO Bank, Hamam Street Branch, Bombay.

Transaction No. 2

Coming to the second transaction, it involved 70 lacs units of UTI. Here MUL was the purchaser and UCO Bank, Hamam Street Branch, Bombay was the seller. The date of the transaction is 13.3.1991. Here again, the modus operandi for this transaction is almost identical to those involved in Transactions 3, 4 and 5. In respect of the second transaction A-3 addressed a letter dated 13.3.1991 to MUL on the letter head of the UCO Bank, Bombay instructing remittance of the amount involved. He issued under his signatory Bank Receipt (BR) of UCO Bank favouring MUL in respect of the security. The letter and the BR were received at the first instance in the office of A-5 at Delhi which then passed across to A-l who then put up a proposal in the form of Agenda Note before the Investment Committee showing as if the transaction was between MUL and UCO Bank, Bombay and on this basis approval was obtained. On the same day, as authorized signatory of MUL, A-l instructed Canara Bank, Delhi to issue a pay order favouring Grindlays Bank by debiting the amount to the account of MUL and accordingly Canara Bank issued its pay order for the amount directly to MUL. A-5's Delhi Office instructed its bankers Grindlays Bank, Delhi for issuance of a banker's cheque for the said amount favouring Grindlays for the benefit of MUL by depositing the amount into the account of A-5. This is what was done.

Exbt. 60 is the letter dated 13.3.1991 which was signed by A-3 Deosthali. By the said letter it was indicated to MUL that it (MUL) had purchased 70 lakhs of units. There was a request to remit funds through Grindlays Bank. The Agenda Note and the approval clearly show that MUL was to place funds through UCO Bank.

A reading of the Agenda Note and the Resolution clearly shows that the transaction was intended to be between MUL and UCO Bank. Much was made of the words "through UCO Bank" to contend that there was no prohibition on involvement of A-5. This has to be considered in the background of the stand of A-5. His stand was that the transaction was between him and MUL on principal-to-principal basis. But the material on evidence clearly shows that the intention was that MUL was to be the purchaser and the UCO Bank the seller.

Exbt. 38 is the BR issued by the UCO Bank. The same was authored and signed by A-3. BR recites UCO Bank having received from MUL the concerned sum, being the cost of 70 lakhs of units of the face value of rupees 7 crores. It was stipulated that the security will be delivered when ready in exchange "by this receipt" is duly discharged. The said recital in the BR clearly from its plain reading would indicate UCO Bank, Hamam Street Branch having undertaken to MUL to deliver security, namely, 70 lakhs units when ready in exchange for the said BR. There is also endorsement made in the said BR reading as "discharged" with a rubber stamp of MUL which is proved to be made by accused No.l Pramod as proved by PW-3 Mr. Agharam Ramkrishnan Halasyam, the officer of MUL. This endorsement shows UCO bank having discharged its obligations to MUL under the said BR. Credit advise dated 13.3.1991 (Exbt.150) issued by UCO Bank is in the handwriting of A-3. Although, in the narration of credit voucher it was mentioned that 70 lakhs of units related to MUL, there is no written record in that regard. Exbt. 128 which is the advise of Grindlays Bank, does not justify the narration as appearing in the credit voucher.

The material on record clearly justifies a conclusion that the amount involved came from the account of A-5 and was paid to MUL. There was no involvement whatsoever of UCO Bank though the stand of MUL is that the transaction was between it and UCO Bank. As is the case with the first transaction, A-5's stand is that the transaction between him and MUL was on principal-to-principal basis which routed through UCO Bank. But, as noted above in the reversal stage UCO Bank does not figure at all.

Third transaction

The situation is somewhat similar so far as transaction 3 is concerned. The amount in question came in the first instance from A-5's account with Grindlays Bank on the basis of instructions, letter and approval from Grindlays Bank, Bombay to Grindlays Bank, Delhi and from Grindlays Bank Delhi to Canara Bank, Delhi in the account of MUL.

Fourth transaction

So far as fourth transaction is concerned, initially the proposal was for investment of units valued at rupees 7.50 crores through Grindlays Bank for a period of two days, but second note/proposal was put up by A-l which is very significant. There was approval for placement of Rs.7.50 crores with Grindlays Bank for 2 days at an expected yield of 26.25% p.a. Subsequently, UCO Bank agreed to accept this fund at the same rate. There was some reluctance on the part of Grindlays Bank to accept the fund beginning 24.4.1991. Accordingly, the placement has been done with UCO Bank.

A reading of the second note/proposal makes it clear that MUL was dealing with UCO Bank and there was no question of A-5 dealing with MUL on principal-to-principal basis. In the minutes of Sub-Committee for the investment, the committee had earlier approved the proposals as contained in the Agenda Note, Exbt. 40(3) where the investment in the security in question was to be made with Grindlays Bank. But later on, the same was changed and it was resolved to be made with UCO Bank, Hamam Street Branch, Bombay as proposed by A-l- Pramod. Significantly, there was no written proposal either from UCO Bank or Grindlays Bank which has been received and placed before the Committee of MUL, it had given its approval to the proposal for investment with UCO Bank. As noted earlier in respect of the other transaction, there was no direct involvement of UCO Bank and it was A-5 creating a facade to give a picture to MUL as if the transaction was between it and UCO Bank.

Transaction No. 5

So far as transaction No.5 is concerned, there was no letter issued by UCO Bank, Hamam Street Branch, Bombay and proposal to MUL as was in the case of earlier transactions. The most significant aspect is that there was also no Bank Receipt (BR) issued by UCO Bank, Hamam Street Branch, Bombay favouring MUL in respect of this transaction. Notwithstanding these, the security was put through and MUL parted with money which went into the account of A-S in the same manner as in the case of transactions 2 to 4. Here again, A-l placed a Agenda Note (Exbt. 42(3)) which reads as follows:

"We have received a request from UCO Bank for placement of Rs. 10.00 crores in units. The placement will be for a period of 5 days with effect from 2.5.1991. The expected yield will be 21% per annum".

The Sub-Committee's approval was in the following terms:

"Resolved that Maruti may place funds with UCO Bank for investment of units aggregating to Rs.10 crores for a period of 5 days w.e.f. 2.5.1991 at an expected yield of 21% per annum".

Another important aspect is that the monies/funds were in fact credited eventually in the account of A-5 Harshad with UCO Bank, Hamam Street Branch, Bombay. The debit and credit vouchers of the bank amply prove this.

Role of Accused No. 1 in the transactions are as follows:

1. Carbon copy of bank voucher on the letterhead of MUL approved and singed by A-l (Exbt.44).

2. Reverse entry on 25.2.1991, carbon copy of bank voucher of MUL approved and signed by A-l (Exbt.45).

3. Transaction No.2- bank receipt dated 13.3.1001 of UCO bank, Hamam Street Branch. The expression "discharged" is in the handwriting of A-l. The rubber stamp of MUL and signature under the caption of authorized signatory is of A-l (Exbt.38).

4. Instruction letter of MUL dated 13.3.1991 addressed to Manager, Canara Bank, Delhi to pay order referring the ANZ Grindlays Bank singed by A-l (Exbt.29).

5. Transaction No.3 - Agenda note for the meeting prepared by A-l. (Exbt.24).

6. In the bank receipt of UCO bank, notings are made by A-l, (Exbt.39).

7. Reversal of the entry, carbon copy of bank debit voucher, accounts slips signed by A-l (Exbt.48).

8. Transaction No.5 - Minutes signed by A-l (Exbts.42 [1] to [3]).

9. Instruction letter dated 2.5.1991 of MUL addressed to the Manager, Canara Bank to issue pay orders in favour of Hong Kong and Shanghai Banking Corporation and in favour of Grindlays Banks signed by A-l (Exbt.35).

10. For the 5th transaction, there was no BR and it has not been explained by A-l as to how the transaction could take place without BR.

A-l concealed the receipt signed by PW-23 on the letterhead of A-5 cancelling the receipt of 35 lakhs of units from MUL. It is, therefore, hard to believe that A-l did not know that the ultimate beneficiary was A-5. A-1 delivered pay order for the second transaction to PW-16. It has to be noted that for the first time in this Court A-5 has taken the stand that the relevant transactions were in the nature of loan between A-5 and MUL. A-l used to place the proposal before the Board and obtained approvals for the investments in question. A decision was taken by MUL for investing its funds with PSU's as deposed by PW-1. That clearly indicated that investments could only be in PSU's bonds. As per PW-3, MUL did not engage the services of brokers for its transactions and A-l used to give instructions on the basis of which letters addressed to banks were prepared by MUL clearly suggesting that the transactions were intended to be between MUL and UCO bank. Therefore, what was intended was that the transactions in securities were directly to be with UCO bank. As per PW-4 it brought to the notice of A-l that the pay order was being given to the Grindlays Bank in a transaction with UCO bank. A-l's reply is very significant. The stand taken by A-l that there was instruction by UCO Bank to issue pay order in favour of Grindlays Bank is clearly untenable because if the UCO bank intended that in its transaction the pay orders were to be issued to Grindlays Bank, the same could not have been without any direction from UCO bank. The contention of A-l is also not acceptable because in respect of fourth and fifth transactions, pay orders continued to be issued to Grindlays Bank even though admittedly there was no instruction from UCO Bank. In the fifth transaction, he released funds of MUL even in the absence of an authority letter or a security in form of Bank Receipt from UCO Bank. Payments made at the stage of reversal by MUL were directly made to A-5. There was no authorization to purchase any securities from any brokers. There was no mention about the intention that monies will be given on loan to any broker. Each transaction as reflected was considered to be a placement of funds with PSUs and there was no scope of any placement of surplus funds with private person. It is unbelievable that A-1 did not know about the involvement of A-5 when the receipt in respect of 35 lakhs of units was kept in the records of MUL.

Next comes the case of A-3.

In almost all the transactions the role of A-3 is very significant. Investment of the first transaction (Exbt.58) indicates that the same was written on the letterhead of UCO bank and was signed by A-3 with reference to 35 lakhs of units. So far as reverse entries are concerned, letter dated 22.2.1991 addressed by the UCO bank, Rajabahadur Building, Bombay to MUL requested MUL to remit funds through ANZ Grindlays Bank. (Exbt.59[l]). Transaction No.2-BR dated 13.3.1991 is in the handwriting of A-3 and is signed by him. Carbon copy of credit voucher of UCO bank (Exbt. 150) is in the handwriting of A-3 and also bears his signature. It indicates that the amount was intended for A-5 being the amount of security, namely, units sold to MUL. Similarly, Exbt. 151(1) shows that A-3 signed on the debit voucher in the name of Harshad Mehta for Rs.6,000.

In Exbt. 152(1), the signature of A-3 on the debit voucher of UCO bank in the name of A-5 is there.

Exbt. 153(1) is the signature of A-3 on debit voucher of UCO bank in the name of Harshad Mehta. Transaction No.3 - letter dated 18.3.1991 of UCO bank is signed by A-3 (Exbt.61). BR dated 18.3.1991 is signed by A-3 (Exbt.39). Exbt. 157(1) is the signature of A-3 on the debit voucher of UCO Bank in the name of A-5. Exbt. 158(1), page 6893, is the signature of A-3 in the name of A-5. Similar is the case of Exbts. 159(1), 160(1), 161(1) and 162(1) where there are signature of A-3 on the debit vouchers of UCO Bank in the name of A-5. Transaction No.4 - BR 106 dated 24.4.1991 covering security of 51 lakhs of units signed by A-3. Credit voucher Exbt. 163(1) is in the name of A-5 singed by A-3. Similarly in the case of Exbts. 164(1), 165(1), 166(1), 167(1) and 168(1). It is an accepted case that documents purporting to be prepared in the normal course were prepared outside the office. Evidence of PW-6 is significant in this regard.

One significant factor as deposed by PW-7 is that none of UCO’s Bank Managers was authorized to deal with securities. If there was any genuine transaction for sale of security, the deal could have been concluded by the Head Office of the Bank. Accused No.3 wrote letters and made a representation that he has entered into transactions for the Bank. A-3 was not authorized to write a letter unless he is permitted to do so from the Head Office. A-3, therefore, did not have the authority to deal with the Bank or to any arrangement. PWs. 14 and 21 deposed that only the Head Office can instruct on behalf of the Bank. A-3’s signatures indicating various designations were fraudulent because it represented something which in reality was not there. A-3 has signed in various documents, describing his designation differently. In letter dated 23.1.1991 he has signed as Manager. He has attested signature of Khandelwal (PW 23) "for UCO Bank". Similar is the position in letters dated 22.2.1991 (Ext. 59), 13.3.1991 (Ext. 60), 18.3.1991 (Ext.61) where he has signed as "Manager" for UCO Bank. In Exbt. 38 dated 13.3.1991, he signed as "Accountant". He issued the three letters in question to MUL and four BRs describing himself as "Manager" on the letters and "Accountant" on the BRs; though in reality he was the Assistant Manager. These are clearly conducts of deceit and dishonest intention. On the basis of the letters and BRs. MUL parted with its funds which went to the account of A-5. The letters and BRs. were handed over to A-5.

The BRs. which are in the format (either cyclostyled or Xeroxed reproduced para 179 of the trial court’s judgment) show that there is a requirement for signatures at two authorized signatories i.e. Manager and Accountant. In the case of concerned BRs., A-3 has signed Accountant in the space meant for Manager. Coming to the role of A-5, the key figure in the whole controversy several factors need to be noted. Grindlays and UCO bank never received money in their own right. They only collected the cheque for A-5, although the cheque in each case was non-negotiable payee cheque in favour of Grindlays Bank without any instructions from Canara Bank or MUL. UCO bank did not sell or agree to sell, as A-3 had no authority either to sell or commit UCO Bank to any sale of security on behalf of the bank, even if it is accepted that the bank had purchased the security, it had become the

property of bank, and the securities dealt with as an agent is not to be reflected in the books of the Bank yet such recording is appropriate. In the instant case, the sale or repurchase has not been passed through the Bank's books. The stand that bank had received a commission is inconsistent with the stand that there was a sale and repurchase involved in the transaction. In such a transaction, the difference in price is the profit and not a commission. For the 5th transaction neither there was a letter from the UCO bank nor a BR, which amply demonstrate that no security was delivered. Though it is possible as an argument that in respect of transactions 2, 3 and 4 certain securities were placed with A-3 by A-5, that really is of no assistance to A-5. If any security is received, the Bank ought to have made some payment and if the Bank has not paid to retain the security, it would have been required to deliver the securities based on the BR and/or its letters. In other words, UCO Bank's fund were payable to MUL, without having any legal right to retain any security which A-3 may have kept in his possession.

Another question which needs to be considered is whether UCO Bank received any consideration for the sale of MUL. The Banker's cheque issued by Canara Bank on MUL's account was received by Grindlay's Bank and credited to the account of A-5, and remitted to the Bombay Branch of Grindlay's Bank. There was an instruction from Grindlays Bank to credit the amount in the account of A-5 in respect of banker's cheques of UCO bank. Thus, UCO Bank did not receive any money in the transaction.

For the first time before this Court A-5 took a stand that there was a transaction between him and the UCO bank. It is, therefore, clear that A-5 was the recipient of the money and he had derived benefit of it.

Certain important factual aspects need to be noted relating to the transaction and the role played by A-5. Pay Orders of Canara Bank were collected by Anuj Kalia (PW 16). These were deposited as though he was the payee. It is clear from the descriptions in the pay-in slips, letters written by his agent/employees to Grindlays Bank giving, clear instructions to remit the proceedings of Pay Orders to his account. Receipts given by A-5 in respect of the first transaction of 35 lakhs of units were in the records of MUL. It is clear from the resolutions and the minutes of discussion that MUL had not approved the role or involvement of A-5 and it was not known to the Board that the transactions were in reality with A-5, The subterfuge adopted was to conceal actual state of affairs and to present a totally distorted picture.

The stand of A-5 that MUL's counter party was UCO bank who was; acting for undisclosed principal is hard to believe.

The evidence of PW-23 is to the effect so far as the first transaction is concerned including question of brokerage, he did not inform MUL that the funds were received from the account of A-5. PW 23 did not indicate to MUL that A-5 was the ultimate principal or beneficiary or that the fund; were credited to the accounts of A-5 or funds were received from A-5.

It is most significant to note that there was no letter from the Board on the 5th transaction and even for the same transaction no BRs were received.

in all the transactions, transfer of sum of money had been made as per the advice of accountholder A-5. Exbt. 82, is a letter dated 2.5.1991 addressed to the Manager, Grindlays Bank, "New Delhi for remitting the sum of money to his account at M.G. Road, Bombay.

The Agenda Note prepared by accused No.l did not make any mention of accused No.5, Harshad but referred to UCO Bank. In fact, A-1 has accepted that the transactions were between MUL and UCO Bank and not with any individual. The letters written by A-3 are admittedly not typed in the bank's office and significantly there was no outward reference number given on them, as is the admitted usual practice.

For the 4th transaction there was only the BR, and no letter and for the 5th transaction there was neither letter nor BR. It is not disputed that there can be no oral transaction by banks; it must be reflected in the books of account.

Further, a bank cannot act as a broker under the Banking Act. It is not one of the permitted acts. There is also not a question paying of any commission on purchase/sale of transactions. The transactions are, therefore, not transparent. The counter party i.e. MUL does not appear to have noticed about the role of the brokers. The decisions in question did not refer to A-5, Harshad but to UCO Bank, but the beneficiary is A-5. The pay-in slips were filled up by PW-16 which indicate that the payment was made to A-5, Harshad and in fact there was no authorization from MUL in this regard. The cheques were account payee cheques. In Exhibit 38 dated 13.3.1991, A-3 has signed as "Accountant". The document uses the expression "cost". Though the receipt was from A-5, it was indicated as if it was from MUL.

'All the relevant vouchers show as if the sale of units was to Grindlays' Bank.

Transactions show that payment was made to Grindlays Bank and not to UCO Bank and there was no question of MUL issuing the cheque to Grindlays Bank. It would have been to UCO Bank. Grindlays Bank made the payment and UCO Bank had nothing to do with MUL. The draft was in the name of UCO Bank. In essence, UCO Bank has not received any money from MUL. There was no direction given by Grindlays Bank, Parliament Street. All the vouchers that have been produced show that same are put through Grindlays Bank. The vouchers of MUL clearly show as if the transaction was between MUL and UCO Bank.

Much stress has been laid by the appellants on the role of Khandelwal (PW 23). The evidence on record clearly shows that Khandelwal was not only known to MUL but represented accused No.5, Harshad and in particular to accused No.l, Pramod. Exbt. 58 is the letter of the UCO Bank, Hamam Street Branch, Bombay dated 23.1.1991 addressed to the MUL. Herein, MUL had been instructed to deliver 35 lakhs of units to Khandelwal whose specimen signature was attested by accused No.3 Deosthali. Delivery of the said securities was effected to Khandelwal (PW 23) by MUL and the receipt was passed by PW 23. Interestingly, the acknowledgment is on the printed stationery i.e. letter head of A-5 Harshad.

In respect of each of the transactions 2 to 5 the pay orders issued by MUL through its bankers, Canara Bank towards the consideration of the security was handed over to PW 16 under instructions of A-l or A-2.

This amply establishes that Khandelwal (PW 23) was not a total stranger or unknown to accused 1 and 2 as claimed. His association with accused 5, Harshad also is clearly borne out. It is unbelievable that to a stranger i.e. (PW 23) Khandelwal, valuable securities of crores of rupees and pay orders were delivered by MUL for which receipts were issued on the letterhead of A-5, Harshad. The evidence also shows that letters and the BRs issued by the UCO Bank, Hamam Street Branch, Bombay in the transactions addressed to MUL were firsts received in the office of A-5 and were then passed on to MUL.

In respect of the conspiracy in April/May, 1989 it is of interest to note that in the meeting i.e. 4th May, 1989 the Board of Directors of MUL resolved and decided to deploy the surplus funds into the money market. The evidence of PW 3 also throws some light on this aspect. The following portion of his evidence is of great significance:

"The accused No. 1 at that time stated that MUL could not deal or involve the brokers. Mr. Harshad S. Mehta stated that the deals would be between

MUL and banks structured and suggested by him i.e. Harshad S. Mehta. Mr. Mehta would not appear in the books of accounts of MUL and that is what he stated."

Though, attempt was made to emphasize accused No.l ’s role in informing A-5 that MUL could not deal or involve broker, the statement attributed to A-5 Harshad has also to be considered. An attempt was made to as if there was no broker involved. Accounts were to be presented in such a manner that the role of A-5 would remain hidden.

It is interesting, as noted above, that so far as the last transaction is concerned, there is no letter or the BR. Though accused No.5, was the mastermind in reality, it reflects the involvement of several persons to present legitimacy while in reality that was not so. Letters authored by A-3 made a clear representation to MUL as if it was transacting with UCO Bank.

It would be relevant to take note of the various offences alleged to have been committed under Sections 409, 420, 467, 468, and 471 of the Indian Penal Code, 1860. The relevant provisions read as follows:

Section 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 criminal breach of trust in respect of that property, 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 420: Cheating and dishonestly inducing delivery of property-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 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, movable 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 movable 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 468: Forgery for purpose of cheating-

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 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.

It would be appropriate to deal with the question of conspiracy. Section 120B of IPC is the provision which provides for punishment for criminal conspiracy. Definition of criminal conspiracy' given in Section 120A reads as follows:

"120A- When two or more persons agree to do. or cause to be done.-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, the; become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol.11 See 23, p. 559). For an offence punishable under section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

In Halsbury's Laws of England (vide 4th Ed. Vol.11, page 44, page 58), the English Law as to conspiracy has been stated thus;

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus rues in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to affect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. (See: Bhagwan Swarup Lal Bishan Lal etc. etc. v. State of Maharashtra, AIR (1965) SC 682 at p. 686.

It was held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

"as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it".

"In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it, and (5) it can only be used against a co-conspirator and not in his favour."

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.), [1980] 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits

there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available; offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

The provisions of Section 120A and 120B, IPC have brought the law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on Crime (12 Ed.Vol.1, p.202) may be usefully noted-

"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."

Glanville Williams in the "Criminal Law" (Second Ed. P. 382) states-

"The question arose in an lowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for 'concert of action', no agreement to 'co-operate'.

Coleridge, J. while summing up the case to Jury in Regina v. Murphy, [(1837) 173 ER 502 at p. 508] states:

"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means the design being unlawful."

As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard

to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120B See: S.C. Bahri v. State of Bihar, AIR (1994) SC 2420. The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. See: E.K. Chandrasenan v. State of Kerala, AIR (1995) SC 1066.

In Kehar Singh and Ors. v. The State (Delhi Administration), AIR (1988) SC 1883 at p. 1954, this Court observed:

"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Conspiracy can be proved by circumstances and other materials. See: State of Bihar v. Paramhans, (1986) Pat LJR 688. 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, so long as it is (known that the collaborator would put the goods or service to an unlawful use. See: State of Maharashtra v. Som Nath Thapa, JT 1996 4 SC 615.

It was noticed that Sections 120-A and 120-B IPC have brought the law of conspiracy in India in line with English law by making an overt act I inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code.

I may usefully refer to Ajay Agarwal v. Union of India and Ors, JT (1993) 3 SC 203. It was held:

XXX XXX
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"8.....It is not necessary that each conspirator must know all the

details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement; (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones' case that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of the judges while referring the question to the House of Lords in Mulcahy v. Reg and House of Lords in unanimous decision reiterated in Quinn v. Leathern:

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rest in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; punishable of for a criminal object, or for the use of criminal means.'

This Court in B.G. Barsay v. State of Bombay held:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law."

In Yash Pal Mittal v. State of Punjab, [1977] 4 SCC 540 the rule was laid as follows: (SCC p. 543 para 9)

'The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators.'

In Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra, [1981] 2 SCC 443, it was held that for an offence under Section 120B IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication."

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 Aggarval 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 nay 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 [2000] 8 SCC page 203 Slate of Kerala v. P. Sugathan and Anr.

As was observed by this Court in State of Kerala v. P. Sugathan and Anr., [2000] 8 SCC 203, it would be extremely difficult to find direct evidence in case of criminal conspiracy. The circumstances and surrounding factors have to be taken note of. In the instant case, the accused 1, 2 and 5 have submitted that the role of PW-5 as described is that he did not want to be directly shown in the picture. In fact, A-l wanted that MUL did not want to involve brokers and did not want to deal with them This itself deals of fatal blow to the stand taken by the accused that there was no prohibition of acting through brokers and the intention was that dealing would be directly with the bank and not through any broker or intermediary. Much has been made out of use of the word 'through' in the resolution. If the clear understanding of A-l was that the deal should not be dealt with or involved any broker then the question of A-5 acting as broker does not arise. Use of the expression "through" is indicative of the fact that emphasis was on securities being not purchased in the open market, but "through" named PSU. These PSU were admittedly not brokers. They were either Banks or financial institutions. Evidence clearly shows that A-5 wanted that he will not directly come to the picture, and would not appear in the books of accounts of MUL; but would stand to gain by way of commission and as a brokerage from the Bank. The statement of A-l that he would look into any good proposals if A-5 does not come to the picture shows that the actual state of affairs was intended to be hidden from the MUL authorities and a totally distorted picture was sought to be given. These are factors which does not go in favour of the accused as contended, and on the contrary clearly proves conspiracy.

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

Section 409 deals with criminal breach of trust by public servant or by banker, merchant or agent. Section 405 defines criminal breach of trust. The offence like the offence of criminal misappropriation is characterized by an actual fraudulent appropriation of property. There is not originally wrongful taking or moving as in the case of theft but the offence consists in wrongful appropriation of property, consequent upon a possession which is lawful. The offence is distinguishable from criminal misappropriation because subject of it is not the property which by some casual act or

otherwise, but without criminal means, comes into the offender's possession; but the property which is entrusted to the offender by the owner or by others lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust.

Sections 407 to 409 make special provisions for various cases in which property is entrusted to the enumerated categories of persons who commit the offence. The offence of breach of trust and dishonest misappropriation are sufficient to constitute an offence under the relevant provisions.

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

In Jaswantrai Manilal Akhaney v. The State of Bombay, AIR (1956) SC 575), it was held that if the Managing Director of the Bank entrusted with securities owned by the pledgor disposes of their securities against the stipulated terms of the contract entered into by the parties with an intent to cause wrongful loss to the pledgor and wrongful gain to the Bank there can be no question but that the Managing Director has necessarily mens rea required by Section 405.

The term 'entrustment' is not necessarily a term of law. It may have different implications in different context. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all.

When a person misappropriates to his own use the property that does not belong to him, the misappropriation is dishonest even though there was an intention to restore it at some future point of time.

As noted by this Court in Jaikrishnadas Manohardas Desai and Anr. v. State of Bombay, AIR (1960) SC 889), to establish the charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted if proved may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion.

Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients. Deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to some one a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself.

Section 467 relates to forgery of such documents as valuable securities and of other documents mentioned.

Section 468 deals with forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent.

Section 471 deals with using as genuine a forged document. For the purpose of convicting an accused under Section 467 read with Section 471 IPC, it has to be shown that an accused either knew or has reason to believe that the document was forged.

Section 463 defines forgery and Section 464 deals with making a false statement. Section 463 reads as follows:

"463. Forgery-[Whoever makes any false documents or false electronic record or 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."

In order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community.

The expression 'intent to defraud' implies conduct coupled with intention to deceive or thereby to cause injury. In other words, defraud involves two conceptions namely, the deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. The term 'forgery' as used in the statute is used in its ordinary and popular acceptation.

The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions are (i) is the document false (ii) is it made by the accused and (iii) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty. 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.

The intent to commit forgery involves an intent to cause injury. A person makes a false document who dishonestly or fraudulently signs with an intent or cause to believe that the document was signed by a person whom he knows it was not signed.

A false description makes a document of forgery when it is found that the accused by giving such false description intended to make out or wanted it to believe that it was not he that was executing the document but another person.

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

When the factual background highlighted is considered in the light of the various provisions, it is clear that the offences under the Indian Penal Code alleged have been established against the accused persons. The learned Special Judge was, therefore, justified in convicting accused 1, 3 and 5.

Section 13(2) of the PC Act is intended to deal with aberrations public servants. In view of the finding that A-l in furtherance of criminal conspiracy, in his capacity as 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(l)(c) read with Section 13(2) are clearly applicable. Similar is the position vis-a-vis A-3. The offences in these cases were not of the conventional or traditional type. The ultimate objective was to use public money in a carefully planned manner for personal use with no right to do it.

Funds of the public bodies were utilized as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL, a Government company, were diverted and all the concerned accused persons A-l, A-3 and A-5 played dubious roles in these illegitimate transactions. Their acts had serious repercussions on the economic system of the country, and the magnitude of financial impact involved in the present appeal is only tip of the iceberg. There were several connected cases and interestingly some of the prosecution witnesses in the present case are stated to be accused in those cases. That itself explains the thread of self-perseverance running through their testimony. Therefore, the need to pierce the facadial smoke screen to unravel the truth to lift the veil so that the apparent, which is not real can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage; done to the National Economy and National Interest, as was aptly stated in State of Gujarat v. Mohanlal Jitamalji Porwal and Anr., AIR (1987) 1321)

Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. These cases are nothing but private gain at the cost of public, and lead to economic disaster.

The convictions of accused 1, 3 and 5 are in order and are maintained. A question about the sentence was raised. Normally, in cases involving offences which corrode the economic stability are to be dealt with sternly. It is, however, noticed that A-5 has died during the pendency of the appeal. A-1 and A-3 were small flies who appear to have been caught in the web of A-5's machinations. Apparent reason for their involvement is greed and avarice. There may be substance in the plea raised by the learned counsel for the accused-appellants that higher ups of MUL and Banks can not certainly be unaware of the goings on, and have not been proceeded with and given clear chit. Though this is certainly a matter of concern, yet that cannot be a ground for taking a sympathetic view of A-l and A-3's conduct. Considering the fact that the occurrence took place a decade back, and the trial has spread over a few years, and the death of A-5, we feel custodial

sentence for the period already undergone (which we are told was for a number of months) would meet the ends of the justice. While fixing the quantum of sentence, we have duly considered the fact that in the instant case the amounts have been paid back, which as noted above, learned counsel for the prosecution conceded was a factor for fixing the quantum of sentence. The fine amounts imposed remain unaltered with the default sentence. Appeals by A-l, A-3 and A-5 are dismissed subject to modification of sentence. We respectfully agree with conclusions of learned Brother Shah though not with the reasoning in their entirety regarding dismissal of the appeals against acquittal of A-2, and setting aside the conviction of A-4.