

MHNG030023772002



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**IN THE COURT OF 2nd ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, NAGPUR AT NAGPUR
(Presided Over by J. V. Pekhale-Purkar)**

Regular Criminal Case No.147/2002

Exh.No.3483

STATE OF MAHARASHTRA

Through Police Station Officer –
Ganeshpeth Police Station, Nagpur.

...PROSECUTION

..Vs..

1. Sunil Chhatrapal Kedar

Age - 62 years, **Occu.** - Agriculturist
R/o. Plot No.266, Bajaj Nagar, Nagpur.

2. Ashok Namdeorao Chaudhary

Age - 69 years, **Occu.** - Retired
R/o. 131A, Chhatrapati Nagar, behind
Chhatrapati Hall, Wardha Road, Nagpur.

3. Sanjay Hariram Agrawal

(Trial Seperated)

4. Ketan Kantilal Seth

Age - 60 years, **Occu.** - Director, Giltedge
Management Services, Vile Parle, Mumbai.
R/o. J.V.P.D. Scheme, Flat No. 9, Andheri
West, Mumbai.

5. Mahendra Radheshyam Agrawal

Age - 69 years, **Occu.** - Director, Century Dealers Pvt. Ltd, Calcutta.

R/o. 2-J, Judges Court Road, Mominpur, P.S. Alipur, Calcutta - 27.

6. Shriprakash Shantilal Poddar

Age - 69 years, **Occu.** - Director, Indramani Merchant Pvt. Ltd., Calcutta.

R/o. P-11, Devendra Dutta Lane, Dhaka Pattis, P.S. Posta, Calcutta - 7.

7. Amit Sitapati Verma

Age - 50 years, **Occu.** - Director, Syndicate Management Services Pvt. Ltd., Ahamedabad.

R/o. 103, Mrunal Apartment, Dipkunj Society, Rajnagar, Paldi, Ahmedabad

8. Subodh Chandradayal Bhandari

Age - 58 years, **Occu.** - Ex-director, Indramani Merchant Pvt. Ltd. **and** Senior Vice President, Home Trade Pvt. Ltd. Washi, Navi Mumbai.

R/o. 703/B, Govind Complex, Sector No. 14, Washi, Navi Mumbai.

9. Nandkishor Shankarlal Trivedi

Age - 61 years, **Occu.** - Director, Home Trade Pvt. Ltd. Washi Navi Mumbai.

R/o. Pushpam Apartment, 3-A, Khandabhai Desai Road, Vile Parle, Mumbai.

10. Kanan Mewawala
(Absconding)**11. Suresh Damodarrao Peshkar**

Age - 83 years, **Occu.** - Retired
R/o. 60-B, Reserve Bank Colony,
Jayprakash Nagar, Khamla, Nagpur.

...ACCUSED**APPEARANCE :**

Counsel for the prosecution	:	Spl.P.P. Jyoti Vajani, Spl.P.P. Ajay Misar, A.P.P. L.S.Gajbhiye.
Counsel for accused No.1	:	Adv. Subodh Dharmadhikari, Adv. Devendra Chavhan.
Counsel for Accused No.2	:	Adv. Ashok Bhangade.
Counsel for Accused No.4	:	Adv. Girish Purohit.
Counsel for Accused No.5, 6	:	Adv. Gopal M. Agrawal.
Counsel for Accused No.7	:	Adv. R.S.Verma.
Counsel for Accused No.8	:	Adv. B.B.Tiwari, Adv. Chaube.
Counsel for Accused No.9	:	Adv. Chaube.
Counsel for Accused No.11	:	Adv. C.H.Jaltare.

JUDGMENT**(Delivered on 22nd day of December, 2023)**

Accused No.1 to 11 are being prosecuted for commission of offence punishable under Sections 406, 409, 468, 471 read with Section 120-B in the alternative Section 34 of the Indian Penal Code (hereinafter referred to as “the IPC”).

2. Facts of the prosecution case are as under -

a) Nagpur District Central Cooperative Bank Ltd. (in short “the NDCC bank”) is a Co-operative bank having its head office at Gandhisagar, Natic Chowk, Mahal, Nagpur. Its area of operation is Nagpur district. It has separate board of directors. It is governed by the provisions of the Maharashtra Co-operative Societies Act, 1960 (in short “the MCS Act”), Maharashtra Co-operative Societies Rules, 1961 (in short “the MCS Rules”), its own bye-laws, Banking laws and directives issued by the Reserve Bank of India (in short “the RBI”) and National Bank for Agriculture and Rural Development (in short “NABARD”) from time to time vide their circulars. Funds of the NDCC bank are required to be invested in accordance with above laws.

b) Accused No.1 is the then Chairman of the NDCC bank whereas accused No.2 and 11 are the then General Manager and Chief Accountant respectively.

c) The then employees of NABARD namely Deshmukh and Das carried out statutory audit of NDCC bank covering period from 01/04/1999 to 31/03/2001. This inspection/audit was done from 04/02/2002 to 26/02/2002 as per guidelines issued by the RBI and NABARD. During inspection, they found that investment port-folio of the NDCC bank was increased notably. From 05/02/2001 to 28/03/2001 NDCC bank had done various transactions of sale and purchase of physical securities. As on 31/03/2001 physical securities of Rs.124.76 crore were due to the NDCC bank. It was

also found that there were many irregularities and violations of legal provisions and also that of the circulars issued by the RBI from time to time. On being asked to produce physical securities for inspection only xerox copies were put up before them and those were also in the name of Home trade Limited (in short "HTL") and not of the NDCC bank.

d) It was also revealed that till 31/03/2001 NDCC bank had entered into transactions of government of India (in short "GOI") (physical) securities only through HTL, but thereafter transactions were also done through other brokers like Indramani Merchants Private Limited, Calcutta, Syndicate Management Services Private Limited, Ahmedabad, Century Dealers Private Limited, Calcutta and Giltedge Management Services Limited, Mumbai (hereinafter these four companies will be individually referred to by their first name only i.e. "Indramani", "Syndicate", "Century Dealers" and "Giltedge" as the case may be and whenever their collective reference will be necessary, they will be referred as "4 broker companies"). Accused No.3 to 10 were the directors/employees of HTL and these 4 broker companies and were directly handling the transactions in question.

e) As on reference date of inspection about Rs.149.83 crore were due to the NDCC bank towards GOI securities. Original GOI (physical) securities were not produced before the inspection team till 26/02/2002. Accordingly, detail inspection report was sent to the NDCC bank, RBI, Registrar of Co-operative Societies and Maharashtra State Co-operative Bank (in short "MSCB").

f) Meanwhile as per directions given by Co-operative Commissioner and Registrar, Co-operative Societies, State of Maharashtra, Pune vide letter dated 20/04/2002, Divisional Joint Registrar, Co-operative Societies, Nagpur vide letter dated 24/04/2002 directed the Special Auditor – Class I (Bank) of Co-operative Societies, Nagpur, namely Bhaurao Vishwanath Aswar i.e. the informant to carry out inspection of sale and purchase transactions of government securities in NDCC bank and some other banks.

g) Accordingly, the informant carried the inspection. He found that on approval of accused No.1 and 2 GOI (physical) security transactions were carried out through HTL and 4 broker companies. Out of them, only HTL was the authorized dealer of Security and Exchange Board of India (in short “SEBI”). 4 other broker companies were not the authorized dealers of SEBI.

h) It was revealed in the inspection that during 25/01/2002 to 05/02/2002 total amount of about Rs.153.04 crores including premium and interest was invested on behalf of NDCC bank towards purchase of government (physical) securities through HTL and 4 other broker companies. Transactions about sale and purchase of government securities in physical form were never brought to the notice of the board of directors and their approval was never sought. Original government securities, bonds, holding certificates, receipts about investment of money etc. were also not available in the head office of the NDCC bank. Therefore, it was doubtful whether the government securities were actually

purchased or not. All these transactions were done at the instance of and with the approval of accused No.1 and 2. Accused No.1 and 2 being Chairman and General Manager respectively, and in turn, being the bankers were entrusted to manage the funds of share holders and depositors. They were morally as well legally responsible to strictly adhere to banking rules and regulations while managing the financial affairs of the NDCC bank. However, they illegally invested these amounts through unauthorized dealers without following prescribed legal mandate. These transactions were causing loss to the depositors and share holders. Hence, the informant lodged report on 29/04/2002 in Ganeshpeth police station, Nagpur against accused No.1, 2, HTL and 4 other broker companies for commission of offences punishable under Sections 406, 409, 468 read with Section 34 of the IPC.

3. Crime No.101 of 2002 came to be registered for commission of offences punishable under Sections 406, 409, 468 read with Section 34 of the IPC. Similarly, five days before the lodging of FIR by the informant accused No.1 had also lodged the FIR with Ganeshpeth police station against HTL and 4 broker companies for commission of offence punishable under Sections 406, 420 read with Section 34 of the IPC. Based on this crime No.97 of 2002 came to be registered.

3.a) The investigation followed. Special investigation team including the then Deputy Superintendent of Police Bele, Sawade, Porate, Police Inspector Kukde, Deshpande and other police officials was established to carry out investigation. Thorough investigation

was done. Relevant documents and muddemal were seized vide various seizure panchnamas. Bank accounts were freezed. Statements of witnesses were recorded. Information was collected from RBI, NABARD, SEBI and National Security Exchange Board (in short "NSE"). Opinion of handwriting expert was taken.

b) During investigation it revealed that accused No.1 was the Chairman of NDCC bank dring 1999 to 2002 whereas accused No.2 and 11 were the General Manager and Chief Accountant respectively. Similarly, accused No.3, 4 and 9 were the then directors of HTL. Accused No.4 was also the director of Giltedge. Accused No.5, 6 and 7 were the then directors of Century Dealers, Indramani and Syndicate respectively and accused No.8 and 10 were the employees and authorized signatories of HTL during relevant period. Accused No.3, 4 and 9 were also the directors of Euro Discover India Limited (in short "EDIL").

c) On 14/09/2000 accused No.1 in violation of bye-laws and other banking rules advanced loan of Rs.40 crores to EDIL by taking circular resolution with signatures of 6 other directors which were obtained by accused No.2 by misleading them that resolution is to be sent to NABARD. This circular resolution was never approved in the very next or any further meeting of board of directors.

d) As per resolutions dated 19/01/1999 and 16/05/1999 accused No.1, 2 along with the then Vice-President, Chief Accountant and Chief Officer (administration) of NDCC bank were

authorized to deal in GOI securities only in SGL mode with RBI. However, from 02/02/2001 without approval of board of directors accused No.1 and 2 started investing funds of NDCC bank in GOI securities in physical mode through private broker HTL.

e) During 05/02/2001 to 12/06/2001 total amount of Rs.185.70 crore was transferred to the account of HTL from the account of NDCC bank towards investment in GOI (physical) securities. However, these original physical securities were never sent by HTL to the NDCC bank. No steps were taken by above accused persons to get original securities from the HTL. During 21/03/2001 to 31/10/2001 total amount of Rs.38.15 crore was repaid by HTL to NDCC bank from time to time. Still in the year 2001 amount of Rs.147.54 crore was due to NDCC bank from HTL towards purchase transactions of GOI (physical) securities. However, still no steps were taken by the accused to get original GOI (physical) securities from HTL.

f) Again on 25/01/2002 and 05/02/2002 amount of about Rs.96.71 crore with HTL and total amount of about Rs.56.32 crore with 4 other unauthorized broker companies i.e. total amount of about Rs.153.04 crore was invested by these accused persons towards purchase of GOI (physical) securities. Original securities pertaining to these purchases were also not available with the NDCC bank.

g) The amounts so received by HTL and 4 other broker companies were never appropriated for purchasing GOI (physical)

securities for the NDCC bank. They were never purchased. No steps were ever taken by the office bearers of NDCC bank to get original securities from these broker companies. These amounts were used by HTL for paying salaries to its employees, giving loan them so also for purchasing office furniture and other articles. Moreover, above stated entire investment was done in violation of various circulars issued by RBI, Co-operative and Banking laws and bye-laws of NDCC bank. In fact, it was never an investment, as there was no giving and taking, it was merely one sided transaction of taking away the funds of the bank under the guise of investment.

h) Not only this accused No.8 and 10 prepared forged securities of Rs.370/- crore and handed over to accused No.2. Those were also in the name of HTL. Not only this, accused No.2 also prepared two letters with forged contents to mislead the NABARD inspection team stating that he was sending original physical securities to HTL for sale. Accused No.8 and 9 also sent various letters to NDCC bank stating thereby that HTL is holding original GOI (physical) securities and NDCC bank is the principal owner thereof. However, as per report given by RBI none of the securities mentioned in all these letters were in the name of NDCC bank. Owners of those securities were different. Therefore all those letters were forged and used as genuine only to mislead and cheat NABARD inspection team.

i) As such all the accused hatched criminal conspiracy to do an illegal act of misappropriation of funds of the NDCC bank to the tune of Rs.241.73 crore (of which Rs.124.21 crores were shown

to have been repaid by HTL to NDCC bank) under the guise of investing them in purchase of GOI (physical) securities and also prepared forged documents for cheating and used them as genuine.

j) Accordingly, final report came to be filed under Section 173(8) of Code of Criminal Procedure (hereinafter referred to as “the CrPC” in short) against accused No.1 to 11 for commission of offence punishable under Sections 406, 409, 468, 471 read with Sections 120-B and 34 of IPC.

4. In view of order passed below Exh.1 by my learned predecessor on 14/11/2019, excluding accused No.3 and 10 trial proceeded against remaining accused persons.

5. Accordingly, my learned predecessor having heard the prosecution and accused No.1, 2, 4 to 9 and 11 as per Section 239 of the CrPC framed charges against them vide Exh.1096 for commission of offence punishable under Sections 120-B, 406, 409, 468, 471 read with Section 120-B and in the alternative Section 34 of the IPC. Charges were read over and explained to the accused. They pleaded not guilty vide statements (Exh.1097 to 1105) and claimed to be tried. Therefore, the trial proceeded further.

6. As per chargesheet period of alleged transactions is dated 14/09/2000, 05/02/2001 to 12/06/2001, 25/01/2002 to 05/02/2002 and intervening period. However, in the charge (Exh.1096) period of alleged transactions in 2002 i.e. 25/01/2002 to 05/02/2002 has remained to be mentioned and error has been

committed in mentioning the date as “05/02/2000” which should be “05/02/2001”. However, record of the case including defence put forth through line of cross examination of prosecution witnesses, statements recorded under Section 313 of the CrPC, additional statements filed therewith and evidence of defence witnesses show that the accused are not misled by such error and omission. They have put forth their defence with respect to allegations as to the transactions on these dates as well. Therefore, in view of Section 215 of CrPC this error and omission are not material. Evidence as to allegations regarding transactions of above period can very well be considered for appreciation.

7. Before I proceed further, it is necessary to mention here that accused No.7 vide application (Exh.3273) prayed for correction of his occupation in the charge (Exh.1096). It is stated therein that he is the director of Syndicate. He has no connection with Giltedge. However, inadvertently his occupation in the charge (Exh.1096) is shown as “Manager - Giltedge Management Services Pvt. Ltd.”. Hence, he prayed for necessary correction in the charge (Exh.1096). My learned predecessor has kept this issue pending to be decided at the time of judgment.

8. Bele (P.W.53) has also admitted in his evidence that accused No.7 was not associated with Giltedge in any manner and he was arrested as one of the directors of Syndicate. Accused No.7 himself also has stated that he is the director of Syndicate. Other material on record also indicates that he is the director of Syndicate. Therefore, it appears that it is just an unintentional error occurred in

the chargesheet which was inadvertantly repeated while typing the charge (Exh.1096). The prosecution has not raised any objection to this. Correction in the charge (Exh.1096) is necessary. No prejudice would be caused thereby to any of the parties. Hence, I proceed to correct occupation of accused No.7 in the charge (Exh.1096) as “Director-Syndicate Management Services Pvt. Ltd.”.

9. After completion of evidence of the prosecution statements of the accused as per Section 313 of the CrPC came to be recorded vide Exh.3287/1 to 3287/9. The defence of the accused is that of total denial and false implication.

10. Points for determination which arose for my consideration are mentioned below along with my findings thereon :-

Sr. No.	POINTS		FINDINGS
1.	Does the prosecution prove that accused No.1, 2, 4 to 9, 11 along with accused No.3 and 10 agreed to do (or caused to be done) an illegal act i.e. mis-appropriation of the funds of NDCC bank by illegal means i.e. under the guise of purchasing GOI securities on the basis of illegal resolutions and forged documents and all of them were party to the said criminal conspiracy?	:-	... Yes, as regards accused No.1, 2, 4 and 7 to 9.
2.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank and accused No.4 to 9		

	alongwith accused No.3 and 10 as the brokers, entered into criminal conspiracy and being entrusted with property namely the funds of the NDCC bank for investing it in GOI securities committed criminal breach of trust pertaining to said amount worth crores of rupees ?	:-	... Yes, as regards accused No.1, 2, 4 and 7 to 9.
3.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 as the brokers being entrusted with property namely the funds of the NDCC bank for investing it in GOI securities in furtherance of common intention of all committed criminal breach of trust pertaining to said amount worth crores of rupees ?	:-	... Does not survive.
4.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in their capacity as brokers entered into criminal conspiracy and committed criminal breach of trust pertaining to said amount worth crores of rupees of the NDCC bank ?	:-	... Yes, as regards accused No.1, 2, 4 and 7 to 9.
5.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in their capacity as brokers in furtherance of common intention of all committed criminal breach of trust		... Does not survive.

	pertaining to said amount worth crores of rupees of the NDCC bank ?	:-	
6.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in their capacity as brokers entered into criminal conspiracy and committed forgery for the purpose of cheating the NDCC bank and its inspection team ?	:-	... Yes, as regards accused No.1, 2, 4 and 7 to 9.
7.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in their capacity as brokers in furtherance of common intention of all committed forgery for the purpose of cheating cheating the NDCC bank and its inspection team ?	:-	... Does not survive.
8.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in their capacity as brokers entered into criminal conspiracy and fraudulently used as genuine certain documents to wit photocopies of government securities and letters with false contents that such GOI securities have been purchased which they knew or had reason to believe at the time they	:-	... Yes, as regards accused No.1, 2, 4 and 7 to 9.

	used it to be a forged document and that such GOI securities were never purchased ?		
9.	Does the prosecution prove that accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No.4 to 9 alongwith accused No.3 and 10 in furtherance of common intention of all fraudulently used as genuine certain documents to wit photocopies of GOI securities and letters with false contents that such GOI securities have been purchased which they knew or had reason to believe at the time they used it to be a forged document and that such GOI securities were never purchased ?	:-	... Does not survive.
10.	What order ?	:-	... As per final order.

REASONS

11. To bring home guilt of the accused the prosecution has in all examined 53 witnesses. Details thereof are as follows -

P.W. No.	Name and official designation	Deposed in the capacity of	Exhibit No.
1.	Bhaurao Vishwanath Aswar – Special auditor Class I (Bank) Co-operative Societies	Informant	1113
2.	Santosh Limbaji Chaure	Director of NDCC bank	1180
3.	Vasant Bhauraoji Wandhe	Director of NDCC bank	1183
4.	Sukhdeo Bhikaji Patil	Nominated member	1192

		of NDCC bank	
5.	Natthu Govindrao Awari	Employee of NDCC bank	1192-A
6.	Sandhya Arun Dani	Employee of NDCC bank	1301
7.	Madhukar Bhaiyyaji Wakhare	Employee of NDCC bank	1302
8.	Ramesh Vyankatrao Nimje	Director of NDCC bank	1311
9	Dr. Baban Bhauraoji Taywade	Director of NDCC bank	1317
10.	Heeren Nandubhai Amin	Director of Syndicate	1347
11.	Devang Bhanuprasad Thakar	Employee of HTL	1353
12.	Rajendra Gangaram Gore	Panch	1360
13.	Shankar Bhatuji Randhaye	Employee of MSCB acted as panch	1369
14.	Dipak Haribhau Devghare	Panch	1371
15.	Nama Daulatrao Kadu	Panch	1374
16.	Bandu Mukundrao Kamble	Panch	1382
17.	Umeshbhai Kantilal Pathak	Panch	1416
18.	Sheshrao Shyamrao Gode	Employee of NDCC bank	1448
19.	Prakash Ravindranath Kelkar	Employee of Janata Sahakari Bank acted as Panch	1478
20.	Gurunath Madhukar Thumbare	Panch	1484
21.	Mangesh Padmakar Patil	Panch	1491
22.	Shivyogi Basavraj Kubsad	Employee of HDFC	1525
23.	Usha Vyankat Rao	Employee of MSCB	1528
24.	Bindumadhav Prabhakar Tikekar	Employee of HDFC	1569
25.	Sandra Rodridgues	Employee of RBI	1574
26.	Vishwas Vinayak Ranjangaonkar	Handwriting expert	1590

27.	Chandrashekhar Tukaramji Samrth	Director of NDCC bank	1733
28.	Vinayak Laxman Hampihallikar	Employee of HTL	1736
29.	Ashok Shrihari Madavi	Panch	1738
30.	Milind Digambar Ghormade	Panch	1739
31.	Rajesh Shyamrao Kathode	Panch	1749
32.	Ajay Ashok Datta	Panch	1750
33.	Sudhakar Govindrao Borkar	Accountant of NDCC bank	1751
34.	Ganesh Mahadeo Vadvalkar	Panch	1753
35.	Akhilesh Gunwant Shah	Panch	1757
36.	Parimal Rasiklal Shah	Auditor of HTL	1783
37.	Shrikant Someshwar Deshpande	Employee of Janata Sahakari Bank	1793
38.	Ketan Ramesh Maskariya	Employee of HTL	1812
39.	Yashwant Narayanrao Kuthe	PSO who recorded the FIR lodge by the informant and accused No. 1	1816
40.	Anita Mangesh Kenkare	Employee of SEBI	1828
41.	Shivsingh Sandusingh Bighot	Employee of MSCB	1832
42.	Jaykumar Rasiklal Mehta	Employee of HTL	1837
43.	Narayan Nagesh Doley	Employee of Janata Sahakari bank	1851
44.	Yogeshkumar Ramshankar Bajpeyee	Assistant investigating officer	1865
45.	Hemraj Bakara Kukde	Assistant investigating officer	1870
46.	Babanrao Bhagwanji Porate	Assistant investigating officer	1877
47.	Krushna Vithobaji Sawade	Assistant investigating officer	1921
48.	Vinod Gunderao Deshmukh	Employee of NABARD	1955

		who conducted inspection of NDCC bank	
49.	Sreekantappa Ramakantha	Registrar of Companies	1962
50.	Anil Shankar Pant	The then Divisional Joint Reigstrar of Co-operative Societies, Nagpur	2072
51.	Dr. Golak Chandra Nath	Employee of NSE	2097
52.	Ketan Rajnikat Choukasi	Chartered accountant appointed by the investigating officer for preparing flow chart	3127
53.	Kishor Balaji Bele	Chief investigating officer	3151

Documentary evidence relied upon by the prosecution will be referred in due course.

12. In support of their defence accused No.2 and 8 have examined themselves vide Exh.3312 and 3290 respectively. Documents filed in evidence by them will be referred in due course.

13. Heard learned Special Public Prosecutor (“Spl.P.P.” in short) for the prosecution and also learned counsels for accused No.1, 2, 4 to 9 and 11. Both sides have also filed their written notes of arguments and citations relied upon by them in support of their submissions. Brief details thereof are as under :-

Sr. No.	Written Notes of Arguments filed by	Exh. No.
1.	Prosecution	3460
2.	Accused No. 1	3395, 3463
3.	Accused No. 2	-
4.	Accused No. 4	3381
5.	Accused No. 5, 6	3385
6.	Accused No. 7	3368
7.	Accused No. 8	3383, 3454
8.	Accused No. 9	3387, 3455
9.	Accused No. 11	-

AS TO POINTS NO.1 TO 5 :

14. As all these points are interconnected to avoid repetition they are being discussed together.

15. Section 406 of the IPC prescribes punishment for the offence of criminal breach of trust whereas Section 409 is an aggravated form thereof. It speaks of punishment when criminal breach of trust is committed by a person entrusted with property or any dominion over the property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, attorney or agent. Thus, to bring home guilt both under Sections 406 and 409 proof of criminal breach of trust is a sine qua-non.

16. Section 405 of the IPC defines offence of criminal breach of trust. To prove this offence, the prosecution has to prove following ingredients :-

- (1) The accused were entrusted with property or any dominion over the property;
- (2) The accused so entrusted –

- (a) dishonestly misappropriated or converted to their own use that property; or
 - (b) dishonestly used or disposed of that property; or
 - (c) wilfully suffered any other person to do so;
- (3) Above acts are done in violation of -
- (i) any directions of law prescribing the mode in which such trust is to be discharged; or
 - (ii) any legal contract, express or implied, which he has made touching discharge of such trust.

On above parameters evidence in the case at hand will have to be evaluated.

17. NDCC bank is the entrusted entity of its depositors and shareholders. Deposits and all other funds in it are its assets/property. Its is governed by the provisions of Co-operative Laws including MCS Act, MCS Rules, Banking Laws, its own bye-laws (Exh.1450) and the circulars and guidelines issued by the RBI and NABARD from time to time. NDCC bank functions through its board of directors and various committes formed as per bye-laws (Exh.1450).

18. Admittedly accused No.1 was the Chairman of NDCC bank during the year 1999 to 2002 whereas accused No.2 and 11 were the General Manager and Chief Accountant respectively. It is also admitted that accused No.2 was the original employee of the MSCB and was working on deputation with the NDCC bank.

19. Board of directors vide resolution (Exh.1185) passed in its meeting held on 19/01/1999 authorized accused No.1, 2, Vice-chairman Asha Mahajan, Chief Accountant Gokhale and Chief Officer Gode to purchase, sale, entrust, negotiate, transfer or otherwise deal with government or any securities for and on behalf of the NDCC bank and to receive the principal and interest due thereon.

20. Further, in view of resolution (Exh.1193) bearing No.14(6) passed in the meeting of the board of directors held on 16/05/1999, accused No.2 and Chief Accountant were jointly authorized to enter into an agreement with MSCB to open and operate Subsidiary General Ledger account ("SGL account" in short) in the name of NDCC bank as also with the RBI to transact the business in GOI securities, State Development Loans and Treasury bills. Accused No.1 was authorized to take decision of investment and sale in securities through SGL account on the advice from Funds Management Department of MSCB. Further, any two out of accused No.2, Manager, Chief Accountant and Chief Officer (administration) were authorized to carry out transactions on behalf of the NDCC bank to place order for sale and purchase of investment.

21. Above two resolutions (Exh.1185 and 1193) are not disputed by the defence side. On the basis thereof, it is sufficiently proved that accused No.1, 2 alongwith Vice-Chairman, Chief Officer (administration) and Chief Accountant were entrusted with the property of the NDCC bank i.e. funds thereof to deal in investment in GOI securities and carry out transactions of sale and purchase

thereof. As such, accused were having dominion over the property of NDCC bank for above purposes. Thus, the ingredient of entrustment and dominion over the property of NDCC bank by accused No.1, 2 and 11 is duly proved by the prosecution. These accused also have not disputed their entrustment and dominion over this property.

22. Moreover, accused No.1, 2 and 11 are the bankers as they were authorized to deal with the funds of the NDCC bank. Board of directors of the NDCC bank are its trustees and in terms of resolutions (Exh.1185 and 1193) they had appointed accused No.1, 2 and 11 alongwith others mentioned therein to act on their behalf. Thereby, these accused were not only working in the capacity of banker and trustees of the NDCC bank but, also were representing it in regard to such transactions as it's agents.

23. Having proved the entrustment and dominion over property of NDCC bank, now it is to be seen in what manner this entrustment was discharged by these accused persons, more particularly, whether they had committed criminal breach of trust in terms of Section 405 of IPC. According to the prosecution they dishonestly misappropriated the funds of the NDCC bank and dishonestly used or disposed of that property in violation of laws prescribing the mode in which such trust is to be discharged.

24. As per allegations of the prosecution these accused persons have done following transactions in violation of bye-laws (Exh.1450) of the NDCC bank, directions issued by RBI, NABARD,

Co-operative laws and banking regulations prescribing the mode in which funds of the NDCC bank are to be invested :-

- I. Advancement of loan of Rs.40 crore to the EDIL in the form of investment in shares on buy back basis; and
- II. Investment in GOI (physical) securities [including investment in public sector undertaking (in short “PSU”) bonds].

25. Now it is to be seen as to whether the prosecution has succeeded in proving all these allegations on the basis of evidence led. For clarity these allegations are required to be dealt with one by one.

I. ADVANCEMENT OF LOAN OF RS.40 CRORE TO THE EDIL IN THE FORM OF INVESTMENT IN SHARES ON BUY BACK BASIS :-

26. The transactions with EDIL discloses the dark side of the co-operative sector in Maharashtra State. In fact, the District Central Co-operative Banks have been established in every district of Maharashtra with primary object to provide support to the agriculturists and the economically marginalized people in the concerned district. As per evidence of Bele (P.W.53) the transaction with EDIL was done on 14/09/2000 and 15/09/2000 on the basis of circular resolution.

27. Evidence as to this transaction has come on record more specifically through the testimony of Gode (P.W.18). This witness

has deposed that from 11/09/2000 to 23/09/2000 accused No.2 was on leave and hence, he was the in-charge General Manager. Accused No.2 has also admitted his absence during this period vide his testimony as well as leave applications (Exh.3313 and 3314).

28. Gode (P.W.18) has deposed that on 11/09/2000 there was a proposal (Exh.1451) for advancing loan of Rs.40 crores to EDIL against hypothecation of shares. Proposal (Exh.1451) was put up from the accounts department under the hand writing of accused No.11 and signatures of himself and Gode (P.W.18). As per this proposal (Exh.1451) accused No.11 had already cautioned that if the proposal is approved board's resolution would be necessary.

29. As per this proposal (Exh.1451) Gode (P.W.18) prepared office note (Exh.1376) dated 14/09/2000 stating therein that investment is urgent, meeting of board of directors is not scheduled in near future and hence, there is need of passing circular resolution. As per evidence of this witness, he had prepared this office note (Exh.1376) as per instructions of accused No.1. Accordingly, circular resolution (Exh.1452) was obtained for investing Rs.40 crores in the shares of EDIL against pledge of 5,00,000/- (Five Lakh) equity shares of HTL with collateral security of 13,50,000 (Thirteen Lakh Fifty Thousand) shares of Ways India Limited. This circular resolution (Exh.1452) was shown to be passed under signatures of accused No.1, Vice-Chairman Ashatai Mahajan, directors Shamrao Dhawad, Kusumtai Kimmatkar, Morbaji Nimje, Chaure (P.W.2) and Nimje (P.W.8).

30. Evidence of Gode (P.W.18) further transpires that after passing circular resolution (Exh.1452) he issued letter (Exh.1377) to the chief accountant of NDCC bank asking him to prepare four (4) cheques of Rs.10 crore each in favour of EDIL and to debit this amount from the account of NDCC bank bearing No.101/5751 maintained with MSCB. Accordingly, letters (Exh.1378 and 1379) were given to the EDIL.

31. Gode (P.W.18) has further deposed that after passing circular resolution (Exh.1452) he and accused No.11 went to accused No.1 asking him that circular resolution is required to be approved in the meeting of the board of directors and permission of government is also necessary for it. However, accused No.1 directed them to disburse the amount on the same day. Therefore the amount of Rs.40 crore was disbursed to EDIL through cheques.

32. In this regard evidence of the then accountant of NDCC bank Borkar (P.W.33) duly corroborates the contentions of Gode (P.W.18). He has stated that on 14/09/2000 accused No.11 asked him to prepare four (4) cheques of Rs.10 crore each alongwith voucher for being given to accused No.1. Accordingly, on 14/09/2000 he prepared those four (4) cheques dated 15/09/2000 and handed over to accused No.11. The receipt thereof was not given to this witness.

33. As such, investment with EDIL of Rs.40 crore was done only by passing alleged circular resolution (Exh.1452), though it was informed by Gode (P.W.18) and accused No.11 and which was

mandatory as per bye-laws (Exh.1450) to put the circular resolution (Exh.1452) for discussion and approval before the meeting of board of directors.

34. Evidence of Nimje (P.W.8) who is one of the signatories to the circular resolution (Exh.1452) shows that his signature on the said resolution (Exh.1452) was taken under the guise that it was required to be sent to NABARD. This was informed to him by one of the officers of the NDCC bank. Said resolution (Exh.1452) was prepared in English and he was not able to read the English language. Thus, it appears that this resolution (Exh.1452) was passed by keeping the directors in dark and misleading them that it was required to be sent to NABARD or it was something like routine compliance required to be made to NABARD.

35. It is pertinent to note, that accused No.1, 2 and 11 have not disputed this transaction with EDIL. Evidence of Nimje (P.W.8), Gode (P.W.18) and Borkar (P.W.33) on the above points is also not seriously disputed during their respective cross-examinations. The only contention of these accused persons in this regard is that the amount invested with EDIL is repaid with interest. Evidence, particularly account statements (Exh.1472/2 & 1472/3) show that on 19/03/2001, 20/03/2001 amount has been repaid by EDIL with interest of Rs.10,95,890/- and thereby according to these accused there was no loss to the NDCC bank in the transaction with EDIL.

36. Though, the accused are claiming there was no loss to NDCC bank, the question is not whether there was profit or loss but,

the question is whether such transaction was legal or illegal. Banking business is not a game of chance, like that of gambling. If a person playing the gambling wins money at one or two occasions does not mean that gambling is legal. Likewise, the question herein is whether accused were acting within their jurisdiction and had authority to make the alleged investment and whether it was done in accordance with law. Definitely, the answer is 'No'.

37. As stated herein above, this entire transaction with EDIL was done only on the basis of circular resolution (Exh.1452). As per bye-laws (Exh.1450) more particularly bye-law No.25(xiv), circular resolution can be taken on emergent occasion, if a meeting of the board of directors cannot be convened, by the chairman in consultation in writing with at least five (5) other directors and the decision so arrived at unanimously has to be placed before the next meeting of the board of directors for confirmation. Herein, though office note (Exh.1376) showing urgency of taking circular resolution was pretended, the nature and extent of such urgency is not coming forth. The alleged circular resolution (Exh.1452) does not appear to have been passed in accordance with the norms set in this regard. The other office bearers/signatories were not made to understand as to for what purpose their signatures were obtained. It was never never tabled for discussion and approval in the next meeting of the board of directors.

38. Investment of such huge amount is definitely a strategic decision and its confirmation by the board of directors was very

necessary. Still it was conveniently not done by accused No.1. No explanation has been given by him for this non-compliance.

39. Apart from this, as per bye-laws (Exh.1450) area of operation of the NDCC bank is Nagpur district. Still loan in the form of investment in shares on the basis of buy back arrangement was given to EDIL company which was neither the member of NDCC bank nor working within area of operation of NDCC bank. Directors of EDIL i.e. accused No.3, 4 and 9 were not the members of the NDCC bank. Still the question arises as to why and how they approached the NDCC bank and benefited by urgent disbursement of huge sum of Rs.40 crore.

40. Moreover, as per letter (Exh.1581/1 to 1581/3) it is clarified by the RBI that investment by these accused persons with EDIL in the form of investment in shares under buy back arrangement requires prior approval of the RBI which was not obtained. Moreover, investment in shares of private corporates by the District Central Co-operative Banks is prohibited as per the provisions of MCS Act.

41. Letter (Exh.1581/1 to 1581/3) further clarifies that as per guidelines issued by NABARD vide circular No.NB.PCD. (OPR)/H-74/A.175/2000-01 dated 19th April, 2000, limits for lending to others outside co-operative fold i.e. companies/corporates registered bodies/agencies/institutions etc. is not to exceed 25% of the bank's capital funds (i.e.individual borrower exposure limits). In case of above investment limit worked

out was Rs.11.25 crore only, but it was exceeded when these accused persons lent amount to EDIL i.e. outside co-operative fold.

42. As such, entire transaction done by these accused persons with EDIL of which accused No.3, 4 and 9 were directors was completely illegal. When basically accused No.1 was not at all authorized to make investment in the above manner, yielding of interest thereon will not cover up or wash out wrong done by him.

43. Rather, evidence on record suggests that EDIL was the company based at Mumbai. The questions arise as to how they approached to NDCC bank?, who introduced them?, how and why they were entertained by making a show of extreme urgency? Everything is in dark. This transaction done in the year 2000 shows old acquaintance and deep rooted meeting of mind between accused No.1 with the other accused namely directors of EDIL and HTL i.e. accused Nos.3, 4 and 9 and in turn, the others associated with these companies.

II. TRANSACTIONS IN GOI (PHYSICAL) SECURITIES [INCLUDING INVESTMENT IN PSU BONDS] :-

44. The period of alleged transactions by these accused persons in GOI securities (physical) through HTL was during 05/02/2001 to 12/06/2001 and similar transactions through HTL and 4 other broker companies during 25/01/2002 to 5/02/2002 and intervening period. To have brief idea and for ready reference these various transactions are mentioned below in tabular form :-

TABLE -1A

Transactions regarding Purchase of GOI (physical) securities through HTL during 5/2/2001 to 12/6/2001 [proved in the evidence of Awari (P.W.5), Wakhare (P.W.7), Gode(P.W.18) and Rao (P.W.23)]

******These transactions are specifically referred in the chargesheet and transaction period is also referred in the charge (Exh.1096). Hence, they are mentioned below seperately and specifically :-**

Sr. No.	Exh. No.	Nature of document	Date	Prepared by (‘A’ below stands for ‘accused’)	Recommended and approved by (‘A’ below stands for ‘accused’)	Amount (Rs.)	Amount transferred from where and when	Amount transferred to where
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	1196/13 10	Notesheet about purchase of GOI securities through HTL in physical form instead of in SGL mode	2/2/2001	A-11	A-2, A-1	As per this notesheet accused No.1, 2 approved and switched the mode of transactions in GOI securities from SGL to physical and started transactions through HTL.		
2.	1197	Notesheet about purchase of GOI	3/2/2001	Wakhare	A-2, A-1	25,80,02,152.78	NDCC bank A/c No.101/5751 at	HTL A/c No.2364 at Janta Co-

		securities (physical) 11.03% (2012) through HTL		(P.W.7)			MSCB on 5/2/2001	operative bank
	1273	Contract Note about above transaction	Trade Dt - 3/02/2001 Settlement Dt. - 5/02/2001	A-3	A-3			
3.	1198	Notesheet about purchase of GOI securities (physical) 11.43% (2015) through HTL	5/2/2001	Wakhare (P.W.7)	A-2, A-1	26,06,25,000.00	NDCC bank A/c No.101/5751 at MSCB on 7/2/2001	HTL A/c No.2364 at Janta Co- operative bank
	1274	Contract Note about above transaction	Trade Dt - 5/02/2001 Settlement Dt. - 7/02/2001	A-3	A-3			
4.	1199	Notesheet about purchase of GOI	3/3/2001	Wakhare (P.W.7)	A-2, A-1	26,51,75,069.44	NDCC bank A/c No.101/5751 at	HTL A/c No.2364 at Janta Co-

		securities (physical) 11.03% (2012) through HTL					MSCB on 5/3/2001	operative bank
	1231	Contract Note about above transaction	Trade Dt - 3/03/2001 Settlement Dt. - 5/03/2001	A-8	A-8			
5.	1200	Notesheet about purchase of GOI securities (physical) 10.47% (2015) through HTL	16/3/2001	Wakhare (P.W.7)	A-1, Gode (P.W.18)	15,14,83,250.00	NDCC bank A/c No.101/5751 at MSCB on 16/3/2001	HTL A/c No.17031 at MSCB
	1721	Contract Note about above transaction	Trade Dt - 15/03/2001 Settlement Dt. - 16/03/2001	A-9	A-9			
6.	1201	Notesheet about purchase of GOI	20/3/2001	Wakhare (P.W.7)	A-1, Gode (P.W.18)	40,44,20,666.67	NDCC bank A/c No.101/5751 at	HTL A/c No.17031 at MSCB

		securities (physical) 10.47% (2015) through HTL					MSCB on 20/3/2001	
	1719	Contract Note about above transaction	Trade Dt - 19/03/2001 Settlement Dt. - 20/03/2001	A-9	A-9			
7.	1203	Notesheet about purchase of GOI securities (physical) 11.40% (2008) through HTL	23/3/2001	Wakhare (P.W.7)	A-1, Gode (P.W.18)	21,73,83,333.33	NDCC bank A/c No.101/5751 at MSCB on 23/3/2001	HTL A/c No.17031 at MSCB
	1230	Contract Note about above transaction	Trade Dt - 20/03/2001 Settlement Dt. - 23/03/2001	A-8	A-8			
8.	1207	Notesheet about purchase of GOI	4/6/2001	Wakhare (P.W.7)	A-1, Gode (P.W.18)	20,02,27,777.78	NDCC bank A/c No.101/5751 at	HTL A/c No.17031 at MSCB

		securities (physical) 10.25% (2021) through HTL					MSCB on 4/6/2001	
	1718	Contract Note about above transaction	Trade Dt - 04/06/2001 Settlement Dt. - 04/06/2001	A-9	A-9			
9.		(No Notesheet about this transaction found. However, funds were transferred as per column No.7 to 9)				10,03,41,666.67	NDCC bank A/c No.101/5751 at MSCB on 12/6/2001	HTL A/c No.17031 at MSCB
	1717	Contract Note about above transaction	Trade Dt - 09/06/2001 Settlement Dt. -	A-9	A-9			

			12/06/2001				
Total Amount Paid/transferred by NDCCB						185,73,89,472.22	
**** Barring accused No.3 above mentioned notesheets and contract notes are not disputed by the accused persons whose signatures are appearing on it. Moreover, they are also proved through the evidence of Awari (P.W.5), Wakhare (P.W.7), Gode (P.W.18), Ranjangaonkar (P.W.26) and Mehata (P.W.42). **** Letter (Exh.1503) dated 30/5/2002 issued by Rao (P.W.23) to the investigating officer shows that above amounts at Sr.No.2 to 9 were debited from the account of NDCC bank maintained with MSCB and were directed to be paid by issuing banker's cheque in favour of the HTL as per instructions given by NDCC bank to MSCB through FAX messages (Exh.1534, 1535, 1536, 1537, 1538, 1539, 1540 and 1541). These documents are proved in the evidence of Rao (P.W.23). **** Letter (Exh.1542) and entries in the Route map (Exh.1543/1 to 1543/11) also show that the above amounts were debited from the account of NDCC bank maintained with MSCB and credited to the accounts No.2364 and 17031 as the case may be maintained by HTL with Janta Co-operative bank and MSCB respectively. These documents are also proved in the evidence of Rao (P.W.23).							

TABLE - 1B

Transactions (other than those mentioned in TABLE – 1A above) regarding Sale/Purchase of GOI (physical) securities through HTL during 21/3/2001 to 11/01/2002

[proved in the evidence of Awari (P.W.5), Dani (P.W.6), Wakhare (P.W.7) and Gode (P.W.18)]

Sr.No.	Exh. No.	Nature of document	Date	Prepared by (‘A’ below stands for ‘accused’)	Recommended and approved by (‘A’ below stands for ‘accused’)	Transaction Amount (Rs.)
1.	2.	3.	4.	5.	6.	7.
1.	1202	Notesheet about sale of GOI securities (physical) 11.43% (2015) through HTL	21/03/2001	Dani (P.W.6)	Gode (P.W.18), A-1	--
2.	1204	Adjustment Notesheet seeking approval to credit difference amount of Rs.4,44,73,583.34 of sale and purchase transaction of GOI securities through HTL in MSCB A/c No.101/5751 of NDCCB	24/03/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	4,44,73,583.34

3.	1205	Notesheet about sale of GOI securities (physical) 11.03% (2012) through HTL	28/3/2001	Wakhare (P.W.7)	Gode (P.W.18), A-2, A-1	26,66,11,805.56
	1234	Contract note about above transaction	Trade Dt - 24/03/2001 Settlement Dt. - 28/03/2001	A-8	A-8	
5.	1206	Notesheet about purchase of GOI securities (physical) 11.83% (2014) through HTL	28/3/2001	Wakhare (P.W.7)	Gode (P.W.18), A-2, A-1	22,21,38,222.22
	1233	Contract note about above transaction	Trade Dt - 24/03/2001 Settlement Dt. - 28/03/2001	A-8	A-8	
6.	1208	Adjustment Notesheet seeking approval to credit difference amount of Rs.17,93,250.00 in MSCB A/c No.101/5751 of NDCCB out of sale transaction of GOI securities (Physical) 10.25%(2021), 11.83%(2014),	23/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	17,93,250.00

		11.03%(2012) and purchase transaction of GOI securities (Physical) 12.40%(2013), 10.70%(2020), 10.50%(2014), 10.45%(2018) through HTL				
	1235	Adjustment letter issued by HTL about above transaction.	23/08/2001	A-8	A-8	
7.	1209	Notesheet about sale of GOI securities (physical) 11.83% (2014) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	23,51,03,666.67
	1236	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	
8.	1210	Notesheet about sale of GOI securities (physical) 10.25% (2021) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	20,90,83,333.33
	1237	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. -	A-8	A-8	

			24/08/2001			
9.	1211	Notesheet about sale of GOI securities (physical) 11.03% (2012) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	27,95,07,500.00
	1238	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	
10.	1212	Notesheet about purchase of GOI securities (physical) 10.70% (2020) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	10,94,26,111.11
	1239	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	
11.	1213	Notesheet about purchase of GOI securities (physical) 10.50% (2014) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	16,26,81,250.00

	1241	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	
12.	1214	Notesheet about purchase of GOI securities (physical) 12.40% (2013) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	23,43,75,555.56
	1243	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	
13.	1215	Notesheet about purchase of GOI securities (physical) 10.45% (2018) through HTL	24/08/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	21,54,18,333.33
	1245	Contract note about above transaction	Trade Dt - 23/08/2001 Settlement Dt. - 24/08/2001	A-8	A-8	

14.	1216	Adjustment Notesheet seeking approval to credit difference amount of Rs.33,19,361.11 of sale and purchase transaction of GOI securities through HTL in MSCB A/c No.101/5751 of NDCCB	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	33,19,361.11
	1247	Adjustment letter issued by HTL about above transaction.	06/09/2001	A-8	A-8	
15.	1217	Notesheet about sale of GOI securities (physical) 11.40% (2008) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	23,44,15,333.33
	1248	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
16.	1218	Notesheet about sale of GOI securities (physical) 10.47% (2015) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	26,51,75,069.44
	1249	Contract note about above transaction	Trade Dt - 06/09/2001	A-8	A-8	

			Settlement Dt. - 07/09/2001			
17.	1219	Notesheet about sale of GOI securities (physical) 10.25% (2021) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	10,57,20,805.56
	1250	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
18.	1220	Notesheet about purchase of GOI securities (physical) 09.81% (2013) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	21,00,86,500.00
	1251	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
19.	1221	Notesheet about sale of GOI securities (physical) 10.47% (2015) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	43,00,16,333.33

	1253	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
20.	1222	Notesheet about purchase of GOI securities (physical) 12.40% (2013) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	40,98,34,444.44
	1254	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
21.	1223	Notesheet about purchase of GOI securities (physical) 10.03% (2019) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	15,36,45,166.67
	1256	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	

22.	1224	Notesheet about purchase of GOI securities (physical) 09.39% (2011) through HTL	07/09/2001	Dani (P.W.6)	Gode (P.W.18), A-1	15,45,23,125.00
	1258	Contract note about above transaction	Trade Dt - 06/09/2001 Settlement Dt. - 07/09/2001	A-8	A-8	
23.	1225	Adjustment Notesheet seeking approval to purchase GOI securities (Physical) 12.40%(2013) out of interest amount of Rs. 1,32,25,000.00 accrued on GOI securities (Physical) 10.70%(2020) through HTL and 10.50%(2014) and to credit difference amount of Rs.12,37,333.33 in MSCB A/c No.101/5751 of NDCCB and	30/10/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	12,37,333.33
24.	1226	Adjustment Notesheet seeking approval to credit difference amount of Rs.4,10,347.22 in MSCB A/c No.101/5751 of	30/10/2001	Dani (P.W.6)	Gode (P.W.18), A-2, A-1	4,10,347.22

		NDCCB out of sale transaction of GOI securities (Physical) 09.39%(2011), 10.45%(2018) and purchase transaction of GOI securities (Physical) 10.18%(2026) and 10.03%(2019) through HTL				
25.	1227	Notesheet about sale of GOI securities (physical) 10.50% (2014) through HTL	08/01/2002	Wakhare (P.W.7)	A-2, A-1	16,54,08,750.00
	1264	Contract note about above transaction	Trade Dt - 08/01/2002 Settlement Dt. - 08/01/2002	A-8	A-8	
26.	1228	Notesheet about sale of GOI securities (physical) 10.70% (2020) through HTL	08/01/2002	Wakhare (P.W.7)	A-2, A-1	11,22,58,888.89
	1265	Contract note about above transaction	Trade Dt - 08/01/2002 Settlement Dt. - 08/01/2002	A-8	A-8	

27.	1229	Notesheet about sale of GOI securities (physical) 10.18% (2026) through HTL	11/01/2002	Wakhare (P.W.7)	Gode (P.W.18), A-2, A-1	17,76,05,000.00
	1279	Contract note about above transaction	Trade Dt - 10/01/2002 Settlement Dt. - 11/01/2002	A-3	A-3	

**** Barring accused No.3 above mentioned notesheets and contract notes are not disputed by the accused persons whose signatures are appearing on it. Moreover, they are also proved through the evidence of Awari (P.W.5), Dani (P.W.6), Wakhare (P.W.7), Gode (P.W.18), Ranjangaonkar (P.W.26) and Mehata (P.W.42).

**** Entries in this table show that apart from transactions in TABLE-1A above there were many sale and purchase transactions in GOI securities (Physical) between NDCC bank and HTL during the aforesaid period i.e. March 2001 to 11/01/2002.

TABLE - 2A

Transactions regarding Sale / Purchase of GOI (physical) securities through HTL during 25/01/2002 to 05/02/2002
[proved in the evidence of Awari (P.W.5), Wakhare (P.W.7), Ranjangaonkar (P.W.26) and Mehata (P.W.42)]

Sale of GOI Securities (physical) to / through HTL :-

Sr. No	Exh. No.	Nature of document	Date	Prepared by (‘A’ below stands for ‘accused’)	Recommended and approved by (‘A’ below stands for ‘accused’)	Transaction Amount (Rs.)
1.	2.	3.	4.	5.	6.	7.
1.	1292	Notesheet about sale of GOI securities (physical) 10.03% (2019) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	6,49,84,455.56
	1268	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
2A.	1293	Notesheet about sale of GOI securities (physical) 12.40% (2013) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	25,77,66,666.67

	1272	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
2B.	1293	Notesheet about sale of GOI securities (physical) 12.40% (2013) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	45,10,91,666.67
	1271	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
2C.	1293	Notesheet about sale of GOI securities (physical) 12.40% (2013) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	1,28,88,333.33
	1270	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	

2D.	1293	Notesheet about sale of GOI securities (physical) 12.40% (2013) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	18,04,36,666.67
	1269	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
						Total 96,71,67,788.90
Purchase of GOI securities (physical) from / through HTL :-						
1A.	1154	Notesheet about purchase of GOI securities (physical) 11.83% (2014) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	25,94,34,944.44
	1155/2	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	

1B.	1154	Notesheet about purchase of GOI securities (physical) 11.90% (2007) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	6,16,07,361.11
	1155/6	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
1C.	1154	Notesheet about purchase of GOI securities (physical) 11.99% (2009) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	19,19,70,083.33
	1155/4	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
1D.	1154	Notesheet about purchase of GOI securities (physical) 12.32% (2011) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	19,08,08,000.00
	1155/5	Contract Note about above transaction	Trade Dt - 04/02/2002	A-8	A-8	

			Settlement Dt. - 05/02/2002			
1E.	1154	Notesheet about purchase of GOI securities (physical) 11.43% (2015) through HTL	05/02/2002	Wakhare (P.W.7)	A-2, A-1	26,33,23,000.00
	1155/3	Contract Note about above transaction	Trade Dt - 04/02/2002 Settlement Dt. - 05/02/2002	A-8	A-8	
		Total 96,71,43,388.88				

**** Above mentioned notesheets and contract notes are not disputed by the accused persons whose signatures are appearing on it. Moreover, they are also proved through the evidence of Awari (P.W.5), Wakhare (P.W.7), Ranjangaonkar (P.W.26) and Mehata (P.W.42).

TABLE - 2B

Transactions regarding Purchase of GOI (physical) securities through 4 other broker companies during 25/01/2002 to 05/02/2002 [proved in the evidence of the informant, Awari (P.W.5), Wakhare (P.W.7)]

Sr. No	Exh. No.	Nature of document	Date	Prepared by (‘A’ below stands for ‘accused’)	Recommended and approved by (‘A’ below stands for ‘accused’)	Transaction Amount (Rs.)
1.	2.	3.	4.	5.	6.	7.
1A.	1156	Notesheet about purchase of GOI securities (physical) 10.20% (2005) as per proposal of Indramani and to take necessary account of receipt and disbursement (<u>Jama Kharch</u>)	25/01/2002	Wakhare (P.W.7)	A-2, A-1	16,59,22,500.00
	1157	Confirmation letter about above transaction	25/01/2002	A-6	A-6	
2.	1158	Notesheet about purchase of GOI securities (physical) 09.39% (2011) as per proposal of Syndicate and to take necessary account of receipt and disbursement (<u>Jama Kharch</u>)	25/01/2002	Wakhare (P.W.7)	A-2, A-1	16,71,43,375.00

TABLE - 3

As per evidence of the informant coupled with testimony of Rao (P.W.23) and Dole (P.W.43) supported by documentary evidence like inspection report (Exh.1138), route map (Exh.1543/1 to 1543/11) and letters (Exh.1852 to 1856 and 1859) following amounts were transferred from the account of NDCC bank to the accounts of 4 broker companies -

Sr. No.	Cheque No.	Amount (Rs.)	Account No. from which the amount was transferred and when	Account No. to which the amount was transferred.	Particulars / Purpose of transferred amount
1.	666011 (Exh.1532)	11,22,09,589.04	Account of NDCCB maintained with MSCB on 07/01/2002	Account No. 2932 of Giltedge Management services Ltd. maintained with Janata Sahakari Bank.	As per entry No.10 in route map (Exh. 1543/9) this amount was received for purchase of Mahajivan Pradhikaran Bonds face value of Rs. 10 Crores.
2.	666012 (Exh.1532)	16,57,24,520.55	Account of NDCCB maintained with MSCB on 07/01/2002	Account No. 2869 of Syndicate Management services Ltd. maintained with Janata Sahakari Bank.	As per entry No. 12 in route map (Exh. 1543/11) this amount was received for purchase of Power Grid Bonds.
3.	666016	11,68,70,821.00	Account of NDCCB maintained with MSCB on 09/01/2002	Account No. 2811 of Century Dealers Pvt. Ltd. maintained with Janata Sahakari Bank.	As per entry No. 09 in route map (Exh. 1543/08) this amount was received for purchase of MKVDC Bonds face value of Rs. 10 Crores.
4.	666017	16,48,41,780.00	Account of NDCCB maintained with MSCB on 10/01/2002	Account No. 2814 of Indramani Merchant Pvt. Ltd. maintained with Janata Sahakari Bank.	As per entry No. 11 in route map (Exh. 1543/10) this amount was received for purchase of MKVDC Bonds face value of Rs. 15 Crores.

45. As per resolutions (Exh.1185, 1193) accused No.1 was authorized to take decision of investment and sale in GOI securities through SGL account only and that too on the advice from Funds Management Department of MSCB.

46. However, notesheet (Exh.1196/1310) dated 02/02/2001 shows that it was prepared by accused No.11, recommended by accused No.2 and approved by accused No.1. It pertains to transaction of GOI securities in physical form through the broker HTL. This happens to be the very initial notesheet whereby the accused persons appear to have started transacting in physical form of GOI securities with HTL. Above tables demonstrate various transactions shown to be entered in to by these accused persons with HTL thereby transferring huge funds in crores of rupees to the accounts of HTL under the guise of purchasing GOI (physical) securities.

47. It is pertinent to note that there is nothing on record to show that these transactions were done by availing advice from Funds Management Department of MSCB. It is therefore clear that accused have switched the mode of investment in physical form of securities through private brokers, not through SGL account and such decision was taken on their own. It is needless to say that such decision at the instance of accused No.1 and 2 was in gross violations of the norms set and the resolutions passed for investing in GOI and other securities.

48. It is much clear that these accused persons were authorized to deal in GOI securities only through SGL II account. Therefore, the act of switching to invest through private brokers that too in physical form of GOI securities indeed was a strategic decision and ought to have been taken only after discussion and approval of board of directors. However, evidence of the informant and Deshmukh (P.W.48) coupled with testimonies of the then directors of the NDCC bank viz. Patil (P.W.4), Nimje (P.W.8), Taiwade (P.W.9) and Samarth (P.W.27) show that subjects of investments in GOI securities in physical form through brokers like HTL and 4 other broker companies which were not empanelled by the board of directors of the NDCC bank were never discussed in the meetings of the board of directors and approved by it. It shows that these accused transgressed authority granted to them vide resolutions (Exh.1185 and 1193) keeping the board of directors in dark till long time, more particularly, till these illgalities were brought to board during inspection of NABARD.

49. No explanation or reason has been stated by the accused as to how and why such decision was taken without consulting the board of directors and taking approval from it. Rather as per resolution (Exh.1194) in the meeting of managing committee (and of course not the meeting of board of directors) held on 25/08/2001 accused No.2 at the instance of accused No.1 informed the members of that committee about investment of Rs.150 crore in GOI (physical) securities through HTL. This conduct on the part of these accused would clearly demonstrate that all the questioned transactions and the manner in which such transactions were

executed were suppressed from the board of directors. This shows that these accused were acting in clear violations of the bye-laws (Exh.1450). Supprssion of all these things from the board of directors speaks in volume.

50. Now let us see as to whether acts of these accused about dealing in GOI (physical) securities were in violation of directions time to time issued in this regard by RBI, NABARD, other Co-operative laws, and banking rules and regulations. Illegalties of all these transactions have been initially questioned by the Commissioner of Co-operative Societies, (State of Maharashtra), NABARD and RBI. Hence, evidence of witnesses of these departments will have to be evaluated.

51. As per testimony of Pant (P.W.50), the Commissioner of Co-operative Societies, Pune vide letter (Exh.1137) had directed him to inquire about the scam alleged to have been committed in the sale and purchase transactions of GOI (physical) securities in the NDCC bank and to take further legal action, if required. Accordingly, Pant (P.W.50) primarily inquired with accused No.2 by visiting NDCC bank. On the basis of information gathered, vide letter (Exh.1114) he directed the informant to carry out inspection about transactions in sale and purchase of GOI (physical) securities by the NDCC bank. In pursuance of these directions, the informant carried inspection and submitted report (Exh.1138) to Pant (P.W.50).

52. Evidence of the informant transpires that on 27/04/2002 only the purchase register was made available to him for inspection in the NDCC bank. Some photocopies of the documents pertaining to the transactions of GOI securities done on 25/01/2002 and 05/02/2002 were provided to him on 28/04/2002. On the basis of whatever material made available to him, he found that transactions to the tune of Rs.153.04 crore (Rs.149 crore premium and remaining amount towards interest) were carried out towards sale and purchase of GOI (physical) securities.

53. The informant has further deposed that for none of these transactions' approval was obtained from the board of directors. His evidence would show that previous to this inspection, he had also conducted audit of the NDCC bank for the period 01/04/2000 to 31/03/2001. At that time also he had pointed out and instructed that these type of transactions should be done very carefully. Actual purchase of physical securities should be confirmed by visiting the concerned office at Mumbai and report thereof should be sent to the office of the Registrar, Co-operative Societies. However, during the present inspection he found that none of the directions issued in the audit report were complied on behalf of the NDCC bank. No compliance report of previous audit was sent by the NDCC bank till the present inspection.

54. The fact of audit previously done by him is not seriously disputed by the accused persons, rather it has been admitted. Compliance of the directions therein is neither specifically claimed

nor it is shown to have been done. Therefore, it is clear that directions in previous audit report were also not complied by these accused persons. The accused persons were already made aware of the risk in such transactions and precautions to be taken. However, no such precautions are ever seen to have been taken by these accused persons.

55. Testimony of the informant further transpires that he made inquiry with the officials of the NDCC bank as to how the transactions of GOI securities were entered into by the bank. It was informed to him that the seniors of the bank used to discuss with the brokers by telephonic communications. Thereafter, the confirmation letters were used to be forwarded to the bank from the concerned brokers. After receiving confirmation letters, the transactions were to be proceeded ahead. The learned defence counsels objected these questions on the ground that evidence on these points being of hearsay nature is inadmissible. Said objection was left open by my learned predecessor till the final hearing.

56. Now, the fact that the informant was appointed for inquiry and inspection of the questioned transactions and that he had visited the NDCC bank for that purpose is not much disputed. When the officer of the level of the informant visits the bank for inspection, it would be but natural that he will inquire about the transactions with the concerned bank officials. Therefore, whatever information he has received from the bank officials cannot be thrown away merely on the ground that it was hearsay. In fact there is noting in his cross-examination to demonstrate that the

defence has taken any specific plea in respect of the procedure adopted by the bank, particularly accused No.1 and 2, in respect of the sale and purchase of the GOI securities. There is nothing in his cross-examination to demonstrate that there was any legal procedure adopted by the accused persons for these transactions and that he has deliberately not mentioned about said procedure in his inquiry report (Exh.1138). When there is nothing on record to doubt the reliability of this witness in this regard, his evidence on above aspect cannot be thrown away under the guise that it is hearsay. It is well admissible in evidence and the objection raised in this regard on behalf of defence stands rejected.

57. As per evidence of the informant it was further revealed in the inquiry that chief accountant used to prepare note-sheets and put them before accused No.2. On the recommendation of accused No.2 these notesheets were used to be put up before accused No.1 for approval, who in turn used to approve the same. The informant also found during inquiry that original physical securities, holding certificates or any original document regarding transactions were not available in the record of the NDCC bank to demonstrate that the securities in physical form have been actually purchased. Based on this inspection, he submitted report (Exh.1138) to Pant (PW.50).

58. During entire cross-examination of the informant, it is nowhere disputed that except the documents stated by him, no other documents particularly the original GOI securities were produced before him for inspection. Therefore, the suggestions

during his cross-examination that his report does not demonstrate that the said transactions were illegal are of no avail.

59. An attempt is also made during his cross-examination to suggest that previously the objections as such were not raised either during the audit or in other meetings attended by this witness. Be that as it may, assuming that the previous wrong done was escaped from the audit report or that it was not brought on board during any of the previous meetings, does not mean that such wrongs should be permitted to be continued. Therefore, this contention of the accused holds no water.

60. Moreover, report (Exh.1138) discloses transactions mentioned in TABLE 2-A and 2-B above. As per this report (Exh.1138) following violations were found in the above stated sale and purchase transactions of the GOI (physical) securities :-

- (i) Subject of sale and purchase transactions of physical securities was not discussed in any of the meetings of the board of directors and its approval was not taken.
- (ii) Original physical securities, holding certificates or any other documents which will show that the securities were purchased for the NDCC bank were not available in its record.
- (iii) Senior Officer of the NDCC bank has not verified and confirmed as to whether physical securities were really purchased and that too in the name of the NDCC bank and not filed report thereof in the bank.

- (iv) Expert advise was not taken though these transactions were technical, complicated and highly risky.
- (v) Employees dealing with these transactions in the NDCC bank were not trained about it.
- (vi) These transactions are mainly entered into by the Chairman with the help of General Manager and Chief Accountant.

61. Aforesaid testimony of the informant is duly corroborated through the report (Exh.1138), letters (Exh.1114, 1137), note-sheets (Exh.1140, 1142, 1144, 1146, 1148) and adjustment and confirmation letters (Exh.1141/1 to 1141/7, 1143, 1145, 1147, 1149 to 1152). Based on the observations in the report (Exh.1138) and as per directions of Pant (P.W.50), the informant lodged written complaint (Exh.1139) resulting into registration of FIR (Exh.1167). As already discussed evidence of the informant has remained intact during cross-examination on all material points.

62. Deshmukh (P.W.48) has deposed that as per Section 35(6)(1)(b) of the Banking Regulation Act, 1949 as applicable to Co-operative Societies, NABARD has authority to carry out statutory audit of the District Central Co-operative Banks. Accordingly, he and his colleague Das were shouldered with responsibility to carry out inspection of NDCC bank covering period 01/04/1999 to 31/03/2001. Accordingly, they carried out inspection from 04/02/2002 to 26/02/2002 as per guidelines issued by the RBI and NABARD.

63. Evidence of Deshmukh (P.W.48) further transpires that during inspection, they found that from 05/02/2001 to 28/03/2001 NDCC bank had done various transactions of sale and purchase of physical securities. It was found that investment port-folio of the NDCC bank was increased notably. As on 31/03/2001 physical securities of Rs.124.76 crore were due to the NDCC bank. It was also found that there were many irregularities and violations of legal provisions and also that of the circulars (Exh.1581/1 to 1581/23) issued by the RBI on 04/09/1992 and subsequent thereto. On being asked to produce physical securities for inspection, only xerox copies were put up before them and those were also in the name of HTL and not in the name of NDCC bank.

64. Deshmukh (P.W.48) has further deposed that on further inquiry, it was found that till 31/03/2001 NDCC bank had entered into transactions of GOI (physical) securities only through HTL, but thereafter transactions were also done through 4 other broker companies. As on 26/02/2002 outstanding of GOI securities was to the tune of Rs.149.83 crore.

65. Testimony of Deshmukh (P.W.48) further depicts that in the contract notes of HTL (Exh.1155/2 to 1155/6) HTL was shown as seller and not as broker and there was no mention of brokerage in it. It is further deposed that in such type of investments, there has to be a prescribed policy of the bank and it ought to have been approved by the board of directors. However, during inspection no such prescribed policy or scheme was found to have been prepared or approved by the board of directors of the NDCC bank before

making such investments. Similarly, there has to be impanelment of all the brokers approved by the board of directors. However, there was no such panel of brokers in the NDCC bank. Not only this, initially the transactions were carried out through HTL only but later on in the transactions of single day 4 other broker companies were involved under the guise of investments.

66. Deshmukh (P.W.48) has further deposed that NDCC bank was required to take half yearly review of the investments port-folio twice in the year i.e. on 31st March and 30th September and report thereof was required to be sent to NABARD and RBI. Further, GOI securities so purchased by the bank should have been classified in three types i.e. hold for trading, due for maturity and available for sale. However, this was not complied by the NDCC bank. Moreover, till completion of the inspection on 26/02/2002, physical GOI securities purchased for the NDCC bank were not actually available with the bank.

67. Evidence of Deshmukh (P.W.48) further shows that on 26/02/2002 i.e. on the last day of inspection they called meeting of board of directors and the violations and irregularities found in inspection were put up before the directors. It was informed on behalf of the NDCC bank that they will produce original physical securities before the inspection team, however no such securities were ever shown to them. Letter (Exh.1956) was also sent to the NDCC bank (through accused No.2) in this regard by the NABARD under the signature of their then General Manager, Balan.

68. Letter (Exh.1956) is dated 08/04/2002 whereby Balan had reiterated that investment by NDCC bank in GOI securities through HTL was not backed by the physical possession of securities with the NDCC bank to the extent of Rs.124.05 crore as on 31/03/2001 and its further increase to Rs.149.83 crore (involving 5 brokers i.e. HTL and 4 other broker companies) as on 26/02/2002. It is also mentioned in the letter (Exh.1956) that in the meeting dated 26/02/2002 and during discussion though accused No.1 and 11 had promised to obtain physical possession of the securities by 20/03/2002, no compliance report was sent to NABARD till date.

69. During cross-examination of Deshmukh (P.W.48) it is not disputed that he along with his colleague Das had conducted the inspection of NDCC bank covering aforesaid period. It is also admitted that after the said inspection meeting of board of directors was held on 26/02/2002. Issuance of letter (Exh.1956) and contents thereof are also not disputed by the defence.

70. In the cross-examination of Deshmukh (P.W.48) conducted on behalf of accused No.11 besides a suggestion that the inspection report was submitted under the political pressure, nothing material was asked. Except this vague suggestion accused No.11 has not denied and challenged the facts deposed by Deshmukh (P.W.48) in his examination-in-chief.

71. On behalf of accused No.2, 4 and 7, an attempt has been made during cross-examination of Deshmukh (P.W.48) to bring on record that whatever contentions as regards the procedure and

alleged guidelines issued by RBI have been deposed by him before the Court, the same have not been stated by him in his statement recorded under Section 161 of CrPC.

72. Perusal of statement of Deshmukh (P.W.48) recorded under Section 161 of CrPC. would demonstrate that he has stated about the illegalities committed during the transactions in question. His statement nowhere demonstrate that he has given a clean chit to the accused thereby saying that everything was done as per the norms. Therefore, the particulars which he has mentioned during his evidence are mere explanations of the facts he had asserted before the investigating officer during statement recorded under Section 161 of CrPC. Therefore, the statements made by him during his deposition before Court can not be treated as material improvements or omissions affecting the case of prosecution.

73. It is pertinent to note that the report of NABARD inspection is not placed on record. However, in the letter (Exh.1579/1 to 1579/5) issued by Bele (P.W.53) to the RBI, irregularities in trading in GOI securities by the NDCC bank which were pointed out in the inspection conducted by the officers of NABARD i.e. Deshmukh (P.W.48) and Das were reproduced and clarification was sought from the RBI as to the details of directions and guidelines for each of the violations done by the NDCC bank. This letter has been replied by the RBI vide letter (Exh.1581/1 to 1581/23) alongwith necessary circulars issued by the RBI from time to time. Defence has not disputed contents of the letter (Exh.1579/1 to 1589/5). Moreover, both these letters (Exh.1579/1 to 1579/5

and 1581/1 to 1581/23) could not be falsified during cross-examination of the concerned prosecution witnesses i.e. Rodridgues (P.W.25) and Deshmukh (P.W.48). Reply letter (Exh.1581/1 to 1581/23) also could not be falsified by the defence side.

74. In above circumstances, irregularities/discrepancies found in the NABARD inspection and pointed out in the letter (Exh.1579/1 to 1579/5) can be relied upon and reproduced below :-

- (a) The Board has delegated powers to the Chairman vide resolution No.14(6) dated 16/05/1999 (Exh.1193/3158) for purchase and sale of securities only through MSCB under SGL(II) with the RBI.
- (b) The Board had not taken any policy decision for transacting through the brokers nor had approved the panel of brokers for the purpose.
- (c) Market quotations were not being called for and the rate provided by the broker in the contract were not verified and compared with the prices quoted in the market.
- (d) Though, the bank had maintained SGL(II) account through MSCB the transactions were routed only through five brokers viz. HTL and 4 other broker companies.
- (e) As there was no delivery of securities book entries at the bank level were passed on the basis of contract notes received through the brokers. Brokers had only sent photo copies of

certificates of securities purchased during 2000-2001 which were endorsed in the name of broker firm.

- (f) No agreements entered into between NDCC Bank and the respective brokers for the purpose of trading in securities in the secondary market.
- (g) Though on the reverse side of the contract notes issued by HTL indicate that brokerage had been charged at rates not exceeding the official scale of brokerage, respective column to show actual amount of brokerage charged were left unfilled in the contract notes. The contract notes issued by the other brokers also did not indicate brokerage, if any, paid to them.
- (h) The counter party involved in the purchase and sale of securities was not indicated in the contract notes issued by the HTL and four other brokers (i.e. 4 other broker companies).
- (i) Payments to the broker firms were realized on settlement dates without getting delivery of the securities.
- (j) No fixed internal investment policy and procedures were laid down by the board of directors nor were there half yearly reviews of the bank's investment portfolio by the bank's board of directors. Even though, as per part 'V' of the RBI RPCD Circular No.RF.BC-17/A-4/92-93 dated 4th September, 1992 such reviews should be conducted and copies of the review notes to be forwarded to the NABARD and RBI.

- (i) Valuation of the securities to be done on quarterly basis as per guidelines issued by the RBI vide circular RPCD No.BC.154/07:02:08/94-95 dated 23rd May, 1995 was not being made. The securities were also not valued (at cost or market price whichever was lower) as on 31/03/2001.
- (k) As on 31/03/2001 the total premium paid aggregated Rs.408.75 lakhs and the same has been capitalized as required.
- (l) The bank has resorted to continuous process of sale and purchase of securities. As per the contract notes, the sales were effected at rates higher than the cost price and the difference between sale price and purchase price was being transferred to P and L account as income from time to time. These incomes cannot be considered real as the bank had not ascertained at any point of time whether the broker had really made any efforts to get unsold securities (i.e. securities belonging to the bank and lying with the brokers) in the name of the bank.
- (m) The bank had been utilizing sale proceeds of securities for fresh purchase made on the same dates. As a result inflow of funds to the bank was very minimum. Most of the times the bank was paying additional amounts to cover cost of fresh purchase which were mostly at high premiums. As on 05/02/2002, last date of transaction (till date of completion of present inspection) amount of premium paid against outstanding securities aggregated Rs.2901.26 lakhs as

against Rs.408.75 lakhs of premium paid in securities outstanding as on 31/03/2001. This represents 709.79% increase in premium as against 120.78% growth in the total value of outstanding securities of these two dates.

- (n) The risk involved in security transaction was increasing trend since the bank has not adopted system for classification of securities under “held for trading”, “available for sale” and “held to maturity” and the entire securities portfolio under SGL-II with MSCB and under physical mode with the aforesaid brokers were to be under continuous trading.
- (n) No well defined account procedure/manual had been prepared by the NDCC bank to ascertain profitability of security transactions realistically.
- (o) Based on average cost-yield analysis of investment portfolio during 2000-2001 trading in GOI securities fetched 9.74% as compared to other investments like Fixed Deposits with MSCB fetching average return of 12%. If unadjusted interest which was actually paid on purchase of securities, but shown as receivable in the B/S as on 31/03/2001 was taken into account, the average return from the securities’ trading would come down to 7.18%. As against this, average cost of mobilizing terms deposit comprising FD, Re-investment Deposit and deposits mobilized from Urban Bank etc. works out 12.80%, 13% and 13.83% respectively. So, the bank had been incurring losses in its trading activities.

75. As such, testimony of Deshmukh (P.W.48) is duly corroborated through the contents of letter (Exh.1579/1 to 1579/5). This entire evidence is not shaken and falsified during cross examination.

76. Apart from above, Deshmukh (P.W.48) has deposed that there were violations of the directions issued by the RBI through circulars (Exh.1581/1 to 1581/23) from time to time. The prosecution has examined Rodridgues (P.W.25) who is an officer of the RBI. She has proved and confirmed various circulars and resolutions issued by RBI from time to time in respect of investments in the GOI securities. Existence and issuance of all these circulars and directions is also proved by Deshmukh (P.W.48). Further, Bele (P.W.53) vide letter (Exh.1579/1 to 1579/5) sought clarification from the RBI with respect irregularities committed by these accused pointed out in NABARD inspection and thereby violations of directions issued by RBI from time to time. The RBI vide letter (Exh.1581/1 to 1581/3) has given clarification against the violations as follows :-

Irregularities in investment transactions- Nagpur District Central Co-operative Bank Ltd. Nagpur		
Sr. No.	Guidelines/Instructions/ Directions of RBI/NABARD	Nature of Violation
1.	Investment policy and guidelines, internal control system, system of internal/concurrent audit, risk/exposure limits to be put in	None of the prescribed safeguards followed. Powers were delegated to the Chairman for investment in securities

	place, deal slips detailing full particulars should be prepared, system to verify market rates, brokers' panel, classification of investment into permanent/current and valuation thereof to be verified periodically, half yearly review for submission to the Board/NABARD/RBI etc. are required to be done by the bank with the approval of their board (Circular RPCD.No.RF.BC.17/A.4 -92/93 dated 4 th September, 1992).	through SGL. The Chairman himself finalized deals and permitted transactions to be passed. Half yearly reviews in detail were never prepared for submission to the Board/NABARD/RBI.
2.	Transactions through an individual broker should not exceed 5% of the total investment transactions during the year. If exceeded, post facto approval of the board should be obtained after citing the necessity of the same (RPCD.No.RF.BC.71/07.02.08 dated 10 th December, 1994).	There was only one broker with whom the bank had done most of its business. The broker was also made counter party. Review of business through brokers was never done. Limit of 5% per broker was never done. Limit of 5% was not adhered to.
3.	Investment in shares of corporates are not to be made as per MCS Act.	Investment was made in shares under a buy back arrangement. Further, any such investment made in non approved category

		of securities required RBI's prior approval which was not obtained.
4.	Limits for lending to others outside the co-operative fold i.e. companies / corporate registered bodies / agencies / institutions etc. is not to exceed 25% of the bank's capital funds (i.e. individual borrower exposure limits) under NABARD's guidelines (NB.PCD.(OPR)/H-74/A.175/2000-2001 dated 19 th April, 2000).	The limit in this regard works out to be Rs.11.25 crores only which was exceeded when the bank lent to outside the co-operative fold.
5.	Investment in Public Sector Undertakings (PSU) bonds can be made only after satisfying certain conditions and after obtaining prior approval from RBI, on a case to case basis (RPCD.No.RF.BC.46/07.02.03/94-95 dated 6 th October, 1994).	Prior approval from RBI not obtained. The bonds sought to be purchased were never received and were later showed as if exchanged for GOI securities. The GOI securities were also not received.
6.	For the purpose of SLR, valuation of securities acquired after the balance-sheet date is to be done at the face value or book value whichever is less (RPCD.BC.46/07.02.08/95-96	Value of securities taken at their book value which was more than the face value. Securities which were not in possession of the bank were also accounted for SLR purpose. On exclusion of

	dated 12 th October, 1995).	such securities, the bank was found to have defaulted in SLR maintenance thereby violating the provisions of Section 18 of the Banking Regulation Act, 1949.
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77. Thus, evidence of Deshmukh (P.W.48) coupled with letters (Exh.1579/1 to 1579/5 and Exh.1581/1 to 1581/3) supported by circulars (Exh.1581/4 to 1581/23) show that accused No.1 and 2 have violated the directives issued by RBI and NABARD from time to time while investing in GOI (physical) securities through HTL and 4 broker companies.

78. It is contended and argued on behalf of accused Nos.1, 2 and 11 that these circulars were not within their knowledge. This is surprising to note that accused No.1 was Chairman of the NDCC bank for a considerable time. Accused No.2 was originally employee of MSCB and acting as General Manager of the NDCC bank on deputation. Accused No.11 is also a retired employee of the RBI. When all these accused were working in the banking sector on responsible posts, they cannot be permitted to take plea that they were not aware of the circulars issued by the RBI which is a controlling body of entire banking sector in the nation. This cannot be denied that all the banking transactions are required to be carried out as per the directions and norms set by the Apex Bank i.e. RBI from time to time.

79. Moreover, it is settled principle that ignorance of law has no excuse. The bankers when undertake to run the bank it is but obligatory and must be supposed that they are having the knowledge of banking laws and regulations more particularly when they are diverting the large and substantive fund of the bank for investment purpose. It is also well settled that when the law prescribes a particular procedure on particular aspect, then it should be done in that manner only. Therefore, above submissions of the accused holds no water.

80. Further, accused No.1 and 2 have come with main defence that through communications vide letters (Exh.3315 to 3322) either by themselves or through MSCB, they had requested NABARD to sanction the post of financial analyst and adviser for the NDCC bank. However, no such financial analyst or adviser was appointed by the NABARD. Therefore, the accused were not having any expert advisor in relation to investment of the funds of NDCC bank due to which this unintentional irregularities have occurred. Thus, they seem to have admitted that the mode of transactions was not legal. Their defence is that, it happened as they were not provided an expert adviser.

81. In terms of correspondences/communications vide letters (Exh.3315 to 3322), accused No.1 and 2 themselves and through MSCB have asked NABARD to appoint financial analyst and adviser. However, vide letter (Exh.3323) dated 26/04/2001 Deputy General Manager of NABARD had informed accused No.2 that such financial analyst cannot be provided to the NDCC bank through

BDD scheme. Further, vide this letter (Exh.3323) it was informed that the bank may engage the services of financial analyst from out of its own sources. It means on 26/04/2001 itself the accused were having knowledge that they can appoint financial analyst and adviser through the funds of the bank. However, they have not availed services of any such expert. Rather, before receiving this reply from NABARD, they had already started transferring the huge funds to HTL and 4 other broker companies without seeking any expert advice. Therefore, plea of the accused that they had tried to seek expert assistance but it was not provided to them and hence, only because of lack of knowledge these irregularities have occurred at their instance is not at all tenable. This is not just a lack of knowledge, but the facts and circumstances appearing on record would suggest that with a well planned strategy the huge funds were taken out of the bank.

82. After looking into the evidence of the informant, Deshmukh (P.W.48) and Pant (P.W.50) as well as various guidelines and directions issued by RBI and NABARD and violations thereof by these accused persons, now it is to be seen as to whether these violations are mere irregularities or intentional illegalities. To ascertain this, it is necessary to see the manner in which these accused persons were doing transactions in GOI (physical) securities.

83. In this regard, evidence of Dani (P.W.6), Wakhare (P.W.7) and Gode (P.W.18) is very material. All these three were staff members of the NDCC bank during the relevant period.

Cumulative reading of their testimonies would show that as per instructions of accused No.1, Dani (P.W.6) was working as an assistant to Wakhare (P.W.7). Wakhare (P.W.7) was working in the accounts department and since 1994 he was assigned the work of investment transactions of the NDCC bank. Gode (P.W.18) was working as the in-charge manager since 1991. As per Bye-law (Exh.1450) No. 35, this witness used to hold charge of General Manager in his absence.

84. Evidence of above three witnesses reveals that all the transactions relating to investments were being looked after by accused No.1 and 2 and accounts of those transactions were being maintained by Wakhare (P.W.7) and in his absence by Dani (P.W.6). Moreover, according to these witnesses accused No.2 informed them that that from 2001 the transactions of GOI securities will be done through HTL. The transactions were not done through SGL-II account.

85. Testimonies of these three witnesses further reveal that before doing any transaction of GOI (physical) securities, accused No.1 and 2 used to discuss with HTL either on phone or otherwise. After confirmation of deal HTL used to send fax thereof to accused No.2. Accused No.2 then used to ask Wakhare (P.W.7) to prepare notesheets thereof and in his absence these notesheets were being prepared by Dani (P.W.6). After preparing such notesheets Wakhare (P.W.7) or Dani (P.W.6) as the case may be used to put them before accused No.11 and in his absence before Gode (P.W.18). After remark if any, by them those notesheets were being put up before

accused No.2 and on his recommendation before accused No.1 for approval who in turn used to approve the same.

86. Accordingly, all notesheets filed in evidence were prepared either by these witnesses or by accused No.11. Evidence of these witnesses further shows that whenever accused No.1 was available at Nagpur, these transactions were being done with his personal instructions and whenever he used to be at Mumbai, he used to instruct these witnesses about transactions and direct to prepare the notesheets by phone calls.

87. As such, evidence of above three witnesses states the manner in which these transactions in GOI securities were done with HTL and 4 other broker companies. The testimonies of these witnesses on above stated points and their role in the NDCC bank is not shaken during cross-examination.

88. As per evidence on record accused No.1 and 2 had already started dealing in GOI (physical) securities through HTL from February 2001 itself that too only on the basis of note-sheet (Exh.1196). Thereafter, as per resolution (Exh.1194) for the first time in the meeting of managing/administrative committee held on 25/08/2001 accused No.2 merely informed the members about investment of Rs.150 crore in GOI securities in physical form through HTL. No explanation is given by these accused as to why this important subject was not discussed earlier in the meetings of board of directors and approval was not sought.

89. The question is why and how accused No.1 and 2 have picked up these companies for investment in GOI (physical) securities. How these companies came in picture of the investment of NDCC bank appears to be a mystery. There appears no clarification at all on the part of accused No.1 and 2 for not adopting prescribed legal procedure in investing such a huge sum of the NDCC bank with the private brokers. It is not the case that any meeting of the board of directors was called to appoint appropriate broker for investment purpose, any tenders were issued from the brokers for purchasing GOI securities. The entire procedure adopted is like that of a proprietary firm. No justifiable reasons appear on record as to why huge amounts were transferred to these questioned brokers.

90. After all, such a huge investment is a strategic decision and it ought to have been taken by passing valid resolution in conformity with the guidelines set forth by the RBI and NABARD and co-operative laws in this regard. However, though accused No.1 and 2 were allowed to make investment only through SGL account, the same was not done. No justifiable reasons are put forth on the part of these accused as to why they did not invest through SGL account and in conformity with the guidelines set by the RBI and NABARD in this regard.

91. Not only this as observed by the informant and Deshmukh (P.W.48) during their respective inspections though, such amounts/funds were transferred to the accounts of broker companies original physical securities, holding certificates or any

other documents which will show that these GOI securities were purchased and held in the name of the NDCC bank were not available in the record of bank.

92. RBI alongwith its letter (Exh.1583/1) has placed on record statements (Exh.1583/2 to 1583/25) showing transactions undertaken by HTL in GOI securities (Stock Certificates) during the period April, 1997 to September, 2002. These statements (Exh.1583/2 to 1583/25) show that during aforesaid period HTL had never purchased any GOI securities in the name of NDCC bank or for the NDCC bank.

93. Thus, it is clear that though, huge funds in crores of rupees were transferred to HTL under the guise of purchasing GOI (physical) securities they were never purchased for NDCC bank and when no such securities were ever purchased, there is no question of subsequent sale thereof by HTL. Therefore, all these sale and purchase transactions shown to have been entered into by accused No.1 and 2 between the NDCC bank and HTL are completely false and forged. This shows complete erosion of funds of the NDCC bank. These funds were syphoned in the account of HTL and other companies under the guise of purchase of GOI securities (physical) which in fact were never purchased for the NDCC bank.

94. Accused No.2 during his evidence has placed on record undertaking (Exh.3333). As per his testimony it was given during NABARD inspection on 19/04/2002. In terms of this undertaking (Exh.3333) it is acknowledged by accused No.2, 11 and Wakhare

(P.W.7) that NDCC bank had not received the original stock certificates issued by RBI in respect of securities purchased by the bank from HTL during 3/02/2001 to 5/02/2002. It is also acknowledged thereby that the bank had not delivered any such original stock certificates to HTL when the securities purchased as above were sold back to them during the above period. Not only this, it is further acknowledged that the NDCC bank does not hold any original stock certificates in respect of its purchase mentioned in the letters written to other broking firms i.e. 4 other broker companies.

95. Accused No.2 has also placed reliance on the letters (Exh.1348 and 3324 to 3332) which were sent by him to HTL and 4 other broker companies calling for original stock certificates and physical form of securities enclosed in the name of NDCC bank. Letters (Exh.3324 to 3328) are dated 26/02/2002 and 27/02/2002 whereas letters (Exh.1348 and 3329 to 3332) are dated 20/04/2002. It means all these letters (Exh.1348 and 3324 to 3332) were sent when non availability of original GOI (physical) securities was pointed out in the inspection carried out by Deshmukh (P.W.48).

96. Till then accused No.1, 2 or any other officer of the NDCC bank had not taken absolutely any steps to call for original securities from the concerned brokers or to confirm as to whether any such securities were ever purchased by them for NDCC bank. Though these transactions were going on since February, 2001 to 05/02/2002 and as per undertaking (Exh.3333) these accused were

knowing that original securities or stock certificates purchased and sold back during this entire period were never received by them from the concerned brokers, till February and April 2002, no steps were taken by these accused persons to get original securities or holding certificates. This shows dishonest intention of these accused persons of not materializing the transactions in reality.

97. This fact is also clear from the report (Exh.1817) dated 25/04/2002 which resulted in registration of FIR (Exh.1818) lodged at the instance of accused No.1 wherein he has alleged that these broker companies have not supplied original GOI securities purchased for the NDCC bank. This report (Exh.1817) and FIR (Exh.1818) were just an attempt by the accused persons to show that they were taking steps to call for original GOI securities. However, it was done only after concerned authorities like the informant and Deshmukh (P.W.48) started questioning these transactions.

98. Had the transactions were being done in good faith and that too in accordance with banking and co-operative laws so also the directives of RBI and NABARD, there would have been no occasion for accused No.1 and 2 to wait to take action till the concerned authorities started questioning these transactions. No prudent person having ordinary sense would wait for such a long period if he has invested substantial amounts from his assets for purchasing another asset and purchased asset was not delivered to him for such a long time. Therefore, the action of lodging FIR by accused No.1 more or less appears to be just an attempt to counter

the questioning started by the concerned authorities and to create an alibi for himself for doing these transactions.

99. Under the circumstances, it is clear that accused No.1 and 2 by taking disadvantage of their respective posts have withdrawn huge sums of the NDCC bank and without following prescribed legal procedure transferred the sums to the brokers in question without taking any precaution to verify or get original GOI (physical) securities in the name of NDCC bank. This is not merely a procedural irregularity, but it is a patent illegality which is apparent on the face of record.

100. Another side of coin here is transfer of funds in the accounts of 4 broker companies as mentioned in TABLE – 3 above and further diversion thereof. As per evidence of Rao (P.W.23) supported by documentary evidence referred in this table, amounts mentioned therein were transferred as per directions of accused No.1 and 2 on behalf of NDCC bank to the account of 4 broker companies which was shown for purchase of non SLR/PSU bonds named above on and about 07/01/2002, 09/01/2002 and 10/01/2002. Transfer of these amounts and the purpose thereof is not disputed by the accused persons.

101. Rather, initial receipt of these amounts for above mentioned purpose is admitted to accused No.4 to 7. The entire testimony of Rao (P.W.23) remained unchallenged by accused Nos.1, 2, 8, 9 and 11, as they have declined to cross-examine her. Therefore, it is clear that on above mentioned dates these amounts

were transferred as per instructions of accused No.1 and 2 for investment in these bonds.

102. Further, as per evidence of the informant supported by report (Exh.1138) and notesheets (Exh.1142/1156, 1144/1158, 1146/1160, 1148/1162) those bonds were shown to have been sold and sale proceeds thereof were shown to have been syphoned/adjusted for purchase of GOI (physical) securities from/through these 4 broker companies as mentioned in the notesheets (Exh.1142/1156, 1144/1158, 1146/1160, 1148/1162) and confirmation letters (Exh.1157, 1159, 1161, 1163 and 1166).

103. As per clarification given by RBI vide letter (Exh.1581/1) and annexure (Exh.1581/2 and 1581/3) coupled with RBI circular No.RPCD.RF.BC.46/07.02.03/94-95 dated 6th October, 1994 investment in non SLR/PSU bonds can be made only after satisfying certain conditions and after obtaining prior approval from RBI on a case to case basis. However, herein no such permission/approval is shown to have been taken by accused No.1 and 2 while making such investments. Rather, neither any notesheet nor any resolution of the board of directors is placed on record to show that investment for these bonds was done with approval of the board of directors and RBI.

104. Most importantly as stated herein before, as per evidence of the informant these bonds were shown to have been sold and proceeds thereof were syphoned towards purchase of GOI (physical) securities from these 4 other broker companies. On the

other hand, it is contention of these broker companies that the funds so received by them from NDCC bank were returned back to it through HTL. The route map (Exh.1543/1 to 1543/11) and evidence of Dole (P.W.43) coupled with letters of confirmation of transaction (Exh.1852 to 1856 and 1859) is material here.

105. As per letter (Exh.1852) amount mentioned in TABLE - 3 above shown to have been paid to Giltedge by the NDCC bank was further transferred by Giltedge to the account of Indramani on 08/01/2002 and as per letter (Exh.1853) from Indramani on the same day it was transferred to three companies i.e. Poddar Trading Company, Pacific Finance and Hoogly Trading. Further, the amounts credited to the accounts of these three companies were further transferred to the account of HTL on 09/01/2002 as per letters (Exh.1854 to 1856).

106. Not only this, as per letter (Exh.1859) and entry No.12 of the route map (Exh.1543/11), the amount received by Syndicate from NDCC bank vide cheque No.666012 (Exh.1532) was further transferred by Syndicate to the account of Century Dealers on the same date i.e. on 07/01/2002. Further, as per same entry No.12 of the route map (Exh.1543/11) on 08/01/2002 this amount was transferred by Century Dealers to the account of Pacific Finance, Poddar Trading and Hoogly Trading who in turn on the same day i.e. on 08/01/2002 transferred all these amounts to the account of HTL.

107. Further, amount received by Indramani from NDCC bank vide cheque No.666017 was further transferred by it to the accounts of Hoogly Trading, Pacific Finance and Poddar Trading who in turn transferred those amounts to the account of HTL on 11/01/2002 as per route map (Exh.1543/10).

108. As per entry No.09 of the route map (Exh.1543/8) the amount received by Century Dealers from the NDCC bank vide cheque No.666016 was further transferred by Century Dealers to the account of Hoogly Trading, Poddar Trading and Pacific Finance on 10/01/2002 and 11/01/2002 and these companies further transferred those amounts to the account of HTL on 11/01/2002.

109. Ultimately, it appears from above that the amounts so received by 4 broker companies as per TABLE - 3 were transferred to the account of HTL through Pacific Finance, Poddar Trading and Hoogly Trading, who as per evidence of Bele (P.W.53) are the subsidiaries of HTL.

110. As per contention of 4 other broker companies the amounts received by them as per TABLE - 3 were transferred to the account of HTL as per instructions of the director of HTL for purchasing GOI securities.

111. In this regard it is specifically contended by accused No.7 and deposed by Ameen (P.W.10) that Syndicate had received Rs.16,57,24,520.55 from NDCC bank on 7/01/2002 towards sale of (10.90%) Power Grid bonds. As per instructions of director of HTL

on the same day he had transferred this amount to the account of Century Dealers and while doing so brokerage amount was also deducted by him. As per further testimony of Ameen (P.W.10) again on 25/01/2002 this transaction dated 07/01/2002 was informed to be reversed by HTL and to be converted in to sale of 9.39% (2011) GOI securities to NDCC bank. As per testimony of this witness this entire transaction was done as per instructions of HTL and HTL was supposed to provide above securities but it was not done by it. However, besides oral contentions there is absolutely no material on record to substantiate these contentions. Moreover, the question arises as to how persons who are running a company do such huge transactions merely of oral instructions/directions of anyone. Therefore, explanation so given by accused No.7 is not probable.

112. Herein, it is pertinent to note that barring accused No.5 and 6 as per notesheets and confirmation letters as referred in TABLE - 2B above, these 4 broker companies have confirmed the receipt of amount for purchasing GOI (physical) securities of the nature mentioned therein. Thus, the material placed on record shows that the amounts received by these 4 broker companies were initially received for purchasing PSU bonds mentioned above and after selling those bonds the sale proceeds thereof were adjusted for purchasing GOI (physical) securities through these 4 broker companies in accordance with the notesheets and confirmation letters mentioned in TABLE - 2B above. However, as mentioned above, the amounts received by 4 broker companies were transferred to the account of HTL either on the same day or at the most within next two days.

113. Moreover, there is absolutely no material placed on record by these accused persons to show that these PSU bonds were ever purchased and later on sold for purchasing GOI (physical) securities as per notesheets and confirmation letters mentioned in TABLE - 2B above. Neither PSU bonds nor GOI (physical) securities purchased for NDCC bank by these 4 broker companies are placed on record nor they were put up for perusal of the informant and Deshmukh (P.W.48) during their respective inspections. Rather, as already admitted by accused No.2 and 11 vide undertaking (Exh.3333) none of the original securities purchased from HTL or 4 other broker companies were ever received by them. Thus, this entire transaction is completely dubious. Overall scenario thereof shows that neither PSU bonds nor GOI (physical) securities were ever purchased but the funds were transferred ultimately to the account of HTL and brokerage was also deducted by these broker companies.

114. Not only this, as per evidence of Kenkare (P.W.40) supported by letter (Exh.1830) these 4 broker companies were not registered with SEBI either as a broker or a sub-broker. Further, as per evidence of Nath (P.W.51) supported by letter (Exh.2099) they were not the members of Wholesale Debt Market (in short 'WDM') segment of NSE. This witness has deposed that the broker willing to trade in government securities has to register itself with NSE, WDM segment by following the prescribed procedure and then only can place its trade in respect of listed government bonds or securities. Thus, evidence of these two witnesses shows that these 4 broker companies were not the registered brokers and not authorized to

deal in GOI (physical) securities. In spite of this, they indulged in the transactions of PSU bonds and GOI (physical) securities in terms of the confirmation letters referred in TABLE - 2B above.

115. Otherwise also these 4 broker companies have not shown that they were authorized to deal in PSU bonds or GOI (physical) securities by SEBI or NSE. Their defence with respect to their registration with SEBI and NSE enabling them to deal in GOI securities as could be seen from the line of cross-examination of above two witnesses appears to be that non-banking finance companies who are having licence from the RBI can trade in GOI securities on principal to principal basis. However, this contention is not supported by any authenticated guidelines or circulars issued by the RBI in this regard. Moreover, even these 4 broker companies have not placed on record any material to show that they are the non-banking finance companies and RBI has exempted them from getting registered with SEBI and NSE for dealing in government securities.

116. Thus, it is sufficiently proved that though, these 4 companies were not authorized brokers to deal in GOI (physical) securities, accused No.1 and 2 transferred huge funds to their accounts initially under the guise of purchasing PSU bonds and then of purchasing GOI (physical) securities and these 4 broker companies also knowingly received those funds and further transferred them to the account of subsidiary companies of HTL, from where they were further transferred to the account of HTL. It

means these companies were brought also brought in to picture to send money to HTL through them.

117. Though as it may be on this ground these companies cannot exonerate themselves from the wrong done by them. This is because despite having knowledge about their unauthorization to deal in GOI securities they have received the amounts from the NDCC bank, deducted their brokerage or commission and further transferred those amounts to HTL to aid accused No.1, 2 and directors and concerned employees of HTL to syphon funds of NDCC bank under the guise of purchasing GOI (physical) securities.

118. A contention has been raised on behalf of the accused persons that substantial amount has been repaid by HTL to the NDCC bank. 4 broker companies have also contended that amounts received by them were repaid to NDCC bank through HTL. Herein it is pertinent to note that the funds were transferred as per directions of accused No.1 and 2 for purchase of GOI (physical) securities to HTL and 4 broker companies. Then while getting those funds repaid there has to be a resolution of board of directors stating reasons therefor. Moreover, when huge funds were transferred to the accounts of brokers and they were not appropriated for the given purpose and were just repaid back later on, accused No.1 ought to have initiated penal action against all these brokers at that time itself. However, this was not done.

119. Not only this as per evidence as to bank accounts on record shows that loan of Rs.30 crore was given by NDCC bank to

Osmanabad District Central Cooperative Bank (in short “ODCC bank”) on 31/01/2002. On 01/02/2002 this amount was transferred by ODCC bank to the account of HTL and on the same day vide cheque No.695177 issued by accused No.8 amount of Rs.29,99,99,766/- was transferred from the account of HTL to the account of NDCC bank maintained with MSCB.

120. Likewise, it is contended by accused that amount lent to EDIL was repaid with interest. As per evidence on record Rs.40 crore were refunded by director of EDIL on 19/03/2001 and was credited in the account of NDCC bank maintained with MSCB on 20/03/2001 and on the same day it was transferred to the account of HTL under the guise of purchasing GOI securities which admittedly were never purchased. It is admitted that directors of EDIL were also the directors of HTL.

121. Nature of above transactions shows that there was no real repayment of amount but they were just fraudulent arrangements made by accused persons i.e. accused No.1, 2 or other directors and employees of HTL or EDIL to pretend repayment. This shows how strong meeting of mind these accused persons were having to facilitate the swindling of funds of the NDCC bank.

122. Much was argued on behalf of all the accused persons that none of them have ever met each other at any point of time. Therefore, there is no question of any agreement and thereby meeting of mind amongst them. To my mind these contentions are not at all tenable. This is because to prove the offence of conspiracy

it is not always necessary that there has to be face to face meeting of accused persons for agreeing to do particular act. Conspiracy and meeting of mind required therefor has to be gathered from the overall circumstances and conduct of accused persons. Herein many instances and circumstances are pointed out above which show meeting of mind amongst accused persons.

123. As such since unauthorizedly investing in the shares of EDIL in September, 2000 of which admittedly accused Nos. 3, 4 and 9 were directors and immediately thereafter from February, 2001 commencing of transactions with HTL absolutely in an illegal manner and without adhering to the settled legal procedure prescribed by the RBI, NABARD, Co-operative and other Banking laws and bye-laws (Exh.1450) of NDCC bank itself, shows strong meeting of mind amongst accused No.1, 2, 4, 7 to 9 with other director of HTL.

124. Herein a question may crop up in mind as to why there is no comment above as to involvement accused No.5, 6 and 11. Let me state about about accused No.11 first. Though accused No.1 and 2 are trying to put this entire blame on accused No.11, involvement of this accused as can be gathered from oral and documentary evidence on record is to the extent of preparing notesheets (Exh.1196/1310 and 1197 to 1199) and proposal (Exh.1451).

125. Out of these, notesheet (Exh.1196/1310) pertains to commencement of transactions in GOI (physical) securities through HTL. It is dated 02/02/2001. Thereby accused No.11 has mentioned

about approach by HTL to act as broker to deal in GOI (physical) securities. In the notesheet (Exh.1196/1310) itself accused No.11 has mentioned about the precautions required to be taken while considering this proposal. He has specifically mentioned therein that actual scripts of GOI securities should be made available to the NDCC bank by the broker and meantime it has to be clarified by the broker company that the holding certificate from the party who received the consideration shall have to be treated as base for treating them for SLR purpose. In this context only that proposal was put up for approval. Thus, it appears that accused No.11 had already made accused No.1 and 2 aware of the precautionary measures to be taken while entering in to such transactions through HTL. Further, this proposal/notesheet (Exh.1196/1310) is approved by accused No.1 and 2. However, as discussed in the ongoing paragraphs it is already proved that no such precautionary measures were taken by accused No.1 and 2 since inception of these transactions.

126. Another proposal (Exh.1451) put up by accused No.11 is with respect to investment of Rs.40 crore with EDIL. As already discussed in the proposal (Exh.1451) itself accused No.11 and Gode (P.W.18) had mentioned the requirement of approval and resolution of board of directors. Not only this, in the proposal (Exh.1451) itself accused No.11 has mentioned all precautionary documents required to be obtained from EDIL towards this investment. Further, as deposed by Gode (P.W.18) he and accused No.11 had met accused No.1 asking him to get the circular resolution (Exh.1452) approved in the meeting of board of

directors. This also shows that accused No.11 was performing his duties.

127. As regards preparing notesheets (Exh.1197 to 1199) they are same like many other notesheets on record prepared by employees of the NDCC bank like Dani (P.W.6), Wakhare (P.W.7) and Gode (P.W.18) from time to time. This has already come on record that all these notesheets were being prepared as per directions and instructions of accused No.1 on the basis of his discussions with concerned brokers. Like these witnesses, accused No.11 has also acted as per directions and instructions of accused No.1 and 2. Moreover, as already stated he had already made accused No.1 and 2 aware of the precautions to be taken while dealing with HTL or EDIL as the case may be. Not only this, accused No.1 and 2 were the main decision making authorities and all transactions are done only after their approval and every deal was proceeded further only after their approval.

128. Apart from above, there is no material connecting accused No.11 with this alleged offence. Above evidence do not prove involvement of accused No.11 in the commission of any of the alleged offences beyond reasonable doubts. It appears that, an attempt is made by accused No.1 and 2 to blame him in their own defence, though they knew, he had no authority to approve any of the questioned transactions.

129. Coming to accused No.5 and 6, admittedly accused No.5 is the director of Century Dealers whereas accused No.6 is one of

the directors of Indramani. They have categorically denied issuance of any confirmation letter (Exh.1143/1156, 1147/1161) by them thereby agreeing to purchase GOI (physical) securities mentioned therein for NDCC bank. Both of them have denied their signatures on these confirmation letters (Exh.1143/1156, 1147/1161). Opinion of Ranjangaonkar (P.W.26) as to signatures of accused No.5 and 6 thereon is also negative. There is no other evidence to show that these confirmation letters (Exh.1143/1156, 1147/1161) were really issued by accused No.5 and 6. Bele (P.W.53) has also admitted this during his evidence.

130. Much was argued on behalf of the prosecution that though there is no evidence as to agreement of accused No.5 and 6 with accused No.1 and 2 to purchase GOI (physical) securities for the NDCC bank, these accused have received money in their accounts transferred by NDCC bank and further transferred the same to HTL through Hoogly Trading, Pacific Finance and Poddar Trading. This is sufficient to connect these accused with this crime.

131. To my mind above contentions in itself are not sufficient to connect accused No.5 and 6 with the crime they are charged with. This is because as per evidence of Deshpande (P.W.37) supported by resolution (Exh.1794/1) and specimen signature card (Exh.1794/2) there were two authorized signatories of Indramani during relevant period. Those are accused No.6 and Meena Poddar. There is no evidence on record to show under whose signature the amount received in the account of Indramani was further transferred to the accounts of Hoogly Trading, Pacific Finance and

Poddar Trading for being further transferred to the account of HTL. In absence of this evidence it can not be proved that the amount was further transferred by accused No.6. Even otherwise merely receiving amount in the accounts of Indramani and Century Dealers in absence of any other evidence is not sufficient to held that these amounts were received only towards purchase of GOI (physical) securities for the NDCC bank.

132. As such, evidence with respect to accused No.5 and 6 falls short to prove the offences they are charged with beyond reasonable doubts.

133. As regards accused No.4 and 7 to 9 oral and documentary evidence on record as discussed above abundantly prove their involvement in the commission of offences they are charged with. Undisputedly, accused No.4 and 9 alongwith accused No.3 were the directors of EDIL at the time of disputed investment transactions. Further, as per annual report 2000-2001 of HTL (Exh.1964) as mentioned on page 5 thereof accused No.4 was also one of the directors of HTL till 15/05/2001. Further, undisputedly he is the director of Giltedge and at the relevant time of transaction with NDCC bank also he was the director of Giltedge.

134. Despite knowing that Giltedge is not authorized by SEBI and NSE to deal in GOI (physical) securities and trade on WDM segment of NSE, accused No.4 received money towards transaction of purchase of GOI (physical) securities for the NDCC bank and confirmed the transaction vide confirmation letters (Exh.1149/1163

and 1150/1164). He has not disputed his signatures on these confirmation letters (Exh.1149/1163 and 1150/1164). They are also confirmed by opinion of Ranjangaonkar (P.W.26). Not only this evidence on record suggests that though confirmed, GOI (physical) securities were never purchased by this accused. Rather, the amount so received was routed to the account of HTL. This also shows that this accused has aided other accused in syphoning the funds of NDCC bank in the account of HTL to facilitate the misappropriation thereof.

135. Evidence on record more particularly annual report 2000-2001 of HTL (Exh.1964) shows that accused No.9 was executive director and secretary of HTL during the period of questioned transactions. Testimony of Mehta (P.W.42) coupled with various contract notes and confirmation letters (referred in above mentioned TABLES) specifically shows that accused No.9 was one of the authorized signatories of HTL and was looking after security transactions in HTL. It also appears therefrom that these documents are executed and signed by accused No.9. Accused No.9 has also issued letters ((Exh.1722 to 1724) to NDCC bank through accused No.2 or 11 thereby informing that he is holding securities mentioned therein on behalf of the NDCC bank and NDCC bank is the principal owner thereof. However, it is already proved that no such securities were ever purchased for the NDCC bank by HTL. Accused No.9 has neither denied that he was the director of EDIL and HTL as mentioned above nor his signatures on above mentioned documents. His signatures on all these questioned documents are also confirmed through the opinion of

Ranjangaonkar (P.W.26). This shows clear involvement of this accused in the commission of alleged crime.

136. As regards accused No.7, undisputedly he is one of the directors of Syndicate. As per account opening form (Exh.1687) he is the authorized signatory of Syndicate. He has not disputed execution and issuance of confirmation letter (Exh.1145/1159) thereby confirming the transaction of purchase of GOI (physical) securities mentioned therein for the NDCC bank and receipt of amount therefor. This was done by accused No.7 despite knowing that Syndicate is not authorized by SEBI and NSE to deal in GOI (physical) securities and trade on WDM segment of NSE. He has not disputed his signature on confirmation letter (Exh.1145/1159). It is also confirmed by opinion of Ranjangaonkar (P.W.26). Not only this evidence on record suggests that though confirmed GOI (physical) securities were never purchased by this accused. Rather, the amount so received was routed to the account of HTL that too after deducting the brokerage without doing anything. Plea of this accused that everything was done as per say of HTL is already discarded by me for the reasons mentioned in the relevant paragraph.

137. Admittedly accused No.8 was the authorized signatory of HTL during period of alleged transactions. As per ample oral and documentary evidence on record including testimony of Mehta (P.W.42) and testimony of accused No.8 himself, he was working as senior Vice-President in HTL and was holding charge of GOI security transactions in HTL. He has issued about 32 contract notes, 13

letters about holding certificates and 3 adjustment letters (mentioned in above TABLES) on behalf of HTL to NDCC bank towards transactions of GOI (physical) securities. As already discussed above and being in charge of GOI security transactions portfolio of HTL he was knowing that none of the securities were ever purchased by HTL for NDCC bank. Still vide above stated forged and fabricated communications he painted a picture that these securities were purchased for NDCC bank. Moreover, signatures of this accused on above stated questioned documents are also confirmed by opinion of Ranjangaokar (P.W.26).

138. Evidence on record suggests that HTL was doing business/trade in government securities since 1997. Letter (Exh.1583/1) coupled with annexures (Exh.1583/2 to 1583/25) shows transactions done by HTL in GOI securities and the securities held by it since April, 1997 to September, 2002. In spite of that HTL received huge funds in crores of rupees transferred in connivance of accused No.1 and 2 from February, 2001 till February, 2002 and many GOI securities are shown to have been purchased and sold on papers only in terms of notesheets, contract notes, confirmation letters, adjudgment letters etc. referred in above mentioned TABLES. But, none of the securities mentioned therein were ever purchased by HTL in the name of NDCC bank or for NDCC bank. Absolutely, no explanation has come on record as to why physical securities were not purchased by HTL. This also shows dishonest intention of these accused persons.

139. On the other hand, accused No.1 and 2 without verifying and confirming as to whether GOI (physical) securities are really being purchased in the name of NDCC bank kept on sending money to HTL under the guise of dealing in GOI (physical) securities for a long period of more than one year. During this period, they never took any steps to verify and confirm as to whether these securities were really purchased for or in the name of NDCC bank. Moreover, since inception accused No.1 and 2 have transferred the huge funds with HTL in violation of the directions and guidelines issued by RBI, NABARD, as well as MCS Act, Banking Regulations and Bye-laws (Exh.1450) of the NDCC bank. They have crossed limit of 5% of the total transactions (both purchase and sale) entered into by the NDCC bank during the year by investing huge amounts with a single broker i.e. HTL.

140. Moreover, as discussed above, though these accused persons were authorized by the board of directors to deal in GOI or other securities only through SGL-II account with RBI, they transgressed that authority and without discussion and approval of the board of directors and keeping them in dark and without adhering to the directions and guidelines of controlling authorities like NABARD and RBI issued in this regard directly invested the huge funds of the NDCC bank with a single broker i.e. HTL and that too without verifying and confirming actual purchase of GOI securities (physical) in the name of NDCC bank.

141. These accused persons have not given absolutely any explanation as to why proper and prescribed legal procedure was not followed and precautions were not taken to confirm as to whether the funds so invested by them are really appropriated for the given purpose. Had these accused persons been discussed the subject of investment in GOI (physical) securities through HTL and other 4 broker companies with the board of directors and sought approval from it and later on this investment would have failed, it could have been said that it was an unintentional error. However, herein since inception these accused persons have kept the board of directors aloop from this entire procedure and kept on playing with valuable asset of the NDCC bank. This also shows dishonest intention and strong meeting of mind amongst accused No.1, 2, 4, 7 to 9 alongwith other director of HTL.

142. In view of discussion made hereinabove in the entire judgment I need not mention anything seperately to carve out role played by accused No.1 and 2 in the commission of these offences. So I will not burden this judgment by repeating it.

143. As such from cogent, reliable and unimpeachable oral and documentary evidence discussed hereinabove it is proved without any doubt that accused No.1 and 2 as bankers as well as agents of the NDCC bank appointed by its board of directors and accused No.4, 7 to 9 in their capacity as brokers alongwith accused No.3 and 10 were entrusted with the property of the NDCC bank i.e. funds thereof. However, all these accused persons agreed to do and also caused to be done misappropriation of the funds of NDCC bank

by illegal means i.e. under the guise of investment in shares of private corporate and that of purchasing GOI securities on the basis of illegal resolutions and forged documents and all of them were party to the said criminal conspiracy. All these illegal acts were done by these accused persons by transgressing the authority granted to them.

144. 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. Likewise herein also funds of the NDCC bank were supposed to be invested in the manner and adhering to various directions issued by controlling authority i.e.RBI and NABARD from time to time through their circulars and also in accordance with the provisions of MCS Act, MCS Rules, Banking laws and bye-laws (Exh.1450). However, in complete disregard and violation of above laws huge funds of NDCC bank in crores of rupees were swindled to the accounts of 5 brokers (out of which 4 were unauthorized) under the guise of investment in shares and GOI (physical) securities which were never purchased. Though as per case of the prosecution out of total invested funds some amount is shown to have been repaid by these brokers, as can be seen from the evidence of the informant and Deshmukh (P.W.48) on or about the dates of their inspections amount of about Rs.153.04 crores was due to the NDCC bank from these brokers meaning thereby this amount was misappropriated by all these accused.

145. Not only this, from the entire discussion made herein above, it is clear that all these documents like note-sheets contract notes, confirmation letters, adjustment letters were forged and fabricated (as none of the transactions mentioned therein were ever materialized) and prepared only to show that the funds of the NDCC bank were being invested in the transactions of GOI (physical) securities and thereby to cheat the NDCC bank and its controlling authorities.

146. As such on the basis of consistent oral and voluminous documentary evidence it is proved beyond doubts as to how accused No.1, 2, 4 and 7 to 9 alongwith accused No.3 and 10 had made various documents to show that the dubious transactions were effected with help of fabricated documents to facilitate diversion of the huge sums of money by them on pretext of purchase of GOI securities. Furthermore, from the prosecution evidence it is also established precisely and beyond doubt that as a result of criminal conspiracy hatched by these accused persons huge funds of NDCC bank had been transferred in the accounts of the broker companies of which accused No.4 and 7 to 9 were either directors or other authorized persons and which were misappropriated without purchasing any GOI securities. Those amounts were systematically diverted to the account of these accused persons. This all was done despite there was no authority to accused No.1 and 2 to deal with amount in the manner they did. Such illegal transactions were done with the aid, assistance and direct involvement of accused No.4 and 7 to 9 along with other director of HTL i.e. accused No.3 and 10.

147. Thus, it is proved beyond reasonable doubts that accused No.1 and 2 being Chairman and General Manager in their capacity as bankers and agents of the NDCC bank and accused No. 4, 7 to 9 alongwith accused No.3 and 10 in their capacity as brokers entered into criminal conspiracy and committed criminal breach of trust pertaining to funds of NDCC bank worth crores of rupees. Hence, I answer point No. 1 to 5 accordingly.

AS TO POINT NO.6 TO 9 :

148. Evidence related to these points being interconnected they are also discussed together to avoid repetition.

149. According to the prosecution, accused No.1, 2 and 11 being Chairman, General Manager and Chief Accountant of the NDCC bank in their capacity as bankers and agents of the NDCC bank and accused No. 4 to 9 alongwith accused No.3 and 10 in their capacity as brokers entered into criminal conspiracy and prepared forged documents for showing that the government securities were purchased with a knowledge that the same were never purchased and this was done for cheating the NDCC bank and its inspection team. Not only this it is also alleged that these accused fraudulently used certain documents as genuine to wit photocopies of government securities and letters with false contents that such government securities have been purchased which they knew or had reason to believe at the time they used it to be a forged document and that such government securities were never purchased.

150. I have already held above that there is no sufficient evidence on record to book the guilt of accused No.1, 5 and 6. Barring them it will have to be seen whether guilt of other accused persons in this regard is proved on the basis of evidence on record.

151. Admittedly, accused No.8 was Senior Vice-President and authorized signatory of the HTL whereas accused No.9 was the executive director and secretary of HTL at relevant period. Accused Nos.8 and 9 have issued various letters (Exh.1232, 1240, 1242, 1244, 1246, 1255, 1257, 1259 to 1263 and 1722 to 1724) informing the NDCC bank through accused No.2 and 11 that HTL is holding securities of which principal owner is the NDCC bank and assured that securities will be delivered to them as soon as they will be received by the HTL in physical certificates from the RBI.

152. However, information supplied by the RBI vide letter (Exh.1583/1 to 1583/25) shows that from 1997 till September, 2002, no GOI securities (physical) were ever purchased by HTL either in the name of the NDCC bank or for the NDCC bank. Not only this, particulars supplied by the RBI alongwith letter (Exh.1587/1, 1587/2) show that none of the GOI securities (physical) mentioned therein were purchased in the name of the NDCC bank. These particulars cover GOI securities (physical) mentioned in above referred letters. All these documents show that though, above GOI securities (physical) were never purchased by HTL for the NDCC bank, accused No.8 and 9 dishonestly prepared these false letters mentioned above and sent them to the NDCC bank to support claim of the HTL that GOI securities (physical) are

purchased for the NDCC bank and it is the principal owner of these securities which are held by HTL. Thus, it is abundantly clear that these forged letters were prepared by accused No.8 and 9.

153. Another contention of the prosecution is that accused No.2 prepared forged letters (Exh.1303, 1304) to mislead and misguide the NABARD inspection team. As per evidence of Wakhare (P.W.7) in para 17 it is proved that letters (Exh.1303, 1304) respectively dated 02/02/2002 and 06/02/2002 were issued by accused No.2 to HTL thereby mentioning that he is sending original securities mentioned in those letters (Exh.1303,1304) for selling to HTL. Letter (Exh.1303) is in respect of GOI securities (physical) proposed to be sold vide contract notes (Exh.1266, 1267). Letter (Exh.1304) is in respect of GOI securities (physical) proposed to be sold in contract notes (Exh.1268 to 1272).

154. In the letters (Exh. 1303, 1304) accused No.2 has mentioned Stock Certificate numbers which according to him were physically possessed by the NDCC bank and they were being sent to HTL for sale thereof. However, upon verifying Holding Statements issued by HTL to RBI alongwith letter (Exh.1587/1 to 1587/2) coupled with statements (Exh.1587/3 to 1587/13) following facts came before the Court --

.....Table on next page contd.

TABLE - 4

Sr. No.	Description of GOI Security	Stock Certificate No. referred in the letters (Exh.1303, 1304)	Particulars showing actual possession about ownership or original holder about those stock certificate numbers as per statement issued by RBI (Exh.1587/1 to 1587/13)	Specific Exhibit No. showing particular entry
1.	9.81% GOI (2013)	BY-00513 to BY-00515	Security does not exist.	1587/4 (Entry No.26 to 28)
		BY-00032 to BY-00039	Name of original holder is Stock Holding Corporation of India Ltd (5/12/2001) (SGL), The Federal Bank Ltd (20/12/2001) (CSGL) and Indian Bank (31/1/2002)(SGL)	1587/4 (Entry No. 18 to 25)
		BY-00623	Security does not exist.	1587/4 (Entry No.29)
2.	10.3% GOI (2019)	BY-00091	Name of original holder is Bank of India (1/1/2002) (SGL)	1587/12 (Entry No.114)
		BY-00312	This security does not exist.	1587/13 (Entry No.117)
3.	12.40% GOI (2013)	BY-00534 to BY-00539	Names of original holders are - SBI Gilts Ltd (24/7/2001 & 2/8/2001)(SGL), Federal Bank Ltd. (31/7/2001)(CSGL),	1587/9 (Entry No.72 to 77)

			HDFC Bank Ltd (20/8/2001)(CSGL)	
		BY-00084 to BY-00091	Names of original holders are - ICICI Securities and Finance Company Ltd (16/4/1999)(SGL), Bank of India (20/4/1999)(CSGL), Central Bank of India (22/4/1999)(SGL), Mandvi Cooperative Bank Ltd (23/4/1999)	1587/8 & 1587/9 (Entry No.64 to 71)
4.	10.03% GOI (2019)	BY-00092	Name of original holder is Sree Banshankari Mahila Coop. Bank Ltd (Trfd from Bangalore)(7/1/2002)	1587/12 (Entry No.115)
		BY-00005	Name of original holder is ICICI Securities & Finance Co. Ltd. (23/8/2001)(SGL)	1587/12 (Entry No.113)

Judgment contd. on next page....

155. Thus, above evidence shows that securities of above nature were never purchased in the name of the NDCC bank. Therefore, there is no question of NDCC bank much less accused No.2 possessing Stock Certificates thereof. Hence, it is clear that on being asked by the NABARD inspection team to produce original physical securities, accused No.2 with dishonest intention and as a part of conspiracy to mislead and cheat the inspection team that they are sent to HTL for sale, prepared forged letters (Exh.1303, 1304) and used them as genuine. Issuance of these letters (Exh.1303, 1304) is not disputed. Accused No.2 has not denied his signatures on these letters (Exh.1303, 1304). Moreover, Ranjangaonkar (PW.26) has also opined that signatures on the letters (Exh.1303, 1304) are of accused No.2.

156. Moreover, as discussed above during discussion of points No.1 to 3, I have already held that entire note-sheets, contract notes, adjustment letters and confirmation letters filed in evidence are prepared as a part of criminal conspiracy hatched by accused No. 1, 2, 4 and 7 to 9 along with accused No.3 and 10 only to mislead and cheat the NDCC bank and NABARD inspection team to show that the funds of the NDCC bank are being invested in the sale and purchase of GOI securities (physical) which were never purchased and more particularly were never intended to be purchased. As part of the same conspiracy, accused No.2, 8 and 9 also prepared letters (Exh.1303, 1304) and letters (Exh 1232, 1240, 1242, 1244, 1246, 1255, 1257, 1259 to 1263 and 1722 to 1724). All these documents were forged and prepared only to cheat the

NDCC bank and NABARD inspection team and were also knowingly and intentionally used as genuine.

157. Much capital was tried to be raised on behalf of the accused persons that the alleged forged securities are not on record. Therefore, there is no question of forgery by any of the accused persons. True it is that alleged forged securities are not on record. However, charge (Exh.1096) related to Sections 468 and 471 also covers forged letters. I have already discussed above as to how the above mentioned letters (Exh.1303,1304) and letters (Exh 1232, 1240, 1242, 1244, 1246, 1255, 1257, 1259 to 1263 and 1722 to 1724) alongwith all the adjustment letters, confirmation letters, contract notes and note-sheets are forged and fabricated and were knowingly used as genuine to cheat NABARD inspection team as well as NDCC bank.

158. Hence, it is sufficiently proved that accused Nos. 1, 2, 4 and 7 to 9 entered into criminal conspiracy alongwith accused No.3 and 10 and prepared forged documents for showing that GOI securities (physical) were purchased with a knowledge that same were never purchased and for cheating the NABARD inspection team and NDCC bank used those forged documents as genuine. Hence, I answer point No.6 to 9 accordingly.

CITATIONS RELIED UPON BY ACCUSED PERSONS :

159. I will be failing in my duties if I do not discuss here the citations relied upon by the learned counsels for the accused

persons to argue that the offences pitted against the accused are not proved and that they are entitled for acquittal.

160. N. Raghvendar Vs. State of Andhra Pradesh, CBI, 2021 SCC OnLine SC 1232. This authority only lays down the proposition as to what are the essential ingredients absolutely necessary to attract the operation of the Sections 405, 406 and 409 of IPC. In the present case, the prosecution has established all the necessary ingredients and as such this authority in fact support the case of the prosecution.

161. Further principle expounded by their Lordships of the Hon'ble Apex Court is that suspicion cannot take the place of proof, howsoever, strong it may be. It is laid down that in the absence of cogent and unimpeachable evidence to prove that the accused has misappropriated the funds of the Bank, it would not be safe to convict him under the provisions of Section 409 of the IPC. However, in the present case as discussed herein before there is cogent, sturdy and unimpeachable evidence establishing the guilt of the accused beyond reasonable doubt. Therefore, the aforesaid decision is of no help to the accused.

162. Next reference is made to the decision in **Parveen @ Sonu Vs. State of Haryana, 2021 SCC OnLine SC 1184**, wherein it is laid down that to prove the charge of conspiracy within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. In present case there is sterling quality of evidence proving that there was

agreement amongst the accused persons for doing the unlawful act of misappropriation of the funds of NDCC bank by illegal means i.e. under the guise of purchasing GOI Securities on the basis of illegal resolutions and forged documents and all the accused persons were party to the said criminal conspiracy. As such the aforesaid Parveen's case and facts of the present case are quite distinguishable and have no relevance to decide the matter.

163. Reference is also made by the learned counsel for the accused to the decision in the case of **M/s GHCL Employees Stock Option Trust Vs. M/s India Infoline Ltd., 2013 Cri.L.J. 2044**. In this case the only allegation against officers was that they were responsible for day to day affairs of company and no specific allegations were made against officers and hence, their Lordships of the Hon'ble Apex Court had acquitted the accused therein. But in the in hand there are specific allegations against accused persons and as to how they entered into agreement amongst them for doing an unlawful act of misappropriation of crores of rupees of the NDCC bank by creating forged securities. Therefore, this authority is of no help to the accused persons.

164. The following authorities relied upon by the learned counsels for the accused lay down the proposition of law that in the absence of company as an accused, the director cannot be held responsible -

1. **Dayle De'souza Vs. Government of India through Deputy Chief Labour Commissioner (C) and Ors., AIR 2021 SC 5626.**
2. **Sushil Sethi Vs. State of Arunachal Pradesh, AIR OnLine 2020 SC 91**
3. **Sandeep Singh Vs. Nisar Ahmad Dar, AIR OnLine 2022 J and K 41.**

165. In all above referred cases the offences were committed by the company and not individual persons, whereas in present case there are specific allegations against acts of commission and omission by each accused in their personal capacity by abuse of their official position and as such above authorities are not having any relevance for the decision of the present case.

166. Further, reference is made to the decision in the case of **Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector & Anr, 2011 AIR SCW 341**, wherein their Lordships of the Hon'ble Apex Court held that mere bald statement that a person was a director of company against which certain allegations had been made is not sufficient to make such director liable in the absence of any specific allegations regarding his role in management of company. In present case there are not bald statements that the accused are the directors but there is specific allegation as to how they played active and vital role in entering into agreement with other accused and hatched systematic conspiracy for doing an unlawful act of

misappropriation of crores of rupees of the NDCC bank by creating forged documents.

167. In **Shailendra Swarup Vs. Deputy Director, Enforcement Directorate, AIR 2020 SUPREME COURT 3890** it was held by their Lordships of Hon'ble Apex Court that for proceeding against director of company, he must be incharge and responsible to company for conduct of its business and his liability depends on role he played in affairs of company and not on mere designation or status.

168. In **HDFC Securities Ltd. Vs. State of Maharashtra, AIR 2017 SUPREME COURT 61** it has been laid down by their Lordships that managing director or directors of said company cannot be prosecuted for offences of criminal breach of trust and cheating if general and bald allegations are made against them in absence of provisions in Penal Code for attaching vicarious liability on their part.

169. Above both case laws are not applicable since in present case there are specific allegations against all the accused and role played by them. The role played by each of the accused in commission of the crime in their capacity of the management officers of their companies is specifically pleaded and proved by the prosecution. They had conspired with the other accused persons to swindle crores of rupees from the NDCC bank by diverting them systematically.

170. The decisions relied by the learned counsels for the accused in the case of **Shiv Kumar Jatia Vs State of NCT of Delhi, 262 (2019) DELHI LAW TIMES 556 (SC); S.K.Alag Vs. State of U.P. & Others, 2008 DGLS (SC) 230; Om Prakash Bhatt Vs. State of Maharashtra, AIR OnLine 2019 Bom 1839; and Dewji Moti Bhil and another Vs. The State, AIR 1955 MADHYA BHARAT 26** lay down that the non-executive director cannot be held vicariously liable for the acts and omissions of other directors. So is not the case in hand. Specific role is attributed to each of the accused persons and it is also proved by cogent evidence.

171. The following authorities are relied by the learned counsels for the accused wherein the principle settled is that for criminal conspiracy there has to be meeting of minds resulting into decision taken by the conspirators for commission of the crime.

- i. **Sherimon Vs. State of Kerala, 2012 Cri.L.J. 988;**
- ii. **Sahib Singh Vs. State of Haryana, AIR ONLINE 2019 P and H 665;**
- iii. **Sanjeev Kumar etc Vs. State of H.P., 1999 Cri.L.J. 1138**
- iv. **Mahabir Prasad Akela and others Vs. State of Bihar, 1987 CRI. L. J. 1545.**

172. There cannot be second opinion that there should be meeting of minds for conspiracy. In present case there is ample evidence on record establishing how the accused have conspired to commit the crime of misappropriation of the crores of rupees.

173. This takes me to consider the remaining case laws cited by the learned counsels for the accused persons. They indeed cited various decisions of the Hon'ble Superior Courts to buttress their submission in all its ramifications. They have relied upon the following case laws :

- (1) Om Prakash Bhatt Vs. State of Maharashtra, AIR OnLine 2019 Bom 1839;**
- (2) Shailendra Swarup Vs. Deputy Director, Enforcement Directorate, AIR 2020 SUPREME COURT 3890;**
- (3) Dewji Moti Bhil and another Vs. The State, AIR 1955 MADHYA BHARAT 26;**
- (4) Sandeep Singh Vs. Nisar Ahmad Dar, AIR OnLine 2022 J and K 411;**
- (5) Baliya alias Balkishan Vs State of Madhya Pradesh, (2012) 9 SCC 696;**
- (6) Savita Vs State of Haryana, AIR ONLINE 2019 P AND H 1068;**
- (7) R.K. Khandelwal & anther Vs. State, 1965(2) Cri.L.J. 439;**
- (8) Sandeep Singh Vs. Nisar Ahmad Dar, AIR OnLine 2022 J and K 411;**
- (9) Dalip Kaur & Ors Vs. Jagnar Singh & Anr, AIR 2009 SC 3191;**
- (10) M/s Thermax Ltd. & Ors. Vs. K.M. Johny & Ors., 2012 Cri.L.J. 438;**
- (11) All Cargo Movers (I) Pvt. Ltd. Vs. Dhanesh Badarmal Jain, 2007 AIR SC W 6667;**
- (12) Subramanian Swamy Vs. A. Raza, (2012) 9 SCC 257;**

- (13) **S.W. Palnitkar & others Vs. State of Bihar and Another, (2002) 1 Supreme Court Cases 241;**
- (14) **Suresh and another Vs State of U.P., (2001) 3 SCC 673;**
- (15) **Kailash Kumar Sanwatia Vs. State of Bihar and another, (2003) 7 Supreme Court Cases 399;**
- (16) **Aneeta Hada Vs Godfather Travels and Tours Private Limited, (2012) 5 Supreme Court Cases 661;**
- (17) **Sunil Bharti Mittal Vs CBI, (2015) 4 Supreme Court Cases 609;**
- (18) **State of Maharashtra and others Vs. Som Nath Thapa and others, (1996) 4 Supreme Court Cases 659;**
- (19) **Bhagwan Swarup Lal Vs State of Maharashtra, (1964) 2 SCR 378;**
- (20) **R. Kalyani Vs Janak C. Mehta and Others, (2009) 1 SCC 516;**
- (21) **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715;**
- (22) **Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi), 2005 SCC (Cri) 1037;**
- (23) **Subodh S/o Chanddayal Bhandari Vs State of Maharashtra through City police station, Osmanabad, Criminal Application No.555 of 2003(Aurangabad Bench);**
- (24) **Raja Ram Vs State of Rajasthan, 2005 Supreme Court Cases (Cri) 1050;**
- (25) **Sandeep Singh Vs. Nisar Ahmad Dar, AIR OnLine 2022 J and K 411;**

- (26) **Sharad Kumar Sanghi Vs Sangita Rane, (2015) 12 SCC 781;**
- (27) **Bhagwan Swarup Lal Vs State of Maharashtra, (1964) 2 SCR 378;**
- (28) **State Vs Tirath Das, AIR 1954 ALLAHABAD 583;**
- (29) **The State Vs Jage Ram, AIR (38) 1951 PUNJAB 103;**
- (30) **R. Kalyani Vs Janak C. Mehta and Others, (2009) 1 SCC 516**
- (31) **Maharashtra State Electricity Distribution Company Limited and another Vs. Datar Switchgear Limited and others, (2010) 10 SCC 479;**
- (32) **Ravindranath Bajpe Vs Mangalore Special Economic Zone Ltd & Others etc., JT 2021 (9) SC 504;**
- (33) **Girasia Lakhuba Pathubha Vs State of Gujarat, 1966 CriLJ 727;**
- (34) **Rabindra Kumar Dey Vs State of Orissa, AIR 1977 SC 170.**

174. All the above authorities tabled before me are mostly on similar points while many are of no relevance to the issues before the Court. Having gone through the aforesaid decisions, it may be stated here that the said decisions have been rendered in different facts and circumstances and flows from different perspectives. In those cases, the Hon'ble Superior Courts have rendered verdict acquitting the accused persons therein holding quintessentially that there was no evidence sufficient from which it could be deduced that the accused therein were guilty of the offence of misappropriation. However, in present case there is ample evidence

on record to prove beyond reasonable doubt that accused persons had hatched conspiracy to misappropriate the funds of NDCC bank by illegal means i.e. under the guise of purchasing GOI Securities on the basis of illegal resolutions and forged documents and all had been party to the said criminal conspiracy.

175. Suffice it to say that the above decisions have no bearing on the case in hand. The facts of above cited cases are totally distinguishable with the case in hand. A decision is available as precedent only if it decides a question of law. A judgment should always be understood in the light of facts of that case and no more should be read into it than what it actually says. So, I need not distinguish all above case laws for the reason that they do not clinch the issue before me for the reasons that all of them are not on the point on which I am required to dwell upon and then this lengthy judgment would become verbose.

176. Then, it would also be pertinent to note that while deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case (See : **Pandurang and Anr. vs. State of Hyderabad (1955 1 SCR 1083)**). It is also a well established principle that while considering the ratio laid down in one case, the Court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true. Since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law,

but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides and not what logically follows from it. (See : **Ambica Quarry Works Vs. State of Gujarat (AIR 1987 SC 1073)**).

177. Bearing the above jurisprudential principle in mind if all of the cases cited supra are considered it is clear that those cases are decided on the facts of them and so same has no relevance to decide this case of clinching evidence of misappropriation of huge amount in crores of rupees by hatching conspiracy to do so. Therefore, the reliance placed on the above quoted authorities by learned counsels for the accused is not acceptable since the reasoning adopted to come to a particular conclusion on particular facts and circumstances cannot be logically en-grafted in deciding the law in the context of other facts and circumstances where an entirely different question is under consideration.

AS TO POINT NO.10 :

178. The prosecution has not proved commission of offence punishable under Sections 406, 409, 468, 471 read with Section 120-B of the IPC by accused No.5, 6 and 11. Therefore, these accused are entitled to be acquitted of the offences they are charged with. However, the prosecution has successfully proved guilt of accused No.1, 2, 4, 7 to 9 for commission of offence punishable under Sections 406, 409, 468, 471 read with Section 120-B of the IPC. Therefore, I hold them guilty for these offences.

179. Heard accused No.1, 2, 4 and 7, 8 through their learned counsels and accused No.9 in person through video conferencing and in physical presence of his learned counsel before the Court. Also heard learned Spl.P.P. for the prosecution.

180. It is submitted on behalf of accused No.1 that he is serving the people since number of years and has been appreciated by people by electing him as a Member of Legislative Council for multiple times. He has crossed the age of 60 years and is never indulged in any criminal activities. His conduct pre-trial, during trial and post-trial shows that he is always diligent. Considering his socio-political background and age, minimum possible punishment be imposed.

181. The learned counsel for accused No.2 submitted that he is a retired person of 70 years old having several ailments and family dependent upon him. He has no criminal background. Hence, leniency be shown while imposing the sentence.

182. On behalf of accused No. 4, it is submitted that 20 years delay in trial itself is a punishment for this accused. He is a senior citizen of 62 years age and has several ailments. He is shouldered with the responsibility of his wife and a daughter. Therefore, minimum sentence be imposed.

183. On behalf of accused No.7, it is submitted that he is resident of Ahmedabad and has family dependent upon him. The

period of custody already undergone by him be imposed as punishment and set off be given.

184. On behalf of accused No.8, it is submitted that he is the only earning member of his family and director of two companies. If he is severely dealt with, his career will be spoiled. Hence, leniency be shown.

185. On behalf of accused No.9, it is submitted that he is a practising advocate and also has several ailments. His family including 88 years old father is dependent on him. His professional career is at stake. Hence, leniency be shown to the maximum possible extent.

186. The learned Spl.P.P. submitted that the accused have misappropriated the huge public amount. The offence is serious one. No one should play with public money in the manner these accused persons did. There has to be deterrence of law. Balance should be maintained for social impact. Hence, he prayed for imposing maximum sentence in accordance with law.

187. After hearing both the sides and considering the facts of the case, evidence placed on record and legislative intent, this Court is of the view that this is not a fit case to release the accused persons merely on probation of good conduct or on admonition. This is also for the reasons mentioned herein below-

A] Accused No.1, who was the Chairman of the NDCC bank and accused No.2, who was the General Manager thereof, were entrusted with the entire stake of the bank. Undisputedly, the fund in question was the hard earned money of the poor people/members of the bank, mostly who happened to be the farmers of Nagpur district.

B] The object and purpose of Co-operative Sector is to enhance the status of economically marginalized sector of the society. The District Central Co-operative Banks are established to support the marginalized people and the farmers to give them the financial back-up. Therefore, the amount which is lying with the bank belongs to all of them. The bank holds the same in public trust. Accused No.1 and 2 were entrusted to invest this amount in the manner prescribed by the law. However, they have committed the breach of this trust. They are not merely the bankers but also the agents of the bank and in turn, the agents of thousands of the members who have deposited their hard earned money, rather their life earning with the bank. However, the trust imposed by them has been breached to their detriment by these accused persons. Such criminal breach of trust is a serious offence. It is recognized as such, by the statute itself which provides a sentence upto imprisonment for life.

C] The loss of such huge amount to a Co-operative bank, is sufficient enough for collapsing the financial position of such bank. In turn, it affects the thousands of members and the staff serving with such bank. The people who are holding higher and responsible

posts, are vested with more responsibility to manage such financial affairs, so that even a single rupee of any of the members shall not be wasted in any manner, whatsoever. Therefore, the breach of trust by such responsible persons, invites this Court to deal the accused persons with steel hands.

D] Merely passing a minimum sentence, will be against a scheme of punishment provided under Section 409 and 468 of the IPC. The provision itself provides the strict and harder sentence upto life. Thus, the statute itself considered this offence as a serious one and provided serious punishment for the same.

E] So far as accused No.4 and 7 to 9 are concerned, who are the directors or the employees of brokerage firms, are responsible for accepting the funds from the bank for purchasing GOI securities. However, they did not purchase the GOI securities for which the funds were accepted. They are equally responsible for committing the criminal breach of trust in respect of the public money. It has been already held that there was well planned conspiracy of the accused persons to take away money from the bank but not to purchase the GOI securities. They all are directly involved in taking away the money of the bank in unauthorised and patently illegal manner, thereby halting even the day-to-day affairs of the Co-operative bank.

F] This is not a case where the offence was committed under the extreme emotional or mental stress. It is not the offence resulting from any provocation. The facts and circumstances of the

case would disclose that it was a result of deep rooted conspiracy and cool minded plan to take away the huge amount from the bank with an ultimate common object not to return the same or not to invest the same in the manner prescribed by the law.

188. In view of the above discussion, considering seriousness of the offences and in view of the scheme of punishment prescribed for the given offences, no leniency as prayed for, can be shown to the accused. In the result, following sentence would meet the ends of justice. Hence, in answer to point No.10, I pass the following order :-

ORDER

1. Accused No.1 **Sunil Chhatrapal Kedar**, accused No.2 **Ashok Namdeorao Chaudhary**, accused No.4 **Ketan Kantilal Seth**, accused No.7 **Amit Sitapati Verma**, accused No.8 **Subodh Chandradayal Bhandari** and accused No.9 **Nandkishor Shankarlal Trivedi** are hereby convicted for the offence punishable under Section 409 read with Section 120-B of the Indian Penal Code vide Section 248(2) of the Code of Criminal Procedure and all of them are sentenced to suffer **rigorous imprisonment for five years each** and to pay **fine of Rs.10,00,000/- (Rs.Ten Lakhs each)** in default to suffer rigorous imprisonment for **one year each**.

2. Accused No.1 **Sunil Chhatrapal Kedar**, accused No.2 **Ashok Namdeorao Chaudhary**, accused No.4 **Ketan Kantilal Seth**, accused No.7 **Amit Sitapati Verma**, accused No.8 **Subodh Chandradayal Bhandari** and accused No.9 **Nandkishor Shankarlal Trivedi** are hereby convicted for the offence punishable under

Section 406 read with Section 120-B of the Indian Penal Code vide Section 248(2) of the Code of Criminal Procedure. As the sentence is passed under Section 409 read with Section 120-B of Indian Penal Code, no separate sentence is passed for the offence punishable under Section 406 of the Indian Penal Code.

3. Accused No.1 **Sunil Chhatrapal Kedar**, accused No.2 **Ashok Namdeorao Chaudhary**, accused No.4 **Ketan Kantilal Seth**, accused No.7 **Amit Sitapati Verma**, accused No.8 **Subodh Chandradayal Bhandari** and accused No.9 **Nandkishor Shankarlal Trivedi** are hereby convicted for the offence punishable under Section 468 read with Section 120-B of the Indian Penal Code vide Section 248(2) of the Code of Criminal Procedure and all of them are sentenced to suffer **rigorous imprisonment for five years each** and to pay **fine of Rs.2,00,000/- (Rs.Two Lakhs each)** in default to suffer rigorous imprisonment for **six months each**.

4. Accused No.1 **Sunil Chhatrapal Kedar**, accused No.2 **Ashok Namdeorao Chaudhary**, accused No.4 **Ketan Kantilal Seth**, accused No.7 **Amit Sitapati Verma**, accused No.8 **Subodh Chandradayal Bhandari** and accused No.9 **Nandkishor Shankarlal Trivedi** are hereby convicted for the offence punishable under Section 471 read with Section 120-B of the Indian Penal Code vide Section 248(2) of the Code of Criminal Procedure and all of them are sentenced to suffer **rigorous imprisonment for two years each** and to pay **fine of Rs.50,000/- (Rs.Fifty Thousands each)** in default to suffer rigorous imprisonment for **three months each**.

5. Accused No.1 **Sunil Chhatrapal Kedar**, accused No.2 **Ashok Namdeorao Chaudhary**, accused No.4 **Ketan Kantilal Seth**, accused No.7 **Amit Sitapati Verma**, accused No.8 **Subodh Chandradayal Bhandari** and accused No.9 **Nandkishor Shankarlal Trivedi** are hereby convicted for the offence punishable under Section 120-B of the Indian Penal Code, vide Section 248(2) of the Code of Criminal Procedure. As the sentence in clause 1 to 4 above is passed read with section 120-B of the Indian Penal Code, no separate sentence is passed for the offence punishable under Section 120-B of the Indian Penal Code.

6. All above sentences shall run concurrently.

7. Accused No.5 **Mahendra Radhesham Agrawal**, accused No.6 **Shriprakash Shantilal Poddar** and accused No.11 **Suresh Damodarrao Peshkar** are hereby acquitted of the offence punishable under Sections 406, 409, 468, 471 read with Section 120-B of the Indian Penal Code vide Section 248(1) of the Code of Criminal Procedure.

8. Set off be given to accused No.1, 2, 4 and 7 to 9 as per Section 428 of the Code of Criminal Procedure for the period during which they were in custody in respect of this Crime.

9. Accused No.5, 6 and 11 shall furnish personal bond of Rs.15,000/- each with one surety each in the like amount as per Section 437-A of the Code of Criminal Procedure.

10. Bail bonds of accused No.5, 6 and 11 shall stand cancelled. They are set at liberty.

11. Accused No.1, 2, 4 and 7 to 9 shall surrender to their bail bonds.
12. Out of fine amount imposed above, if recovered, 50% amount be credited to the Government and remaining 50% be paid to the NDCC bank, Nagpur as compensataion vide Section 357 (1) of the Code of Criminal Procedure, after appeal period is over, unless otherwise directed by the Hon'ble Appellate Court.
13. No order in respect of muddemal, as the case is still pending against accused No. 3 and 10.
14. Conviction warrant be issued against accused No.9.
15. The copy of judgment be forthwith given in gratis to accused No.1, 2, 4 and 7 to 9.

Sd/-

Place :Nagpur.
Date : 22.12.2023.

(J. V. Pekhale-Purkar)
Additional Chief Judicial Magistrate
Nagpur.