A SUDHIR SHANTILAL MEHTA

v.

C.B.I.

(Criminal Appeal No. 905 of 2005)

B AUGUST 7, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992:

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s.36(1) – Security scam – Transaction of discounting and rediscounting of bill of exchange – Accused persons, public servants having dominion over public funds – Allegedly entered into conspiracy with Harshad Mehta, dealer in securities market for obtaining liquid cash for short period with a view to make investments in securities market – Bills of exchange issued in relation to transaction in shares – No verification as required undertaken – No security taken – Discounting of bill of exchange – Payment not made on the retiring day – Loss to bank – Conviction under s.409 and s.120B – Held: Acquisition of shares was neither bona fide nor in the interest of the Bank – Guidelines laid down in the Manual of UCO Bank and directions of Reserve Bank of India dated 5.9.1988, stipulated that credit limit be fixed only after verifying the creditworthiness of customer – Security also required to be taken and it was the duty of the Manager to satisfy himself that the Bills of Exchange were a result of genuine trade transactions – But said procedures were given a complete go by – Branch not dealing with Bill Discounting chosen which demonstratively proved that the transactions were not ordinary commercial transactions – Accused 1 and 2 were high ranking officers of the Bank and had dominion over the funds thereof – They could not part with the same in favour of any person without complying with the statutory requirements – By reason of such transaction wrongful loss

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was caused to the Bank and wrongful gain was made by the Harshad Mehta group – Money of a Public Sector Bank was diverted to share/securities market transactions in violation of law – Prosecution proved the charges made against the accused 1, 2, 4, 5 – Conviction for conspiracy for commission of the offence of criminal breach of trust upheld – Banking Regulation Act, 1949 – s.21, 35A – Reserve Bank of India, 1934 – Penal Code, 1860 – ss.405, 409, 120B – Scam.

Jurisdiction of Special Court – Held: Is not confined to the scam relating to securities alone but utilization of any amount relating to transaction of securities and for matters connected therewith or incidental thereto.

s.2(c) – Securities – Meaning of.

Reserve Bank of India, Act, 1934: Directions/circulars issued by RBI are statutory in character – RBI has requisite power to issue direction to Banks in relation to discounting and rediscounting of bills of exchange and directions so issued have statutory force – All public sector banks are bound thereby.

Prosecution case was that accused no.1 was the Chairman-cum-M.D. of the UCO Bank. On 14.3.1992, he visited Harshad Mehta who was a dealer in the securities market. After the meeting he allegedly informed the other officers of the bank that he met Harshad Mehta who suggested that it was in the interest of the bank to undertake the business of discounting and rediscounting bills of exchange. The officers present were assured by accused no.1 that the business would be transacted without involving the banks funds. He also insisted for undertaking the said business through the Nariman Point Branch of the Bank though such transactions were generally not undertaken therefrom.

On the same day i.e. 14.3.1992, a resolution was

A passed by M/s. Growmore, to open an account in UCO Bank, Nariman Point so as to enable it to avail bill discounting facility provided by UCO Bank Ltd. limited to Rs.50 crores. A similar resolution was passed on 18.3.1992 by M/s. Mazda.

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On 24.3.1992, Accused no.7 and 9 came to Nariman Point Branch of UCO Bank. They brought with them two banker's cheques, one cheque was from Syndicate Bank for Rs.24.63 lacs and the other from State Bank of Patiala for Rs.25 lacs. Two bills of exchange drawn by J.H. Mehta C were accepted by accused 4 on behalf of Growmore and accused 7 on behalf of Mazda. Letters were also issued by Mazda and Growmore to the effect that the said amount would be repaid by them on or before 24.4.1992. The two usance promissory notes were handed over to D accused no.7 and 9. The acceptors Mazda and Growmore did not have any account in the said branch at that time. Two draft promissory notes were handed over to PW 44 by Accused Nos. 7 and 9; one issued in favour of Syndicate Bank and the other in favour of State Bank of E Patiala to be executed by UCO Bank in relation to the said cheques. Those usance promissory notes were signed by PW 44 and PW 1, pursuant whereto the Bank issued two pay orders on the same day in favour of ANZ Grindlays Bank for a sum of Rs.25.27 crores and Rs. F 14.14 crores. An account in the name of M/s J.H. Mehta was opened on the same day and the amount of Bill of Exchange was credited into that account.

On 25.3.1992, the amount was transferred to Harshad Mehta's account. On 26.3.1992, PW 44 asked PW 1 to G prepare a note for the Chairman so as to enable him to seek approval from the Board for the transaction. Pursuant to this, the said note was prepared and it was shown to accused No. 1. A proposal for ratification of the Bill Discounting transaction was sent to the Head office H

on 3.4.1992. On 24.4.1992, i.e., the due date for retiring the Bills of Exchange, the payments were not made either by the drawer or by the acceptors. Accused No. 1 allegedly agreed to the suggestion of Harshad Mehta for rolling over the same for one more month. PW 44 allegedly did not agree thereto and insisted on prompt payment.

As the funds were not received, UCO Bank made payments to Syndicate Bank and State Bank of Patiala out of its own funds. There was shortfall in the funds available with UCO Bank, the requisite call money to meet the deficient was borrowed by it from the Corporation Bank and the Oriental Bank of Commerce to the tune of Rs. 50 crores for three days. Officers of UCO Bank thereafter visited the offices of Mazda and Growmore for realization of the payments due. Two cheques were handed over by M/s J.H. Mehta with a request that the same be not encashed and that the cheques of Growmore and Mazda would be given at a later date. Mazda and Growmore also issued two cheques. They were not sent for clearing as the requisite funds therefor were admittedly not available in their accounts. The said two Bills of Exchange, for want of fund, were not retired either by M/s J.H. Mehta or Growmore or Mazda. Subsequent thereto, a formal meeting of the Investment Committee consisting of Accused Nos. 1 and 3 and PW 45 was held. At the instance of Accused Nos. 1 and 3, shares of Gujarat Ambuja Cement worth Rs. 50 crores were purchased by UCO Bank. The amount received by J.H. Mehta from UCO Bank under the said transaction was transferred by him to Mazda and Growmore so as to facilitate encashment of the said cheques for retiring the Bills of Exchange. Payment towards purchase of shares was made by UCO Bank before delivery thereof. The amount due to the Bank was thus sought to be realized in that manner.

A Several charges were framed against the accused persons by the Special Court. The Special Court held that the offence of criminal breach of trust on the part of the accused Nos. 1 and 2 was proved beyond all reasonable doubts as they had been entrusted with the B funds of UCO Bank; that the said discounting of bills was illegal as it violated the Circular issued by the Reserve Bank of India dated 5.9.1988; and by reason thereof, a sum of Rs. 50 crores was transferred to the accused No. 3 Harshad Mehta and/or his groups; the transactions was C in violation of the Circular dated 5.9.1988, the accused Nos. 1, 2 and 8 acted contrary thereto or inconsistent therewith, the same constituted an offence within the meaning of Section 405 IPC; the said transactions were carried out to benefit Harshad Mehta Group of D Companies by the accused in conspiracy with each other; and the private accused as well as Accused No.8 were convicted only for commission of the offence of criminal conspiracy. Accused 1 to 5 and 8 filed these appeals.

E Disposing of the appeals, the Court

HELD: 1. Jurisdiction of Special Court is confined to trial of offence relating to transactions in securities and for matters connected therewith or incidental thereto F committed during the period between 1.4.1991 and 6.6.1992. The alleged offence was admittedly committed during the said period. The definition of 'securities' is an inclusive one. It is not exhaustive. It takes within its purview not only the matters specified therein but also G all other types of securities as commonly understood. The term 'securities', thus, should be given an expansive meaning. The jurisdiction of the Special Court is not confined to the scam relating to securities alone but utilization of any amount relating to transactions in

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securities and for matters connected therewith or incidental thereto. The jurisdiction of the Special Court is exclusive one. It exercises original jurisdiction to try offences relating to security scam. The said Act having regard to the peculiar nature of offence sought to be dealt with, should receive a liberal construction. Jurisdiction of the Special Court is required to be determined with regard to the provisions of Section 6 of the Code of Criminal Procedure, 1973. The Act is a special Act. It contains a non obstante clause. It shall, thus, prevail over any other Act. [Paras 34, 37, 40, 41 and 44] [718-E; 719-E-F; 720-F-G; 721-D]

State of Bombay and others v. The Hospital Mazoor Sabha and others **AIR 1960 SC 610;** *Regional Director, Employees State Insurance Corporation v. High Land Coffee Works of P.X.S. Saldanha and sons and Anr.* **(1991) 3 SCC 617;** *Commercial Taxation Officer, Udaipur v. Rajasthan Taxchem Ltd.* **(2007) 3 SCC 124 and** *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and others* **(2001) 3 SCC 71 – relied on.**

Harshad S. Mehta and others v. State of Maharashtra **(2001) 8 SCC 257;** *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and another* **(2004) 11 SCC 456, referred to.**

2. An offence is committed with a view to circumvent the law. An apparent state of affairs need not be the real state of affairs. A simple transaction of discounting and rediscounting on its face may appear to be genuine and lawful but there may be underlying purposes behind it. It has not been disputed that Harshad Mehta was dealing in the money market and securities market and that Growmore although a public limited company, was controlled by Harshad Mehta. Both Mazda as also Growmore indisputably were dealing in the business of selling and buying of shares. Further M/s J.H. Mehta, was the proprietary concern of the wife of Harshad Mehta. She

A used to execute business through her constituted attorney. General Power of Attorney was also issued by these Companies in favour of the accused persons. The Harshad Mehta Group of Companies were therefore dealing in securities. [Para 45] [721-E-H]

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3.1. The method of siphoning of the funds of UCO Bank through discounting of two bills of exchange was unlawful. Both the bills of exchange were shown to have been issued in relation to transaction in shares between M/s JH Mehta, Growmore and Mazda. For arranging C repayment of the amount, shares were purchased by UCO Bank through M/s VB Desai and Co. The offence of conspiracy to commit the offence of breach of trust, thus, related to the transaction in securities. It is therefore not a case where it can be said that the Special Court lacked D inherent jurisdiction in trying the offence said to have been committed by the accused. [Paras 46 and 48] [722-A-B; 722-B; 722-C]

3.2. UCO Bank is a Nationalized Bank. It has various E branches in Bombay; its main Branch being at D.N. Road. Its Nariman Point Branch was mainly dealing with foreign exchanges. The business as regards discounting and rediscounting usually was carried out at the main branch. [Para 50] [722-E-F]

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4. In terms of Section 35A of the Banking Regulation Act,1949, the Reserve Bank of India is empowered to issue directions to the Banks in public interest; or in the interest of Banking policy; or to prevent the affairs of any banking company being conducted in a manner G detrimental to the interests of the depositors or in a manner prejudicial to the interest of the Banking Company; or to secure the proper management of any Banking company generally. The Reserve Bank of India, therefore, has the requisite power to issue direction to H Banks in relation to discounting and rediscounting of

bills of exchange and directions so issued have statutory force. All public sector banks are bound thereby. Pursuant to or in furtherance of the said power, the Reserve Bank of India issued a Circular dated 5.9.1988 titled "Bills Rediscounting Scheme -- Introduction of usance promissory notes – Procedure therefor". Accused Nos. 1, 2 and 8 were public servants and so were bound by the Circulars issued by the Reserve Bank of India. [Paras 52-55 and 57] [722-G-H; 722-B-C; 722-D]

Corporation Bank vs. D.S. Gowda & Anr. **(1994) 5 SCC 213 &** *Central Bank of India vs. Ravindra & Ors.* **(2002) 1 SCC 367, referred to.**

B.O.I. Finance Ltd. v. Custodian & ors. **1997 (10) SCC 488, held inapplicable.**

5.1. The distinction between exercise of jurisdiction under the enabling provisions contained in Section 36(1) of Special Court (Trial of offences relating to transactions in Securities) Act, 1992 and the ones under Sections 21 and 35A of the Banking Regulation Act and the provisions contained in Section 45L of the Reserve Bank of India Act, 1934 is absolutely clear and unambiguous. In terms of Section 36, the Reserve Bank of India may caution or prohibit the Banking Companies but in terms of Sections 21 and 35A of 1949 Act it can issue binding directions. The circular was issued by the Reserve Bank of India in regard to rediscounting. The officials of UCO Bank were, therefore, bound by the said circular letter. UCO Bank could only have discounted the bills of exchange out of bonafide commercial transactions as had been provided under the RBI circulars. [Paras 63 and 65] [725-F; 725-G; 726-B]

State of Madhya Pradesh v. Ramcharan **AIR 1977 MP 68, referred to.**

A 5.2. The accused contended that they had no knowledge of the circulars. The conduct of the accused clearly shows to the contrary that they in fact had knowledge of the RBI Circulars in question. They otherwise would not have gone to the length of creating B documents to show that the bills of exchange was issued because of a sale of shares of M/s JH Mehta to Growmore and Mazda. In order that the bank could discount a bill of exchange, it was necessary that it related to a bonafide or genuine commercial transaction and it C was because of this requirement that the accused persons had gone to the extent of preparing false documents to give an appearance that the discounting related to bona fide commercial transaction. [Para 66] [727-F-G; 727-H; 728-A-B]

D 6.1. An offence of criminal breach of trust by a public servant attracts the penal provision of Section 409 IPC. Indisputably, the Bank entrusted its funds to its officers; they had the dominion over the said property; they were holding the said money in trust which is an E comprehensive expression, to denote a relationship of master and servant. The act of criminal breach of trust per se may involve a civil wrong but a breach of trust with an ingredient of mens rea would give rise to a criminal prosecution as well. [Para 68] [728-E-F]

F 6.2. The criminal breach of trust would mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation G of any direction of law or any contract express or implied relating to carrying out the trust. It is one thing to say that any circular letter issued by the Reserve Bank of India being not within the public domain would not be law but it would be another thing to say that it did not contain any direction of law so as to attract the liability in terms of H

Section 405 IPC. Lawful directions were issued by the Reserve Bank of India. The Circular Letter was meant for all Scheduled Banks. The authorities and/or officers running the affairs of the Scheduled Banks therefore were aware thereof. If it is binding on the Banks, it would be binding on the officers. Any act of omission or commission on the part of any authority of the Bank would amount to acting in violation of any direction of law. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom. [Para 69] [729-A-D]

6.3. Indisputably, the higher authorities of the UCO Bank were entrusted with or otherwise had dominion over the properties of the bank. They were dealing with public funds. Failure on their part to abide by the directives issued under the Circulars would result in civil action. Subjecting the bank to a civil liability would thus attract one of the ingredients of criminal breach of trust. [Para 70] [729-E-G]

7. The mode of disposal of the public money is prescribed in terms of the UCO Bank Manual and the Circulars issued by the Reserve Bank of India. It was, however, necessary for the prosecution to prove that the same was done with requisite mens rea. The submission for the appellants that there has been no violation of the RBI Guidelines and/or the UCO Bank Manual cannot be accepted. It may be true that PW 40, Executive Director, RBI, Bombay had stated that technically the RBI Circular referred to the Bill rediscounting and not discounting, but it is not disputed at the Bar that Bill rediscounting must be preceded by Bill discounting. UCO Bank had issued usance promissory notes; it was required to be backed by encumbered usance Bills of Exchange of at least

A equal value not due for payment; the transactions were required to be bona fide commercial transaction. UCO Bank Manual although permits advances as against house bills but it stipulates that for the said purpose, creditworthiness of the customer was required to be B verified. Credit limit was also to be fixed. For the said purpose, credit reports were to be compiled; limits were to be sanctioned. The jurisdiction of Chairman-cum-Managing Director and other Authorities are fixed if the Bill of Exchange exceeds Rs. 25,000/-, credit report on C drawees on whom the bill is drawn is also required to be obtained. The Manual mandates that security be also taken. The duty had been cast on the Manager to satisfy himself that Bill of Exchange is the result of genuine trade transaction. [Paras 71 and 88] [730-A-B; 735-C-H]

D 8.1. Section 43 IPC carries a very wide meaning. If any ground for civil action can be founded on the basis of any act of omission or commission on the part of a person, his act may be held to be illegal or it may be held that he was legally bound to do an act which he had E omitted to do. If a person is guilty of breach of a departmental order, he may be held to be guilty as he was legally bound to act in terms thereof. It does not matter whether the violation was in relation to the Circular issued by the Reserve Bank of India or whether it was in F violation of the guidelines issued by the Bank itself. The question as to whether the directions are statutory in character and binding in law may not depend upon the nature of the powers to be exercised by the Reserve Bank of India. Discounting and rediscounting of Bills of G Exchange is an integral part of banking transactions. Purchase and sale of securities is also a part of the banking transactions as would appear from Section 6(1)(a) of the Banking Regulations Act. Harshad Mehta was having a very good customers credit rating which H was even spoken of by PW 7. The Bills of Exchange

being usance Bills of Exchange in terms of Section 32 of the Negotiable Instruments Act on their maturity, only the acceptors, namely, Growmore and Mazda were responsible for clearance thereof and not M/s J.H. Mehta. [Paras 89 and 90] [736-C-E; 736-E-G]

8.2. The bills were drawn by M/s JH Mehta and were accepted by M/s Growmore and M/s Mazda. The payment on rediscounting by the Bank should therefore be made to M/s JH Mehta, but the payment was in fact made to M/s Growmore and M/s Mazda Industries. If the Bills of Exchange was drawn because M/s JH Mehta had sold the shares to Mazda and Growmore, it was M/s JH Mehta entitled to the purchase price of the shares which it was sold to M/s Growmore and M/s Mazda. In the present case the Bank first made a credit entry in the account of JH Mehta and then transferred the amount to Growmore and Mazda by issuing cheques in favour of ANZ Grindleys Bank favouring Mazda and Growmore. Thus the ultimate payment on the rediscounting of the two bills of exchange went to Growmore and Mazda who had been shown as the purchasers of the shares from M/s JH Mehta and were therefore to make payment of the price of the share to JH Mehta. Even the cheques for repayment to the Bank on 27.04.1992 were issued by M/s Growmore and M/s Mazda. As the amount paid under the Bills of exchange by the Bank was returned to the Bank, it is beyond the purview of any explanation why the bills of exchange was drawn in the first place. Obviously the discounting of the Bills of exchange did not represent a bonafide commercial transaction. [Para 91] [736-H; 737-A-E]

9. It was brought to notice by the appellants that Harshad Mehta was behind all the entities. Apart from his individual capacity, he was acting on behalf of M/s J.H. Mehta, Mazda and Growmore. This fact was not unknown

A to the officers of the Bank. Each one of the private accused was connected in one way or the other with each of the said entities. J.H. Mehta, Mazda and Growmore were new customers. An account was opened on the same day as the Bill of Exchange was presented
B for discounting. It is beyond any doubt or dispute that the power to sanction advance so far as the Chairman is concerned is limited to Rs.5 crores. Prior sanction of the Board of Director was necessary if the Bill discounting exceeds Rs.5 crores. Admittedly, even the Board of
C Directors did not ratify the said transaction although in terms of the Manual it was necessary that prior sanction should be obtained. The Manual, prescribed exercise of greater caution in the cases where the drawer and drawee of the Bill are identical or connected persons. It
D provided for the meeting of safeguards by way of making an enquiry as regards the creditworthiness, a satisfaction of which was required to be arrived at by the Manager. Thereabout, having regard to the credit rating, business integrity and past dealing, the Manual provided that those borrowers who did not satisfy the said tests laid down
E would not be eligible for any loan. Evidently, all these procedural requirements necessary for safeguarding the interests of the Bank were not fulfilled. [Paras 92, 93 and 94] [737-F-G; 738-G-H; 739-A-B; 739-C]

F 10.1. The Executive Director of UCO Bank, PW-37 accepted that the discounting of bills is a method of advancing credit to a party. Evidently, therefore, the prudent lending norms were required to be observed. One of the contentions raised for the appellants was that
G further security was not necessary as two cheques had been issued by two scheduled Banks. The cheques were issued for the purpose of earning interest by way of rediscounting. It may be true that whereas the Syndicate Bank and State Bank of Patiala were to get 17.5% of

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interest, the UCO Bank was to receive interest from Harshad Mehta at the rate of 21% per month. This itself shows the speculative nature of the transaction. Syndicate Bank and State Bank of Patiala or even the banker of Harshad Mehta and his group ANZ Grindlays Bank were of the opinion that they proceeded with so much amount even for a short period. [Para 97] [739-H; 740-A-C]

10.2. Evidently, UCO Bank was approached as a conduit as it had no money of its own. Whereas other banks were secured as they had issued cheques in the name of Nationalized Bank; UCO Bank did not obtain any security or pledge. The fact that it had undertaken a grave risk is not in dispute. Money was to be returned by a fixed date, namely, 24.4.1992. Even the balance sheet and annual reports of the two banks were not sought for far less scrutinized for arriving at a satisfaction as regards the capability of the borrower to repay the amount within the stipulated time. Only after advances were made i.e. on 26.3.1992, PW-44 asked PW-1 to collect the balance sheet from Mazda and Growmore for forwarding them to the Head Office for seeking approval of the Bill Discounting already done. Thus, all attempts to procure the balance sheet, etc. were undertaken at a later date. As the date of repayment was coming closer, UCO Bank sent letters to Mazda and Growmore for arranging funds to retire the Bill of Exchange on due date. Evidently, they were unable to fulfill their promise. For the said purpose, Accused No.1 agreed that the Bills would be rolled over for one more month. PW-44 was informed about this by Accused No.9. Naturally, as the entire blame would be put on him, he did not agree thereto and insisted on payment. From the evidence, it is evident that PW-44 informed about his decision for insistence of payment to Accused No. 2 and PW-45 also informed of the same to Accused No. 1. Accused No. 2 being a high-ranking Officer was informed

A particularly in view of the fact that if the Bank does not get back the money, it has to take loan for the purposes of having call money, but the very fact that the high-ranking officers also informed the Accused No. 8, speaks a volume. [Paras 100, 103] [741-C-D; 741-E-F; 724-B-D;
B 743-B-C]

10.3. Admittedly, even on 24.4.1992 payments were not made either by the drawer or by the acceptors. In terms of Section 32 of the Negotiable Instruments Act, it was the acceptor's liability and not the drawer's liability.
C The fact remained that the money was not re-deposited. Indisputably, UCO bank had to make payment out of its own funds. As by reason thereof a shortfall occurred, call money was borrowed from two other banks, namely, Corporation Bank and Oriental Bank of Commerce to the
D tune of Rs. 50 crores for three days. Therefore, the charge of criminal breach of trust stands established against Accused 1, and 2. The role played by Accused No. 2 in the entire chain of events is significant. The decision to discount the two bills of exchange at Nariman
E Point Branch was taken by Accused No. 1 only after consulting Accused No. 2. Accused No. 2 had full details of the transaction. He also played a key role in the purchase of shares by UCO Bank to provide for repayment of the amount advanced by UCO Bank itself.
F He also similarly made an endorsement for issuing a cheque in favour of ANZ Grindley's Bank on account of JH Mehta. However the role played by Accused No. 2 was subsidiary to that played by Accused No. 1. The entire transaction appeared to have been gone through
G because of a deal struck between deceased Harshad Mehta and Accused No. 1. [Paras 104 and 105] [743-D-F; 744-C-E]

10.4. Accused No. 8 was not in a position to issue any directions; he being a Scale IV employee. He
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therefore could not be said to be guilty of the offence of Criminal Breach of trust. The judgment of acquittal recorded by the Special Judge as regards the Accused No. 8 is not interfered with. [Para 106] [744-F-G]

11.1. Criminal conspiracy is an independent offence. It is punishable independent of other offences; its ingredients being:- an agreement between two or more persons; 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. It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence was committed or not may take into consideration the circumstantial evidence. While however doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be. [Para 107] [744-H; 745-A-C]

Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra **(2008) 6 SCALE 469; Nirmal Singh Kahlon vs. State of Punjab & Ors. (2008) 14 SCALE 639;** *Ram Lal Narang vs. State (Delhi Administration* **(1979) 2 SCC 322, referred to.**

Chaman Lal & Ors. v. State of Punjab & Ors. **JT 2009 (4) SC 662;** *K.R. Purushothaman vs. State of Kerala* **(2005) 12 SCC 631;** *P.K. Narayanan vs. State of Kerala* **(1995) 1 SCC 142, relied on.**

11.2. Offence was committed purely for the benefit of Harshad Mehta. He was the prime beneficiary. He made elaborate plans to obtain liquid cash for a short period with a view to enable him to make investments in the security market so that he could obtain quick returns. He involved a few Nationalized Banks in the process. Prosecution sought to establish the offence of conspiracy from the evidence of P.W. 44, P.W. 45 and P.W. 7. The conduct of Growmore and Mazda in passing

A the resolution for opening the accounts even before the alleged purchase of shares by them from JH Mehta who had drawn the bills of exchange raise doubt about the bonafide of the entire transaction. [Para 111 and 112] [747-G-H; 748-C-D; 748-A]

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11.3. Both Accused 1 and Accused 2 played a major role in arranging the entire transaction. In fact had it not been for Accused No. 1, it would not have been possible for Harshad Mehta or his associates to take the Bank for a ride and unlawfully utilize the funds of the bank. With a C view to achieve the said object, neither the RBI directions requiring bills of exchange to satisfy the tests of bona fide commercial or cash transactions were complied with nor the procedure laid down under the UCO Bank Manual were followed. The power of the Chairman for investment D in shares is upto Rs. 10 crore. His power in regard to bill discounting is only upto Rs.5 crore. So far as other accused are concerned, namely Accused No.3, Accused No. 4 and Accused 5, they were not only residing at the same place but Accused No. 4 and Accused 5 were men E of trust of Harshad Mehta. A power of attorney had been executed in their favour. [Paras 114 and 117] [750-C-D; 750-E-F]

12. The Board of Directors of Growmore had by their F resolution dated 14th March, 1992 authorized Accused 4 and 5 to seek bill discounting facility from UCO Bank to the limit of Rs. 50 crores. The application for opening the account of Growmore at Nariman point was signed by Accused No. 4. Further on behalf of Growmore the Bill of exchange was accepted by Accused No. 4. Not only this G but the letter dated 24.3.1992 addressed to UCO Bank by Growmore undertaking to repay the amount by 24.4.1992 was also signed by Accused No. 4. Legally the Bank would be concerned only with M/s JH Mehta. But the letter of Growmore signed by Accused No. 4 clearly indicates H his involvement in the criminal conspiracy. So far as

Accused No. 5 is concerned, it is he who had signed the Bill of Exchange as the Power of attorney of the proprietors of M/s JH Mehta. It is he who had signed the forms for opening the account with the Nariman Point Branch of UCO Bank. He had signed the letter dated 23.3.1992 requesting the Bank to discount the two bills of Exchange. The relationship between the parties both personal and professional clearly establishes criminal conspiracy on the part of Accused No. 5. The decision of the special judge holding Accused No. 5 guilty of the offence of criminal conspiracy is affirmed. Accused Nos. 6, 7 and 9 did not prefer appeals challenging their conviction. There is no reason to interfere with the judgment of conviction arrived at by the Special Judge with respect to the said accused. However the conclusions arrived at by the Special Judge with regard to the guilt of Accused No. 8 for the offence of Criminal Conspiracy is not upheld. The mere fact that he may be present at the meeting dated 14.3.1992 of the officers of UCO Bank by itself does not conclusively prove his involvement in the conspiracy hatched by the other officers of the Bank. Something more was needed to be shown that he was a party thereto. [Paras 118 and 121] [750-G-H; 751-A-B; 751-B-D; 751-E; 751-E-G]

Case Law Reference:

AIR 1960 SC 610	relied on	Para 38
(1991) 3 SCC 617	relied on	Para 38
(2007) 3 SCC 124	relied on	Para 39
(2001) 8 SCC 257	referred to	Para 42
(2004) 11 SCC 456	referred to	Para 43
(2001) 3 SCC 71	relied on	Para 44
(1994) 5 SCC 213	referred to	Para 53

A	**(2002) 1 SCC 367**	**referred to**	**Para 53**
	1997 (10) SCC 488	**held inapplicable**	**Para 58**
	AIR 1977 MP 68	**referred to**	**Para 64**
B	**(2008) 6 SCALE 469**	**referred to**	**Para 108**
	(2008) 14 SCALE 639	**referred to**	**Para 109**
	JT 2009 (4) SC 662	**relied on**	**Para 109**
	(2005) 12 SCC 631	**relied on**	**Para 110**
C	**(1995) 1 SCC 142**	**relied on**	**Para 110**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 905 of 2005.

D From the Judgment & Order dated 09.06.2005 of the Special court (Trial of Offences Relating to Transactions in Securities) at Bombay in Special Case No. 1 of 1993.

WITH

E Crl. A. Nos. 922, 925, 945 & 965 of 2005.

Bishwajit Bhattacharyya, V.A. Mohta, Kamini Jaiswal, P.S. Narasimha, Amit Sharma, Rohit Rao, Rosh Mani, Anupam Lal Das, Debashis Mukherjee, Ajay Singh, Ravindra Kumar, E.C. F Agrawala, for the Appellant.

A. Mariarputham, A. Subba Rao, Aruna Mathur, C.V. Subba Rao, T.A. Khan, B.K. Prasad, P. Parmeswaran, for the Respondents.

G The Judgment of the Court was delivered by

S.B. SINHA, J.

INTRODUCTION

H 1. These appeals arise out of a judgment and order dated

9.6.2005 passed by the learned Judge, Special Court, Bombay constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short, "the said Act") in Special Case No. 1 of 1993 whereby and whereunder appellants herein with accused Munipally Subramanium Eshwar Chandra (Accused No. 6), Sunil Samtani (Accused No. 7) and Pankaj Brijlal Shah (Accused No. 9) were convicted for commission of offences punishable under Sections 409 and 120B amongst others and sentenced as under:

(a) Accused No. 1, K. Margabanthu was sentenced 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, Ramaiya Venkatkrishnan was sentenced to undergo R.I. for three months and to pay fine of Rs.50,000/-, in default S.I. for 15 days.

(c) Accused No. 4, Ashwin Mehta was sentenced to undergo R.I. for a period of three months and to pay fine of Rs. 2,00,000/-, in default S.I. for one month.

(d) Accused No. 5, Sudhir Mehta was sentenced to undergo R.I. for a period of three months and to pay fine of Rs.2,00,000/-, in default S.I. for one month.

(e) Accused Nos. 6, Munipally Subramanium Eshwar Chandra, Accused No. 7 Sunil Samtani, Accused No. 9 Pankaj Brijlal Shah were directed to pay fine in the amount of Rs.25,000/- each, in default S.I. for 15 days.

(f) Accused No. 8, S.V. Ramanathan was sentenced to undergo R.I. for a period of one month and to pay fine of Rs. 25,000/- in default R.I. for 15 days.

2. Before proceeding further, we may place on record that Harshad Shantilal Mehta (Original Accused No. 3) expired during the pendency of the criminal proceedings and the case

A against him, thus, abated. Accused Nos. 1, 2 and 8 who are appellants in Criminal Appeal Nos. 945, 965 and 922 of 2005 respectively were the Chairman-cum-Managing Director, the General Manager and the Divisional Manager of UCO Bank respectively.

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3. Whereas Accused No. 1 and 2 have been found guilty of committing both Criminal Breach of Trust as well as Criminal Conspiracy, Accused No 8, being a Scale IV Bank employee was found guilty only for commission of the offence of criminal conspiracy. Accused Nos. 4 and 5 (hereinafter referred to as, C "the private accused") were found guilty of commission of offences only under Section 120B of the Indian Penal Code being related to and otherwise connected with the activities of the original accused No. 3. Accused Nos. 6, 7 and 9 on whom only a punishment of fine was imposed accepted the judgment D and have not preferred any appeal before this Court.

BACKGROUND FACTS

4. The prosecution case centers around transactions, of discounting and rediscounting of Bills of Exchange and two Pay E Orders issued by the State Bank of Patiala and Syndicate Bank, in favour of the UCO Bank. This was said to be at the instance of the private accused.

5. Harshad Mehta was a dealer in the money and F securities market. The Reserve Bank of India had found that Harshad Mehta along with his other associates had diverted a huge amount of public fund belonging to Public Sector Banks and Financial Institutions for short term investment in the securities market, and thus defrauded the banks of a huge G amount.

6. An Inquiry Committee was thereafter constituted under the Chairmanship of Shri Janakiraman. The Committee submitted its report; pursuant to and in furtherance whereof the said Act was enacted providing inter alia for the constitution of H a Special Court for trial of the criminal offences, as also civil

disputes arising therefrom during the period between 1.4.1991 and 6.6.1992. The said Act provides for the appointment of a Custodian for attaching the properties of notified parties to prevent diversion of such properties. The properties which were attached included shares of various companies as well as moveable and immoveable properties of the private parties herein.

7. Accused No. 1 being Chairman-cum-Managing Director of the UCO Bank used to sit in the Head Office of the Bank situated at Calcutta. The Bank has an office and a guest house at Bombay as well.

8. On or about 14th March 1992, Accused No. 1 visited Harshad Mehta. Thereafter he came back to his office and called a meeting in which, inter alia, four Prosecution Witnesses being Shri S.V. Prabhu, Assistant General Manager (PW 44), Shri Bhaskar Roy Choudhary, Dy. General Manager (PW-45), Shri Ramanathan, Divisional Manager (Accused No. 8) and Shri R.L. Joshi, Public Relations Officer (PW 7) participated.

9. Accused No. 1 allegedly informed others that he had met Harshad Mehta who had suggested that it would be in the interest of the Bank to undertake the business of discounting and rediscounting of Bills of Exchange. The officers present were assured by him that the business could be transacted without involving the banks' funds. He furthermore insisted that the said business be undertaken through the Nariman Point Branch of the Bank though such transactions were generally not undertaken therefrom. In course of the meeting, Accused No. 1 contacted Accused No. 2 R. Venkatkrishnan at Calcutta and informed him about the transactions which had to be carried out. On the other officers of the Bank objecting thereto, Accused No. 1 assured them that the business of discounting and rediscounting of Bills of Exchange would be personally looked after by Harshad Mehta himself.

10. On the same day, that is, on 14.3.1992, a resolution was passed by M/s Growmore Research and Asset

A Management Ltd. (for short, "Growmore") to open an account in UCO Bank, Nariman Point so as to enable it to avail Bill Discounting facility provided by UCO Bank limited to Rs.50 crores. Harshad Mehta (the Original Accused No. 3), Ashwin Mehta (Accused No. 4) and/or Sudhir Mehta (Accused No. 5) B had been authorized by the said resolution to execute necessary documents on behalf of the Company. A similar resolution was also passed by M/s Mazda Industries & Leasing Ltd. (for short, "Mazda") (Accused No. 7), which is a public limited company for the purpose of opening up of a current C account in UCO Bank, so that it too could avail the Bill discounting facilities from the Bank .

11. Two or three days thereafter, Sunil Samtani, the Vice President of Mazda and Pankaj Shah, the Vice President of Growmore (Accused No. 9) met Shri Prabhu (PW 44) with D Ramanathan (Accused No. 8). They procured two forms for opening current accounts with the Bank. They were introduced by Accused No. 8, who were also invited for attending the Annual General Meeting of Mazda as also a cocktail party which was to be held on 18.3.1992 at Hotel Oberoi.

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12. The party was attended by Ramanathan (Accused No. 8), Prabhu (PW 44), Roy Choudhary (PW 45), Pankaj Brijlal Shah (Accused No. 9) and Harshad Mehta.

13. On 24.3.1992, at about 2.30 P.M., Sunil Samtani F (Accused No. 7) and Pankaj Shah (Accused No. 9) came to the Nariman Point Branch of the UCO Bank. They had brought with them two banker's cheques; one cheque was from Syndicate Bank dated 24.3.1992 for a sum of Rs.24,63,01,370/- drawn in favour of UCO Bank (Exh. 24); and the other from G State Bank of Patiala dated 24.3.1992 for a sum of Rs.25,00,53,636/-.

14. They had also brought with them the application forms for opening Current Accounts in the Bank. The same were handed over to Prabhu (PW 44). The two cheques that they had H brought were handed over to Ranjit Mukherjee (PW 1) for

clearance.

15. Two Bills of Exchange for a sum of Rs.14,41,44,000/- and Rs.35,95,24,000/- drawn by J.H. Mehta which were accepted by Ashwin Mehta (Accused No. 4) on behalf of Growmore (Exhibit 154) and by Sunil Samtani (Accused No. 7) on behalf of Mazda respectively were brought by Accused Nos. 7 and 9. Both the Bills of Exchange were executed by Sudhir Mehta (Accused No. 5), authorized signatory of M/s J.H. Mehta. It is not in dispute that original contract note with respect to the underlying security transaction had not been produced and only a photocopy thereof had been produced.

16. Letters were also issued by Mazda and Growmore to the effect that the said amount would be repaid by them on or before 24.4.1992. They had asked the Bank in writing to issue cheques in the name of ANZ Grindlays Bank.

17. For the said two cheques receipts were obtained from Syndicate Bank and State Bank of Patiala. The two usance promissory notes were handed over to Accused No. 7 and Accused No. 9. Indisputably, J.H. Mehta, the drawer of the Bills of Exchange did not have any account in his name. The acceptors, namely, Mazda and Growmore also did not have any account at the said branch.

18. Two draft promissory notes were handed over to Mr.Prabhu (PW 44) by Accused Nos. 7 and 9; one issued in favour of Syndicate Bank and the other in favour of State Bank of Patiala to be executed by UCO Bank in relation to the said cheques. Those usance promissory notes were signed by Mr. Prabhu (PW 44) and Ranjit Mukherjee (PW 1), pursuant whereto the Bank issued two pay orders on the same day in favour of ANZ Grindlays Bank for a sum of Rs.25,27,00,000/- and Rs. 14,14,00,000/-.

19. An account in the name of M/s J.H. Mehta was opened on the same day; the amount of Bill of Exchange was credited into that account; three accounts were opened in the Bank for

A carrying on transactions in the name of the aforementioned three entities bearing Nos. 1705, 1706 and 1708. The Account Nos. 1705 and 1706 were introduced by Ashwin Mehta (Accused No. 4) and Account No. 1708 was introduced by Sudhir Mehta (Accused No. 5). Two Bills of Exchange were B drawn by M/s J.H. Mehta. The same were signed by Sudhir Mehta (Accused No. 5) as the Constituted Attorney of Mrs. Jyoti Mehta, the proprietor of M/s J.H. Mehta. On behalf of Mazda, the bill was accepted by Ashwin Mehta (Accused No. 4). The amount of Bills of Exchange were credited to the account of C M/s J.H. Mehta and thereafter they were transferred to the account of Mazda and Growmore. The Bills of Exchange in relation to Growmore was accepted by Ashwin Mehta (Accused No.4).

20. On 25.3.1992, the account of J.H. Mehta in Grindlays D Bank credited the said amount and the amount was promptly transferred to Harshad Mehta's Account. On 26.3.1992, Prabhu (PW 44) asked Ranjit Mukherjee (PW 1) to prepare a note for the Chairman so as to enable him to seek approval from the Board for the transaction pursuant whereto the said note was E prepared and it was shown to accused No. 1. On the same date, PW 1 was asked by Prabhu (PW 44) to collect the Balance Sheets from Mazda and Growmore. Whether the Balance Sheets and Annual Reports of the said two Companies were ultimately collected or not is unknown. A proposal for F ratification of the Bill Discounting transaction was sent to the Head office on 3.4.1992. On 24.4.1992, i.e., the due date for retiring the Bills of Exchange, the payments were not made either by the drawer or by the acceptors. Accused No. 1 allegedly agreed to the suggestion of Harshad Mehta for rolling G over the same for one more month. PW 44 allegedly did not agree thereto and insisted on prompt payment.

As the funds had not been received, UCO Bank made payments to Syndicate Bank and State Bank of Patiala out of its own funds. There being a shortfall in the funds available with H UCO Bank, the requisite call money to meet the deficient had

to be borrowed by it from the Corporation Bank and the Oriental Bank of Commerce to the tune of Rs. 50 crores for three days. Officers of UCO Bank thereafter visited the offices of Mazda and Growmore for realization of the payments due. Two cheques were handed over by M/s J.H. Mehta with a request that the same not be encashed and that the cheques of Growmore and Mazda would be given at a later date. Mazda and Growmore also issued two cheques. They were not sent for clearing as the requisite funds therefor were admittedly not available in their accounts in Grindlays Bank. The said two Bills of Exchange, for want of fund, were not retired either by M/s J.H. Mehta or Growmore or Mazda.

22. Subsequent thereto, a formal meeting of the Investment Committee consisting of Accused Nos. 1 and 3 and PW 45 was held. At the instance of Accused Nos. 1 and 3, shares of Gujarat Ambuja Cement worth Rs. 50 crores were purchased by UCO Bank. It was routed through V.B. Desai a broker and an amount of commission for a sum of Rs. 9.53 lakhs was paid to him. The amount received by J.H. Mehta from UCO Bank under the said transaction was transferred by him to Mazda and Growmore so as to facilitate encashment of the said cheques for retiring the Bills of Exchange. Payment towards purchase of shares was made by UCO Bank before delivery thereof. The amount due to the Bank was sought to be realized in that manner.

23. However Mr. VB. Desai, could not deliver all the shares of Gujarat Ambuja Cement. It was agreed that in place of 3 lakhs shares of Gujarat Ambuja Cement, 77150 shares of 'CASTROL' would be delivered at the rate of Rs.1750/- per share.

24. Mr. Prabhu thereafter contacted accused No. 2 and informed him about the transactions, which according to him, had to be gone through at the Nariman Point Branch as had been directed by accused No. 1.

A **CHARGES**

25. Several charges were framed against the accused persons by the learned Judge, Special Court on or about 9.10.1995. A Special Leave Petition was preferred thereagainst. Although the order of the Special Court dated B 9.10.1995 was not interfered with, this Court recorded a statement made by the Additional Solicitor General of India that charges No. 10 to 13 and 16 would not be pressed. We may also place on record that the prosecution at a later stage did not press charges No.2, 4 and 6. The charges which were, thus, C framed and pressed against the accused persons were charge Nos. 1, 3, 5, 7, 8, 9, 14 and 15 as also charge No. 12 and 13 (Exhibit – 228). As charges No. 14 and 15 related to the deceased accused No. 3- Harshad Mehta, the same stood abated. The charges which survived were charges No. 1, 3, 5, D 7, 8, 12 and 13.

26. In the words of the learned Special Court, the said charges read as under:

E "2. By charge No.1, it is alleged that the accused nos. 1, 2 and 8 being public servants and being entrusted with public funds entered into a criminal conspiracy to commit offences punishable under Section 409 of the Indian Penal Code. It is also alleged that accused nos. 1, 2, and 8 being F public servant entered into a criminal conspiracy and thereby committed offence punishable under Section 120B of the Indian Penal Code. It is further alleged that accused nos. 1, 2 and 8 are also guilty of the offence of criminal misconduct under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act.

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3. By charge nos. 2, 4, 6 and 9, it is alleged that accused nos. 4, 5, 6, 7 and 9 acted in furtherance of the criminal conspiracy and abetted accused nos. 1, 2 and 8 in committing offence of criminal breach of trust. It is thus, H clear that basically the offences with which the accused

nos. 1, 2 and 8 are charged are offences of committing criminal breach of trust and entering into a criminal conspiracy, and the accused nos.4, 5, 6, 7 and 9 are charged with the offence of criminal conspiracy."

EVIDENCE

27. The prosecution in support of its case examined a large number of witnesses. The defence also examined some witnesses. Ashwin Mehta (Accused No. 4) also examined himself in defence.

A large number of documents were also brought on record by the parties. We would refer to some of them at an appropriate stage.

PROCEEDINGS BEFORE THE SPECIAL COURT

28. Before the special court it was alleged that the original contract note with respect to the underlying security transaction for the discounting of Bills had not been produced at the time of entering into the said transactions and only a photocopy thereof was produced. It was furthermore alleged that no security was insisted upon for discounting the Bills of Exchange and before signing the promissory notes, the Bank did not have with it the shares in relation to which the Bills of Exchange were drawn. The said acts of omission and commission on the part of Accused Nos. 1, 2 and 8 are said to be in violation of the UCO Bank Manual of Instructions on Bill Discounting (Exhibit-239) as also the Circular letter dated 5.9.1988 issued by the Reserve Bank of India (Exhibit-247).

29. The prosecution alleged that the transaction of discounting and rediscounting of the two Bills of Exchange was bogus and that the said modus operandi was adopted for siphoning of the public funds wherewith accused Nos. 1, 2 and 8 were entrusted. It was furthermore alleged that the said Bills of Exchange were not issued by way of any bona fide commercial transaction and were prepared only to secure

A financial accommodation for the deceased Harshad Mehta and his group.

30. The prosecution further alleged that as the deceased Harshad Mehta was not in a position to pay the amount due to the Bank on 24.4.1992; only with a view to facilitate the B payment of amount to the Bank against the two Bills of Exchange, accused Nos. 1 and 2 decided to purchase shares of Gujarat Ambuja Cement and the amount of purchase price of the shares was paid to M/s J.H. Mehta. Growmore and Mazda thereafter issued cheques in favour of the Bank in C discharge of the liability in relation to the said two Bills of Exchange. The authority on the part of the accused Nos.1, 2 and 8 to enter into the said transactions without obtaining sanction from the Board of Directors was also questioned.

D The defence of the accused persons had been a mere denial of the allegations.

31. Before proceeding further, we may notice that Bhaskar Roy Choudhary (PW 45) and S.V. Prabhu (P.W. 44) were E initially made accused in the case. They were arrested and later on released on bail. Applications were filed on their behalf purported to be in terms of Section 307 of the Code of Criminal Procedure, 1973, which were allowed by the learned Special Judge by order dated 22.6.1993, inter alia, on the condition that they would give evidence during the trial and make a full-and F true disclosure of the circumstances within their knowledge relating to the said offences.

JUDGMENT

G 32. The learned Special Judge upon consideration of the entire materials brought on record by the parties, in a very detailed and well considered judgment, held:

i. The offence of criminal breach of trust on the part of the accused Nos. 1 and 2 was proved beyond H all reasonable doubts as they had been entrusted

with the funds of UCO Bank, they had discounted two Bills of Exchange drawn by M/s J.H. Mehta and accepted by two corporate entities, Growmore and Mazda.

ii. The said discounting of bills was illegal as it violated the Circular issued by the Reserve Bank of India dated 5.9.1988 (Exhibit 247); and by reason thereof, a sum of Rs. 50 crores was transferred to the deceased accused No. 3 Harshad Mehta and/ or his groups.

iii. The transactions having been carried out in violation of the aforementioned Circular dated 5.9.1988 issued by the Reserve Bank of India, the accused Nos. 1, 2 & 8 having acted contrary thereto or inconsistent therewith, the same constituted an offence within the meaning of Section 405 of the Indian Penal Code.

iv. The said transactions having been carried out to benefit Harshad Mehta Group of Companies by the accused in conspiracy with each other, the prosecution has proved its case. The private accused as well as Accused No.8 were convicted only for commission of the offence of criminal conspiracy.

SUBMISSIONS

The learned counsel appearing on behalf of the appellants, inter alia, would urge:

i. The transactions being related to discounting and rediscounting of Bills of Exchange and not to securities, the Special Court had no jurisdiction to pass the impugned judgment of conviction and sentence.

A ii. The purported Circular Letter dated 5.9.1988 not being law within the meaning of Section 405 of the Indian Penal Code read with Section 43 thereof, the prosecution of the appellants ex facie was illegal and without jurisdiction. In any event, the said B Circular Letter not being in the public domain having not been published cannot have any force of law as is ordinarily understood.

iii. The said Circular in any event being not binding on the private accused, they could not be said to have C been a party to the offence of conspiracy.

iv. The Circular Letter being confined to rediscounting and a separate procedure having been laid down for discounting of Bills of Exchange permitting the D house loan/accommodation loan for some time as provided for in Exhibit 299; the impugned judgment cannot be sustained. No money, thus, having been transferred in violation of any law, the question of commission of any offence under Section 409 did E not arise.

v. The transactions having been entered into bona fide by the officials of the Bank and with the accused in order to earn profit for the bank and in that view of the matter, the prosecution cannot be said to have F proved any dishonest intention on their part as envisaged under Section 24 of the Indian Penal Code.

vi. The prosecution has not been able to prove that any G wrongful loss or wrongful gain was caused to any person. In view of the admitted case that Harshad Mehta or his group had not made any default in payment of the amount due and only because now a purported scam is said to have been committed, H all the private accused who were connected with

Harshad Mehta Group of Companies are alleged to have committed the offence of conspiracy, although the prosecution had failed to prove any of the charges levied against them.

vii. The deposition of S.V. Prabhu (PW 44), Bhaskar Roy Choudhary (PW 45) should not have been relied upon by the learned Special Judge without any material corroboration having regard to the fact that they were approvers.

viii. The judgment of the learned Special Judge being full of speculative inferences and surmises, is wholly unsustainable.

ix. No witness having been examined by the prosecution to show that the action on the part of the official accused was not bona fide, the learned Special Judge committed a serious error in passing the impugned judgment. It suffers not only from misreading and misconstruction of the evidences but also in taking note of the deposition of the witnesses examined on behalf of the defence.

x. Accused No. 1 being the Chairman-cum-Managing Director of the Bank having taken a decision to transact business with Harshad Mehta in the interest of the Bank whose reputation and creditworthiness in those days being unquestionable and particularly in view of the fact that even the prosecution witness accepted that he was respected by all concerned, the inference that the transaction was not entered into bona fide is wholly unsustainable.

xi. The learned Special Judge committed a serious error in arriving at a finding that no contract had been entered into by and between the Banks as it

A has categorically been accepted by Shri Prashant D. Patel, (P.W. 17) that a contract was entered into. In any event, a contract, it is well known, can be entered into by necessary implication.

B xii. The learned Special Judge committed a serious error in holding that accused No. 5 was Director of the Company although in fact he was merely an employee.

C xiii. Even assuming that Jyoti Mehta, Mazda and Growmore belonged to one group but in terms of the Manual issued by the UCO Bank itself, house loan transactions in favour of persons having the same identity and belonging to a group being permissible; the transactions were not violative of D the directions issued by the Reserve Bank of India.

xiv. In any event, the Reserve Bank of India's directions being confined to rediscounting and UCO Bank having knowledge thereof entered into the E transaction for discounting, the said Circular was not applicable to the case at hand. The decision to enter into the said transaction having been taken in a meeting and not by Accused No. 1 alone, he cannot be said to have any mens rea particularly when the Bank had earned a huge amount by way F of interest.

xv. Purchase of shares of Gujarat Ambuja Cement having been recommended by the Investment Committee which was a separate Department in a G meeting held on 27.4.1992; purchase was not in violation of any law.

xvi. The learned Special Judge committed a serious error in recording the judgment of conviction against each of the appellants herein without considering H

their individual involvement.

33. Mr. Mariarputham learned counsel appearing on behalf of the C.B.I., on the other hand, urged:

i. Conspiracy amongst the accused had clearly been established by the evidence of S.V. Prabhu (PW 44), Bhaskar Roy Choudhary (PW 45) and R.L. Joshi (PW 7).

ii. The manner in which the transactions had been carried through and in particular accused No. 1's meeting with Harshad Mehta on 13.3.1992 as also the transactions taking place in quick succession thereafter clearly establish that all the accused were parties to the conspiracy, which would appear from the following:

a. The decision was taken to make available a sum of Rs. 50 crores to Harshad Mehta by way of Bill Discounting.

b. A branch which had not been dealing with Bill Discounting of such high value had been chosen which demonstratively proved that the transactions in question were not ordinary commercial transactions as the branch which had been dealing with such bill discounting transactions was D.N. Road branch and not the Nariman Point Branch. The said branch was purposely chosen as the officers working there were not familiar with Bill discounting transactions.

c. Immediately after the meeting between accused No. 1 and Harshad Mehta on 13.3.1992, resolutions were passed by Growmore and Mazda for opening accounts with a view to obtaining Rs. 50 crores from the Bank. Transactions were shown to have been

A entered into between M/s J.H. Mehta on the one hand and Mazda and Growmore on the other, purporting to sell shares worth Rs. 50 crores on 20.3.1992; on the strength whereof two Bills of exchange were prepared by M/s J.H. Mehta and
B purported to have been accepted by Growmore and Mazda. The same were presented to UCO Bank, Nariman Point branch for discounting. The said Bills of Exchange were not accompanied by the original credit note relating to the alleged sale
C transaction of share securities. The Bills of Exchange were discounted and payment of Rs.50 crores was made. The accounts for facilitating the said bill discounting had been opened on the same day. No verification as per the required procedure
D was undertaken.

d. No security was taken even before the Bills of Exchange were discounted, although rediscounting had been carried out by two other Banks. Even the usance promissory notes for rediscounting was
E issued by the UCO Bank much later.

e. When there was default in retiring the Bills of Exchange with a view to cover up the matter, shares worth Rs. 49.50 crores were purchased from J.H.
F Mehta; as a result whereof, the said amount was made available to it for the purpose of retiring the Bills of Exchange. The acquisition of shares was neither bona fide nor in the interest of the Bank.

f. Mazda had approached Hamam Street Branch
G of UCO Bank for bill discounting facility upto the limit of Rs. 50 crores. However the same had not been granted as it had been found that Mazda did not satisfy the eligibility criterion, as would appear from the evidence of PW 2, Mazda would have been
H entitled to a maximum credit limit only of Rs. 2.76

crores; but even then transactions worth Rs. 50 crores were undertaken with J.H. Mehta, Growmore and Mazda.

g. Guidelines laid down in the Manual of UCO Bank (Exhibit 239) and directions of the Reserve Bank of India dated 5.9.1988, which have statutory force, stipulated that the credit limit be fixed only after verifying the creditworthiness of the customer wherefor it was necessary to compile the credit reports and accordingly the credit limit should have been sanctioned only thereafter. In terms of the said directions, if the Bills of Exchange exceeded Rs. 25,000/-, credit report on the drawee on whom the Bill was drawn was required to be obtained. Security was also required to be taken and it was the duty of the Manager to satisfy himself that the Bills of Exchange were a result of genuine trade transactions. But in the instant case, the said procedures were given a complete go by.

h. Accused No. 1 and Accused No. 2 being the officers of the Bank and having dominion over the funds thereof could not part with the same in favour of any person without complying with the statutory requirements. Even if the Manual of the UCO Bank and the Circular of Reserve Bank of India were not statutory in nature, the transactions having dishonestly been carried out, the same would satisfy the requirements of Section 405 read with Section 24 of the Indian Penal Code.

i. By reason of such transaction wrongful loss was caused to the Bank and wrongful gain was made by the Harshad Mehta group. Money of a Public Sector Bank was diverted to share/securities market transactions in violation of law and the prosecution therefore must be held to have proved

A the charges made against the accused. The two banker's cheque issued by the Syndicate Bank and State Bank of Patiala, although were not per se securities but as by reason thereof liability to pay interest had been cast on UCO Bank.

B

j. Accused No. 6 being Chief Executive of Mazda, Accused No. 7 being Vice President of Mazda and Accused No. 9 being Vice President of Growmore, they were also party to the conspiracy for commission of the offence of criminal breach of trust.

C

JURISDICTION OF THE SPECIAL COURT

34. The history as regards constitution of the Special D Courts has been noticed by us heretobefore. Its jurisdiction, inter alia, is confined to trial of offence relating to transactions in securities and for matters connected therewith or incidental thereto committed during the period between 1.4.1991 and 6.6.1992. The alleged offence had been committed admittedly E during the said period.

Section 2(c) of the 1992 Act defines "securities" to mean:-

"(c) "securities" includes--

F (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

G

(iii) rights or interests in securities;"

35. Sub-section (1) of Section 3 of the 1992 Act provides for appointment and functions of custodian. Sub-section (2) of Section 3 enables the custodian, on being satisfied on

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information being received that any person had 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, to notify the name of such person in the Official Gazette. Section 4 provides for cancellation of contracts entered into fraudulently. Section 5 provides for the establishment of the Special Court. Section 6 empowers the Special Court to take cognizance of or try such cases which are instituted before it or transferred to it. Jurisdiction of the Special Court is provided for in Section 7 of the 1992 Act. It starts with a non obstante clause providing that any prosecution in respect of any offence referred to in sub-section (2) of Section 3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any Court shall stand transferred to the Special Court. Section 9 provides for the procedure and powers of the Special Court.

36. Let us, at the outset, deal with contention of learned counsel for the appellant that having regard to the definition of 'securities' as contained in Section 2(c) of the 1992 Act which does not involve 'bill discounting and rediscounting', the Special Court had no jurisdiction to try the accused for the offences alleged against them.

37. The definition of 'securities' 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. The term 'securities', thus, should be given an expansive meaning.

38. In *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 held as under:-

> "It is obvious that the words used is an inclusive definition denote extension and cannot be treated as restricted in any sense. (Vide : Stroud;s Judicial Dictionary", Vol. , p.

A 1415). Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation"

(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).

39. In *Commercial Taxation Officer, Udaipur v. Rajasthan Taxchem Ltd.* [(2007) 3 SCC 124, this Court stated:

C **"22.** We have already extracted the definition of raw material under Section 2(34) which specifically includes fuel required for the purpose of manufacture as raw material. The word includes gives a wider meaning to the words or phrases in the statute. The word includes is D usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall E include."

40. This jurisdiction of the Special Court is not confined to the scam relating to securities alone but utilization of any amount relating to transactions in securities and for matters F connected therewith or incidental thereto.

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

42. In *Harshad S. Mehta and others v. State of Maharashtra,* [(2001) 8 SCC 257], this Court held:

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"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." A

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43. We may also notice another decision of this Court in *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and another,* [(2004) 11 SCC 456] wherein it was held as under:-

"18. The jurisdiction of the Special Court is of wide amplitude. Subject to a decision in appeal therefrom, its decision is final." C

44. Jurisdiction of the Special Court is required to be determined with regard to the provisions of Section 6 of the Code of Criminal Procedure, 1973. The Act is a special Act. It contains a non obstante clause. It shall, thus, prevail over any other Act. [See – *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and others,* [(2001) 3 SCC 71]. D

45. An offence is committed with a view to circumvent the law. An apparent state of affairs need not be the real state of affairs. A simple transaction of discounting and rediscounting on its face may appear to be genuine and lawful but there may be underlying purposes behind it. It has not been disputed that Harshad Mehta was dealing in the money market and securities market and that Growmore although being a public limited company, was controlled by Harshad Mehta. Both Mazda as also Growmore indisputably were dealing in the business of selling and buying of shares. Further M/s J.H. Mehta, was the proprietary concern of the wife of Harshad Mehta. She used to execute business through her constituted attorney. General Power of Attorney had also been issued by the aforementioned Companies in favour of the accused persons. The Harshad Mehta Group of Companies were therefore dealing in securities. E F G

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A 46. The method of siphoning of the funds of UCO Bank through discounting of two bills of exchange was unlawful. Both the bills of exchange were shown to have been issued in relation to transaction in shares between M/s JH Mehta, Growmore and Mazda.

B 47. For the purpose of arranging repayment of the amount, shares were purchased by UCO Bank through M/s VB Desai and Co. The offence of conspiracy to commit the offence of Breach of trust, thus, related to the transaction in securities.

C 48. It is therefore not a case where it can be said that the Special Court lacked inherent jurisdiction in trying the offence said to have been committed by the accused.

RBI CIRCULAR

D 49. Banking business is controlled by several Acts of Parliament. We need not go into the history relating thereto in great details being not necessary.

50. Suffice it to say that UCO Bank is a Nationalized Bank E having been taken over under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It has various branches in Bombay; its main Branch being at D.N. Road. Its Nariman Point Branch was mainly dealing with foreign exchanges. The business as regards discounting and F rediscounting usually used to be carried out at the main branch.

51. The Bank, inter alia, is regulated under the provisions of the Reserve Bank of India Act, 1934 as also the Banking Regulation Act, 1949 (for short, "the 1949 Act") Its directions are statutory in character.

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52. In terms of Section 35A of the 1949 Act, the Reserve Bank of India is empowered to issue directions to the Banks in public interest; or in the interest of Banking policy; or to prevent the affairs of any banking company being conducted

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in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the Banking Company; or to secure the proper management of any Banking company generally. The Reserve Bank of India in terms of Section 21 of the 1949 Act is empowered to control advances by banking companies and issue necessary directions in this behalf.

53. The Reserve Bank of India, therefore, has the requisite power to issue direction to Banks in relation to discounting and rediscounting of bills of exchange and those directions issued by the Reserve Bank of India have statutory force and, thus, can be termed as law in force. {See also *Corporation Bank vs. D.S. Gowda & Anr.* [(1994) 5 SCC 213] & *Central Bank of India vs. Ravindra & Ors.* [(2002) 1 SCC 367]}

54. All public sector banks are bound thereby.

55. Pursuant to or in furtherance of the said power, the Reserve Bank of India issued a Circular dated 5.9.1988 titled "BILLS REDISCOUNTING SCHEME -- INTRODUCTION OF USANCE PROMISSORY NOTES – PROCEDURE THEREFOR", clauses 2(iii) and 2(v) whereof read as under

> "2(iii) The usance promissory note should be backed by unencumbered usance Bills of Exchange of at least equal value not fallen due for payment, drawn or endorsed in its favour, arising out of bonafide commercial or trade transactions on which the required stamp duty has been paid. The discounting bank will hold and continue to hold such unencumbered usance bills till the date of maturity of the usance promissory note.
>
> 2(v) It would be desirable to centralize the function and confine the authority to draw the usance promissory notes etc. at the bank's main Funds Management Centre."

56. We may also notice that the Bank had issued a Manual, known as the "UCO Bank Manual of Instructions on Bill

A Discounting" relating to discounting of Bills of Exchange, laying down the procedure therefor, relevant portions whereof (marked as Exhibit 239) read as under:

> "2.5. The attention of the Sanctioning Authority should be
B specifically drawn:
>
> (a) If bills drawn on places where the bank does not have branch are to be purchased.
>
> (b) If house bills are to be purchased under the limit. House
C bills are bills where drawer and drawee are identical or connected persons. Purchase of house bills obviously involves greater risk than the purchaser of bills drawn on unconnected, independent drawees. Purchase of house bills should be recommended for sanction only when the
D credit rating, business integrity, past dealings and business methods of the customer are highly satisfactory and he is considered good for the limit on his single signature."

THE EFFECT OF THE CIRCULAR LETTER

E 57. Accused Nos. 1, 2 and 8 being public servants, they were bound by the aforementioned Circulars having been issued by the Reserve Bank of India.

58. Mr. Jethmalani, however, has relied upon the decision
F in *B.O.I. Finance Ltd. v. Custodian & ors.* 1997 (10) SCC 488, wherein this Court while dealing with a Circular letter which had been marked confidential opined that such a Circular did not bind third parties, stating:

> "22. With regard to the finding of the Special Court that the
G transactions in question were illegal, as they were in contravention of the circulars which were issued by the Reserve Bank of India under the provision of the Act, it was contended by Mr. Cooper, learned Counsel, that the circulars issued were no more than guidelines which were

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required to be followed by the Bank and they were not mandatory in nature. Elaborating this contention, Mr. Cooper submitted that the Banking Companies Act contains provisions which enable the Reserve Bank of India to issue directions which were mandatory and also give advice to the banks. Our attention was drawn to Sections 21 and 35A of the said Act and it was contended that the directions which are issued by the Reserve Bank of India under these two provisions are clearly mandatory. On the other hand, Section 36(1)(a) & (1)(b) gives power to the Reserve Bank of India to give advice or lend assistance and any action taken thereunder cannot be regarded as mandatory. It was submitted that the language of the circulars dated 14.4.1987 and 1.12.1987, which prohibit the banks from entering into buying back arrangements, clearly shows that the said circulars were only in the nature of advice and must be regarded as having been issued under Section 36(1)(a) and (1)(b) of the Act."

59. Having regard to the provisions of Section 36(1)(a) and (b) of the Banking Regulation Act, it was held that they were only in the nature of an advice and not binding on the third parties.

60. The distinction between exercise of jurisdiction under the enabling provisions contained in Section 36(1) and the ones under Sections 21 and 35A of the Banking Regulation Act and the provisions contained in Section 45L of the Reserve Bank of India Act, 1934 is absolutely clear and unambiguous.

61. In terms of Section 36, the Reserve Bank of India may caution or prohibit the Banking Companies but in terms of Sections 21 and 35A of 1949 Act it can issue binding directions. The directions have been issued by the Reserve Bank of India in regard to rediscounting.

62. The said decision therefore is not applicable to the

A facts and circumstances of this case.

63. Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said B purpose, the intention of the legislature must be considered. Having regard to the fact that the Reserve Bank of India exercises control over the Banking Companies, we are of the opinion that the said Circular letter was binding on the Banking Companies. The officials of UCO Bank were, therefore, bound by the said circular letter. C

64. The Madhya Pradesh High Court in *The State of Madhya Pradesh v. Ramcharan* [AIR 1977 MP 68] held:

"6. Although the Constitution does not contain any generic D definition of law, it defines "law" for purposes of Article 13 to include "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". Article 366(10) of the Constitution also defines the expression "existing law" to mean "any law, E Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation". Another definition which is relevant here is the definition of the expression "Indian law" in the General Clauses Act, F 1897. Section 3(29) of this Act defines "Indian Law" to mean "any Act, Ordinance, regulation, rule, order or bye-law, which before the commencement of the Constitution had the force of law in any Province of India or part thereof and hereafter has the force of law in any Part A State or G Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act". These definitions go to confirm that under our legal order "law" does not include only legislative enactments but it H

also includes rules, orders, notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power.

... 7. The question relating to a post-constitution order or notification in the context whether it amounts to law was considered by the Supreme Court in *Jayantilal Amratlal v F. N. Rana,* AIR 1964 SC 648 = 1964-5 SCR 294. ...The Court further observed as follows:

"This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law." ..."

65. It therefore stands established from the above that UCO Bank could only have discounted the bills of exchange out of bonafide commercial transactions as had been provided under the RBI circulars which were statutorily binding on UCO Bank.

66. So far as the submission of the learned counsel that they had no knowledge of the circulars issued by RBI is concerned, we would affirm the findings of the special judge that the conduct of the accused clearly shows to the contrary that they in fact did have knowledge of the RBI Circulars in question. They otherwise would not have gone to the length of creating documents to show that the bills of exchange had been issued because of a sale of shares of M/s JH Mehta to Growmore and Mazda. If they did not have the knowledge of the said circulars and if the bank had been willing to discount the bills of exchange, a simple accommodation Bill of Exchange could have been executed. In order that the bank could discount

A a bill of exchange, it was necessary that it related to a bonafide or genuine commercial transaction and it was because of this requirement that the accused persons had gone to the extent of preparing false documents to give an appearance that the discounting related to bona fide commercial transaction.

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CRIMINAL BREACH OF TRUST

67. Section 405 of the Indian Penal Code defines Criminal Breach of Trust in the following terms:

C "405. *Criminal breach of trust* - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any D 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".

68. An offence of criminal breach of trust by a public E servant attracts the penal provision of Section 409 of the Indian Penal Code. Indisputably, the Bank entrusted its funds to its officers; they had the dominion over the said property; they were holding the said money in trust which is an comprehensive expression, inter alia, to denote a relationship of master and F servant. The act of Criminal Breach of Trust per se may involve a civil wrong but a breach of trust with an ingredient of mens rea would give rise to a criminal prosecution as well. The ingredients of Section 409 are:

G 1. Accused must be a Public servant, merchant, agent, a factor, broker or an attorney.

2. In his such capacity he must be entrusted with some property or must have gained dominion thereover.

H 3. He must have committed criminal breach of trust.

69. The criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. It is one thing to say that any Circular Letter issued by the Reserve Bank of India being not within the public domain would not be law but it would be another thing to say that it did not contain any direction of law so as to attract the liability in terms of Section 405 of the Indian Penal Code. Lawful directions were issued by the Reserve Bank of India. The Circular Letter was meant for all Scheduled Banks. The authorities and/or officers running the affairs of the Scheduled Banks therefore were aware thereof. If it is binding on the Banks, it would be binding on the officers. Any act of omission or commission on the part of any authority of the Bank would amount to acting in violation of any direction of law. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom.

70. Indisputably, the higher authorities of the bank were entrusted with or otherwise had dominion over the properties of the bank. They were dealing with public funds. Indisputably again they were required to apply the same in terms of the Circulars issued by the Bank as also the Reserve Bank of India. It has been accepted at the Bar that failure on the part of the officers of the Bank to abide by the directives issued under the Circulars would result in civil action. Subjecting the bank to a civil liability would thus attract one of the ingredients of criminal breach of trust. There cannot be, however, any doubt whatsoever that a mere error of judgment would not attract the penal provision contained in Section 409 of the Indian Penal Code.

The materials brought on record by the parties must be judged keeping in view of the aforesaid legal position.

A 71. The primary question is whether the property of the bank was dishonestly used or disposed of in violation of any direction of law prescribing the mode therefor. The mode of disposal of the public money is prescribed in terms of the UCO Bank Manual and the Circulars issued by the Reserve Bank of B India. It was, however, necessary for the prosecution to prove that the same was done with requisite mens rea.

Before proceeding further, we may notice some basic facts which have been proved by the prosecution and in respect whereof there is not much controversy. C

72. All the accused were working as full-time employees. On 13.3.1992, Margabanthu (Accused No.1) Chairman-cum-Managing Director of the Bank met Harshad Mehta, the prime accused. This has been proved by Joglekar PW-6 the Driver D and R.L. Joshi, PW-7.

73. What transpired in the said meeting although is not known, the purport thereof can be found out from the representation made by Accused No. 1 in the meeting held on E 14.3.1992, which was attended by PW 44 - Prabhu, Assistant General Manager of the Nariman Point Branch, PW 45 – Bhaskar Roy Choudhary, Dy. General Manager, Accused No. 8 – Ramanathan, Division Manager and PW 7 – R.L. Joshi, Market Promotion Officer, that the bank may earn some profit without investing its own money. Ex facie, the offer appeared F to be attractive as it was for the benefit of the Bank but the process involved therein was a complex one.

74. It was insisted that the transaction of such magnitude be carried out from the Nariman Point Branch of the Bank G which was not the main branch and was not otherwise well equipped to deal with such transactions. The private accused did not have any account in the said branch. The employees of the said branch did not have enough experience to carry out transaction of such high values. Despite objection made by

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Prabhu (PW-44), the same was insisted upon.

75. It had not been disclosed that a similar offer made by Mazda to carry the transactions at the Hamam Street Branch of the Bank had yielded no results. An assessment of creditworthiness of Mazda was made and it was found that their creditworthiness was only to the extent of Rs. 2.76 crores and not beyond the same. This appears to be the prime reason why the transactions were shifted from Hamam Street Branch to Nariman Point Branch.

76. The officers of the main branch of the Bank at Bombay were not taken into confidence at all. One of the officers who was asked to attend the meeting was Ramanathan, Divisional Manager (Accused No.8). Why he was involved had not been explained? He might not have participated in the meeting as contended but then his subsequent role speaks of volumes. We would refer thereto a little later. It must be noticed that during the said meeting itself the Accused No. 1 spoke to Accused No. 2 over phone. This has been proved by PW-7 in his deposition, stating:

> "When I was in the chamber, Mr. Margabanthu had spoken to Mr. R. Venkatakrishnan i.e. Accused No. 2.
>
> "When the person on the other side of the telephone picked up the phone Mr. Margabanthu said 'Venkit'. Then Mr. Margabanthu informed about this bill transaction and added that this would not affect the outflow of the funds from the Bank. At that time Mr. Venkatakrishnan, Accused No.2 was looking after the Investments & Treasurer Division of the Bank that is why I know that the conversation was with Mr. Venkatakrishnan"

77. The fact that Accused No.1 spoke to Accused 2 over phone was also stated by PW-44 and PW-45 in their statements. The reason why consent of Accused No. 2 or at least the necessity of keeping him informed about the

A transaction appears to be that he used to handle the call money. If a large chunk of money goes out of the coffer of the bank, it would have been probably necessary to arrange for call money in future.

B 78. Although, it is not the case of the prosecution that Nariman Point Branch of the Bank had not been dealing with discounting/rediscounting of the Bills of Exchange; what was pointed out was that from the said Branch such a huge transaction had never been carried out. Objection of PW 44 was over ruled on the premise that Harshad Mehta who had C vast experience in the field himself would be taking care of the transaction.

79. Indisputably, thus, the person for whose benefit the transactions were sought to be carried out, was involved in the D internal functioning of the Bank. This aspect of the matter has been proved by PW-7 – R.L. Joshi, PW-44 – S.V. Prabhu and PW-45 – Bhaskar Roy Choudhary.

80. On the same day, Growmore passed a resolution to E open an account at the Nariman Point Branch of the UCO Bank for the purpose of availing Bill Discounting limit of Rs. 50 crores. Harshad Mehta (accused No. 3), Ashwin Mehta (accused No. 4) and Sudhir Mehta (accused No. 5) were authorized to execute necessary documents on behalf of the company. Although we do not know the exact time of holding of the F meeting of the Bank Authorities vis-à-vis the time when the Resolution was passed but the fact remains that both took place on the same date. Only a few days later, Sunil Samtani (accused No.7), the Vice President of Mazda and Pankaj Shah (accused No.9), the Vice President of Growmore came to the G Bank and met Prabhu (PW-44). They did not come alone; they were accompanied by Ramanathan (accused No.8). Admittedly, they obtained two forms for opening Current Accounts. At the same time, the Officers were invited for attending a cocktail party on 18.3.1992, i.e. on the same day.

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81. We would presume that before accused No. 7 and accused No. 9 came to the Bank, a resolution was also passed by Mazda. Although no documentary evidence in this behalf is available on record but it was spoken of by PW 4 Prakash V. Bhat. The learned special judge also has referred thereabout in his judgment. We may, for this purpose also, take into consideration that a dinner was held at Hotel Oberoi on the same day. It was attended by Ramanathan (Accused No. 8), Prabhu (PW-44), Roy Choudhary (PW-45). Accused No. 7, Accused No.9 and Harshad Mehta (Accused No.3) were also present. It is crucial that on 24.3.1992, at about 2.30 P.M., Samtani (accused No. 7) and Pankaj Shah (accused No.9) came to the Nariman Point Branch of the UCO Bank; they brought with them two cheques marked Exhibit 24 and Exhibit 26; the first having been drawn by Syndicate Bank on the same date for a sum of Rs.24,63,01,370/- in favour of UCO Bank, and second from the State Bank of Patiala of the same date for a sum of Rs.25,00,53,636/-. The application forms for opening 'Current Accounts' were handed over to Prabhu (PW-44). The cheques were handed over to Ranjit Mukherjee (PW 1) for clearance. PW-44 testified that the account opening forms were given to the Current Account Department. At the same time, two draft promissory notes were brought, on the basis whereof usance promissory notes were prepared and signed by Prabhu (PW-44) and Ranjit Mukherjee (PW-1). Bank's functions of preparing draft promissory notes were therefore taken over by the borrower.

82. The promissory notes were issued (Exhibit 28 and Exhibit 29) in favour of Syndicate Bank for a sum of Rs. 25 crores and in favour of State Bank of Patiala for a sum of Rs. 25,36,64,000/-. They also brought two Bills of Exchange (Exhibit 154 and Exhibit 155) one of which was drawn by M/s J.H. Mehta for a sum of Rs. 14,41,44,000/- signed by Ashwin Mehta (Accused No.4) and the other for a sum of Rs.35,95,24,000/- signed by Sunil Samtani (Accused No.7). Whereas former (Exhibit 154) was accepted by Growmore and the later (Exhibit

155) by Mazda. Both the Bills of Exchange were executed by Sudhir Mehta (accused No. 5).

83. Ranjit Mukherjee (PW-1) who was supported by PW-44 – Prabhu categorically stated that no original contract note with regard to the underlying security transactions had been produced, only a photocopy was produced. No security was received for discounting the Bills of Exchange. Banks also did not have the shares in relation to which the Bills of Exchange were drawn before the promissory notes were executed.

84. As is customary, having regard to the nature of the promissory notes being usance, Mazda and Growmore were to repay the amount on 24.4.1992. They issued letters promising to do so (Exhibit 35 and Exhibit 36).

85. Letters were also issued asking the Bank to issue cheques in the name of ANZ Grindlays Bank. The same was complied with. Accused No. 7 and Accused No. 9 were handed over: (i) two pay orders in favour of ANZ Grindlays Bank; (ii) receipts for the two cheques received from Syndicate Bank and State Bank of Patiala; and (iii) two usance promissory notes.

86. Indisputably, as on the said date, M/s J.H. Mehta did not have any account at the Nariman Point Branch. Accounts of Mazda being Account No. 1705 (Exhibit 86), Growmore being Account No. 1706 (Exhibit 89) and M/s J.H. Mehta being Account No. 1708 (Exhibit 93) were opened later. The transactions took place in a post haste manner.

87. Accounts of Growmore and Mazda were credited and pay orders were issued. Thereafter, M/s J.H. Mehta's Account was credited and the amount was transferred to the accounts of Growmore and Mazda. When certain irregularities in regard to the Bill discounting were pointed out, PW 44 and PW-1 admitted that confusion was prevailing in the matter. The Bills were rediscounted by State Bank of Patiala before they had

been discounted by UCO Bank. PW-19 I.B. Gupta, who is an employee of State Bank of Patiala categorically stated that Sunil Samtani (accused No.7) had contacted the Bank in the morning about the bill rediscounting. Similarly, S.K. Jindal (PW-21), an officer of the State Bank of Patiala testified that Prakash Shah (PW-9) had given an offer on behalf of Harshad Mehta for investment in bill rediscounting. Money was credited in the account of M/s J.H. Mehta with ANZ Grindlays Bank. This has been proved by Cheque dated 25.3.1992 (Exhibit 267) and the deposit slip (Exhibit 268). This was the route of transferring the money agreed to by all the players.

88. The submission of the learned counsel for the appellants that there has been no violation of the RBI Guidelines and/or the UCO Bank Manual cannot be accepted. It may be true that Shri Veeraraghwan Rangarajan (PW 40), Executive Director, RBI, Bombay had stated that technically the RBI Circular referred to the Bill rediscounting and not discounting, but it is not disputed at the Bar that Bill rediscounting must be preceded by Bill discounting. UCO Bank had issued usance promissory notes; it was required to be backed by encumbered usance Bills of Exchange of at least equal value not due for payment; the transactions were required to be bona fide commercial transaction. UCO Bank Manual although permits advances as against house bills but it stipulates that for the said purpose, creditworthiness of the customer was required to be verified. Credit limit was also to be fixed. For the said purpose, credit reports were to be compiled; limits were to be sanctioned. The jurisdiction of Chairman-cum-Managing Director and other Authorities are fixed if the Bill of Exchange exceeds Rs. 25,000/-, credit report on drawees on whom the bill is drawn is also required to be obtained. The Manual mandates that security be also taken. The duty had been cast on the Manager to satisfy himself that Bill of Exchange is the result of genuine trade transaction.

A **ILLEGALITY**

89. Section 43 defines the terms 'Illegal' or 'Legally bound to do" in the following terms.

> "43. "Illegal", "Legally bound to do"- The word "illegal" is B 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.

C It carries a very wide meaning. If any ground for civil action can be founded on the basis of any act of omission or commission on the part of a person, his act may be held to be illegal or it may be held that he was legally bound to do an act which he had omitted to do. If a person is guilty of breach of a D departmental order, he may be held to be guilty as he was legally bound to act in terms thereof.

It does not matter whether the violation was in relation to the Circular issued by the Reserve Bank of India or whether it was in violation of the guidelines issued by the Bank itself.

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90. The question as to whether the directions are statutory in character and binding in law may not depend upon the nature of the powers to be exercised by the Reserve Bank of India. Discounting and rediscounting of Bills of Exchange is an F integral part of banking transactions. Purchase and sale of securities is also a part of the banking transactions as would appear from Section 6(1)(a) of the Banking Regulations Act.

Harshad Mehta was having a very good customers credit rating which was even spoken of by PW 7. The Bills of G Exchange being usance Bills of Exchange in terms of Section 32 of the Negotiable Instruments Act on their maturity, only the acceptors, namely, Growmore and Mazda were responsible for clearance thereof and not M/s J.H. Mehta.

H 91. Further we must take note of the fact that the bills had

been drawn by M/s JH Mehta and were accepted by M/s Growmorw and M/s Mazda. The payment on rediscounting by the Bank should therefore have been made to M/s JH Mehta, but the payment had in fact been made to M/s Growmore and M/s Mazda Industries. If the Bills of Exchange had been drawn because M/s JH Mehta had sold the shares to Mazda and Growmore, it would have been M/s JH Mehta which would have been entitled to the purchase price of the shares which it had been sold to M/s Growmore and M/s Mazda. In the present case the Bank had first made a credit entry in the account of JH Mehta and then the amount had been transferred to Growmore and Mazda by issuing cheques in favour of ANZ Grindleys Bank favouring Mazda and Growmore. Thus the ultimate payment on the rediscounting of the two bills of exchange went to Growmore and Mazda who had been shown as the purchasers of the shares from M/s JH Mehta and were therefore to make payment of the price of the share to JH Mehta. It must moreover be noted that even the cheques for repayment to the Bank on 27.04.1992 had been issued by M/s Growmore and M/s Mazda. As the amount paid under the Bills of exchange by the Bank was returned to the Bank, it is beyond the purview of any explanation why the bills of exchange had been drawn in the first place. Obviously the discounting of the Bills of exchange in our opinion did not represent a bonafide commercial transaction.

92. It has been brought to our notice by the learned counsel for the appellants that Harshad Mehta was behind all the entities. Apart from his individual capacity, he was acting on behalf of M/s J.H. Mehta, Mazda and Growmore. This fact was not unknown to the officers of the Bank. Each one of the private accused was connected in one way or the other with each of the said entities. Sudhir Shantilal Mehta (Accused No. 5) held the Power of Attorney and was the authorized signatory of M/s J.H. Mehta. In a situation of this nature, in terms of the Manual if house bills were to be purchased where the drawer and the drawee were closely interconnected, the following requirements

A were to be satisfied, namely, (i) if the credit rating is high, (ii) business integrity and (iii) past dealings and the business methods of the customer were highly satisfactory and he was considered good for the limit on his single signature. None of the aforementioned ingredients of Para 2.5 (b) of the Manual
B were satisfied. None of them were customers of the said Branch; the Authorities, namely, PW-44, PW-45 as also PW-1 did know them. Although the past dealings of the accused with the Bank took place at Hamam Street Branch, its records were not called for. So far as J.H. Mehta, Mazda and Growmore are
C concerned, they were new customers. It was therefore beyond anybody's comprehension as to how an account was opened on the same day as the Bill of Exchange was presented for discounting. It is also beyond any doubt or dispute that the power to sanction advance so far as the Chairman is concerned
D is limited to Rs.5 crores. Prior sanction of the Board of Director was necessary if the Bill discounting exceeds Rs.5 crores.

PW-44 in his evidence stated:

"The limit upto which Shri Margabanthu was authorized to
E sanction was Rs. 5 crores. If business was to be in excess of Rs.5 crores, the authority to sanction was with the Board of Directors."

To the same effect is the evidence of Varanadi
F Subrahmanyam (PW-43), who testified:

"According to me a transaction of discounting or rediscounting of Bills of Exchange in a sum of Rs. 50 crores could not be undertaken without previous sanction of the Board of Directors.

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93. The Manual, therefore, prescribes exercise of greater caution in the cases where the drawer and drawee of the Bill are identical or connected persons. It provides for the meeting of safeguards by way of making an enquiry as regards the
H creditworthiness, a satisfaction of which was required to be

arrived at by the Manager. Thereabout, having regard to the credit rating, business integrity and past dealing, the Manual provides that those borrowers who do not satisfy the said tests laid down would not be eligible for any loan. Evidently, all these procedural requirements necessary for safeguarding the interests of the Bank were thrown to the winds.

94. The submission of Mr. Mohta, however, is that all such transactions of the past had been ratified by the Board of Directors. It may be or it may not be but the fact remains that the law requires prior sanction of the Board of Directors and not ratification. Admittedly, even the Board of Directors did not ratify the said transaction although in terms of the Manual it was necessary that prior sanction should be obtained. At least, none has been produced before us.

95. Strong reliance has been placed on a resolution of the Board of Directors dated 12.5.1992 whereby all support was extended to Accused No.1. The same, in our opinion, is of no significance as even on that day the Board of Directors did not ratify the transaction.

96. We may notice that the Officers of the Bank were aware of the fact that the Bank finances were not utilized for speculative purposes. The Banking business is governed by sound practice. Any advance exceeding Rs. 5 lakhs against shares and debentures was to be sanctioned by the Board/ Committee of Directors. As it is stated:

> "12. Advances exceeding Rs. 5 lakhs against shares and debentures should be sanctioned by the Board/Committee of Directors. Suitable powers may be delegated to the Chief Executive and others for sanctioning advances for lesser amounts.

97. Advances against securities/shares/debentures in terms of explanatory note included all types of advances. The Executive Director of UCO Bank Biswajit Choudhari (PW-37)

A accepted that the discounting of bills is a method of advancing credit to a party. Evidently, therefore, the prudent lending norms were required to be observed. One of the contentions raised by the learned counsel for the appellants was that further security was not necessary as two cheques had been issued B by two scheduled Banks. The cheques were issued for the purpose of earning interest by way of rediscounting. It may be true that whereas the Syndicate Bank and State Bank of Patiala were to get 17.5% of interest, the UCO Bank was to receive interest from Harshad Mehta at the rate of 21% per month. This C itself shows the speculative nature of the transaction. Syndicate Bank and State Bank of Patiala or even the banker of Harshad Mehta and his group ANZ Grindlays Bank were of the opinion that they proceeded with so much amount even for a short period. We fail to see any reasons as to why the usual good credit was not taken recourse to. The underlying object of such D transaction is that the same should be a genuine/bonafide commercial transaction. It was for the said purpose procedural requirements were required to be complied with.

98. Even if the words 'directions of law' are to be given E literal meaning, it would include a direction issued by the authorities in exercise of their statutory power as also the power of supervision. We have opined heretobefore that it has been accepted at the Bar that both the RBI Circulars as also the Manual of UCO Bank were binding on the authorities. Our F attention, however was drawn to the statement of Srinivas Padiyar (PW-20) of the Syndicate Bank to show that a contract was entered into on phone. It was furthermore submitted that the contract was an implied one. Apart from the fact that no sufficient and reliable evidence has come on record to show G that the competent authorities of the UCO Bank and the other Banks in question, namely, Syndicate Bank and State Bank of Patiala had entered into such transactions but we would assume the same for the sake of argument. We will also assume that the transaction was otherwise permissible in law H in terms of the provisions of the Contract Act or any other

Parliamentary Act for the time being in force.

99. The prosecution case, however, is that it has been done in a manner not known to law and/or in violation of the directions of law. If it has been able to prove the ingredients of Section 405 of the Indian Penal Code that the transaction had been carried out for the purpose of disposing of the property belonging to the Bank or having used dishonestly and/or in violation of the direction of law, the prosecution must succeed. The entire transaction was undertaken with one motive that the funds of UCO Bank should be made available to Harshad Mehta who was the stock broker.

100. Evidently, UCO Bank was approached as a conduit as it had no money of its own. Whereas other banks were secured as they had issued cheques in the name of Nationalized Bank; UCO Bank did not obtain any security or pledge. The fact that it had undertaken a grave risk is not in dispute. Money was to be returned by a fixed date, namely, 24.4.1992.

101. Even the balance sheet and annual reports of the two banks were not sought for far less scrutinized for arriving at a satisfaction as regards the capability of the borrower to repay the amount within the stipulated time. Only after advances were made i.e. on 26.3.1992, PW-44 asked PW-1 to collect the balance sheet from Mazda and Growmore for forwarding them to the Head Office for seeking approval of the Bill Discounting already done.

PW-1 in his evidence stated:

"Round about 26th March, 1992, Mr. Prabhu also asked me to collect the balance-sheet of Mazda and Growmore. He told me that it was necessary to send the balance sheets to the Head Office. He had asked me to go to their offices. On 27th or 28th March, 1992, I visited the office of Mazda. Over there I met Mr. Samtani. I requested him

A to give me the Balance Sheets and the Annual Reports for the last three years. Mr. Samtani told me that he would send the same. I also asked him about the Balance Sheets of Growmore. Mr. Samtani stated that he would collect these and send them to the bank. As Mr. Samtani did not give
B the Balance Sheets and the Annual Reports, I again contacted Mr. Samtani. Mr. Samtani gave me two Annual Reports for the years 1988 to 1990 and for the year 1991"

102. Thus, all attempts to procure the balance sheet, etc. were undertaken at a later date. As the date of repayment was
C coming closer, UCO Bank sent letters to Mazda and Growmore for arranging funds to retire the Bill of Exchange on due date. Evidently, they were unable to fulfill their promise. For the said purpose, Harshad Mehta had already spoken to Accused No.1 and he agreed that the Bills would be rolled over for one more
D month. PW-44 was informed thereabout by Pankaj Shah (Accused No.9). Naturally, as the entire blame would be put on him, he did not agree thereto and insisted on payment. In his evidence, he stated:

E "The due date of both the bills of exchange was 24th April, 1992. On 22nd March 1992, the Bank addressed letters to Mazda Leasing Co. and Growmore Finance Ltd. to retire the bills on due date. On 22nd April 1992 I was informed by Mr. Pankaj Shah that Mr. Harshad Mehta has
F talked to the Chairman of the Bank and that the bills are not to be retired on 24th April 1992 but are to be rolled over. (The witness is shown documents at Exhs. 58 and 59). This were the letters sent to the above referred Companies on 22nd April, 1992. I told Mr.Pankaj Shah that I do not agree to the re-rolling and that payment of both
G the bills should be made on due date. I also informed Shri Roy Chowdhari, Zonal Manager that I do not agree to any re-rolling and that payment has to be made on due date. I also informed the same to Shri Ramnathan. I remember that I also gave the same information to Shri
H Venkatkrishnan at Kolkata on telephone."

He was corroborated by PW-45 who stated:

"Shri Harshad Mehta told us that he and Mr. Margabanthu had already decided that the period of discounting will be extended by one month."

103. From the aforementioned evidence, it is evident that PW-44 informed about his decision for insistence of payment to Accused No. 2 and PW-45 also informed of the same to Accused No. 1. We can understand that Accused No. 2 being a high-ranking Officer was informed particularly in view of the fact that if the Bank does not get back the money, it has to take loan for the purposes of having call money, but the very fact that the high-ranking officers also informed the Accused No. 8, speaks a volume. We would consider this aspect of the matter a little later.

104. Admittedly, even on 24.4.1992 payments were not made either by the drawer or by the acceptors. At this stage, it may not be necessary to consider the submission of Mr. Bhattacharyya that in terms of Section 32 of the Negotiable Instruments Act, it was the acceptor's liability and not the drawer's liability, for the simple reason that whosoever's liability it was, the fact remained that the money had not been re-deposited. Indisputably, UCO bank had to make payment out of its own funds. As by reason thereof a shortfall occurred, call money was borrowed from two other banks, namely, Corporation Bank and Oriental Bank of Commerce to the tune of Rs. 50 crores for three days. The evidence of PW-44 in this regard is relevant, which is as under:

"In view of the promissory notes executed by the Bank in favour of Syndicate Bank and Bank of Patiala, on due date our Bank made payments to the two Banks in whose favour promissory notes were signed. The Bank made these payments from its own funds. The Mazda Industries and Leasing Ltd. and Growmore Finance Ltd. did not retire the bills of exchange on due date i.e. 24th April, 1992"

To the same effect is the evidence of PW-1:

> "These Promissory Notes were due for payment on 24th April, 1992. In the morning I had discussed this with Mr. Prabhu. He asked me to make payments in respect of these Promissory Notes. We had therefore made payments to the Syndicate Bank and to the State Bank of Patiala respectively."

105. We are, therefore, of the opinion that the charge of criminal breach of trust stands established against Accused 1, and 2. The role played by Accused No. 2 in the entire chain of events is significant. The decision to discount the two bills of exchange at Nariman Point Branch had been taken by Accused No. 1 only after consulting Accused No. 2. Accused No. 2 had full details of the transaction. He had also played a key role in the purchase of shares by UCO Bank to provide for repayment of the amount advanced by UCO Bank itself. He had also similarly made an endorsement for issuing a cheque in favour of ANZ Grindley's Bank on account of JH Mehta. However we may notice that the role played by Accused No. 2 was subsidiary to that played by Accused No. 1. The entire transaction appears to have been gone through because of a deal struck between deceased Harshad Mehta and Accused No. 1. We would take note of this aspect of the case while considering the quantum of sentence so far as Accused No. 2 is concerned.

106. We agree with the observations of the learned Special Judge that Accused No. 8 was not in a position to issue any directions; he being a Scale IV employee. He therefore could not be said to be guilty of the offence of Criminal Breach of trust. We find no justification advanced by the prosecution to interfere with the judgment of acquittal recorded by the learned Special Judge as regards the Accused No. 8.

CRIMINAL CONSPIRACY

107. Criminal conspiracy is an independent offence. It is

punishable independent of other offences; its ingredients being:-

(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.

It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however doing so, it must bear in mind that meeting of the minds is essential; mere knowledge or discussion would not be.

108. As the question has been dealt with in some detail in Criminal Appeal No. 76 of 2004 (*R. Venkatakrishnan vs. Central Bureau of Investigation*), it is not necessary for us to dilate thereupon any further.

We may, however, notice that 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

A offence does not take place pursuant to the illegal agreement."

109. Yet again in *Nirmal Singh Kahlon vs. State of Punjab & Ors.* [(2008) 14 SCALE 639], this Court following *Ram Lal Narang vs. State (Delhi Administration* [(1979) 2 B SCC 322] held that a conspiracy may be a general one and a separate one meaning thereby a larger conspiracy and a smaller which may develop in successive stages. For the aforementioned purpose, the conduct of the parties also assumes some relevance. {See also *Chaman Lal & Ors. v.* C *State of Punjab & Ors.* [JT 2009 (4) SC 662]}

110. In *K.R. Purushothaman vs. State of Kerala* [(2005) 12 SCC 631], this Court held:

D "11. Section 120A of I.P.C. defines 'criminal conspiracy.' According to this Section when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy. In *Major* E *E.G. Barsay v. State of Bombay,* (1962) 2 SCR 195, Subba Rao J., speaking for the Court has said:

> "The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act F agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act, It may comprise the commission of a number of acts."

G xxx xxx xxx

13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and H every detail of conspiracy. Neither it is necessary that

every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair, The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."

{See also *P.K. Narayanan vs. State of Kerala* [(1995) 1 SCC 142]}:

111. Offence had been committed purely for the benefit of Harshad Mehta. He was the prime beneficiary. He appears to have made elaborate plans to obtain liquid cash for a short period with a view to enable him to make investments in the security market so that he could obtain quick returns. He involved a few Nationalized Banks in the process. Prosecution seeks to establish the offence of conspiracy from the evidence

A of Shri S.V. Prabhu (P.W. 44), Shri Bhaskar Roy Choudhary (P.W. 45) and Shri R.L. Joshi (P.W. 7). If the story unfolded by the prosecution through several witnesses is taken to its logical conclusion, the following would emerge:

B 112. The transactions in relation to which the two bills of exchange were drawn are dated 20th March, 1992. Growmore and Mazda opened the account with Nariman Point Branch of the UCO Bank on the same date on which the bills of exchange were presented to the Bank on 24 March 1992, but a resolution for the purpose of opening the account with the UCO Bank was C passed by Growmore on 14. 03.1992 and by Mazda on 18.03.1992. The conduct of Growmore and Mazda in passing the resolution for opening the accounts even before the alleged purchase of shares by them from JH Mehta who had drawn the bills of exchange raise doubt about the bonafide of the entire D transaction.

113. Accused No. 4 appearing as a witness made a statement that the transaction had been settled and executed by Harshad Mehta. For the said purpose, it may be necessary E to take into consideration the mode and manner in which the same was completed. Indisputably, a large sum, namely, Rs.50 crore was made available to Harshad Mehta through the process of bill discounting. Evidences have been clearly brought on record to show that the business of bill discounting was not F being carried out in the Nariman Point Branch. The said branch, therefore, was chosen so as to enable Harshad Mehta to open and operate account therein. Accused No. 1 met Harshad Mehta at about 1.00 p.m. on 1.3.1992. Accused No.8 was present in the said meeting. After meeting Harshad Mehta, Accused No.1 came back to the Bank. He asked the officers G to undertake bill discounting for Harshad Mehta. He, however, did not disclose that for the aforementioned purpose he had met Harshad Mehta earlier. Accused No. 8 was present in the said meeting. He, however, is said to have not taken any part therein. During the said meeting itself, Accused No. 1 spoke H

to Accused No. 2. Possibility of having transactions relating to bill discounting was disclosed. Accused No. 2 was consulted. Accused No. 2 did not deny or dispute receipt of the telephonic call but merely took a plea that according to him details thereof had not been furnished to him. As a follow up of the decision taken in the meeting held by Accused No.1, resolutions were passed by Mazda and Growmore. However, a note in relation to the aforementioned meeting was prepared which related to the aforementioned discussions. Why Nariman Point Branch was chosen for carrying out the said transaction is not known. P.W. 44 raised objection stating that only the D.N. Road Branch used to deal with the matter relating to bill discounting. It is now no longer in dispute that Mazda had approached D.N. Road Branch for getting the facility of discounting upto 50 crore of rupees but the same was not granted as it did not satisfy the eligibility requirements. The said fact had not been disclosed. On the strength of the opening of the account Mazda and Growmore in the said Branch, two bills were presented. It is, however, of some significance to notice that the original credit note relating to the alleged sale transactions of shares had not been presented, only a photocopy thereof had been presented. A sum of Rs. 50 crore is made available on the same day; no verification or assessment as per procedure is carried out; no security was taken. Yet again, before the bills of exchange were discounted, rediscounting had already been done by two other branches. The usuance promissory notes, however, were issued by UCO Bank later. Rediscounting is permissible only when the transaction of discounting is taken first. P.W. 40 said so in no uncertain terms in the following manner:

> "There can be no Bills Re-discounting unless there is a first Bill Discounting. This Circular is only laying down the revised procedure for rediscounting. According to me, in that sense this is covering Bills Discounting but it is correct that it does not directly deal with Bills Discounting."

114. For the purpose of covering default in retiring the bills

A of exchange, shares were purchased from J.H. Mehta by UCO Bank and a sum of Rs. 49.50 crore were made available to it by retiring the same. J.H. Mehta in turn transferred the accounts to Mazda and Growmore

B 115. Purchase of shares of J.H. Mehta is neither denied nor disputed. It was projected as a bona fide acquisition of shares in the interest of the Bank.

116. However, the very fact that the principal accused made a default of repayment of Rs. 50 crores, the purchase of C shares by the Bank itself assumes significance. Even Accused No. 2 took prominent part in the matter of purchase of shares. We have already noted that both Accused 1 and Accused 2 played a major role in arranging the entire transaction. In fact had it not been for Accused No. 1, in our opinion it would not D have been possible for Harshad Mehta or his associates to take the Bank for a ride and unlawfully utilize the funds of the bank.

117. With a view to achieve the said object, neither the RBI directions requiring bills of exchange to satisfy the tests of bona E fide commercial or cash transactions were complied with nor the procedure laid down under the UCO Bank Manual were followed. The power of the Chairman for investment in shares is upto Rs. 10 crore. His power in regard to bill discounting is only upto Rs.5 crore. So far as other accused are concerned, F namely Accused No.3, Accused No. 4 and Accused 5, they were not only residing at the same place but Accused No. 4 and Accused 5 were men of trust of Harshad Mehta. A power of attorney had been executed in their favour.

G 118. The Board of Directors of Growmore had by their resolution dated 14th March, 1992 authorized Accused 4 and 5 to seek bill discounting facility from UCO Bank to the limit of Rs. 50 crores. The application for opening the account of Growmore at Nariman point had been signed by Accused No. 4. Further on behalf of Growmore the Bill of exchange had been H accepted by Accused No. 4. Not only this but the letter dated

24th March,1992 addressed to UCO Bank by Growmore undertaking to repay the amount by 24th April, 1992 had also been signed by Accused No. 4. Legally the Bank would have been concerned only with M/s JH Mehta. But the letter of Growmore signed by Accused No. 4 clerly indicates his involvement in the Criminal conspiracy.

119. So far as Accused No. 5 is concerned, it is he who had signed the Bill of Exchange as the Power of attorney of the proprietors of of M/s JH Mehta. It is he who had signed the forms for opening the account with the Nariman Point Branch of UCO Bank. He had signed the letter dated 23.3.1992 requesting the Bank to discount the two bills of Exchange. The relationship between the parties both personal and professional clearly establishes criminal conspiracy on the Part of Accused No. 5. We therefore affirm the decision of the special judge finding Accused No. 5 guilty of the offence of Criminal Conspiracy.

120. As we have already mentioned Accused Nos. 6, 7 and 9 have not preferred appeals before us challenging their conviction. We find no reason to interfere with the judgment of conviction arrived at by the learned Special Judge with respect to the said accused.

121. We however disagree with the conclusions arrived at by the learned Special Judge with regard to the guilt of Accused No. 8 for the offence of Criminal Conspiracy. The mere fact that he might have been present at the meeting dated 14.3.1992 of the officers of UCO Bank by itself does not in our opinion conclusively prove his involvement in the conspiracy hatched by the other officers of the Bank. Something more was needed to be shown that he was a party thereto.

122. In conclusion we hold Accused No. 1 (K. Margabanthu), Accused No. 2 (Ramaiya Venkatkrishnan), Accused No. 4 (Ashwin Mehta) and Accused No. 5 (Sudhir Mehta) guilty of the offence of Criminal conspiracy. We need

not interfere with the conviction of Accused 6, 7 and 9. Accused No 8 (S.V. Ramanathan) is acquitted of the charge of Criminal Conspiracy.

SENTENCING

123. We must, while pronouncing on the sentence to be passed on the accused make note of the fact that the CBI has not preferred any appeals for enhancement against the impugned judgment of the Special Court. This Court, therefore, cannot impose a higher sentence.

124. Accused No. 1, K Margabanthu had been sentenced to undergo RI for a period of six months and to pay a fine of Rs.1,00,000/- in default to undergo SI for two months, by the learned Special Judge. We find no reason to interfere therewith.

125. Accused No. 2, Ramaiya Venkatkrishnan had been sentenced to undergo rigorous imprisonment (RI) for three months and to pay a fine of Rs. 50,000/- in default simple imprisonment (SI) for 15 days, by the learned Special Judge. We set aside the sentence of the special judge and sentence him to imprisonment for a period of one month of RI and to pay a fine of Rs.1,00,000/- and in default thereof Simple Imprisonment for 15 days.

126. Accused No. 4 Ashwin Mehta is sentenced to undergo RI for a period of one month and to pay a fine of Rs.1,00,000/- in default Simple Imprisonment for 15 days.

127. Accused No. 5 (Sudhir Mehta) is sentenced to undergo Rigorous Imprisonment for a period of one month and to pay a fine of Rs.1,00,000/- in default Simple Imprisonment for 15 days.

All the accused should be entitled to set off for the period of imprisonment undergone by them in this case.

D.G. Appeals disposed of.