

“The Hon’ble Special Court delivered a judgment in Criminal Case instituted before it by CBI commonly known as ‘SBI Caps case’ and acquitted all the accused including Shri Sudhir Mehta after trial. The Special Court concluded that the prosecution had miserably failed to prove its allegations and further held that it has not been able to prove any illegality in the securities transactions. CBI could not prove that HSM had no intention of returning the amounts and just because the securities were not delivered the same did not amount to any criminal offence taking into account the past track record of completion of all transactions.”

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**IN THE SPECIAL COURT CONSTITUTED UNDER THE
SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992 AT MUMBAI**

SPECIAL CASE NO.4 OF 1998

Central Bureau of Investigation Complainant.

V/s

1. S.K. Kumar (Abates on 18/3/2011)
2. C.R.L. Narasimhan
3. L.V. Sharma (Orig.Accused No.4)
4. Sudhir S. Mehta (Orig. Accused No.5)Accused

Mr. V.C. Gupte with Mr. R.S. Mhamane, Special Public Prosecutors for the Complainant.

Mr. Sanjog Parab, Mr. Girish Dave, Mr. Mohan Rao and Mr Patrick Fernandes, Advocates for Accused No.2.

Mr. Parvez Ubharay, Advocate for Accused No.3.

Mr. Dhiraj V. Mirajkar, Advocate for Accused No.4

**CORAM: V. M. KANADE, J.
JUDGE, SPECIAL COURT**

DATE: 6th September, 2013

ORAL JUDGMENT:

1. In this case, charge-sheet initially was filed against five Accused viz (1) S.K. Kumar, (2) C. R. L. Narasimhan, (3) Harshad S. Mehta (4) L.V. Sharma (5) Sudhir S. Mehta. Out of these five, two accused expired viz. S.K. Kumar & Harshad S. Mehta. S.K. Kumar expired on 18/3/2011 and Harshad S. Mehta expired on 30/12/2001.

2. After the death of Harshad S. Mehta, by order of the then Special Judge, name of Harshad S. Mehta was deleted and in his place L.V. Sharma - Original Accused No.4 was shown as Accused No.3 and Sudhir S. Mehta - Original Accused No.5 was shown as Accused No.4. Thereafter, S.K. Kumar expired and the case against him abated on his death on 18/3/2011. In this case, therefore, there are only three Accused viz. C.R.L. Narasimhan - Accused No.2, L.V. Sharma - Accused No.3 and Sudhir S. Mehta - Accused No.4.

3. The case of the prosecution, in brief, is that Harshad S. Mehta alongwith L.V. Sharma and Sudhir S. Mehta entered into conspiracy with C.R.L. Narasimhan - Accused No.2 who was working as Asst. General Manager with SBI Capital Market Ltd and S.K. Kumar - Accused No.1, who was also working as Manager with SBI Capital Market Ltd, to misappropriate an amount of Rs 16.25 crores and thereby caused wrongful loss to the SBI Capital Market Ltd and

wrongful gain to Harshad S. Mehta (Original Accused No.3) and his accomplice and that S.K. Kumar - Accused No.1 and C.R.L. Narasimhan - Accused No.2 had committed criminal breach of trust by abusing their official position and had dishonestly diverted the said funds to the Account of Harshad S. Mehta. Allegation against the Accused, therefore, is that they had committed an offence punishable under section 120B read with section 409 of the I.P.C and Sections 13(1)(c) and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. It is alleged that the said amount of Rs 16.25 crores was diverted by entering into four such ostensible Ready Forward Transactions. The first transaction is dated 30/03/1992, the second transaction is dated 03/04/1992, the third transaction is dated 20/04/1992 and the fourth transaction is dated 21/04/1992.

4. According to the prosecution, SBI Capital Market Ltd. (For short "SBICAP") which is a wholly owned 100% subsidiary of State Bank of India, a Company incorporated under the Companies Act, invested various sums of money belonging to the customers of State Bank of India in various securities through Harshad S. Mehta who was a broker registered with the Bombay Stock Exchange and the said amount was to be repaid within one month at the agreed rate of interest. The State Bank of India on 30.3.1992 remitted the funds belonging to M/s G.M. International,

Chennai, M/s Bullman Exports, Chennai, M/s M.L. India, Chennai and M/S Intercraft South (Exports) Pvt. Ltd to the tune of Rs of Rs 100 lakhs, Rs 50 lakhs, Rs 225 lakhs and Rs 50 lakhs respectively aggregating to Rs 4.25 crores to the personal Account of Harshad S. Mehta in the State Bank of India, Mumbai Main Branch, who issued four sets of contract notes dated 30/3/1992, 03/04/1992, 20/04/1992 and 21/04/1992 detailing the rates at which the units were to be purchased from Harshad S. Mehta and to be repurchased from Harshad S. Mehta at predetermined prices on 29/4/1992, 4/5/1992, 20/5/1992 and 6/5/1992. The following amount of Rs 16.25 crores was paid through the State Bank of India, Overseas Branch, Chennai and State Bank of India, Industrial Finance Branch, Chennai and it was credited in the Current Account of Harsahd S. Mehta with the State Bank of India, Bombay Main Branch, details of which are as under:-

Date of remittance	Amount in crores
30/03/1992	4.25
03/04/1992	4.00
20/04/1992	3.00
21/04/1992	5.00
Total	16.25

In respect of third remittance, the amount was sent on 03/04/1992 and was agreed to be held for contract dated

20/04/1992 and in respect of fourth remittance dated 21/04/1992, the amount was sent on 06/04/1992 and was agreed to be held for contract dated 21/04/1992.

5. The prosecution case is that the said transaction was ostensibly a Ready Forward Transaction and only paper entries were made and, in fact, no such transaction had taken place and the amounts which were sent by State Bank of India on behalf of its customers for investment for a period of one month were directly sent to the Account of Harshad S. Mehta who utilized the said amounts for his own purposes and did not repay the said amounts and, in fact, no securities were purchased or sold and, consequently, there was no such actual delivery of securities by Harshad S. Mehta to SBICAP.

6. Sometime, in the month of May, 1992, large scale irregularities and malpractices were detected in the transactions of securities carried out by some of the brokers in collusion with various employees of the Banks and Financial Institutions. Reserve Bank of India appointed a Committee under the Chairmanship of Mr. Jankiraman (known as "Jankiraman Committee") who submitted its report and on the basis of the said report and to deal with the situation as also to ensure speedy recovery of huge amounts, Parliament enacted Special Court (Trial of Offences

Relating to Transactions in Securities) Act, 1992 and established the Special Court.

7. Prosecution in this case is regarding financial irregularity found in these four transactions which had resulted in alleged misappropriation of Rs 16.25 crores. In the present case, FIR came to be lodged by one P.K. Jacob Dy. SP/CBI/BSC/N.Delhi on 20/8/1993 at 13.00 hours on the basis of the information received from reliable source against S.K. Kumar, C.R.L. Narsimhan, Harshad Mehta, L.V. Sharma and other unknown persons for the offence punishable under section 120B IPC read with Section 406, 409 and 420 IPC and Section 13(2) read with section 13(1)(d) of P.C. Act 1988. In the FIR, it was alleged that as per "Working Paper on Investment Management Services" dated 7th June, 1991, all Ready Forward Transactions were to be supported by actual purchase and sale of securities and the appropriate documentary evidence was to be kept on record. It was alleged that in breach of the said guidelines, total amount of Rs 16.25 crores was siphoned off through Harshad S. Mehta and, therefore, the said FIR was filed. The investigation was carried out by Mr. P.K. Jacob Dy. SP/CBI/BSC/N.Delhi. Number of documents were seized. Statements of witnesses were recorded and charge-sheet was filed on 30/12/1994

8. Charge was framed against S.K. Kumar since deceased.

Charge was framed against C.R.L. Narasimhan - Accused No.2 on 3/7/2007, against Sudhir S. Mehta on 10/7/2007 and against L.V. Sharma - Accused No.3 on 13/8/2007. All the accused pleaded not guilty to the charge.

9. Prosecution framed 21 charges against the accused with reference to section 120-B and 409 IPC and 13(2) read with 13(1)(c) and 13(1)(d) of the P.C. Act. Prosecution examined 16 witnesses in support of the aforesaid charges against the accused. These witnesses, after their examination-in-chief was over were cross-examined at length. The defence brought on record certain documents in the cross-examination. Thereafter, statements of accused under section 313 Cr.P.C were recorded.

10. I have heard Shri Gupte and Mhamane, the learned Special Public Prosecutors appearing on behalf of the Prosecution and Mr. Sanjog Parab, learned Counsel for Accused No.2, Mr. Parvez Ubharay, learned Counsel for Accused No.3 and Mr. Dhiraj Mirajkar, learned Counsel Accused No.4 at length.

11. Following points, therefore, fall for consideration before this Court:-

(i) Whether the Prosecution has proved

beyond the reasonable doubt that the accused have entered into conspiracy and committed an offence under section 120-B, 409 I.P.C and also under section section 13(1)(c) and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988?

(ii) Whether Accused No.2 - C.R.L. Narasimhan has committed an offence punishable under section 409 IPC and under section 13(2) read with section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988?

(iii) Whether the Prosecution has proved that Accused No.3 - L.V. Sharma and Accused No.4 - Sudhir S. Mehta have committed an offence punishable under Section 120B read with section 409 IPC and under section 13(2) read with section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988?

SUBMISSIONS

12. Mr. Gupte, the learned Special Public Prosecutor, submitted that so far as the allegation of conspiracy is

concerned, there was sufficient material on record to establish criminal intention on the part of the accused to commit the said offence under sections 120-B read with section 409 of IPC and under section 13(1)(c), 13(2)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. He invited my attention to the observations made by the Supreme Court on the question of conspiracy. He then submitted that the documentary evidence on record clearly established that the amount belonging to SBICAP has been misappropriated and that the said amount has been directly transferred in the personal Account of Harshad S. Mehta which was evident from the documentary evidence on record. He submitted that the SBICAP had to repay the said amount out of its own funds and the loss was caused to the said Bank which was a subsidiary of the State Bank of India. He submitted that investors who had invested their amounts in the State Bank of India were examined by the prosecution and they had proved that their amounts were remitted to SBICAP for the purpose of investing it on short term basis. He submitted that this amount was transferred directly in the Account of Harshad S. Mehta. He further submitted that actual security transaction had not taken place and neither the securities were purchased nor sold which was evident from the fact that at no point of time these securities were handed over to SBICAP. He submitted that it was established that the amount was entrusted to S.K. Kumar (since

deceased) and C.R.L. Narasimhan and that the said amount which was forwarded by the State Bank of India was directly transmitted in the account of Harshad S. Mehta. It has been alleged that all the contract notes were signed by Sudhir S. Mehta - Accused No.4 (Original Accused No.5) and that L.V. Sharma - Accused No. 3 (Original Accused No.4) was at the relevant time was working in his capacity as President of Growmore Assets and Management Limited, Mumbai (For short "GRAM") It is submitted that the entire transaction was sham and bogus transaction and the said transaction was only a paper transaction and principal transaction was to make available these funds to Harshad S. Mehta for his private purpose.

13. The learned Special Public Prosecutor further submitted that P.W. 4 - Ravee Raman Malhotra and P.W. 5 - Manoj K. Lulla were investors who had invested their amounts with the State Bank of India. P.W.4 - Ravee Raman Malhotra has stated in his evidence that whenever he had surplus funds he used to invest the said funds in Fixed Deposit with State Bank of India. He has stated that since he was told by his Oversea Branch that better returns were given if the amount was deposited with SBICAP and, therefore, he instructed his Bank to keep the amount deposited with SBICAP. He has stated that cheque issued by him was encashed and the amount was debited in his account. He, however, stated that

the amount was neither returned to him on maturity nor was it reinvested for further period of 90 days. He, however, received the amount with interest which amount was credited to his account on 20/5/1994. P.W. 5 - Manoj K. Lulla also has given the similar evidence.

14. Mr. Gupte, the learned Special Public Prosecutor appearing on behalf of the Prosecution submitted that sanction had been given by P.W. 15 - Rajagopalan Kirshnamurthy. He submitted that though this witness was declared as hostile witness, in the cross-examination he admitted that he had given the sanction to prosecute Accused No.2. He invited my attention to the following judgments of the Apex Court on the point of sanction:-

*Shiv Raj Singh vs. Delhi Administration*¹ (para 3)

*State of Rajasthan vs. Tarachand Jain*² (Para 17)

He submitted that there was an ample evidence in support of the case of prosecution. He submitted that L.V. Sharma (A-3) was President of GRAM. He submitted that the conduct was a necessary criteria which had to be taken into consideration while establishing the conspiracy and conduct of all the accused clearly showed that their intention was to misappropriate the amount which was entrusted to them.

1 AIR 1968 SC 1419

2 AIR 1973 SC 2131

Mr. Gupte, the learned Special Public Prosecutor has taken me through the evidence of 16 witnesses which has been brought on record and submitted that prosecution has proved beyond reasonable doubt the charges which were levelled against the accused. He invited my attention to the individual documents in each of the the transactions and submitted that the documentary evidence on record coupled with the oral evidence established that the money which was received from investors who had invested their money in the Fixed Deposit of State Bank of India were routed through SBICAP and was handed over to Harshad S. Mehta, who, in turn, had utilized the said money without actually entering into any transaction and this money was never returned by Harshad S. Mehta. He submitted that P.W. 1 - S. Nanda Kumar who was an officer of SBICAP had deposed that deceased S.K. Kumar - Accused No.1 was Manager and Mr. C.R.L. Narasimhan - Accused No.2 was a Senior Manager in SBICAP Ltd and during the relevant period he was working in Treasury Department. The learned Special Public Prosecutor invited my attention to Exhibit-8 which was a transaction dated 30/3/1992 for an amount of Rs 4.25 crores with respect to investments made by different parties whose names were shown in the Column "Party" and in the next Column of "Amount" the amounts invested by each of them respectively were mentioned and the Counter Party was GRAM and initials of C.R.L. Narasimhan - Accused No.4 were

at four places on Exhibit-8. Similarly, documents at Exhibit-9, 10, 11, 12, 13, 14, 15, 16 and corresponding contract notes at Exhibits-17, 18, 19, 20, 24, 25, 29, 30, 33, 34, 37, 38, 40 and 41 indicated that this was only a paper transaction since P.W.1 - S. Nanda Kumar and P.W.13 - C. Gopalraj who were working in SBICAP have stated that at no time physical securities were handed over by Harshad S. Mehta or other accused and that no reference has been made in the contract note for the physical delivery of securities.

15. Mr. Parab the learned Counsel appearing for Accused No.2 submitted that there was no iota of evidence to show the offence of conspiracy. He submitted that it is a well settled position in law that in order to prove conspiracy, prosecution has to prove that there is some material on record to establish that fact. He submitted that the prosecution has miserably failed to establish that there was a conspiracy to commit offence punishable under section 409 IPC or under the provisions of Prevention of Corruption Act. He submitted that so far as provisions of section 409 IPC are concerned, in order to establish the said charge, it has to be established that there was entrustment of funds to the accused or that the accused had dominion over the said funds. He submitted that from the documentary and oral evidence on record, it can be seen that funds never belonged

to SBICAP. Secondly, It is submitted that it has not established that the accused had committed breach of any guidelines or Rules of RBI or SEBI. He submitted that these guidelines or rules either of RBI or SEBI were never produced by the prosecution. It is then submitted that so far as transaction dated 03/04/1992 is concerned, it has been brought on record that the accused was not in office on that date and so far as Charge Nos. 7 to 10 are concerned, post facto approval of the accused No.2 was obtained and his signature was subsequently taken on 6/4/1992. He submitted that so far as charge Nos. 12 to 15 are concerned viz of aiding and abetting the conspiracy to commit breach of trust and offence under the P.C. Act, there is no material on record to establish entrustment. He submitted that from the evidence of P.W. 1 - S. Nand Kumar and P.W. 16 - P.K Jacob, it can be seen that funds of SBICAP were never used. He submitted that if transactions on which reliance has been placed by the prosecution are taken into consideration, at the best it can be said that it was a civil transaction since there is no provision in law which prohibited original Ready Forward Transaction. He submitted that, in this case, the amount which was due and payable to SBICAP was not paid by Harshad S. Mehta and therefore it was a case of non-payment of amount which was due and payable and, therefore, SBICAP had filed a Civil Suit against Harshad S. Mehta for recovery of the said amount of Rs 16.25 crores

with interest and that decree was passed by the Civil Court in favour of SBICAP. It was submitted that documents at Exhibits 8, 20, 26 and 35 indicated that SBICAP was entitled to get the placement fee for the purpose of investing the amounts of the investors in SBI Bank which was invested through SBICAP in UTI units through Harshad S. Mehta who was a broker and whose services were used by SBI in the past also in respect of other transactions. He then submitted that FIR was lodged on 20/8/1993 and the said FIR was lodged on the basis of the source information. He submitted that SBICAP did not file criminal complaint. He then submitted that investigation was not properly conducted by the Investigating Officer P.W. 16. He submitted that Investigating Officer Mr. P.K. Jacob - P.W. 16 in his evidence has submitted that he had conducted the search almost after one year after the statement of Shridharan was recorded. He submitted that the Investigating Officer in his evidence has not disclosed from where he has received the information regarding the said offence. He submitted that SBI had, in the past, entered into similar Ready Forward Transactions through Harshad S. Mehta. He has invited my attention to the cross-examination of S. Nanda Kumar - P.W.1. He submitted that in respect of two transactions viz dated 6/4/1992 the amount was directly sent to the Account of Harshad S. Mehta and the said amount had never reached SBICAP at any time. He then invited my attention to the

statements of other witnesses and submitted that P.W. 13 - C. Gopalraj as well as P.W. 1 - S. Nanda Kumar were also working in the said Departments and though material on record indicated that accused No.2 was merely following the instructions of Superior Officers, he had been made a scapegoat by CBI.

16. On the point of sanction, the learned Counsel for Accused No.2 submitted that there was complete non-application of mind on the part of P.W. 15 - Rajgopalan Krishnamurthy. He had initially supported the prosecution. However in his cross-examination the defence has established that there was complete non-application of mind on the part of the sanctioning officer and that on two earlier occasions, the documents indicated that he had declined to grant sanction and at the behest of Officers of the State Bank of India subsequently he had merely signed on dotted lines and that no new material was shown to him. He relied on the judgment of the Apex Court in AIR 2010 SC 1812. He submitted that therefore the prosecution has failed to prove that he is a public servant. He has taken me through the deposition of 16 witnesses and pointed out from the evidence on record that there was no material whatsoever either documentary and/or oral evidence to establish the case against accused No.2. He submitted that even otherwise accused No.2 could not fall within the definition of

“public servant” since the State Bank of India is a body corporate and that SBICAP was 100% subsidiary of State Bank of India but yet it was a Company registered under the Companies Act and was not a Government Company.

17. The learned Counsel appearing on behalf of accused No.4 submitted that there is no evidence on record to prove any offence allegedly committed by the accused. He submitted that accused No.4 was not a public servant at that time and, therefore, provisions of section 409 IPC are not attracted. He submitted that there is no prima facie evidence produced to prove any conspiracy. He submitted that from the documentary and oral evidence produced by SBI, no prima facie case is made out against accused No.4. He submitted that no criminal complaint was filed by SBICAP, Chennai since Shridharan, Director of Company in his statement to CBI has categorically stated that four transactions cited were civil in nature. He submitted that process of deploying surplus funds of Customers in Ready Forward Transaction with brokers had approval of Board of Directors of SBICAP and there were no irregularities or illegalities committed by the accused.

18. The learned Counsel for accused No.4 submitted that SBI has not been able to prove that there was any conspiracy to divert the funds of SBICAP and that evidence given by

witnesses did not indicate that there was meeting of minds between the accused. It is contended that there was no proof of agreement or meeting of minds by accused No.4 with other accused persons to charge for the offence punishable under section 120B of the IPC. It is then contended that charge under section 409 has not been established since accused No.4 never had a dominion over the funds in question and no property or money was entrusted to him at any time. He submitted that GRAM was Private Limited Company and the work of accused No.4 in the said Company was not to enter into individual deals with any of its clients. He submitted that deals in question were direct deals between the Harshad S. Mehta, the broking firm and the amounts in question were transferred to the Current Account of Harshad S. Mehta with the State Bank of India and no amount was ever transferred to the Current Account of the GRAM. He submitted that there was no document or paper which had name or signature of accused No.4. He submitted that the prosecution has not established that accused No.4 had received any monetary benefits or had knowledge of the transaction. It is then contended that accused No.4 was neither a signatory to any deal slip or any contract note and did not have power to sign on behalf of the Company. He submitted that the name of GRAM was never used in this transaction. It was then submitted that only four witnesses had mentioned his name and none of them have

mentioned about his involvement. The learned Counsel invited my attention to the evidence of P.W. 1 - S. Nanda Kumar and P.W. 13 - C. Gopalraj. He submitted that none of the charges which were levelled against accused No.4 had been established. The learned Counsel for accused No.4 (original accused No.5) invited my attention to the provisions of Companies Act. He submitted that accused No.4 was merely an authorized signatory of Harshad S. Mehta. He submitted that, as an authorized signatory, he had merely signed the contract notes which were issued by Harshad S. Mehta. He submitted that there was no material on record to show that accused No.4 had entered into conspiracy with other accused. He submitted that even under the Contract Law, the agent of disclosed Principal was not liable. He invited my attention to the evidence of P.W. 13 - C. Gopalraj. He submitted that P.W. 13 has stated in para 6 of his deposition that delivery of securities were never intended. He submitted that this statement made by P.W. 13 in his evidence demolished the case of the prosecution. He submitted that in view of evidence of this witness the entire foundation of prosecution case was dislodged. He submitted that the charge was based only on the assumption that physical securities had to be delivered at the time of or after execution of the contract. He submitted that in view of this admission by P.W. 13 - C. Gopalraj, the case of the prosecution was completely demolished. He then invited my

attention to the evidence of P.W. 14 - Atul Manubhai Parekh. He submitted that this witness was examined on behalf of the prosecution and was not declared as hostile witness and, therefore, prosecution could not disown his evidence. He submitted that from the evidence of P.W. 14 it can be seen that nowhere he had given any evidence against Sudhir Mehta - Accused No.4. He had merely mentioned that Sudhir Mehta was an authorized signatory. The learned Counsel invited my attention to evidence given by this witness in para 19 of his deposition. It was contended that this witness has stated that between 1990 and June 1992 he had executed number of contract notes and that there was no default in completion of any contracts prior to Mid-May, 1992 and thereafter since it had come in the news papers on 23rd May 1992 that there were some problems between Harshad Mehta and SBI some of the contracts could not be completed and that was the only reason for not completing the said contracts because Harshad Mehta was not in a position to complete the contracts on account of panic which was created in the market. He submitted that the witness has stated that prior to April, 1992, all the transactions have been completed. He also invited my attention to the deposition of this witness in para 21 wherein he has stated that Sudhir Mehta (Accused No.4) did not play any role in these transactions with SBI Capital Markets Ltd. He, therefore submitted that the charges which were levelled

against the accused were not proved.

REASONS

19. An FIR was filed on information received by the Investigating Officer Mr. P.K. Jacob - P.W. 16 against four accused viz. (1) S.K. Kumar, (2) C.R.L. Narasimhan, (3) Harshad S. Mehta, (4) L.V. Sharma. During the pendency of the trial, Harshad S. Mehta died on 30/12/2001 and S.K. Kumar expired on 18/3/2011. The record indicates that the name of Sudhir S. Mehta (Original Accused No.5) was subsequently added in the Charge-sheet. It appears that my predecessor changed the numbers given to the original accused and the name of Harshad S. Mehta - Original Accused No.3 was deleted and L.V. Sharma was shown as Accused No.3 and Sudhir S. Mehta who was original accused No.5 was shown as Accused No.4.

20. The FIR which was registered at the instance of P.W. 16 - Mr. P.K. Jacob was for the offence under section 120-B read with sections 406, 409 IPC and under section 13(2) read with section 13(1)(c) of the PC Act, 1988. In the complaint, it was alleged that the information was received from a reliable source source that the accused along with some unknown persons had defrauded SBICAP to the tune of Rs 16.25 crores by deploying surplus deposits at their end by entering into ready-forward transaction in contravention of the internal guidelines of Corporate Office of SBICAP. In the

complaint, it was mentioned that Regional Office, Madras of SBICAP was actively involved in ready-forward deals from 28/02/1991 and the dealing officer in Treasury Management Section used to finalize the deals for the investing clients for the purchase of securities, bonds and units etc on their behalf at an assured rate of return for a particular period. It was alleged in the complaint that as per "Working Paper on Investment Management Services" dated 7/6/1991, circulated amongst the executives of SBICAP, all RF transactions were to be supported by actual purchase and sale of securities and appropriate documentary evidence to that effect was required to be obtained and kept on record. It was alleged that the funds received from the customers under the PMS or for short term investments by Madras Regional Office of SBICAP were routed through the company's bank account at Industrial Finance Branch, Madras without passing the entries in the books of accounts. It was alleged the transactions were routed by SBICAP, Madras and this was done through HSM/GRAM and Shri L.V. Sharma, President, GRAM. It was alleged that ready-forward transactions were not supported by bankers receipts or securities and, as a result, SBICAP, Regional Office, Madras was put to loss to the tune of Rs 16.25 crores. Some of the transactions were mentioned in the FIR and it was alleged that the loss of Rs 16.25 crores was caused to SBICAP and in this S.K. Kumar and C.R.L. Narasimhan have abused their

official position and therefore they have committed the aforesaid offences. After the complaint was lodged, investigation was made by P.W. 16 - P.K. Jacob. He recorded the statements of witnesses and seized various documents. Charge-sheet was filed. Accused pleaded not guilty to the charge.

21. Prosecution examined in all 16 witnesses in support of its case. Prosecution examined P.W. 1 - S. Nanda Kumar, who was working with SBICAP and at the relevant time he was confirmed as Deputy Manager and was posted at Chennai and was working in Treasury Department. P.W. 13 - C. Gopalraj was also working in SBICAP and at the relevant time he was posted as General Manager, SBICAP, Madras Regional Office. Prosecution also examined P.W. 15 - Rajagopalan Kirshnamurthy who, at the relevant time, was the Chief General Manager, State Bank of India, Ahmedabad and he was looking after the functions of the Bank confined to Ahmedabad Region. Apart from these two Officers from SBICAP and one Officer from State Bank of India, Ahmedabad Region, prosecution also examined P.W. 2 - S. Narayana Swamy who was posted as Chief Manager, SBI Overseas Branch, Chennai. P.W. 3 - V.A. Mahadevan was, at the relevant time, posted as Assistant Manager with Industrial Finance Branch at Madras. Another Officer who was examined by the prosecution from SBI main Branch, Bombay

was P.W. 8 – Mrs. Aleyamma Geevarghese who was working as Assistant Manager with SBI main Branch with Telegraphic Transfer Payment Section at the relevant time. Prosecution examined P.W. 9 – Mr. Suresh C. Kale who had worked at the relevant time as Clerk in the Security Division of SBI, Main Branch, Bombay and he was examined for the purpose of proving some of the credit vouchers. Prosecution also examined P.W. 11 – Smt. Jayanthi Ranjit who was working as Stenographer at Chennai Office of SBICAP in Treasury Department at the relevant time. Another Officer who was examined was P.W. 12 – Mr. Herbert Andrew Coates who, at the relevant time, i.e. in the year 1992 was posted in Personnel Banking Division of the Main Branch of SBI at Bombay as Manager, Advances. Apart from these Officers who were working either in SBICAP or SBI, prosecution also examined investors viz P.W. 4 – Ravee Raman Malhotra and P.W. 5 – Manoj K. Lulla who had stated that they had kept their money with the State Bank of India and they were advised to deposit the amount with SBICAP so that they could get better returns. P.W.6 – Mr. Ramaswamy was the Chief Financial Officer with Sundaram Finance Company at Chennai and he has also deposed to the effect which was asked to him and he was asked to make short term investment in SBICAP. P.W. 7 – M. Jagannathan was working with Hindustan Teleprinters Limited and he has also deposed about the amounts transferred to SBICAP for short term

investment. P.W. 10 - Smt. Nilakshi Louzado was examined to prove that an amount of Rs 4.25 cores was credited to the account of Harshad Mehta.

22. Prosecution by examining these witnesses attempted to show that P.W. Nos. 4, 5, 6 and 7 were asked to make investments in short term deposits with SBICAP on an assurance that they would get higher returns and were advised to give instructions to the SBI Managers of their Accounts to transfer their Fixed Deposits from the SBI Branch. P.W. 5 - Manoj K. Lulla has stated that he was asked to keep the amount deposited with SBICAP and the cheque which was issued by him was encashed and the amount was debited in his Account. He has stated that deposit receipt for this amount, however, was not given to him. In his evidence he has stated that by letter dated 27/03/1992, he had requested SBI Overseas Branch to open Special Term Deposit for one month for an amount of Rs 50 lakhs and this amount was encashed. He has also stated that by letter dated 28/04/1992, he had requested the Bank to transfer the amount of Rs 50 lakhs on maturity and to deposit it for further period of 90 days. He has stated that, however, this amount was neither returned to him on maturity nor was reinvested for further period of 90 days. He has stated that, subsequently, this amount with interest was credited to his account. Prosecution, therefore, has examined P.W.4, 5, 6

and 7 in order to show that the customers of SBI who had deposited their money in their Account with SBI Overseas Branch had been advised by the SBI Officers to invest their money on short terms basis with SBICAP. P.W.1 - S. Nand Kumar and P.W. 13 - C. Gopalraj have stated the manner in which these transactions had taken place. The documents recording the said transactions have been brought on record.

23. In all there were four transactions and the first transaction was dated 30/03/1992 and it was for a sum of Rs 4.25 crores, the second transaction was dated 03/04/1992 and it was for Rs 4 crores, the third transaction was dated 20/04/1992 and it was for Rs 3 crores and the fourth transaction was dated 21/4/1992 and it was for Rs 5 crores. All the relevant documents right from letters from investors in respect of four transactions have been brought on record by the prosecution.

24. Taking into consideration the aforesaid oral and documentary evidence, it has to be seen whether the prosecution has established the offences with which the accused were charged.

25. So far as offence of conspiracy is concerned, "conspiracy" has been defined under section 120-B which is reproduced hereinbelow:-

“120-B. Punishment of criminal conspiracy.”-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

Criminal conspiracy in terms of Section 120B of the Code is an independent offence and it has to be proved by the prosecution by applying legal principles which are applicable for the purpose of proving criminal misconduct on the part of the accused. The law on this point is quite well settled. The Apex Court in *R. Venkatakrishnan vs. Central Bureau of Investigation*¹ has very succinctly laid down the ingredients of the section and the manner in which the said ingredients

¹ AIR 2010 SC 1812

have to be proved. The Apex Court in the said case has taken into consideration the law laid down by the Apex Court in various other judgments. The Apex Court has noted that thoughts alone are not sufficient for the purpose of establishing the criminal conspiracy unless it is shown that these thoughts are put into action and, secondly, thoughts by themselves are not crimes but it is only when they culminate into an agreement to do or cause to be done an illegal act or act which is not illegal but by illegal means then, in that case, even if nothing further is done, the agreement would give rise to a criminal conspiracy. The Apex Court in the said judgment in para 79 while noting the ingredients of offence of criminal conspiracy has observed as under:-

“79..... The ingredients of the offence of criminal conspiracy are:

(i) an agreement between two or more persons;

(ii) the agreement must relate to doing or causing to be done either -

(a) an illegal act;

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

Further in paras 80, 81 and 82, the Apex Court has observed as under:-

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

“81. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same.”

“82. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. [See *Mohammad Usman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra* (1981) 2 SCC 443 : AIR 1981 SC 1062)]

Finally, in the said judgment the Apex Court in para 89 has observed as under:-

“89. A conspiracy may further be a general

one and a separate one. A smaller conspiracy may be a part of a larger conspiracy. It may develop in successive stages [Nirmal Singh Kahlon v. State of Punjab and Others, 2008 (14) SCALE 639] : (AIR 2009 SC 984 : 2009 AIR SCW 60). New techniques may be invented and new means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant.

The Apex Court also in *Ajay Agarwal vs. Union of India and others*¹ has considered with reference to various judgments of this Court and the Apex Court and other High Courts, on more or less similar lines, the various aspects of conspiracy.

26. Keeping the aforesaid principles of law regarding conspiracy in mind, it has to be seen whether the prosecution has established that the accused had conspired with each other to commit the offence punishable under sections 120B IPC read with Section 409 IPC and under Section section 13(1)(c) and 13(1)(d) read with section 13(2) of the P.C. Act 1988.

27. **In my view, after having taken into consideration the oral and documentary evidence on record, prosecution has miserably failed to establish that all the accused conspired together to commit the said offence for the following reasons.**

¹ 1993 CRI.L.J.2516

28. The accused have neither disputed in principle the transactions which have taken place nor the documents which have been produced on record. All the investors who had invested their amounts in short term deposit with SBICAP have also stated that upon being advised by SBI to invest in SBICAP to get better returns they accordingly had given instructions to their SBI Main Branch in which they had Accounts to transfer certain sums of money to SBICAP. The four transactions mentioned hereinabove indicate that amounts of these investors were debited from their Accounts in SBI Main Branch and on two occasions these sums were routed back to the personal Current Account of Mr. Harshad S. Mehta through SBICAP. So far as the brokers are concerned, contract notes were issued on the letter head of Harshad S. Mehta which also was bearing the Logo of GRAM and the contract notes mentioned the amount which was received and the ready forward transaction viz purchase of securities in the form of units of Unit Trust and the subsequent date of sale of the said units after one month and in one case after 15 days at an assured return price at the end of 30 days or 15 days respectively. The contract notes were signed by Sudhir S. Mehta - Accused No.4 (Original Accused No.5). Though it is alleged that there was a breach of RBI guidelines or SEBI guidelines in respect of the manner in which the said ready forward transactions

were to be entertained, prosecution did not bring on record any such RBI guidelines or SEBI guidelines which stated that at the time of entering into such transactions either physical securities or Bank Receipts have to be procured. As such, the prosecution on the basis of evidence which has been brought on record has been unable to show that the agreement in respect of ready forward transaction was illegal in any manner whatsoever either in terms of RBI guidelines or SEBI guidelines or according to the Working Paper on Investment Management Services dated 7th June, 1991 circulated amongst the executives of SBICAP. Prosecution, therefore, firstly, has not established that these transactions by themselves were illegal in any manner whatsoever or that non-production of securities or BRs was prohibited by law. Therefore both these ingredients viz “agreement to do an illegal act or to do an act which is not illegal in itself but is done by illegal means” have not been established by the prosecution. There is no material on record to establish that Harshad S. Mehta had an intention of not returning the amount which was sought to be invested through him as a broker who was registered at Bombay Stock Exchange. On the contrary, the evidence which has come on record indicates that in the past prior to these four transactions, State Bank of India and SBICAP had entered into ready forward transactions through Harshad S. Mehta and all these transactions had been successfully completed

and they were executed on the same lines as these four transactions. In fact, two main witnesses viz. P.W.1 S. Nanda Kumar and P.W. 13 - C. Gopalraj have in their examination-in-chief and in cross-examination very candidly given various admissions which shall be referred to when I would be discussing the evidence on record. Much emphasis was laid by the learned Special Public Prosecutor appearing on behalf of the prosecution on the conduct of the accused. It has been submitted that the accused C.R.L. Narasimhan had not secured the interest of the Bank by insisting upon the physical securities before making payment to the Account of Harshad S. Mehta. It was further contended that documents indicated that S.K. Kumar also had not taken care to secure the interest of the Bank. It was also contended that the amount which was sought to be invested was not paid directly to the Company whose securities were purchased but were transferred into the personal account of Harshad S. Mehta.

29. In my view, the said conduct, at the most, would have made deceased S.K. Kumar or deceased Harshad S. Mehta liable but there is no material on record to indicate that C.R.L. Narasimhan could be treated or termed as co-conspirator since from the evidence of the said two witnesses vis P.W.2 and P.W. 13, it can be seen that he was acting on the instructions given by the said two witnesses.

On the other hand, there is material on record to show that C.R.L. Narasimhan had, in fact, insisted upon getting these securities but on the assurance given he had not proceeded further to probe into the matter. So far as L.V. Sharma and Sudhir S. Mehta are concerned, none of the witnesses has indicated that they were either aware about the final outcome of the transaction or were acting at the behest of Harshad S. Mehta.

30. In my view, therefore, the prosecution has not been in a position to establish the charge of conspiracy beyond the reasonable doubt against these accused.

31. The second charge is that of criminal breach of trust under section 409 of the Indian Penal Code. Section 409 is an an aggravated offence of criminal breach of trust defined under section 405 of the Indian Penal Code. Section 405 reads as under:-

“405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied which he has made touching the discharge of such trust, or wilfully suffers any other person to do, commits “criminal breach of

trust”.

[Explanation [1].- A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2.- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948(34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution so deducted by him and if he makes default of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Section 409 which is an aggravated form of offence of criminal breach of trust, is made punishable with

imprisonment of life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine if committed by a banker, merchant, factor, broker, attorney or agent either in capacity of public servant or independently in the aforesaid capacities.

32. The ingredients of section 409 therefore are that (a) accused must be a public servant or a banker, merchant, factor, broker attorney or agent during the course of his business, (b) accused in any manner is entrusted with property or has dominion on the property in the aforesaid capacity and (c) accused must have committed breach of trust in respect of that property then he is said to have committed an offence under section 405.

33. Criminal breach of trust is defined under section 405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts it to his own use that property or dishonestly uses or dispose of that property in violation of any law then he is said to have committed criminal breach of trust Explanations 1 and 2 give illustrations of such acts.

34. In the present case, these monies which belonged to the Customers of the State Bank of India who had invested

the same in the Fixed Deposit with SBI, upon being advised decided to invest the said amounts on short term basis with SBICAP, which monies, in turn, were directly transferred to the personal account of Harshad S. Mehta without the said amounts being first deposited with SBICAP. The said mode of transfer of money, at the highest, indicates that the amount was directly deposited in the account of Harshad S. Mehta which was with the SBI Main Branch, Mumbai and which amount was not repaid as per the contract, particulars of which have been given in the contract note executed at the behest of Harshad S. Mehta which was signed by Sudhir S. Mehta - Accused No.4. The said evidence, at the highest, reveals that either S.K. Kumar or Harshad S. Mehta both of whom unfortunately expired during the pendency of the trial, could be held to be guilty for the offence punishable under section 409 of the Indian Penal Code. However, there is no material on record to show involvement of accused No.2 - C.R.L. Narasimhan or accused No.3 - L.V. Sharma or Accused No.4 - Sudhir S. Mehta for the following reasons.

35. Before we take into consideration the said evidence, it would be worthwhile to take into consideration the observations made by the Apex Court in respect of commission of offence of criminal breach of trust. The Apex Court in *R. Venkatakrisnan vs. Central Bureau of Investigation*¹ has observed in para 167 as under:-

¹ AIR 2010 SC 1812

“167. The following are the essential ingredients of the offence under this section:

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

Similarly, in para 178 of the said judgment, the Apex Court has observed that an act of breach of trust simpliciter involves a civil wrong of which the person wronged may seek his redress of damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. The Apex Court in para 178 has observed as under:-

“178. It must in this regard be emphasized that an act of breach of trust simpliciter involves a civil wrong of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. [SW Palanikar v. State of Bihar, (2002) 1 SCC 241] : (AIR 2001 SC 2960 : 2001 AIR SCW 4435). The element of 'dishonest intention' is therefore an essential element to constitute the offence of Criminal Breach of Trust.”

Similarly, in para 179 of the said judgment, the Apex Court

has considered the aspect of dishonest intention and has observed as under:-

“179. So far as the aspect of dishonest intention is concerned, the term 'Dishonestly' is defined by Section 24 of the IPC:

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

In para 182 of the said judgment, the Apex Court, therefore, observed that the main essential ingredient of proving of criminal breach of trust is misappropriation with dishonest intention.

36. From the material which has come on record and particularly the evidence of P.W.14 - Atul Parekh in para 19, who has been examined by the prosecution reveals that between 1990 to 1992 he had executed number of contract notes and there was no default in completion of any contracts prior to Mid-May, 1992 and some contracts could not be completed between Mid-May and June, 1992 and the reason was that since the report had come in the news paper on 23/5/1992 that there were some problems between Harshad Mehta and SBI, there was a panic in the market and thereafter defaults had started. He has stated that prior

to April, 1992 all the transactions were completed. He has also stated that SBICAP, Madras was the client of the Company after June, 1990 and transactions in respect of SBICAP, Mumbai were completed and the volume of deal transaction was to the tune of Rs 1000 crores and comparatively SBICAP, Madras was a very minor player compared to the daily volume and it was a retail player. He further stated in para 20 that he was aware of certain transactions where the stock of Harshad Mehta was lying with SBI. The evidence of this witness discloses that these transactions were entered into on regular basis from 1990 and that except these four transactions all the transactions had been completed. It is, therefore, difficult to come to the conclusion that accused No.2 - C.R.L. Narasimhan had any dishonest intention of routing this money and entering into transaction with Harshad S. Mehta. There is also no material to show that he had knowledge that the said amount would not be returned or would be misappropriated by Harshad S. Mehta. From the evidence of P.W.1 - s. Nanda Kumar and P.W. 13 - C. Gopalraj, it can be seen that accused No.2 - C.R.L. Narasimhan was following the instructions given by his superiors and P.W. 13 - C. Gopalraj, at the relevant time, was his superior Officer.

37. In my view, therefore, offence under section 409 has not been established.

38. So far as offence under section 13(1)(c) and 13(1)(d) read with section 13(2) is concerned, in my view, prosecution has failed to establish that proper sanction was granted to prosecute accused No.2. From the evidence of P.W. 15 - Rajagopalan Krishnamurthy, it can be seen that there was practically no material placed before him before his signature was obtained on the said sanction. Apart from that, in his examination-in-chief he has clearly stated that he was in charge of Ahmedabad Office and was not concerned with Madras Office and, therefore, had refused to give sanction on two occasions. The witness was, thereafter, declared as hostile by the prosecution and was cross-examined. In his examination-in-chief, he has stated that he signed the papers before him but in the cross-examination by defence counsel, this testimony also has been demolished and from his evidence it can be seen that he had merely signed the papers which were placed before him and that too at the instance of his superior Officer. Once it is established that the sanction was not granted to prosecute accused No.2, prosecution under the aforesaid provisions fails. Another aspect is whether the accused No.2 is a public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 It has been strenuously urged that since SBICAP is a public limited Company registered under the Companies Act and is 100% subsidiary Company of SBI, employees of

SBI and SBICAP could not be treated as public servants. In my view, without going into the said aspect even assuming that accused No.2 is a public servant, sanction not having been properly granted to prosecute him under the provisions of sections 13(1)(c), 13(1)(d) read with section 13(2) of the P.C. Act, the said charge against him fails.

39. So far as accused No.3 - L. V. Sharma and accused No.4 - Sudhir S. Mehta are concerned, they are not public servants and even otherwise there is no material on record to suggest that they have abetted, aided the public servant.

For the aforesaid reasons therefore in this case, in my view, the Investigating Officer has acted in a mechanical manner and he ought to have investigated the offence properly. It does appear that those Officers who were actually responsible were allowed to go scot-free and accused No.2 against whom there is practically no material on record was made an accused and was made to face this trial. Though there is some material available against Accused No.1 - S.K. Kumar and Harshad S. Mehta, unfortunately they have expired during pendency of trial and, as such, they cannot be punished in this case.

In my view, prosecution, therefore, has not been in a position to establish its case beyond the reasonable doubt

against these three accused. All the three points framed by me in paragraph 11 above are accordingly answered in the negative.

40. In the result following order is passed:-

ORDER

All the three accused viz. C.R.L. Narasimhan (A-2), L.V. Sharma (A-3) and Sudhir S. Mehta (A-4) are acquitted of the offences punishable under sections 120-B read with section 409 of IPC and under sections 13(1)(c) and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. All these three accused are already on bail. Their bail bonds stand cancelled.

(V.M. KANADE, J.)

BDPPS