SUPREME COURT OF INDIA

R. Venkatakrishnan

Vs.

Central Bureau of Investigation

Crl.A.No.76 of 2004

(S.B. Sinha and Cyriac Joseph JJ.)

07.08.2009

JUDGMENT

S.B. SINHA, J.

INTRODUCTION

These six appeals are directed against a judgment and order dated 4th December, 2003 passed by the Special Court in Case No.2 of 1993 whereby and whereunder the appellants herein were convicted and sentenced in the following terms :-

(a) Accused No. 1, K. Margabanthu is sentenced for the offence punishable under Section 120-B read with Section 409 of the Indian Penal Code read with Section 13(1)[d](iii) read with Section 13(2) of the Prevention of Corruption Act to undergo R.I. for a period of six months and to pay fine of Rs.1,00,000/- in default S.I. for two months. (b) Accused No. 2, R. Venkatkirshnan is sentenced for the offence punishable under Section 120-B read with Section 409 of the Indian Penal Code read with Section 13(1)[d](iii) read with Section 13(2) of the Prevention of Corruption Act, to undergo R.I. for a period of six months and to pay a fine of Rs.1,00,000/- in default S.I. for two months. (c) Accused No. 3, S.V. Ramnathan is sentenced for the offence punishable under Section 120-B read with Section 409 of the Indian Penal Code read with Section 13(1)[d](iii) read with Section 13(2) of the Prevention of Corruption Act to undergo R.I. for a period of one month and to pay fine of Rs.10,000/- in default S.I. for 15 days.

(d) Accused No. 5, Atul M.Parekh is sentenced for the offence punishable under Section 120B of

the Indian Penal Code to undergo R.I. for a period of 15 days and to pay fine of Rs.10,000/-, in default S.I. for 15 days.

(e) Accused No. 6, C. Ravikumar is sentenced for the offence punishable under Section 120-B read with section 409 of the Indian Penal Code read with Section 13(1)[d](iii) read with Section 13(2) of the Prevention of Corruption Act to undergo R.I. for a period of three years and to pay fine of Rs.1,00,000/- in default S.I. for three months. (f) Accused No. 7, S. Suresh Babu is sentenced for the offence punishable under Section 120-B read with section 409 of the Indian Penal Code read with Section 13(1)[d](iii) read with Section 13(2) of the Prevention of Corruption Act to undergo R.I. for a period of one year and to pay fine of Rs.50,000/- in default S.I. for three months.

BACKGROUND FACTS

While accused No.1, K. Margabandhu, at the relevant time, was the Chairman and Managing Director of United Commercial Bank (UCO Bank), (a public sector bank), accused No.2, Ramaiya Venkatkrishnan was the General Manager and accused No.3, S.V. Ramnathan was the Divisional Manager thereof of the Bombay Branch.

accused No.4, Harshad Shantilal Mehta (Harshad Mehta) is said to be the kingpin of the whole operation. He is no more. accused No.5, Atul Manubhai Parekh was working as Asst. Vice President in M/s. Growmore Research and Assets Management Ltd. Bombay and representing Harshad Mehta in the matter of undertaking security transactions.

accused No.6 Coodli Ravi Kumar was Assistant General Manager of National Housing Bank (NHB), Bombay and was in charge of its Funds Department. accused No.7, Seethapathy Suresh Babu was the Assistant Manager of National Housing Bank. He used to report to Accused No.6, Shri Coodli Ravi Kumar in regard to his function and worked under his instructions.

The basic allegation against the appellants and Late Harshad Mehta was that some transactions were carried out in connivance with the officials of the Financial Institutions, Banks illegally as a result whereof Late Harshad Mehta was allowed to obtain a sum of Rs.40 crores which was actually `Call Money' given as a loan by the National Housing Bank to the UCO Bank.

Similar illegal transactions relating to government securities and other non governmental securities came to the notice of the Central Government. A Committee commonly known as `Janakiraman Committee' was thereafter constituted, Shri R. Janakiraman, the then Deputy Governor of Reserve Bank of India was appointed as its Chairman. The Committee submitted its report between May, 1992 and April, 1993. On the basis of the report of the said Committee, Special Courts were constituted in terms of The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1993. Allegations against the appellants and late Harshad Mehta were as under:-

On 6th April, 1992 National Housing Bank lent a sum of Rs.40 crores `at call' to UCO Bank. However the said amount was credited to Harshad Mehta's account in UCO Bank, Hamam Street Branch, Mumbai. This was allegedly done under the instructions of the Head Office in Calcutta and its Zonal Office at Bombay. The Fund Dealing Officer at D.N. Road, Bombay, Branch had alleged that a letter was received from National Housing Bank enclosing the cheque but it was not traceable either in UCO Bank or in National Housing Bank. On the date of credit, the account of Harshad Mehta in UCO Bank, Hamam Street Branch showed an overdraft of Rs.39.07 crores. Harshad

Mehta allegedly repaid the said amount with interest amounting to Rs.27 lakhs through Grindlays Banks which had debited Harshad Mehta's account.

It is stated that National Housing Bank could not have advanced loans directly to the brokers. The recording of the transactions as call money transactions through other banks was a subterfuge meant only to ensure grant of loans to Harshad Mehta. It was also alleged that all the funds management operations at the National Housing Bank (the lending bank) were centralized with C. Ravikumar, Assistant General Manager (accused No.6). He was not only the dealer but was also one of the signatories to the cheques. The back up functions were conducted by S. Suresh Prabhu, Assistant Manager, who used to report to C. Ravikumar and acted under his instructions. These two officers, between themselves, were responsible for all functions including (i) making the deal; (ii) recording the same ; (iii) preparing the vouchers; (iv) preparing the cheques; (v) signing the cheques (as one of the two signatories); preparing and signing BRs; (vii) custody of BRs received from counter-parties; (viii) issuing and receiving SGL transfer forms and lodging the same with the RBI; and (ix) maintaining the account with the RBI and reconciling the same.

The incident having come to light, an investigation was conducted whereafter Charge Sheets were filed against the accused persons. Charges were framed by the Special Court on or about 31st October, 2001 which were as many as fourteen in number. We need not advert thereto.
PROCEEDINGS BEFORE THE TRIAL COURT

With a view to prove the charges against the accused persons the prosecutions examined twenty witnesses, viz :-

1. Shri Bishwajit Choudhuri,

Chairman and Managing Director,

United Commercial Bank of India.

Sanctioning Authority

2. Shri P. Arvindak Shah

General Manager, Reserve Bank of India,

Production Witness

3. Ravi Vira Gupta

Chairman, National Housing Bank,

Sanctioning Authority

4. Shri B.L. Sachdeva,

Under Secretary in the Ministry of Finance in Banking Division

5. Shri Hiten D. Mehta,

Employee of late Shri Harshad S. Mehta

6. Shri N.A. Shivraman,

Assistant, Funds Department,

National Housing Bank

7. Shri Sunil Pandurang Gondhale,

Peon, National Housing Bank

8. Jeroo Dalal,

Management Trainee, ANZ Grindlays Bank

9. Shri Satish D. Hosangadi,

Chief General Manager, National Housing Bank.

10. Mrs. Jyoti R. Patankar,

Officer, Reserve Bank of India Production Witness

11. Sujata Milind Nimbalkar, ANZ Grindlays Bank Production Witness

12. Shri Sunil Kakkar,

Assistant Chief Officer, UCO Bank, Head Office, Kolkata.

13. Shri Chinmoykumar Mukherjee,

Assistant Chief Officer, UCO Bank,

Kolkata

14. Shri K. Vijayan,

Manager, Accounts Department, D.N. Road

Branch, UCO Bank

15. Shri Manohar C. Rupani

Assistant Manager, D.N. Road Branch, UCO Bank

16. Neelam P. Kini

Clerk, Hamam Street Branch, UCO Bank.

17. Shri K. Mallikarjunan,

Officer, UCO Bank, Head Office, Kolkata

18. Shri Pradeep A. Karkhanis,

Senior Manager, UCO Bank, Hamam Street

Branch

19. Shri Sitaram Premaram Paladia,

Supdt. Of Police, C.B.I.

20. Shri P.K. Mankar,

Dy. S.P. C.B.I.

For proving charges against accused No.1, evidence of P.W. No. 4 Shri B.L. Sachdeva, PW-12, Shri Sunil Kakkar; PW-13, Shri Chinkmoykumar Mukehrjee and PW-17, Shri K. Mallkarjunan are relevant. Accused No.1 also examined defence witnesses inter alia contending that on 6th April, 1992 he was not present at the Head Office till 3.30 p.m. It was furthermore contended that the transactions in question were held by and between NHB and accused No.4 and the officers of UCO Bank had nothing to do therewith. The depositions of the said witnesses are also relevant for proving the charges so far as accused No.2 is concerned. His defence was that the offence of conspiracy has not been proved. It is his case that the purported decision to arrange for call money had not been taken by him alone as per the statement of PW-3, P. Arvindk Shah and PW-17, K. Mallikaarjunan, but by the Chairman-cum-Managing Director of UCO Bank.

With a view to prove the charges against accused No.3 the learned Special Court relied upon the evidence of PW-1, Shri Bishwajit Choudhuri, PW-13, Shri Chinmoykumar Mukherjee, PW-16, Neelam P. Kini and PW- 18, Pradeep A. Karkhanis. His defence was that on the basis of the documentary as well as oral evidence, the prosecution had not been able to prove his involvement either for commission of the offence in conspiracy or in commission of any other offence. The only evidence against him being that on 6th April, 1992 he had gone to Hamam Street Branch of the UCO Bank and at that time accused No.5 was also present and the fact that he had sent a letter for reviving the transaction with broker Late Harshad Mehta from the Hamam Street Branch by itself does not prove the offence. So far as accused No.5 is concerned, the prosecution had relied upon the evidence of PW-5, Shri Hiten D. Metha, who was an employee of Late Harshad Mehta. He in his deposition stated that he used to make telephone calls the documents were prepared for repayment of Rs.40 crores on instructions from accused No.5, Atul M. Parekh. The defence of the said accused was that he was merely an employee and had been looking after the execution of the transactions after the deal had been finalized under the instructions of Harshad Metha. He being an employee

could not be a party to the conspiracy nor the prosecution had been able to show that he had any role to play in the transaction.

Admittedly accused No.6, C. Ravikumar, was a dealer with NHB. The prosecution relied upon the deposition of PW-3, Ravi Vira Gupta to prove the order of sanction, validity whereof is in question. The prosecution for proving charge against him relied upon the deposition of PW-5, Hiten D. Mehta, who was working with Late Harshad Mehta. Reliance by the prosecution has also been placed on the evidence of PW-6, Shri N.A. Shivraman, who was working as Assistant, Funds Department, NHB from 27th January, 1991 to 31st December, 1991. Reliance has also been placed in this behalf on the deposition of PW-9, Shri Satish D. Hosangadi, who at the relevant time was the Chief General Manager of NHB. For proving the charges against accused No.7, the prosecution has relied upon the depositions of PW-6, Shri N.A. Shivraman and PW-9, Shri Satish D. Hosangadi.

Accused Nos. 1 to 3 and 6 7 were public servants. Orders of sanction for their prosecution were passed by the competent authorities. Accused Nos. 6 and 7 challenged the validity of the said orders of sanction before the courts below.

All the accused persons had been charged for commission of offences punishable under Section 120-B read with Section 409 and Section 34 of the Indian Penal Code and Section 13(1)(d)(iii) r/w Sections 13(2) of the Prevention of Corruption Act, 1988.

JUDGMENT OF THE SPECIAL COURT

The learned Special Court in its impugned judgment referred to the decision of Ram Narayan Popli v. Central Bureau of Investigation, [(2003) 3 SCC 641] in extenso so as to note the ingredients for commission of the offence of conspiracy to conclude :- It is thus well established that the transaction of call money which was shown to be between the National Housing Bank and the UCO Bank was not a real transaction of call money between the National Housing Bank and the UCO Bank. It was really a transaction between the National Housing Bank and Harshad Mehta and the officers of the UCO Bank permitted the name of the UCO Bank to be used to facilitate the transactions between the National Housing Bank and UCO Bank. Therefore, about the nature of the transaction, there is no dispute.

Referring to the statement of accused No.1 it was furthermore held :- From the submissions of accused No. 1 it is clear that even according to him in this transaction, the UCO Bank allowed itself to be used by Harshad Mehta pursuant to the routing facility that was extended by it to Harshad Mehta. Accused No. 1 also relies on the deposition of P.W. 5 Hiten Mehta in relation to this facility. Yet again upon referring to the deposition of PW-5, Hiten D. Mehta and PW-18, Pradeep A. Karkhanis, the learned court held :-

Now, so far as the aspect of conspiracy is concerned, P.W. 18 Karkhanis has stated that on 6.4.1992 at 12 - '12.30 Ramnathan accused No. 3 and Atul Parekh accused No. 5 had come to the Hamam Street Branch and before he received call from Vijayan, Atul Parekh told him that he is expecting a cheque of Rs.40 crores from the NHB. This clearly indicates that it was already settled between the officers of the NHB and the UCO Bank that on that day the NHB was to route Rs.40 crores to Harshad Mehta through the UCO Bank and that Ramnathan and Atul Parekh knew about it. It has come on record that the transactions with the brokers were stopped in the year 1991 from the Hamam Street Branch. The accused No. 3 Ramnathan wrote a letter dated 17.3.1992 on instruction

from accused No. 1 K. Margabanthu for starting of the transactions again. P.W. 18 Karkhanis has stated that on 6.4.1992 accused No. 3 Ramnathan came to the Hamam Street Branch and insisted on starting the transactions immediately. He also states that accused No. 3 said that he is saying so on instructions from accused No. 1. This shows that accused No. 3 knew that on that day N.H.B. was to route Rs. 40 crores to Harshad Mehta through the UCO Bank and he had gone to the UCO Bank Hamam Street Branch to see that the transaction goes through and that he did so on instruction from the accused No. 1, K. Margabanthu. The Supreme Court has clearly laid it down in the case of Somnath Thapa referred to above that for establishing conspiracy knowledge about indulgence in illegal act is necessary. So far as accused No. 1 is concerned, from the statements that he made in the meeting on 6.4.1992 it is clear that he knew about the transaction. (The dispute about the time of the meeting raised by accused No. 1 is really not relevant considering the means of communication available and the written submissions filed by him, where he says that this was a routine routing transaction). So far as accused No.2 is concerned, it is he who authorized the call money transaction though the amount of Rs.40 crores was not needed by the UCO bank on that day. Therefore, his knowledge about the nature of the transaction is well established. So far as accused No. 3 Ramnathan is concerned, his presence at the Hamam Street Branch on 6.4.1992 at 12 - 12.30 with Atul Parekh and his insistence that the transaction with the broker should be started immediately show that he was also aware of the transaction. It is pertinent to note that cross-examination of P.W. 18 by accused No. 3 shows that even an attempt is not made to dispute the above referred statement of P.W. 18. So far as accused No.5 Atul Parekh is concerned, above referred statement of P.W. 18 clearly establishes his knowledge of the transaction. The statement of P.W. 8 Jeroo Dalal also shows that at his instruction pay order for repayment to the NHB was prepared.

Referring to the other cases vis-`-vis accused Nos. 6 and 7, it was opined :-

Thus, the evidence on record clearly shows that all the accused persons had knowledge of the transaction and that all of them have some part in the transaction. The learned Special Court thereafter considered the question as to whether the `transfer' was illegal within the meaning of Section 43 of the Indian Penal Code in the light of the provisions of Section 14 of the NHB Act, holding :-

It is thus clear that the National Housing Bank in terms of Section 14 of the Act can only make loans and advances to housing finance institutions and scheduled banks or slum clearance authority constituted under the Central or State Legislation. Sub-section (4) of Section 49 of the National Housing Bank Act lays down that if any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act, or of any order, regulation or direction made or given or condition imposed thereunder, any person found guilty of such contravention or default shall be punishable with fine.

So far as the purported offence in regard to criminal breach of trust is concerned, the learned Judge held that the same stood proved against the officers of the Bank. However, so far as accused No.5 is concerned, the same was held to have not been proved, although it was held that he was guilty of commission of offence of conspiracy. So far as the offences under the Prevention of Corruption Act, 1988 is concerned, a finding has also been arrived at that the charges under the said provisions have been proved.

The learned Special Court also negated the contention of accused Nos.6 and 7 that the order of sanction passed against them are not valid. SUBMISSIONS

The principal contentions raised on behalf of the appellants are :-

1) That the prosecution case even if taken to be correct in its entirety does not disclose any offence of conspiracy.

2) So far as accused No. 1 and 2 are concerned they were stationed at Kolkata. Only because they had held a meeting in the Chamber of accused No.1 in presence of PWs 12 and 13, the same by itself does not prove that they were party to a larger conspiracy, namely use of call money for causing unlawful gain to Late Harshad Mehta.

3) The charges of conspiracy vis-`-vis criminal breach of trust cannot be said to have been proved as even in terms of Section 14 of the National Housing Bank Act, such a transaction was legally permissible.

4) Only because the accused No.3 was present at the Bank and wrote a letter for reviving the account of Late Harshad Mehta, the same by itself does not prove that he was a party to the conspiracy. 5) If the prosecution case that there had been a larger conspiracy because of unlawful favour shown to Harshad Mehta is correct, the other officers of the UCO Bank, concerned officers of Reserve Bank of India and ANZ Grindlays Bank should have also been prosecuted.

6) The orders of sanction for prosecuting accused Nos. 6 and 7 were illegal.

7) The evidences of PWs. 5, 7, 12, 13 and 17 should not have been relied upon by the learned Special Court as they were accomplices to the crime.

8) Accused No.1 having come to his office at about 3.00 - 3.30 p.m. from Chennai and the entire transaction having been completed by 2 O' clock, he cannot be said to be a party to a decision either to obtain call money from NHB or the cancellation thereof.

9) The documents proved on behalf of the prosecution do not disclose that the accused and in particular accused Nos. 1 and 2 had any intention to commit the alleged offence.

10) Accused No.2 having signed only two documents and accused No.1 having put his initials only on one document, they could not be held to be a party to the alleged conspiracy.

11) Witnesses, PW No. 5 - Hiten D. Mehta; PW No.12 Sunil Kakkar; PW No. 13 - Chinmoykumar Mukherjee; PW No. 17 - K. Mallikaarjunan and PW No. 18 - Pradeep A. Karkhanis, having regard to Section 163 of the Evidence Act, 1872 read with illustrations appended to clause VIII of Section 114 of the Evidence Act, 1872, could not have been relied upon by the learned Special Court without any corroboration of their statements. In any view of the matter, evidence of one accomplice cannot be taken into consideration for the purpose of corroboration of the evidence of another alleged accomplice.

12) In a case of this nature, where the conspiracy was alleged in regard to a legal act by illegal means, active participation by each one of them must have been held to be imperative in character and in its absence, they could not be held guilty of commission of any offence.

13) Accused No.3, who was only Scale IV officer and posted at Hamam Street Branch of UCO Bank, visited D.N. Road Branch and he had issued a circular for reviving account of three brokers including Late Harshad Mehta, the same by itself does not lead to a conclusion that he had committed the offence.

14) On behalf of accused No.5, it was submitted that being an employee of Late Harshad Mehta and having acted on his instructions, he cannot be held to have committed an offence of conspiracy only because he had visited the banks and /or was in touch with some of their officers for the purpose of ascertaining the position of accounts of Mehta.

15) Accused No.6 merely being signatory to the cheque of Rs. 40 crores issued in favour of UCO Bank which has been cleared by the Reserve Bank of India cannot be presumed to have any knowledge of diversion of the said amount by the officers of UCO Bank in the account of Late Harshad Mehta and the purported refund of the said amount with interest by him through ANZ Grindlays Bank, and as such he cannot be said to have committed the offence of conspiracy. .

16) Accused No.7 merely being an Assistant Manager and having discharged his functions acting under the directions of accused No.6 and other higher officers cannot be said to have committed any offence as alleged or at all.

17) Departmental proceedings having not been initiated by the employers and neither the UCO Bank nor the NHB having suffered any loss, the judgment of conviction for criminal breach of trust is wholly unsustainable.

18) The learned Special Court having not assigned any reason and having not discussed the materials brought on record in details, must be held to have acted illegally and without jurisdiction in passing the impugned judgment.

19) The transfer of money being not `securities' within the meaning of the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1993, the Special Court had no jurisdiction to try the offences thereunder. 20) Accused No.5 having been acquitted from the charges of criminal breach of trust, could not have been held to be guilty of being a party to the conspiracy as alleged by the prosecution on the basis of the materials brought on record.

Mr. Mohan Prasaran, learned Additional Solicitor General appearing on behalf of the Central Bureau of Investigation, on the other hand, urged:- 1) The prosecution case that NHB had diverted its funds in violation of the provisions of the National Housing Bank Act, 1987 must be held to have been proved as the accused persons including Late Harshad Mehta and his associates utilized the officers of UCO Bank as a conduit, having regard to the fact that it stands admitted that a ready forward deal was entered into by and between UCO Bank and NHB Bank, in terms whereof a sum of Rs.40 crores was credited to the account of Late Harshad Mehta.

2) An offence of conspiracy need not be proved by adducing direct evidence of meeting of mind but the same can be established by cumulative consideration of various facts and several events which had taken place in quick succession to facilitate the routing of the amount.

3) From the evidence of PW-17, K. Mallikarjunan it has clearly been established that both accused Nos. 1 and 2 had closely monitored the purchases and sales of securities in tandem with Late

Harshad Mehta and they in conspiracy with each other had caused huge losses to the Bank.

4) Accused No.3 although a Divisional Manager of UCO Bank, issued a letter to the Zonal Manager, UCO Bank, Bombay, on 17th March, 1992, purported to be containing guidelines issued on BR transactions whereby recommendations were made to deal with only three brokers, including late Harshad Mehta, in terms of the purported instructions of the Chairman-cum-Managing Director and as a copy of the said letter was, inter alia. forwarded to accused No.2, showed that he had also been a party to the said conspiracy which has also been proved by reason of the fact that he had visited the D.N. Road Branch of UCO Bank along with accused No.5 on the date of the said transaction. 5) Accused Nos. 6 and 7 had not only been a party to the entire transaction but also manipulated other documents, and in particular, the vouchers, which clearly show that they not only had the requisite knowledge that the amount of Rs.40 crores had to be diverted to the account of Late Harshad Mehta but also the fact that the said amount would be returned with interest by him through ANZ Grindlays Bank.

6) The purported contradiction in regard to absence of accused No. 1 from the office of UCO Bank on 6th April, 1992, and also the timing of meeting the same does not affect the prosecution case, namely the commission of offence of conspiracy by all of them, as it has been established that the cheque issued by the NHB was never intended to be utilised as call money.

7) Accused No.2, in fact, in his written statement in unequivocal terms admitted before the Special Court that the transaction involved was a routing transaction, absolutely transparent and clear transaction in ordinary course of nature, stated that had the scam not been attributed to Harshad Mehta, nobody would have raised eye brows thereabout and, thus, admitted that the routing of a sum of Rs.40 crores belonging to NHB through UCO Bank to the account of Harshad Mehta was carried out for unknown consideration.

8) The entire transaction being illegal would come within the purview of Section 120-A and Section 120-B of Indian Penal Code and, thus, no exception can be taken to the judgment of the learned Special Court.

OVER VIEW NATIONAL HOUSING BANK

NHB is a Bank constituted under the National Housing Bank Act, 1987 (in short NHB Act). The Act was enacted to establish a bank to be known as the National Housing Bank (NHB) to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto. It is a financial institution. It is also a Bank within the meaning of the provisions of the Banking (Regulation) Act, 1949.

The nature of business of the NHB is contained in Chapter IV of the Act.

`Housing finance institution' has been defined in Section 2(d), (as it then stood) to mean ◆

2. (d) housing finance institution includes every institution, whether incorporated or not, which primarily transacts or has as its principal object, the transacting of the business of providing finance for housing, whether directly or indirectly;

NHB was established with a view to give effect to the object and purpose of the said Act. It is a subsidiary of Reserve Bank of India. Provisions of Section 14 of NHB Act, as they are relevant for our purpose may be noticed:-

Section 14 - Business of the National Housing Bank Subject to the provisions of this Act, the National Housing Bank may transact all or any of the following kinds of business, namely:--

(a) promoting, establishing, supporting or aiding in the promotion, establishment and support of housing finance institutions;

(b) making of loans and advances or rendering any other form of financial assistance whatsoever to housing finance institutions and scheduled banks,

(c) subscribing to or purchasing stocks, shares, bonds, debentures and securities of every other description; The Hierarchy of NHB is as under:

1. Chairman-cum-Managing Director

2. Executive Director

3. Chief General Manager/s

4. General Manager/s

5. Deputy General Manager/s

6. Assistant General Manager/s

7. Regional General Manager/s

8. Manager/s

9. Deputy Manager/s

10. Assistant Manager

UCO BANK

UCO Bank is a nationalized bank having been taken over in terms of the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Its head office is at Calcutta. Amongst others it has two branches in Bombay - one at D.N. Road and other at Hamam Street, Functions of the scheduled banks are governed by the provisions of the Banking Companies Act, 1936. UCO Bank is one of the fourteen banks which was nationalized. The administrative hierarchy of UCO Bank is as under:

1. Chairman Managing Director

2. Executive Director

3. General Manager (Scale VII)

4. Dy. General Manager (Scale VI)

5. Asstt. General Manager (Scale V)

6. Officer in (Scale IV)

7. Officer in (Scale III)

8. Officer in (Scale II)

9. Officer in (Scale I)

CALL MONEY - THE LEGAL HISTORY

The statute relating to business in Banking was the Bankers Book Evidence Act, 1891. In 1936 Banking Companies Act, 1936 was enacted which was also known as Indian Companies (Amendment) Act, 1936 wherein Part XA was inserted providing for far reaching effects on the banking legislations. Subsequently, the Banking Regulation Act, 1949 (1949 Act) was enacted to consolidate and amend the law relating to banking. It repealed and replaced Part XA of the Banking Companies Act, 1936.

In the meanwhile, however, Reserve Bank of India Act, 1934 came into force. Section 42 of the 1934 Act provided for cash reserves to be kept with the Bank, relevant provisions whereof read as under:- Section 42 - Cash reserves of scheduled banks to be kept with the Bank

(1) Every bank included in the Second Schedule shall maintain with the Bank an average daily balance the amount of which shall not be less than such per cent. of the total of the demand and time liabilities in India of such bank as shown in the return referred to in sub- section (2), as the Bank may from time to time, having regard to the needs of securing the monetary stability in the country, notify in the Gazette of India Explanation.-For the purposes of this section,- (a) average daily balance shall mean the average of the balances held at the close of business of each day of a fortnight;

... (1A) Notwithstanding anything contained in sub- section (1), the Bank may, by notification in the Gazette of India, direct that every scheduled bank shall, with effect from such date as may be specified in the notification, maintain with the Bank, in addition to the balance prescribed by or under sub-section (1), an additional average daily balance the amount of which shall not be less than the rate specified in the notification, such additional balance being calculated with reference to the excess of the total of the demand and time liabilities of the bank as shown in the return referred to in sub-section (2) over the total of its demand and time liabilities at the close of business on the date specified in the notification as shown by such return so however, that the additional balance shall, in no case, be more than such excess:

Provided that the Bank may, by a separate notification in the Gazette of India, specify different dates in respect of a Bank subsequently included in the Second Schedule.

...(3) If the average daily balance held at the Bank by a scheduled bank during any fortnight is below the minimum prescribed by or under sub-section (1) or sub- section (1A), such scheduled bank shall be liable to pay to the Bank in respect of that fortnight penal interest at a rate of three per cent, above the bank rate on the amount by which such balance with the Bank falls short of the prescribed minimum, and if during the next succeeding fortnight, such average daily balance is still below the prescribed minimum, the rates of penal interest shall be increased to a rate of five per cent, above the bank rate in respect of that fortnight and each subsequent fortnight during which the default continues on the amount by which such balance at the Bank falls short of the prescribed minimum.

Section 42 also provides for penalties. It is, thus, mandatory in character.

Maintenance of `cash reserve ratio' is, therefore, a statutory requirement. The consequence of non compliance thereof has been provided for in sub-section 3 and 3A of Section 42 which was brought into the statute book by Act 38 of 1956 which came into force from 6th October, 1956. In terms of the said provision each bank is to maintain, what is known as, `cash reserve ratio' (CRR) every day. It is accepted at the bar that where a bank having an excess amount would like to invest the same so as to enable it to earn interest, those who fall short of `cash reserve ratio' would be under a statutory obligation to borrow the same so as to maintain the `cash reserve ratio' on such interest, as may be mutually agreed upon. The Banks which are governed under the aforementioned Act being in the business of banking, besides other purposes, may grant loans not only to individuals or private persons or body corporates but also to another bank. Control of Banking Companies is vested in the Reserve Bank of India as would appear from Section 35 of the 1949 Act. Section 35A empowers the Reserve Bank of India to issue direction, which the banks are bound to carry out; on their failure to do so the penal clause contained in Section 46 would be attracted, sub-section (4) whereof reads as under :- Section 46 – Penalties (4) If any other provision of this Act is contravened or if any default is made in- (i) complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, or (ii) carrying out the terms of, or the obligations under, a scheme sanctioned under sub-section (7) of section 45, by any person, such person shall be punishable with fine which may extend to fifty thousand rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one,with a further fine which may extend to two thousand and five hundred rupees for every day, during which the contravention or default continues. In view of the aforementioned provision the `cash reserve ratio' as specified in the statutes, is mandatorily required to kept with Reserve Bank of India. Such average daily balance is not to be less than 3% of the total demand and time liabilities of such Bank in India. Liabilities of a Bank may be in the form of demand or time deposits or borrowings or other miscellaneous items of liabilities. Liabilities of the Banks may be towards banking system (as defined under Section 42 of RBI Act, 1934) or towards others in the form of Demand and Time deposits or borrowings or other miscellaneous items of liabilities. Reserve Bank of India has been authorized in terms of Section 42 (1C) of the RBI Act, 1934 to classify any particular liability as either a demand or a time liability. 'Demand Liabilities' include all liabilities which are payable on demand. `Time Liabilities' are those which are payable otherwise than on demand and they include fixed deposits, cash certificates etc. Call money transactions are thus indisputably banking transactions. It is no doubt true that in the event any irregularity is committed, the Reserve Bank of India would be entitled to take action against the erring Bank. JURISDICTION OF THE SPECIAL COURTS.

During the period April, 1992 and June, 1992 certain large scale irregularities and malpractices were

detected in transactions of both governmental and other securities, carried out by some brokers in collusion with the employees of various Banks and Financial Institutions. To have a more close look into the matter the RBI appointed a committee under the chairmanship of the then Deputy Governor of RBI, Shri R. Jankiraman (the Jankiraman Committee). The committee submitted its report between May, 1992 and April 1993. On the basis of the said report and to deal with the situation as also to ensure the speedy recovery of the huge amount involved the Parliament enacted the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 (the Special Courts Act), establishing the Special Court, from whose judgment this appeal arises. The learned counsel for the appellants contend before us that the special court so constituted did not have the jurisdiction to try this matter. They argue that Section 7 read with Sub Section 2 of Section 3, of the Special Court Act, limiting the jurisdiction of the Special Court only to `offences relating to transaction in securities' would not attract the transactions which have been attributed to the appellants in the present case. It is argued that the definition of the term `Securities', as provided for in Section 2 (c) of the Act does not bring within its ambit `call money transactions' for which they are being tried. It must be noted that the order passed by the learned Special judge is silent on the issue of jurisdiction even though the issue is said to have been raised at the trial. The Special Courts under the Act were established `for the trial of offences relating to transaction in securities and for matters connected therewith or incidental thereto.'

Section 3 of the Act deals with the appointment of, and the functions of custodians under the Act. Section 3 (2) empowers the Custodians to notify the name of any person who are involved `in any offence relating to transaction in securities'. The relevant part thereof reads as under: 3. Appointment and functions of custodians.- ...(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transaction in securities after the 1st day of April, 1991 and on and before the 6th June, 1992 notify the name of such person in the official gazette. [Emphasis supplied]

Section 3, it must be noted, deals only with offences relating to transaction in securities within the period of time specified in the Act. The time period of carrying out the call money transactions is not in dispute before us, for those transactions admittedly took place within the time period referred to in the section. What is disputed however is whether the said transactions do not relate to transactions in securities, as is required by the section. The definition of the term `securities' as provided for in section 2 (c) of the Act, reads as under:

...(c) securities includes - (i) shares, scrips, stocks, bonds, debentures, debenture stock, units of the Unit Trust of India or any other mutual fund or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) Government securities; and

(iii) rights or interests in securities;[Emphasis added] Section 4 of the Act gives the Custodians the requisite power to cancel certain contracts entered into fraudulently and/or to defeat the provisions therein. Section 5 of the Act provides for the establishment of a special Court with a sitting judge of a High Court for speedy trial of such offences. Section 6 empowers the Special Court to take cognizance or try such cases as are instituted before it.

Section 7, which is of relevance in determining the present issues before us, defines the jurisdiction of the Special Courts in criminal matters. It reads as under:

7. Jurisdiction of Special Court.- Notwithstanding anything contained in any other law, any prosecution in respect of any offence referred to in sub section (2) of section 3 shall be instituted only in the Special Court .... [Emphasis supplied]

The said section begins with a non obstante clause providing that the Special Court shall have jurisdiction to try matters in respect of the offences referred to in Section 3 (2) of the Act.

The definition of `securities' in the Act is an inclusive one. It is not exhaustive. It takes within its purview not only the matters specified therein but also all other types of securities as commonly understood. In the State of Bombay and others v. The Hospital Mazoor Sabha and others, [AIR 1960 SC 610] this Court while interpreting the definition of industry as contained in Section 2(j) of the Industrial Disputes Act, 1947 noted as under:-

It is obvious that the words used is an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation [Internal citations omitted]

{See also Regional Director, Employees State Insurance Corporation v. High Land Coffee Works of P.X.S. Saldanha and sons and another, [(1991) 3 SCC 617) and Commercial Taxation Officer, Udaipur v. Rajasthan Taxchem Ltd.. [2007 (2) SCALE 120]. Karnataka Power Transmission Corpn. Anr. v. Ashok Iron Works Pvt. Ltd. [(2009) 3 SCC 240]} However, even if we hold call money transactions not to be within the scope and ambit of the definition of the term `securities', it must still be remembered that the jurisdiction of the Special Court extends even to offences relating to transaction in securities. Therefore, the jurisdiction of the Special Court could be invoked even in cases where the transaction is somehow related to securities. It would extend also to the utilization of any amount relating to transactions in securities and for matters connected therewith or incidental thereto.

The jurisdiction of the Special Court is an exclusive one. It exercises original jurisdiction to try offences relating to the securities scam. It, having regard, to the peculiar nature of the offences sought to be dealt with, should receive a liberal construction.

It was so held in Harshad S. Mehta and others v. State of Maharashtra, [(2001) 8 SCC 257].

The use of different words in Sections 6 and 7 of the Act as already noticed earlier also show that the words in Section 7 that the prosecution for any offence shall be instituted only in Special Court deserve a liberal and wider construction. Similarly the court in L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and another, [(2004) 11 SCC 456] also noted that `[t]he jurisdiction of the Special Court is of wide amplitude. Subject to a decision in appeal therefrom, its decision is final.' Further Section 4 of the Code of Criminal Procedure provides that all offences under the Indian Penal Code shall be investigated and tried as per the provisions of the Code. The same, however, would be subject to special provisions to the contrary. Section 5 of the Code of Criminal Procedure contains a saving clause in terms of which the jurisdiction of special legislations is saved. The Jurisdiction of the Special Court was required to be determined with reference to the said provision. The Act is a special Act. The section conferring jurisdiction on the Special Courts under the Act contains a `Non Obstante' clause. It, thus, prevails over any other Law. [See Solidaire India Ltd. v.

Fairgrowth Financial Services Ltd. and others, [(2001) 3 SCC 71].

The Jurisdiction of the Special Court may be invoked when an offence committed relate to transactions in securities; the logical corollary whereof would be that all parties connected in diverting the funds of the public sectors and/or financial institutions would also come within the purview thereof. For considering the provisions of the said Act, it has to be borne in mind the object and purport thereof. We have noticed heretobefore that the Reserve Bank of India constituted Janakiraman Committee for the purpose of looking in to the Securities Scam of the early 90's. A report pursuant thereto was submitted. It was on the basis of that report that the said Act was enacted and the Special Court was constituted. These background facts, in our opinion, would be relevant for determining the issue. For the purpose of determining the question as to whether the Special Court had the jurisdiction to try the offences in question or not, in our opinion, the principle of purposive construction must be resorted to. The rule which is also known as the `mischief rule' enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs the courts to adopt that construction which suppresses the mischief and advances the remedy. [See Bengal Immunity Co. v. State of Bihar, AIR 1955 SC 661, Zile Singh v. State of Haryana, AIR 2000 SC 5100]. Simply stated `the courts should identify the mischief which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified.' [Anderton v. Ryan, (1985) 2 All ER 355, per Lord Roskill].

The phrase `offence relating to transaction in securities' as used in section 3 (2) is clearly subject to more than one meaning. It is anything but clear. For the aforementioned purpose we may notice the meaning of the word `in relation to'. ors., [(1988) 2 SCC 299], it was observed :-

In view of the language used in the relevant provisions, it appears to us that Section 3 has two limbs: (i) textile undertakings: and (ii) right, title and interest of the company in relation to every such textile undertaking.... The expressions pertaining to, in relation to and arising out of , used in the deeming provision, are used in the expansive sense, as per decisions of courts, meanings found in a standard dictionaries, and the principles of broad and liberal interpretation .... We are of the opinion that the words pertaining to and in relation to have the same wide meaning and have been used interchangeably.... The expression in relation to (so also pertaining to), is a very broad expression which pre- supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context.... In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 521 where it is stated that the term relate is also defined as meaning to ring into association or connection with. It has been clearly mentioned that relating to has been held to be equivalent to or synonymous with as to concerning with and pertaining to. The expression pertaining to is an expression of expansion and not of contraction. [Emphasis supplied]

These lines were also quoted with approval in T.N. Kalyane Mandapam Association v. Union of India, [(2004) 5 SCC 632]. (See also Bismag v. Amblins (Chemists), [1970] 3 All ER 1053 (QB) and Re National Federation of Retail Newsagents', Booksellers' and Stationers Agreement) (Nos. 3 4), [1971] 1 WLR 408.) Regard, therefore, in the matter of establishing and constitution of the Special Court must also be had to the object of creating the Special Courts. In Minoo Mehta v. Shavak D. Mehta, [AIR 1998 SC 831), this Court held:

As the Preamble of the Act shows, the Act is to provide for the establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto. Therefore, every offence pertaining to any transaction in securities which is covered by the sweep of the Act, that is, if such transaction has taken place between 1-4-1991 and on or before 6-6-1992 would be subjected to the provisions of the Act regarding trial of such an offence.

If the purport and object of the Act was to bring home an offence of the nature discussed heretobefore, in our opinion, the Special Court would have jurisdiction to try that offence. The money belonging to National Housing Bank had been diverted to Harshad Mehta's account who was a broker dealing in securities so as to enable him to enter into transactions in securities during the period 1st April, 1991 and on or before 6th June, 1992, which was an offence triable exclusively by the Special Court. The Special Court, therefore, rightly exercised the jurisdiction vested in it. VALIDITY OF THE SANCTION ORDERS.

All the appellants before us, except accused No. 5 Atul M Parekh, were at the relevant point of time public servants. Whereas Accused 1, 2 3 were employees of UCO Bank, Accused 6 7 were employees of the National Housing Bank. They, therefore, have also been charged for commission of offences under the Prevention of Corruption Act, 1988. Section 19 of the Act however requires previous sanction for prosecution of the Public Servants. The relevant part thereof reads as under: 19. Previous Sanction necessary for prosecution.- (1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servent, except with the previous sanction,- ...(c) in the case of any other person, of the authority competent to remove him from office. Indisputably the competent authority had passed the orders of sanction against all the concerned accused persons. Whereas accused 1, 2 3 have raised no objection as regards validity of orders of sanction issued against them; accused 6 7 who were employees of the National Housing bank have questioned the same.

The order of sanction as against accused No. 6 was passed by the Chairman-cum-Managing Director of NHB, Shri R.V. Gupta, who has been examined as PW 3. The relevant portion of the order granting sanction reads as under:-

AND WHEREAS, I R.V. Gupta, Chairman National Housing Bank, being the Authority competent to remove the said Shri C.Ravi Kumar from office, after fully and carefully examining the materials and investigation report in regard to said allegations and circumstances of the case, consider that the said Shri C. Ravi Kumar should be prosecuted in the Court of Law of competent jurisdiction for the said offences.

NOW THEREFORE, I,R.V. Gupta, Chairman National Housing Bank, do hereby accord sanction under Section 19(1)(c) of Prevention of Corruption Act, 1988 for prosecution of the said Shri C. Ravi Kumar for the said offences and any other offence punishable under other provisions of law in respect of the acts aforesaid and for taking cognizance of the offences by the Court of competent jurisdiction.
It is contended by accused no. 6, C Ravi Kumar that he had come to NHB on deputation from the RBI, and therefore the conditions of his service were governed by the RBI regulations and not those of NHB Act. According to him, the Governor of RBI was the only competent sanctioning authority. Indisputably accused No.6 was initially appointed by the Reserve Bank of India and was sent to NHB on deputation in the year 1988. He was, however, permanently absorbed there in 1992 and the

Order of sanction in respect of him was passed on 26th February, 1993. It is a fundamental principle of service jurisprudence that an employee, subject to statutory interdict, cannot have two masters. If from the date of his absorption the relationship of employer and employee came into being between him and NHB, it is fallacious to suggest that the Reserve Bank of India continued to be his employer. It is not in dispute that if accused No.6 is treated to be the an officer of the Bank, the Chairman-cum-Managing Director, being its highest authority would be competent to pass the order of sanction. Next it was urged before us on behalf of accused no. 7, S Suresh Babu that since the terms and conditions of service of the employees of NHB till as late as 1995 used to be governed by the Service Regulations framed by Reserve Bank of India, Shri R.V. Gupta, the Chairman-cum-Managing Director, NHB had no authority to issue the sanctioning order. It was argued that NHB's own staff regulations governing conduct and discipline came into effect only in the year 1995.

The said contention in our opinion is wholly misconceived. Even if till the framing of Regulations by NHB, it adopted the Service Regulations governing the employees of the Reserve Bank of India, the same would not mean that the appointing authority would also be an officer of the Reserve Bank of India and not the appropriate authority of NHB. Chairman-cum- Managing Director of NHB being a highest executive authority, would be, subject to any delegation of powers conferred in terms of the Regulations or through Resolutions adopted by the Board of Directors, the appointing authority. As an appointing authority, therefore, he will have the requisite jurisdiction to accord sanction for prosecution of the employees. Even though, in our opinion, the sanction orders are legal and valid, even if any doubt exists, the same becomes clear in view of the provisions of Section 19 (3). It is reproduced heretobelow: (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub- section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;...

Explanation.- For the purpose of this section.- (a) error includes competency of the authority to grant sanction;... [Emphasis supplied] What has been challenged here before us by both the accused is in fact the competence of the sanctioning authority to issue sanction orders against them. As per the said section, `a finding' or a `sentence' shall not be reversed by a court of appeal on the ground of any error, omission or irregularity in the sanctioning order unless a failure of justice has been occasioned thereby. In our considered opinion even if we assume for the sake of argument that the Chairman cum managing director of NHB, Shri RV Gupta was not the competent authority to pass the orders of sanction against the officials of NHB, the prosecution could still rely on the said s. 19 (3) of the Act; especially since there has been no failure of justice in the present case by the said error in the orders. The contentions of the accused, as to the validity of the Sanctioning orders, in view of the said sub section must be rejected.

RELIANCE ON THE JANKIRAMAN COMMITTEE

Before we move on to deal with the substantive criminal charges under the Indian Penal Code and the Prevention of Corruption Act invoked against the appellants herein, we must first deal with a grievance which has been raised by the learned counsel for the appellants and, in our opinion, rightly that in the impugned judgment the Special Court had acted illegally and without jurisdiction in relying upon the report of the Janakiraman Committee while imposing the sentence on respondent

No.6; the relevant portion whereof is as under:-

So far as accused No.6 is concerned, it is clear from what has been observed [by the] Jankiraman Committee that there was virtually no supervision on accused No.6 and he was managing the affairs or mismanaging the affairs of the N.H.B. according to his own acts, wish and ultimately at the wish and fancy of the brokers. He was giving loans to the brokers which the law prohibited him from doing.

We have noticed hereinbefore the premise on which the said Committee was constituted. We have also noted its objects and reasons. There is no dispute that the Committee was appointed and it submitted its report. It is one thing to say that the court records to the constitution of the Committee for the purpose of tracing the history for enactment of the Act. But it is another thing to say that the contents of the said report would be admitted in evidence in a criminal case without proof thereof. The Committee was not a court. It did not render any decision. It was merely a fact finding body. It was constituted for a limited purpose. Contents of the report, therefore, without formal proof, could not have been taken in evidence.

A Division Bench of the Nagpur High Court in M.V. Rajwade v. Dr. S.M. Hassan, [AIR 1954 Nag 71] following the judgment of the Privy Council In Re. Maharaja Madhava Singh LR , [(1905) 31 IA 239], held that a Commission is a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature and that findings of a Commission of Inquiry were not as definitive as a judgment. Similarly in Branjnandan Sinha v. Jyoti Narain [1955] S.C.R. 955, this Court held that the Commission appointed under the Public Servants (Inquiries) Act, 1850, was not a court within the meaning of the Contempt of Courts Act, 1952.[See also Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279, Puhupram v. State of Madhya Pradesh, (1968) MPLJ 629. Sham Kant v. State of Maharashtra [1992 Suppl. (2) SCC 521]] Accordingly, the Janakiraman committee report was not admissible in evidence. The report in terms of the provisions of the Evidence Act, 1872 is not a judgment. The report may facilitate investigation but cannot form basis of conviction and sentencing of the accused. For the said purpose the report was wholly inadmissible in evidence. CRIMINAL CONSPIRACY

It would now be appropriate to deal with the offence of criminal conspiracy of which all the appellants herein have been charged with and convicted of. It is alleged by the prosecution that K Margabanthu (A 1), R Venkatrrishnan (A-2) and SV Ramanathan (A 3), who all were at the relevant time officials of UCO Bank, along with C Ravikumar (A 6) and S Sureh Babu (A 7), both of whom were at the relevant time officials of the National Housing Bank, at the behest of Late Harshad S Mehta and Atul M Parekh (A 5) entered into a criminal conspiracy with the object of diverting funds from the National Housing Bank to Late Harshad Mehta's Account in UCO Bank. The funds were diverted to enable Harshad Mehta to invest the same in the Securities Market. It is alleged that in furtherance of the said conspiracy K Margabathu (A 1), R Venkatkrishnan (A 2), C Ravikumar and S Suresh Babu (A 7) created certain fake documents to facilitate the transfer of funds. It is further alleged that SV Ramanathan (A 3) along with Atul M Parekh (A5) then persuaded the officials of UCO bank to allow the said transaction to proceed without any hindrance. Criminal conspiracy in terms of Section 120B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are

not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

The ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act;

(b) an act which is not illegal in itself but is done by illegal means.

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

The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/ or by necessary implication. [See Mohammad Usman Mohammad Hussain Maniyar Ors. v. State of Maharashtra (1981) 2 SCC 443] The following passage from Russell on Crimes (12th Edn. Vol 1) refrred to by Jagannatha Shetty, J in Kehar Singh and Ors. v. State (Delhi Administration), [1988 (3) SCC 609 at 731] brings out the legal position succinctly:

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough It was further noted in that case that to establish an offence of criminal conspiracy `[i]t is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.'

Dr. Hari Singh Gour in his Commentary on Penal Law of India, (Vol.2, 11th Edn. p. 1138) elaborates:

In order to constitute a single general conspiracy there must be a common design. .... The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient.

In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This Court in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659] opined that it is not necessary for the prosecution to establish that a particular unlawful

use was intended, so long as the goods or services in question could not be put to any lawful use, stating:

...to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use. [See also K.R. Purushothaman v. State of Kerala (2005) 12 SCC 631] We may also notice a decision of this Court being State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru [(2005) 11 SCC 600], commonly known as the Parliament Attack case, wherein upon taking note of various earlier decisions of this Court, it was opined that as conspiracy is mostly proved by circumstantial evidence, usually both the existence of conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused, stating :

101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.

In Ram Narayan Popli (supra), this Court noted: ...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...

{See also Esher Singh v. State of A.P. [(2004) 11 SCC 585]}: Recently, in Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra [(2008) 6 SCALE 469], a Division Bench of this Court held: 23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement. A conspiracy may further be a general one and a separate one. A smaller conspiracy may be a part of a larger conspiracy. It may develop in successive stages. [Nirmal Singh Kahlon v. State of Punjab and Others, 2008 (14) SCALE 639] New techniques may be invented and new means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant.

Applying the principles of law to the facts of the present case, we may take note of certain broad

features. Indisputably, maintaining of cash reserve ratio is a statutory requirement. All the Scheduled Banks are bound to carry on the statutory instructions issued by the Reserve Bank of India in this behalf. It is for the maintenance of this cash reserve ratio that UCO Bank used to participate in call money transactions in the money market, decision in respect whereof used to be taken at its Head Office at Kolkata. For the said purpose, however, the Head Office used to be in touch with the D.N. Road Main Branch in Bombay.

It is neither in doubt nor in dispute that Mr. K. Venkatkrishnan (Accused No. 2) at the Head Office in Kolkata was authorized for the said purpose. P.W. 12 - Sunil Kakkar in his statement before the learned Special Judge, stated as under:

6. ...The General manager Mr. Venkatakkrishnan [A 2] used to decide upon the requirement of borrowing of call money on a particular date. He also used to decide about lending of call money to other banks. Instructions in this respect were given by the treasury and investment department head office, Kolkatta by the General Manager to the DN Road branch in Bombay. .... Mr Venkatakrishnan, Genaral manager used to take decisions after knowing the requirement, the rate of interest etc. The call money transactions are authorized by him and are recorded in a register known as call money register.

Such a power had been conferred upon various officers to deal with call money transactions. Indisputably, accused No.2 was one of them. Although, those various other officers might have been taking decisions in this behalf, but there is no reason to disbelieve P.W. 12 that ordinarily Accused No. 2 used to take a decision.

For the purpose of exercise of power furthermore it may not be necessary that he would be given instructions only by Accused No. 2 and no other. If he had been given instructions in this behalf from time to time by the Assistant General Manager or Assistant Manager, the same would not necessarily mean that Accused No. 2 was not exercising his power. P.W. 13 in his evidence categorically stated that Mr. Mallikarjunan (P.W. 17) would take instructions from all the fourteen centres on the basis whereof the General manager Mr Venkatkrishnan [A2] used to take a decision. P.W. 17 in his deposition categorically stated: 2. The deals of lending or borrowing money market were done at Calcutta Head Office by Mr. Venkatakrishnan. This is in respect of call money borrowing and lending...

3. Mr Venkatkrishnan used to decide from whom call money to be borrowed and to whom it is to be lent. The necessary information could be supplied by the Bombay main branch. Bombay main branch informs us between 10:30 to 2:30 pm. Once a decision is taken for borrowing or lending call money to some institute at particular rate, the entries are entered in Head Office in call money register of Calcutta office. The decision is communicated to the branch where the transaction is to be executed.

Indisputably again, however, a decision taken by the General Manager would be subject to any direction which may be issued by Margabanthu (Accused No. 1), Managing Director of the Bank. Keeping that aspect of the matter in mind, we may also take notice of the call money transaction which took place on 6.4.1992 around which the prosecution case revolves. Indisputably, call money was required on the 6th of April, 1993 although there may be some dispute with regard to the quantum thereof. P.W. 17 in his deposition produced a `Chit' which was marked as Exhibit 56 to show that call money was to be procured from Can Mutual, State Bank of Saurashtra, and State

Bank of Hyderabad amounting to Rs. 21 crores, Rs.30 crores and Rs. 50 crores besides of National Housing Bank for a sum of Rs.40 crores.

It is profitable to notice the relevant portion of his testimony, which reads as under:

6. On 6.4.1992, I was informed by Mr. Venkatakrishnan that Rs. 40 crore are borrowed as call money from NHB. It was sometime in the afternoon and must be at 2.00 pm. Mr Venkatkrishnan informed me and I noted it down on a chit in my own handwriting. I noted on that chit the names of four institutions and the total borrowing from four institution Rs. 144 crore. [...] I gave this chit to Mr Sunil Kakkar for making necessary entries in the call money register. He made the entries and sent [the call money register] through me to General Manager, Venkatkrishnan. I am shown the call money register [...] for identification [...]. I identify the handwriting of Sunil Kakkar. The enteries in Call Money Authorization register would be made subsequently by Sunil Kakkar and register would be signed by Venkatkrishnan. I am shown the register [...] These are in the handwriting of Mr Kakkar and signed by Venkatkrishnan.[...] With respect to the said chit in which Mr. Mallikarjun had noted down the details regarding the call money transaction after receiving information from A2 [Mr Venkatkrishnan], he further stated: On this sheet, I wrote the names, Can Mutual, SB Saurashtra, and SBH, with the amounts and interest against them as 21 crores. Can Mutual 23%, 30 crores Saurashtra at 26% and 50 crores SB Hyderabad at 26% and these three were totaled after drawing a line below it and the total of 101 crore was written. Thereafter I wrote NHB and against that 40 crore and 26% and again after drawing line the total of 141 crores is made. Exactly I do not remember what happened but I can say that [K Venkatakrishnan (A2)] must have told me three names of the banks and there figures and after totaling, he must have told the fourth name and the figure which is added and the amount is retotaled but I say that I noted down all the four names and figures at the same time. It is true that in his cross-examination, this witness stated that the same was in his handwriting. Existence of the said Chit is thus not in dispute. It matters little whether it is in the handwriting of P.W.17 or Accused No.2. The fact that the decision had been taken by the Accused No.2 to obtain call money to the tune of Rs. 40 crores is, thus, not in dispute. P.W.17 also notes that he had noted the details in the chit after receiving information from Accused No. 2 in this behalf. The said Chit containing the details of the call money transactions was thereafter handed over to P.W.12 - Sunil Kakkar. It has been brought on record that this witness used to maintain the call money register, and was, therefore, required to note the same in the said register.

The learned counsel appearing on behalf of the appellant, however, would submit that the entries in respect of the said transactions had been made post facto. For the aforementioned purpose our attention has been drawn to the deposition of P.W. 12 - Sunil Kakkar who stated, the entries of the transactions would be made post facto. It was the responsibility of superior officer to verify the entries in the register. By superior officers, I mean General Manager, Assistant General Manager.

It was principally, therefore, the responsibility of those two officers to make verification. The entry in relation to the said transaction inter alia finds place in Exhibit 45 for daily funds records to the CMD dated 6.4.1992. This witness has proved the entries in the said registers. Yet again, a comment has been made with reference to his statement that a number of pages of the register were written at one time and i.e., post facto and Accused No. 2 signed the same after the entries had been made post facto. The signature of the Accused No. 2 in those registers, therefore, stands proved.

The significance of this aspect of the matter would be dealt with a little later. Before, however, we do so, we may notice the evidence of P.W. 12 - Sunil Kakkar in this behalf which is to the following

effect: 8. [...] There is reference in the daily Report of call money borrowing on 6.4.1992 amounting to Rs. 141 crore [...] the last borrowing is from National Housing Bank Rs. 40 crore at 26 %

interest due date 7.4.1992 i.e. for one day. These figures are collected from a slip of paper given to me by Assistant general manager Mr. Mallikarjun. The signature of the Assistant General Manager on this document signifies that he has noted the daily funds position as mentioned in the sheet He, upon making entries with regard to the said transaction in the register, in his deposition, stated:

11. [...] I am shown the entry of 6.4.1992. the entry reads as borrowing transaction on 6.4.1992 call money of canbank mutual fund 21 crores payable next date i.e. 7.4.1992 rate of interest 23% [...] This entry is in my handwriting.[...] The other three entries on that day are of State Bank of saurashtra, state bank of Hyderabad and National Housing Bank. These three entries are also in my handwriting [...]

The question as to whether the aforementioned amount of Rs.40 crores, which was to be taken on loan from National Housing Bank was really needed or not is, however, a matter of some controversy. We may, at this juncture, take note thereof.

The prosecution in view of the aforementioned documentary and oral evidence must be held to have proved the following facts: (i) That the decisions regarding the lending or borrowing of call money were usually taken at the Head Office in Kolkata based upon the information received from the DN Road Branch in Bombay. (ii) These decisions in Kolkatta were primarily taken by K. Venkatakriahnan (A 2) who at the relevant time was the General Manager of UCO Bank Kolkatta.

(iii) The decision as to the call money borrowing on the 6th April, 1992 was also taken by K Venkatakrishnan. On that day he had communicated his decision of borrowing of call money to K Mallikarjun, who at the relevant time was an official there. K Mallikarjun had noted the information regarding the borrowing in a chit of paper. He had noted down information regarding call money borrowing amounting to a total of Rs. 141 crore from four different banks. One of these banks was the NHB from which call money amounting to Rs. 40 crore had been borrowed for a period of one day at 26% interest.

(iv) K Mallikarjun had then handed over this chit with the call money information to Sunil Kakkar who had the responsibility of noting the details in the call money register. He accordingly noted the details of the Call Money transactions of the day, including the one from NHB worth Rs. 40 Crore.

But that is not the end of the story.

Subsequently, however, a meeting has been alleged to have taken place in the chamber of Accused No. 1. According to P.W. 17, it was at this meeting that Accused No. 1 had informed him and others present at the meeting that the call money which had been borrowed from the National Housing Bank had in fact been arranged by Harshad Mehta for the purpose of carrying out his security transactions. He further informed them that the money was required by Harshad Mehta at UCO Banks, Hamam Street Branch in Bombay. As per the deposition of the said witness, Venkatakrishnan (Accused No. 2) and C.K. Mukerjee (P.W. 13) were also present in the said meeting. He stated:

7. On 6.4.1992 there was meeting at about 2.00 p.m. in a chamber of Mr. Margabanthu where Mr R.

Venkatakrishna, myself and CK Mukherjee

were present. Mr Margabanthu who is accused in this case told us that this amount from NHB of Rs. 40 Crore meant for Harshad S Mehta account. In his cross-examination to which our attention has been drawn by the learned counsel appearing on behalf of the appellant, he is said to have accepted that he did not remember to have heard from Accused No. 2 that it was not a call money and that the said amount was raised from the Bank by Harshad Mehta. He further accepted :

I did not tell the CBI about this as I was not asked any question about the same by the CBI, [...] I was not knowing for what purpose the inquiry was made. I did not tell CBI of my own regarding the meeting in the Chamber of Mr Margabanthu, as I was only answering the questions.

We have noticed hereinbefore that he, therefore, has given some explanation as to why we could not disclose as to what had taken place in the said meeting in his statement recorded by the Central Bureau of Investigation. The fact that such a meeting had taken place was also the subject matter of deposition by P.W. 13, stating: 7. On that day in the afternoon I and Mallikarjunan were called by General Manager Venkatakrishnan. Mr. Venkatakrishnan told us that we had to go to the chamber of Managing Director Margabanthu and report to him about all the treasury transactions. Then we, means, I , Mallikarjunan [PW 17] and Venkatakrishnan [A 2] went to Mr Margabanthu's office [A 1] and Venkatkrishnan informed him the day's transactions. While referring to NHB's call money transaction of 40 crore Mr. Margabanthu said that it was not UCO bank's call money transaction. It was money arranged by Harshad Mehta from NHB. He also said that the money was required by Harshad Mehta at our Bank at Hamam Street Branch for undertaking certain securities operations by him. [...] He also told that Mr. Venkatkrishnan General Manager that this amount of Rs. 40 Crore should be immediately sent to Hamam Street branch so that Security transactions could be completed by Mr. Harshad Mehta P.W. 13, allegedly on this basis, had called up Vijayan (P.W. 14) who was the Manager, Accounts Department, D.N. Road Branch of the Bank to inform him of the development, stating:

[...] After the meeting was over we, i.e. I and Mr Mallikarjun came down to our department and as per instructions of Mr Venkatkrishnan, General Manager I conveyed this message to Mr Vijanan DN Road Branch, Mumbai Such a telephone call to P.W.14 is further corroborated by P.W. 17, stating:

8. Mr CK Mukherjee phoned to Mr. Vijayan at Bombay and informed him about this decision.[...]

11. Mr Venkatakrishnan told me that he telephoned and informed Mr. Vijayan, Bombay. My statement that Mr Mukherjee telephoned Mr Vijayan is on the basis what Mr. Venkatkrishnan told me. Mr Venkatkrishnan told me most probabally after the meeting but I do not recollect the exact time.

Our attention, however, has been drawn to the evidence of P.W. 14 by Mr. Narasimha, learned counsel appearing on behalf of the accused No. 2 that the instructions for cancellation was received at 1:00 p.m. or so. Although, according to P.W. 17, the meeting had taken place at about 2:00 p.m.

It must, however, be borne in mind that in a case of this nature where the witnesses were being examined more than ten years later i.e. in the 2003, some amount of discrepancy with regard to time would not be of much significance. We would deal with this aspect of the matter at some details at an appropriate stage. Keeping in view the statement made by P.W. 14 which was not shaken in the

cross examination, there is no reason for us to disbelieve that part of the material brought on record that call money from NHB was, in fact, sought to be cancelled. In any event, as would appear from the discussions to be made hereinafter, the prosecution cannot be said to have failed to prove its case. We may, however, notice that at one stage, according to this witness, such a telephone call had been made at about 2:00 or 2:30 p.m.
Our attention has also been drawn that P.W. 13 before the C.B.I. stated:

Mr. Kakkar also told me that the telex message received at Head Office from D.N. Road, Bombay branch showing position of call money borrowed lend on that day does not contain the borrowing item of Rs.40 crores from National Housing Bank.

Telex message has not been produced. Nothing much turns on the said purported admission. It appears from the records that at a later stage the General Manager (IM) was asked to make an investigation. A report was filed by P.W. 17. Only because in the said report again the factum of the meeting did not find place, the same by itself should not be taken to be a ground to ignore the depositions of all these witnesses. Apart from the supposed contradictions and inconsistencies, it is also pointed by the learned counsel for the appellants that no such meeting had taken place in the chamber of Accused No.1 on 6.4.1982. Our attention has been drawn to the evidence of D.W 1- Ajit Sadhukhan, who at the relevant time was the driver of the Accused No. 1 to contend that Accused No.1 came to his chamber only at about 3.30 p.m. although the transaction was over at 3.00 p.m., stating:

On 6th April when in the morning I went to the flat of Margbanthu, Mrs. Margbanthu informed me that Mr. Margbanthu is coming to Calcutta by flight from Madras and that I have to take the vehicle to airport for Mr.Margbanthu. Shri Margbanthu came to Calcutta Airport by flight at about 12.30 p.m. He was having luggage with him. The suitcase was having a registered tag. I took him to his residence. Mr. Margbanthu told me that he will leave for the office after his lunch. We started the office at about 3.15 pm and reached the office at 3.30 pm. We tell the airport with Mr. Margbanthu at about 1 O'clock and reached the residence at 2 O clock.

The prosecution case must be judged on a broad based fact. The Indian Airlines Flight reached Kolkata Airport at about 12.30 p.m. on that date. Evidences brought on record show that it takes about 45 minutes to reach the Head Officer from the Airport. According to the prosecution witness to which we have already adverted to, the meeting took place round about 2'O clock. Even if Accused No. 1 had gone to his house for taking lunch, the possibility of his coming to his office round about 2'O clock cannot be ruled out. The Chairman cum Managing Director of a Bank presumably would like to attend to his duties during banking hours and particularly when vital decisions as regards the borrowing of call money was required to be taken. That amount of concern from a highly responsible officer should be expected.

We must, however, notice that the evidence of P.W.14, who at the relevant point of time was working at the Bombay Branch of UCO Bank, categorically stated :

7. The head office had instructed that call money transaction of Rs. 40 crore was cancelled. This instruction was received at about 1:00 pm or so. From Head office Mr Mukherjee talked to me about this cancellation of call money transaction from NHB. Mr Mukherjee first told me that there are four call money transaction from NHB and subsequently informed that Rs. 40 crore transaction from NHB has been cancelled. Mr. Vijayan (PW 14) in his testimony further goes on to clarify

about the cancellation of the call money.

Though the entry for the call money transaction occurs in the Note Book which was being maintained, but the final Call money register which was being maintained only had three call money transactions, since by the time the entries in the register had to be noted down the fourth transaction had already been cancelled :

9. I am shown note Book [...] These four entries in my handwriting are of all call money. [...] and last entry is of NHB Rs. 40 crore rate of interest @ 26 % and this entry has subsequently cancelled on receipt of instruction from head office. [...] The entry of call money transaction is taken in the call money register [...] Mr Rupani made entry in call money register from the note book.

10. The register shown to me is call money register in which enteries are taken from note book. Only three call money transactions of 6.4. 1992 are mentioned in this register where as fourth transaction of NHB is not mentioned and there is no entry in this register. [...]

11. [...]In respect of other three banks they issued call money receipts to the said banks and collected the cheques. It was between 2:00 to 3:00 pm. In case of NHB Reciept was not prepared and sent as transaction was cancelled. Before 2:00 pm it was cancelled. [...]

However, despite being informed that the call money from NHB had been cancelled, when the DN Road Branch, UCO Bank received a cheque for Rs. 40 crores from NHB, Mr. Vijayan (PW 14) [DN Road Branch] called Mr. Ravikumar (A 6) [NHB] to seek clarification in this respect. Mr Vijayan in his testimony notes:

7. [...] By 3.00 pm we received a cheque of Rs. 40 crores from NHB. Thereafter I telephoned Mr. Ravi Kumar at NHB and asked why he had sent the cheque when transaction is cancelled, he told me on phone in reply that this cheque of Rs. 40 crore pertains to Hamam street Branch.[...] He further went on to state:

12. [...] I called up Mr Ravi Kumar because he should have sent the cheque to Hamam street branch instead he sent the cheque to DN Road Branch.[...]

Mr Vijayan (PW 14) also clarified that he had also received information from Mr. Mukherjee (PW 13) that the cheque was to be transferred to the Hamam street branch of UCO Bank. However, since there was little time left to transfer the cheque to the Hamam street Mr Vijayan directly deposited the cheque with RBI. He also informed this information to Mr Karkhanis (PW 18) from the Hamam street branch:

7. [...] Since there was no time left and since the Hamam street Branch cannot deposit the cheque. I informed the Hamam street branch that we have received the cheque and I am depositing it with RBI. Mr Karkhanis was the Hamam street Branch Manager and I talked with him in connection with the transaction. I told him that we received cheque of Rs. 40 crore from NHB on behalf of Hamam street branch and we have deposited it with RBI. Mr. Karkhanis (PW 18) [Senior Manager, Hamam Street Branch] stated in his testimony as regards the said phone call which was received by him from Mr Vijayan (PW 14):

2. On 06.04.1992 the current account of Harshad Mehta was credited by 40 crores. The cheque was

deposited in DN Road Branch but I have not seen that cheque. Sr. Manager of DN Road Branch, Mr Vijayan informed me on phone that he had received a RBI cheque of 40 crores and he was depositing it directly with RBI because of time constraint. He gave instructions to credit it to the account of Harshad Mehta. The instruction were received from Mr. Vijayan at about 3.00. However, Mr Vijayan, (PW 14) [DN Road Branch] in his testimony disclosed that he had only received information from NHB that the cheque was to be transferred to the Hamam Street Branch in the following terms :

It did not happen that I contacted Ravi Kumar on telephone and he told me that amount of Rs. 40 crores is meant for Harshad Mehta, he only told me that it is meant for Hamam Street Branch There is a discrepancy between the two testimonies of Mr Vijayan [DN Road] and Mr Karkhanis [Hamam Street], as Mr Vijayan in his testimony stated that the amount of Rs. 40 Crore was meant for Hamam Street Branch and that he himself had not been informed that the amount was meant for Mr. Harshad Mehta. Mr Pradeep Kharkhanis stated that Mr. Vijayan specifically informed him that the said amount was meant to be credited to the account of Mr Harshad Mehta. If Mr Vijayan himself did not know that the 40 crore were meant to be deposited in the account of Mr. Harshad Mehta at Hamam Street Branch how could he have informed Mr Kharkhanis that it was for Mr Harshad Mehta.? The matter, however, must be considered from another angle. A bankers' cheque for a sum of Rs. 40 crores was received by the Hamam Street Branch of the UCO Bank. The records of the UCO Bank reflect that the same amount was to be repaid on 7.4.1992. The said sum was to carry interest at the rate of 26% per annum.

Had the transaction related to call money, it should have been deposited in the D.N. Road Branch and not in the Hamam Street Branch. The Hamam Street Branch does not deal with call money. On 6.4.1992 itself the amount was credited to the account of Harshad Mehta. Although a lot of arguments had been advanced to contend that National Housing Bank is entitled to enter into the security transactions but neither the deceased Harshad Mehta nor the accused No. 5 made any attempt to show that any transaction had been entered into by and between the deceased Harshad Mehta and National Housing Bank.

The accused in their statement under Section 313 of the Code of Criminal Procedure accepted that the transaction in question was a routine transaction. Such a transaction indisputably was utilized for the personal gain of Harshad Mehta. If such transaction was a routine transaction, it goes to show the long standing agreement between the said bank and Harshad Mehta. Why on one pretext or the other UCO Bank would allow itself to be used as a conduit thereto is the question.

P.W 5 - Hiten D. Mehta who used to work with Harshad Mehta admitted that he knew Ravikumar (Accused No. 6) since 1990 and the remittance facilities were available. A sort of arrangement by and between the said Bank and Harshad Mehta, thus, stood established. This is one of the links in the chain to show how the arrangement developed so as to bring the matter within the purview of conspiracy amongst the accused.

In between 11:00 a.m. and 3:00 p.m. things took place in quick succession. The transaction in question was shown to be a call money transaction. While assuming it to be so for the time being, if it was a call money transaction it could not have been used for any other purpose. The amount was required to be retained in the Bank and should have ordinarily been deposited at the D.N. Road Branch. This was not done. Why the amount had been deposited in the Hamam Street branch remains a mystery. Indisputably, the money which had been lent to UCO Bank had been credited to

Harshad Mehta's Hamam Street Bank account on the very same day. Any call money operation could not have been carried out without the knowledge and involvement of Accused Nos. 1 and 2. The involvement of the accused No. 1 and 2 in tandem for the purpose of entering into such agreement, thus, stands established.

It would be appropriate also to deal with the role played by SV Ramanathan (A 3) in carrying out the said call money transactions at this stage. As per Mr CK Mukherjee (PW 13) [Kolkata], Mr Margabanthu (A1), in the meeting which took place in his chambers, reference whereto has been made heretobefore, had informed him that Mr SV Ramanathan (A3) had been authorized him to deal with security transactions of Mr Harshad Mehta at the Hamam Street Branch, Bombay.

It has also been emphasized by the prosecution that Mr. SV Ramanathan was present at the Hamam Street Branch on the day the said transaction took place. The testimony of Pradeep Kharkhanis (PW 18) is relevant which reads as under :

On that day at about 12:00 to 12:30 Noon, Mr SV Ramanathan, the Divisional Manager had come to our office. Mr SV Ramanathan came to our office at about 12:00 to 12:30 noon and told me that he will take care of any difficulty about the transaction as required by Parekh. These were brokers transactions. Mr SV Ramanathan was presenting the Bank when Mr Atul Parekh was there (Emphasis added)

Mr Kharkhanis, in his testimony, further clarified the role of Mr SV Ramanathan in insisting the starting up of security transactions through the account of Mr Harshad Mehta, regarding which Mr Ramanathan had even addressed the following letter:

This letter was in connection with the restarting of brokers transaction of Mr Harshad Mehta and two other brokers. I identify the signature of the Divisional Manager Mr SV Ramanathan. I have made the endorsement to the effect that Mr SV Ramanathan, DM visted the Branch on 6.4.1992 from 12:30 to 3:15 pm and insisted on starting switch transactions which he said were as per the chairman's instructions.

It is evident therefore that SV Ramanathan (A3) also played an important role in ensuring that the call money from NHB which was meant from UCO bank got transferred to Harshad Mehta's Account. It is pertinent to note that the money which was supposed to be borrowed by UCO Bank as a call money was ultimately repaid by Harshad Mehta through his account in ANZ Grindlays Bank directly. Mr. Jeroo Dalal (PW 8) who at the time was an official at ANZ Grindlays states in his testimony thus:

2. Deceased Shri Harshad S Mehta was having an account with ANZ Grindlays Bank...

4. I am shown document No. 14. It bears my signature. I would have received instruction on phone from Shri Atul Parekh on the basis of which this is prepared. I can say that this was prepared on pursuance of telephone of Shri Atul parekh and I have mentioned in the document favouring

National Housing Bank for Rs. 40,27,52,42/- and below that Debit Shri Harshad Mehta and I have signed.

Satish D Hosangadi (PW 9) [Chief General Manager, NHB] also, in his deposition, notes with

regard to the repayment of the said call money from ANZ Grindlay Bank stated, thus:

From the record, it appears that the cheque dated 16.4.1992 was given to the National Housing Bank by Grindlays Bank. [Technically] the amount of Rs. 40 crore is not yet repaid by the UCO Bank...

6. The cheque of Grindlays bank was directly deposited with RBI and credited to the account of NHB

During his re-examination, Mr Satish D. Hasangadi furthermore to the following questions :

Q: During the period of 6th of April and 16th April, 1992 did the ANZ Grindlays Bank owe Rs. 40,27,52,42/] to the Nationla Housing Bank in connection with any transaction.answered in negative.
The testimony of Mr Jeroo Dalal also brings out the involvement of Mr Atul Parekh (A5) in the entire chain of conspiracy, stating :

7 We used to get instructions from Atul Parekh on behalf of accused No, 4 and as per instructions from the bank, the amount used to be debited in the account of Harshad Mehta. Mr Pradeep Anant Karkhanis (PW 18) [Hamam Street branch] notes in his testimony, stated :

Shri Atul Parekh accused in this case had also come in our branch on that day. Shri Atul Parekh had come to me for starting transaction in brokers account. I raised certain queries in this respect and I told Shri Atul Parekh that I was seeking replied (sic) to the queries...These were brokers transactions. Before I received telephone from Vijayan.Shri Atul Parekh told me that he was expecting a cheque of Rs. 40 crores from National Housing bank.

Whatever doubt had been left regarding the involvement of Shri Atul Parekh (A5) has been cleared by the above stated testimony. He knew that he was to receive 40 crores from NHB and that is why he had on the said day come to the Hamam Street Branch of the Bank. It must however be noted that the entire transaction could not have been carried out, had the officials of the NHB been not involved.

We must here deal with the involvement of C Ravi Kumar (A6) and Suresh Babu (A7). NA Shivraman (PW 6) [NHB] in his testimony in this regard stated thus:

I am shown Voucher D 11.... It mentions deal no. 395 amount Rs. 40,27,52,442/- It mentions Rs 40 crores call money and interst... The rate of interest for 1 day is 26% and for 9 days it is 25% and the date of maturity is 16.04.92. the date of deal is 6.4.92. Accused C Ravi Kumar was authorized to decide the date of maturity or of extending the date of maturity... The particulars of call money were being first mentioned in his diary by C Ravi Kumar and thereafter the entries were taken in call money register....

11. I am shown the concerned page containing entry of 6th April, 1992.... The entry mentions the deal no 395 and the name of the institution as UCO Bank with rate as 26 % and due date as 7.4. 92. ... The period extension to 9 days from 1 day is written in the diary by C Ravi Kumar. Interest of 25% was for 9 days and 26% for 1 day It is amply clear from above testimony that the C. Ravi Kumar (A6) was the person responsible for the extension of the call money transaction from 1 day to 9 days and the reduction of the interest from 26% to 25%. The involvement of C Ravi Kumar

(A6) is also corroborated by the testimony of Mr Vijayan (PW 14) where he made reference to the fact that it was the former who had informed him that the cheque from NHB worth Rs. 40 crore was to be transferred to the DN Road Branch of UCO Bank.

What survives is the involvement of the Suresh Babu (A7) who was working under C Ravi Kumar (A6) at NHB. In this regard, reliance has been placed by the prosecution and even by the Special Court in its judgment on the testimony of Mr. Sunil Pandurang Gondale (PW 7) who deposed that Suresh Babu (A 7) had sent him to UCO Bank, Hamam Street Branch on the 16.4.1992 to collect the cheque for the return of the call money advanced:

For the first time, I had gone on 6.4.1992 I went to UCO Bank and handedover the cheque. After about 10 days on 15th or 16th Aptil, 1992 I again had gone to UCO Bank on instructions of Shri Suresh Babu. When I went for the second time, I was directed to receive cheque from UCO bank, Hamam Street Branch....However I did not get the cheque from there as directed by shri Suresh Babu. On Coming from UCO Bank I told Shri Suresh

Babu that I did not get the cheque and the person to whom I was asked to meet had told me that cheque was sent directly by UCO Bank

In our opinion, reliance on the said testimony is not enough. Just because Sunil Pandurang Gondale (PW 7) had been sent by Shri Suresh Babu (A7) is not enough for his involvement in the criminal conspiracy which was hatched on behalf of the other accused. Something more substantial would be needed to bring him within its fold. In fact in his cross examination he admits:

It is not true to say that on 16.4.92 Suresh Babu [A 7] told me to go to Hamam Street Branch. It is not true to say that when I was sent to UCO bank accused C Ravi Kumar [A 6] was not present The burden of proof is always heavy on the prosecution. The prosecution must stand on its own legs basing its findings on the evidence that has been let in by it. The prosecution has however failed in this task at least with respect to A7, Shri Suresh Babu who was an officer working with NHB.

Now that it has been established that the accused had the knowledge of the call money transaction which took place between the National Housing Bank and Harshad Mehta on the 6th April 2008, next we would have to consider the question as to whether the said transaction was illegal or not. To establish a charge of conspiracy, indulgence in either an illegal act or a legal act by illegal means is necessary. The definition of `illegal' is provided for in section 43 of the Indian Penal Code.

43. `Illegal', `legally bound to do'.-The word `illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be `legally bound to do' whatever it is illegal in him to omit.

The word `illegal' in the section has been given a very wide meaning. It consists of three ingredients: (1) everything which is an offence; (2) everything which is prohibited by law; and (3) everything which furnishes ground for civil action.

It is contended on behalf of the respondent that the routing of call money from the National Housing Bank to the Account of the deceased Shri Harshad Mehta who was a stock broker was contrary to the provision of the National Housing Bank Act, 1987.

To adequately deal with this leg of the submission we must notice the provisions of the National Housing Bank Act, 1987 (The 1987 Act). The NHB was created `to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions.' It was thus created to provide finance to housing finance institutions. Section 14 of the 1987 Act which is of some relevance deals with the `Business' of NHB, the relevant portions whereof read as under:

14. Business of the National Housing Bank.- Subject to the provisions of this Act, the National Housing Bank may transact all or any of the following kinds of business namely:

...(b) making of loans and advances or rendering any other form of financial assistance whatsoever to housing finance institutions and scheduled banks. (or to any authority established by or under any Central, State or provincial Act and engaged in slum clearance).

In terms of Section 14 the 1987 Act, NHB could advance loans to `housing finance institutions' and `scheduled banks' or `slum authority' constituted under a Central or State Legislation. Furthermore, Sub-section 4 of Section 49 of the Act lays down that if any other provision of the Act is contravened or if any default is made in complying with any other requirement of this Act, or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine. It reads as under:

49. Penalties....(4) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act, or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day, after the first, during which the contravention or default continues.

The NHB cannot, therefore, advance loans to anybody except housing finance institutions, scheduled banks and statutory slum clearance body, and in case it advances any loan to any individual the same would amount to an offence under the provisions of the 1987 Act. It has been contended by the learned counsel for the appellants that it was for the Reserve Bank of India to take some action and the very fact that it did not take any action against UCO Bank and NHB are pointers to show that no offence had been committed. The said contention is untenable. It was the Reserve Bank of India, which having regard to the magnitude of the scam constituted Janakiraman Committee to look into the real nature of the transactions and to find out if any fraud or irregularity had been committed. Only pursuant to or in furtherance of the report a first information report was lodged by the Central Bureau of Investigation. It was only with a view to achieve a speedy trial and pass consequential orders in regard to the properties acquired by illegal means, the Special Court was constituted in terms of the provisions of the said Act. Reserve Bank of India in the circumstances could not have done anything more. Therefore, advancement of loan to Harshad Mehta by NHB under the disguise of a call money transaction was illegal. The accused had the knowledge of the said transaction. Therefore they have been rightly convicted by the courts for commission of the offence of criminal conspiracy.

In conclusion we hold that there is sufficient evidence to hold all accused A1 to A3, all official of UCO Bank A5 who was working under Harshad Mehta and A6, official of NHB guilty of criminal conspiracy. But there is not sufficient evidence to show the involvement of A7, NHB in the said

transactions.

CRIMINAL BREACH OF TRUST

The next charge we have to deal with is one arising under Section 409 IPC. For the offence of Criminal Breach of Trust by a public servant the punishment is provided under Section 409 IPC. We must also in this respect have regard to the provision of S 405 which defines Criminal Breach of Trust :

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 in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust or willfully suffers any other person so to do, commits `criminal breach of trust' Punishment for criminal breach of trust is provided in Section 406. Punishment for an aggravated form of criminal breach of trust is provided in Sections 407 to Section 409.

The terms of the section are very wide. They apply to one who is in any manner entrusted with property or dominion over property. The section does not require that the trust should be in furtherance of any lawful object. It merely provides, inter alia, that if such a person dishonestly misappropriates or converts to his own use the property entrusted to him; he commits criminal breach of trust. This section requires 1) Entrusting any person with property or with dominion over property. 2) That person entrusted (a) dishonestly misappropriates or converts to his own use that property; or (b) dishonestly uses or disposes of that property or willfully suffers any other person so to do in violation - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

In Onkar Nath Mishra and Ors. vs. State (NCT of Delhi) and Anr., [(2008) 2 SCC 561] this court noted that in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

In Jaikrishnadas Manohardas Desai and Anr. v. State of Bombay, [AIR 1960 SC 889], this Court observed :

To establish a 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. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account gwhich is untrue, an inference of misappropriation with dishonest intent may

readily be made.

However, 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.

Criminal breach of trust by a Public servant is dealt with under s. 409. 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 of life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. The duties of such persons are of a highly confidential character, involving great powers of control, over the property entrusted to them and a breach of trust by such persons may often induce serious public and private calamity. High morality is expected of these persons. They are to discharge their duties honestly. The following are the essential ingredients of the offence under this section :

1) The accused must be a public servant;

2) He must have been entrusted , in such capacity with the property ; 3) He must have committed breach of trust in respect of such property. In Raghunath Anant Govilkar Vs. State of Maharashtra and Ors, [2008 (2) SCALE 303] the court noted that Section 406 which provides the punishment for criminal breach of trust simplicitor and 409 of IPC are cognate offences in which the common component is criminal breach of trust. When an offence punishable under under Section 406 is committed by a public servant (or holding any one other of the positions listed in the Section) the offence would escalate to Section 409 of the Penal Code. In Superintendent and Remembrancer of Legal Affairs, W.B. v. S.K. Roy, [(1974) 4 SCC 230], this Court held:

12. To constitute an offence under Section 409 IPC, it is not required that misappropriation must necessarily take place after the creation of a legally correct entrustment or dominion over property. The entrustment may arise in any manner whatsoever. That manner may or may not involve fraudulent conduct of the accused. Section 409 IPC, covers dishonest misappropriation in both types of cases; that is to say, those where the receipt of property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as entrustment or acquisition of dominion over property in the capacity of a public, servant who, as a result of it, becomes charged with a duty to act in a particular way, or, atleast honestly.

In Chelloor Mankkal Narayan Ittiravi Namhudiri v. State of Travancore, Cochin, [AIR 1953 SC 478], this Court held: ... to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

In Ram Narayan Popli (supra), this Court stated the law, thus :- 81. 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 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. NON-INSTITUTION OF DEPARTMENTAL PROEEDINGS

In this regard, it must be emphasized that the submission of the learned counsel that the Banks have not initiated any proceedings and suffered any loss and thus the judgment of conviction and sentence of criminal breach of trust is wholly unsustainable cannot be accepted for more than one reason.

It is not the law that complaint petition under all circumstances must be made by the Banks and Financial Institutions whose money had been the subject matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. It is now trite that criminal law can be set in motion by anybody. The prosecution was initiated on the basis of the information received by the Central Bureau of Investigation. It would entitled to do so not only in regard to its statutory powers contained in the Delhi Special Police Act but it was also entitled to take cognizance in terms of the report submitted by `Janakiraman Committee'. The money involved in the transfer is public money belonging to Public Sector Banks. The first allegation of criminal breach of trust is against accused No.6 and 7 as they had for allowed the diversion of a huge sum meant to be used for specific purpose, namely - `call money' to be lent to another Nationalized Bank. We have already hereinbefore dealt with the question as to the legality of the transactions having regard to the provisions of the NHB Act. If the transaction was illegal, as result whereof, a private person, who was not expected to reap the fruit of `call money' was allowed to retain the same for a period to make an unlawful gain therefrom, offence of criminal breach of trust must be held to have been committed. It is for the same reason, the submission that as no body ultimately suffered any loss, an offence under Section 409 of the Indian Penal Code was not made out, cannot be accepted. A Bank or Financial Institution may not suffer ultimate loss but if the money has been allowed to be used by another person illegally for illegal purposes, the ingredients of Section 405 of the Indian Penal Code would get attracted. A case involving temporary embezzlement also attracts the ingredients of Section 405 of the Indian Penal Code.

Furthermore, in terms of the above referred judgments of this Court, when a person allows others to misappropriate the property entrusted to him, that also amounts to criminal breach of trust. In the present case the amount of Rs. 40 crore was entrusted to accused No. 6, C Ravi Kumar to be dealt with in accordance with the provisions of the NHB Act. As has already been noticed herein before, the 1987 Act does not permit grant of loan to an individual. Accused No 6 in violation of the law handed over the amount to the UCO Bank with full knowledge that the amount would be credited to the account of accused No.4 Harshad Mehta. The call money transaction with UCO Bank was only a cover up. Thus the property which was trusted to accused No. 6 was misappropriated by him.

It must in this regard be emphasized that an act of breach of trust simpliciter involves a civil wrong of which the person wronged may seek his redress for damages in a civil court but a breach of trust

with mens rea gives rise to a criminal prosecution as well. [SW Palanikar v. State of Bihar, (2002) 1 SCC 241]. The element of `dishonest intention' is therefore an essential element to constitute the offence of Criminal Breach of Trust. So far as the aspect of dishonest intention is concerned, the term `Dishonestly' is defined by Section 24 of the IPC: `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 thin `dishonestly'.

Thus, an act done with the intention to cause `wrongful gain' can be said to be dishonest.

The term `wrongful gain' is defined in Section 23 of the IPC as follows:

Wrongful gain'- `Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled.

The most essential ingredient of proof of criminal breach of trust, therefore, is misappropriation with a dishonest intention. Breach of trust simplicitor is not an offence as is it not associated with intention which is dishonest.

The term dishonestly defined in Section 24 IPC means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. So the offence is completed when misappropriation of the property has been made dishonestly. Accordingly, even a temporary misappropriation falls within the ambit of the said offence. [See the Judgment of the Orissa High Court in Kartikeshwar Nayak v. State, 1996 Cr.L.J. 2253]. In the present case accused No. 6 parted with money of NHB which was entrusted to him so that Harshad Mehta could get it although not entitled therefor in Law. The conduct of accused 6 was therefore dishonest. He is guilty of the offence of criminal breach of trust. With regard to accused No 7, Suresh Babu we have already mentioned that there is not enough evidence to show his involvement in the said transactions. So far as the involvement of accused 1 to 3 is concerned, we are of the opinion that they also played an important role in diverting the supposed call money from NHB which was meant for UCO Bank to the account of Harshad Mehta. As soon as the cheque for Rs 40 crore was received by UCO Bank the amount stood entrusted to the officials of UCO Bank. However accused 1 to 3 in violation of law and in the absence of any contract permitted the amount to be transferred to the account of accused no. 4 Harshad Mehta who was not entitled to it. Therefore, the offence of criminal breach of trust stands proved against them also. We must also make reference to the following observations of the Supreme Court in Ram Narayan Popli (supra) which was a case arising from the connected securities market scam, to bring home the point as to the impact of the transactions:

100. The offence 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.

101. Funds of the public bodies were utilized as it they were private funds. There was no legitimacy in the 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.

102. 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 persons 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 eve on personal profit regardless of the consequence to the Community. PREVENTION OF CORRUPTION ACT

Apart from the charges under the IPC,accused 1 to 3 [UCO Bank officials] and accused 6 7 [NHB officials] have also been charged of committing the offence under s 13 (1) (d) (iii) read with s 13 (2) of the Prevention of Corruption Act. It must be placed on record that in this regard that the Prevention of Corruption Act, 1988 replaced the Prevention of Corruption Act, 1947. The new Act was enacted `to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.' Relevant portions of section 13 which provide for criminal misconduct by a public servant read as under. 13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

...(d) if he,-

...(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public advantage; or

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

Section 13 in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage he would be guilty `criminal misconduct'. Clause (2) thereof speaks of the punishment for such misconduct. [See CK Damodaran Nair v. Government of India, AIR 1997 SC 551.]

The ingredients of Sub-clause (iii) of S 13 (1) (d) contemplate that a public servant who while holding office obtains for any person any valuable thing or pecuniary advantage without any public interest would be guilty of criminal misconduct. Sub section (2) of section 13 provides for the punishment for such criminal misconduct.

Minimum sentence is prescribed under Section 13(2) of the 1988 Act and a public servant who abuses his position as such for obtaining for himself or for any other person any valuable thing or pecuniary advantage cannot be punished for a term of imprisonment, which is less than for the duration of one year. For convicting the person under Section 13(1)(d)(iii), there must be evidence on record that accused 'obtained' for any other person any valuable thing or pecuniary advantage without any public advantage. In Dalpat Singh v. State of Rajasthan, [AIR 1969 SC 17] while interpreting an analogous provision in the unamended Prevention of Corruption Act, this opined noted:

The ingredients of the offence under section 5 (1) (d) are: (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage, and (4) for himself or any other person The Madras High Court in B. Ramachandran and S.S. Abdul Hameed vs.State rep. by The Inspector of Police, Special Police Establishment, Central Bureau of Investigation, Anti-Corruption Branch, Crl. A. No. 553 of 2000 decided on 23.03.2007 noted thus:

Section 13(1)(d) of the said Act also deals with the criminal misconduct by a public servant by means of corrupt or illegal means, obtains for himself of for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

In the light of the provisions already enumerated by us we per the law laid down we therefore hold that the accused A1 to A3 [officials of UCO Bank] A6 [officials of NHB] are guilty of criminal misconduct under the Prevention of Corruption Act. For the reasons already mentioned by us we do not find sufficient evidence to bring in the involvement of A7, Suresh Babu within the fold of the said transaction. All the accused were at the relevant time public servants. Each one of them played a specific role in diversion of funds from NHB to the account of Harsad Mehta, all ostensibly under a call money transaction. They thereby in our opinion facilitated Harshad Mehta to obtain pecuniary advantage within the meaning of the section. The acts were anything but intended to be in public interest. On the contrary the public loss and suffering occasioned thereby was immeasurable. Though it is true, as has been argued before us that all the funds diverted have subsequently been returned to NHB and no actual loss has been occasioned there by either to the UCO Bank or the NHB. But it must not be forgotten that white collar crimes of such a nature affect the whole society even though they may not have any immediate victims. We, accordingly, hold accused A1 to A3 and A6 guilty of criminal misconduct under s. 13 (1) (d) (iii) of the Prevention of Corruption Act.
SENTENCING

A sentence of punishment in our opinion poses a complex problem which requires a balancing act between the competing views based on the reformative, the deterrent as well as the retributive theories of punishment. Accordingly a just and proper sentence should neither be too harsh nor too lenient. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individual or the society, effect of punishment on offender, are some amongst many other factors which should be ordinarily taken in to consideration by the courts. We may also place on record that as the CBI has not preferred any appeal against the quantum of sentence, this Court cannot impose a higher sentence.

We must first accordingly take into consideration the sentence imposed by the Special Court :

As regards A1, K Margabanthu, the court stated that he had been the Chairman and the Managing director of a public sector bank when he committed the offence. Though the court was of the opinion of giving him a harsh sentence because of the key role played by him in the entire transaction, it, however, while considering his age and health condition, sentenced him to undergo only six months Rigorous Imprisonment and ordered him to pay a fine of Rs.1,00,000/- and in default to undergo SI for two months. We find no reason to interfere with the sentence imposed by the special court.

As regards A2, R Venkatakrishnan the Special Court again for the reasons of his age and the financial status of his family imposed exactly the same sentence as that was imposed on A1. We do not intend to interfere with the sentence of A2 either as regards to the punishment that he had to undergo or the amount of fine imposed on him. As regards A3, SV Ramanathan the court considering his lower rank in the hierarchy of the bank imposed on him only a sentence of one month RI and ordered to pay a fine of Rs. 10,000/- and in default SI for 15 days. Though we are of the opinion that he deserved to be dealt more harshly by the trial court but after five years having passed since the pronouncement of the judgment we do not propose to effect any change the said sentence. As to A 5, Atul M Parekh the court took note of the fact that he was working under the orders of A4, the deceased Harshad Mehta, being his employee, and handed him a sentence of merely 15 days and ordered him to pay a fine of Rs. 10,000 and in default SI for 15 days. We need not interfere with the said sentence.

As to A6, C Ravi Kumar the court gave him a sentence of three years and ordered him to pay a fine 1,00,000 in default SI for 3 months. We have herein before already deprecated against the reference by the Special Court on the Jankiraman Committee Report while awarding the sentence. Though we too are of the opinion that A6 played a very instrumental role in the entire scheme of things, but feel that the Special Court might have been influenced by the observations of the Report while awarding the sentence. In our opinion the transaction could not have been possibly carried on without the help of A6. But so long as there is doubt that the court was not wholly correct in awarding the sentence we would not be in a position to uphold it. This is also visible from the wide difference in the sentence of imprisonment which has been given to him as compared to other accused who also played a equally instrumental role in the illegal transactions. We accordingly reduce his sentence of his imprisonment to six months but uphold the amount of fine which has been imposed upon him.

Since we have acquitted A7, S Suresh Babu of all charges no question as regards the sentence to be imposed on him arises. CONCLUSION

1. A1, K Margabanthu is sentenced for the offence punishable under s. 120B and s. 409 of the IPC as also s.13 (1) (d) (iii) read with s. 13 (2) of the Prevention of Corruption Act to undergo RI for a period of six months and to pay fine of Rs. 1,00,000 in default to undergo SI for two months

2. A-2 , R Venkatkrishnan is found guilty of offence under s. 120B and s. 409 of the IPC as also s. 13 (1) (d) (iii) read with s. 13(2) of the Prevention of Corruption Act and is sentenced to undergo RI for a period of six months and to pay fine of Rs. 1,00,000 and in default SI for two months.

3. A3, SV Ramanathan is sentenced for the offence punishable under s. 120B and s. 409 of the IPC as also s.13 (1) (d) (iii) read with s. 13 (2) of the Prevention of Corruption Act to undergo RI for a period of one months and to pay fine of Rs. 10,000 and in default SI for two months.

4. A5, Atul M Parekh is sentenced for the offence punishable under section 120 B of the IPC to undergo RI for a period fo 15 days and to pay a fine of Rs. 10,000 and in default to undergo a SI for 15 days.

5. A6, C Ravikumar is sentenced for offences under punishable s. 120B and s. 409 of the IPC as also s 13 (1) (d) (iii) read with s. 13(2) of the Prevention of Corruption Act and is sentence to undergo imprisonment for 1 year and to pay a fine of Rs. 1,00,000 and in default to undergo a

imprisonment for SI for two months.

6. A7, S Suresh Babu is hereby acquitted of all charge as the prosecution has failed to prove the case against him beyond all reasonable doubts. Each accused should be given a set off for the period for which he has already undergone imprisonment in this case. So far as the payment of fine is concerned, a period of 2 months time is given to all accused persons, on whom fine has been imposed, to pay the said fine.