

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

Present : Thiru.S.Karthikeyan, M.A., M.L., M.Sc., PGDCFS.,

Principal Sessions Judge.

Thursday, the 19th day of December, 2024.

C.C.No: 79 / 2019

(C.C.No.17 / 2002 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai-18)

1. Name of the Accused	: 1. Bon Plantations & Exports Ltd., a company incorporated under the provisions of Companies Act, 1956 and having its registered office at C/10, BAPMC Market-1, Phase-II, Sector 19, Vashi, New Bomaby 400705 and having its administrative office at VII/386, Darusalam Road, Cochin-682002. 2. Shri.Krishna Kumar K.Bhammer, Director / Officer in charge of the business of the Accused No.1, Address : Krishna Kunj, Palliarakavu Road, Cochin-682002. 3. Shri.Manikant Padmshi (Died, Charge abated). 4. Shri.Devassykutty P.O., Director / Officer in charge of the business of the Accused No.1, Address : Pottakaran House, 1/346, Chengal, Kalady-683574. 5. Shri.Sreekumar, Director / Officer in charge of the business of the Accused No.1, Address : 8/386, Santhy Nivas, Kalady-683574.
2. Name of the Complainant	: Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional Office at D'Monte Buildings, 3 rd Floor, 32, D'Monte Colony, TTK Road, Alwarpet, Chennai-600018 and represented by its Manager Smt.V.Divya.
3. Charges Framed	: U/s 24(1) and 27 of the Securities and Exchange Board of India Act, 1992.
4. Plea of Accused	: The Accused have pleaded not guilty.
5. Finding of the Court	: The Accused 1, 2, 4 and 5 are found not guilty of the offences punishable u/s 24(1) of SEBI Act r/w

		27 of SEBI Act.
6. Sentence or Order	:	The Accused 1, 2, 4 and 5 are found not guilty of the offences punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act and they are acquitted from the said charges. The said acquittal is recorded u/s 235(1) of Cr.P.C. Pending Trial, the Accused 3 died and therefore, the charges against him got abated. (i) The Accused were not arrested. No bail bond was executed. (ii) No material object was recovered and marked before this court and therefore, no property order is passed.
8. Counsel for the complainant	:	M/s.Shivakumar and Suresh, Counsel for the Complainant.
9. Accused defended by	:	M/s.S.Anil Sandeep, Counsel for the Accused 1, 4 and 5. M/s.S.Panneer Selvam for A2.

This case came up on 09.12.2024 before this court for final hearing in the presence of M/s.Shivakumar and Suresh, the counsel for the complainant and of M/s.S.Anil Sandeep, the Counsel for the Accused No.1, 4 and 5 and of M/s.S.Panneer Selvam, Counsel for A2 and upon hearing both sides and upon perusing the documents and material papers of this case, having stood over for considerations till this day, this Court has delivered the following:-

JUDGMENT

The Securities and Exchange Board of India has presented the complaint against the Accused herein for the alleged offences punishable u/s 24(1) and 27 of SEBI Act, before the

learned XXIII Metropolitan Magistrate, Saidapet, Chennai and the same was taken on file in C.C.No.17/2002.

2. Summons were issued to the Accused and on their appearance, copies of the complaint and documents relied on by the complainant were furnished to the Accused u/s 207 of Cr.P.C.

3. On 7.1.2014, one Mr.Pradeep Ramakrishnan, Assistant General Manager of the complainant was examined as P.W.1. Ex.P1 to P9 were marked through him.

4. Whiles, on 18.10.2019, the said case was withdrawn from the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai by this court. It was taken on file in C.C.No.79/2019.

5. Thereafter, the Accused have filed a petition to recall P.W.1 for the purpose of cross-examination and they cross-examined P.W.1. With this, the complainant side evidence was closed. Thereafter, the incriminating materials appeared in the evidence were put to the Accused u/s 313(1)(b) of Cr.P.C. and the Accused denied them as false. On the side of the defence, D.W.1 and D.W.2 were examined and Ex.D1 to D10 were marked.

6. Both sides filed written submissions and they were taken on record. Oral submissions of both side heard. This court has perused the evidence placed before this court, oral and documentary. Materials perused. Both sides written arguments perused.

7. The point for determination is :

Whether the prosecution has proved the charges levelled against the Accused beyond all reasonable doubts?

POINT:

8. The complainant Securities and Exchange Board of India has come up with the present complaint for the alleged offences punishable u/s 24(1) and 27 of SEBI Act. The complaint reads as follows :

1. The Complainant herein is working as Manager with Securities and Exchange Board of India (hereinafter referred to as "SEBI") and is duly authorised to file this Complaint. Annexed and marked as Annexure- "A" is a copy of the letter of authority issued by SEBI authorizing the complainant to file complaints on behalf of it. SEBI was established under the Securities and Exchange Board of India Act, 1992 for providing protection of the interests of investors in securities and to promote the development of and to regulate the securities markets and for matters connected therewith or incidental thereto.

2. Section 11 (1) of Act casts upon SEBI the duty to protect the interests of investors in securities and to promote the development of and to regulate the securities market through appropriate measures, These measures provide for

- a) Regulating the business in stock exchanges and any other securities market,
- b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities market in any manner,
- c) registering and regulating the working of collective investment schemes, including mutual funds,

- d) promoting and regulating self-regulatory organizations,
- e) prohibiting fraudulent and unfair trade practices in securities market,
- f) promoting investor education and training of intermediaries in securities market,
- g) prohibiting insider trading in securities,
- h) regulating substantial acquisition of shares and take- over of companies,
- i) calling for information from, undertaking inspection, conducting enquiries and audits of the stock exchanges and intermediaries and self-regulatory organizations in the securities market,
- j) performing such functions and exercising such powers under the provisions of the capital issues (Control) Act, 1947. (Subsequently repealed) and the Securities Contracts (Regulations) Act. 1956, as may be delegated to it by the Central Government,
- k) levying fees or other charges for carrying out the purposes of Section 11 of the Act,
- l) conducting research for the above purpose,
- m) performing such other functions as may be prescribed by the government.

3. The last decade witnessed initiative by private entrepreneurs to undertake plantation activities on a commercial scale. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amounts over a period of time. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such

schemes throughout the country.

4. The Government of India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like Agro Bonds, Plantation Bonds etc., has to be put in place. A press release was issued by the Government on November 18, 1997, conveying that such schemes should be treated as Collective Investment Schemes coming under the SEBI Act, 1992. In order to regulate such collective investment schemes, both from the point of view of investor protection as well as promotion of legitimate investment activity, SEBI was asked to formulate the regulations for them.

5. SEBI in the year 1999 notified regulations for the regulation of the activities of collective investment schemes, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. (Hereinafter referred to as 'CIS Regulations' or 'the said regulations').

6. The Accused No.1 is operating collective investment schemes and raised an aggregate amount of Rs. 2.21 Crores from the general public.

7. The Accused No. 1 company filed information/ details with SEBI regarding its collective investment schemes pursuant to SEBI press release dated November 26, 1997, and/or public notice dated December 18., 1997.

8. In terms of Chapter IX of the said regulations, any person who had been operating a collective investment schemes at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a collective investment scheme shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations.

9. SEBI vide its letters dated December 13, 1999/ December 29, 1999 and also by way of a public notice dated December 10, 1999 gave intimation to the Accused No.1 directing it to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February 28, 2000.

10. SEBI having regard to the interest of investors and request received from various persons operating collective investment schemes extended the last date of submitting the application by existing entities upto March 31, 2000 and the same was declared by SEBI vide a press release and a public notice.

11. However, the Accused No.1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations.

12. It is submitted that in terms of Reg.73 (1) of the said regulations, an existing collective investment schemes which failed to make an application for registration with SEBI, shall wind up the existing collective investment schemes and repay the amounts collected from the investors. Further, in terms of Reg.74 of the said regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Reg 73.

13. However, the Accused No. 1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Sec. 12 (1B) of Securities and Exchange Board of India Act, 1992 and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the said regulations.

14. On December 7, 2000 SEBI by exercising its powers conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992 directed the Accused no.1 to refund the money collected under the aforesaid collective investment schemes of the Accused. No.1 to the persons who invested therein within a period of one month from the date of the said

directions. A copy of the said directions are annexed and marked as Annexure- B.

15. Despite repeated directions by SEBI, the Accused No. 1 did not comply with the said Regulations and from this, it is clear that the Accused No. 1 is intentionally and with dishonest intentions evading the repayment of the amounts collected by it from the investors.

16. The Accused No.1 raised a total amount of nearly Rs. 2.21 Crores by its own admission and its failure to refund the amounts to the general public who invested their hard-earned money in the schemes operated by the Accused No. 1, caused huge pecuniary damage to them.

17. In view of the above, it is charged that the Accused No.1 has committed the violation of Sec. 12 (1B) of Securities and Exchange Board of India Act, 1992 and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Sec.24 (1) of Securities and Exchange Board of India Act, 1992.

18. The Accused No.2 to 5 are the Directors of the Accused No. 1 and as such persons in charge of and responsible to the Accused No. 1 for the conduct of its business and are liable for the violations of the Accused No.1, as provided under Sec.27 of Securities and Exchange Board of India Act, 1992.

19. The violation of the aforesaid laws by the Accused were the acts of omission and were occurred within the jurisdiction of this Honourable Court and as such this Honorable Court has got jurisdiction to try punish the Accused. This complaint is within the limitation as prescribed under the Code of Criminal Procedure, 1973. The complainant craves the leave of this Honourable Court to produce the documents referred to hereinabove as and when required.

The complainant hence prays this Honourable Court to summon the Accused, and punish them in strictest terms as provided by law in the interest of justice.

9. The learned counsel for the complainant has filed his written submissions and the same is extracted below :

I. Facts of the case in brief:

- 1) The above complaint has been filed by the Securities and Exchange Board of India under Section 24(1) of the Securities and Exchange Board of India Act, 1992 against the 1st Accused company namely, P.G. Fortune Agritech Limited and the second to fourth Accused persons being the Directors of the 1st Accused company, namely, Bon Plantations & Exports Limited and second to fourth Accused persons being the Directors of the 1st Accused company for their violation of section 12(1)(B) of the SEBI Act and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations").

- 2) The Complainant/SEBI is a statutory regulatory body established under the SEBI Act for the following purposes namely:
- a. to protect the interest of investors in securities;
 - b. to promote the development of the securities market;
 - c. to regulate the securities market; and
 - d. to provide for matters connected with, or incidental to the aforesaid purposes.
- 3) It is further submitted that Section 11(1) of the SEBI Act casts duty upon the SEBI to protect the interests of investors in securities market and to promote the development of and to regulate the securities market through appropriate measures. These measures referred to in section 11(1) of the SEBI Act include the registering and regulating the working inter alia of collective investment schemes in terms of clause (c) of section 11(2) of SEBI Act.
- 4) The need for such regulation arose because 1990s and thereafter had witnessed increased activity by private entrepreneurs to undertake plantation activities on a commercial scale and for the said purpose raised huge public finances. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors without any regulatory mechanism to control the collection process or the end use of the funds garnered. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies

to mobilize large amounts over a period of time from the general public. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such schemes throughout the country. Thereafter, the investors were neither paid the promised returns nor the very principal amount. This lead to great economic concerns since the investors were allured by high returns, had invested their savings in such schemes. In many instances the promoters and the companies disappeared, leaving the investors in the lurch. The Government of India, after detailed consultation with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like Teak Bonds, Plantation Bonds etc., has to be put in place.

- 5) Section 12 (1B) of the SEBI Act was incorporated in the SEBI Act w.e.f. 25.01.1995 which stated that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations and continuation of existing schemes were allowed till regulations are framed.
- 6) A press release was issued by the Government on 18.11.1997, conveying that such schemes should be treated as Collective Investment Schemes coming under the SEBI Act. In order to regulate such CIS, both from the point of view of investor protection as well as promotion of legitimate investment activity, the Complainant was asked to

formulate the Regulations for them. Accordingly, in exercise of powers conferred under Section 30 of the SEBI Act read with Sections 11 and 19 thereof, SEBI, in the year 1999 notified the regulations for regulating the activities of CIS, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

- 7) The said Regulations came into force with effect from 15.10.1999. The term CIS is defined under the CIS Regulations and **Section 11AA** of the SEBI Act as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or sub-section 2A shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,-

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.”

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”

8) Regulations **3 and 4 of the CIS Regulations** provide as follows:

“3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

4. Any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these regulations shall make an application to the Board for the grant of registration.”

9) A reading of the above provisions of the SEBI Act and the CIS Regulations make it clear that a certificate of registration from SEBI is to be mandatorily obtained if any entity is desirous to launch and operate a CIS.

10) The Chapter IX of the CIS Regulations deals with existing collective investment schemes. Regulation 68 thereunder provides that any person who has been operating a CIS at the time of commencement of the CIS Regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the

said Chapter IX of the CIS Regulations *inter alia* by way of application to SEBI for grant of registration to act as a CIS. The last date for filing any application seeking registration was 14.12.1999, however, having regard to the interest of investors and requests received from various persons operating such existing collective investment schemes, SEBI extended the last date of submitting the application by existing entities up to **31.03.2000**, and the same was declared vide a press release and a public notice.

- 11) Regulation 73 of the CIS Regulations mandates that an existing collective investment scheme shall be wound up: (i) if it has failed to make an application for registration to SEBI; or (ii) has not been granted provisional registration by SEBI; or (iii) having obtained provisional registration fails to comply with the provisions of regulation 71. Further, the following process has been mandated therein:

- a. the existing Collective Investment Scheme to be wound up under sub-regulation (1) of regulation 73 shall send an information memorandum to the investors who have subscribed to the collective investment schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the collective investment scheme, the amount repayable to each investor and the manner in which such amount is determined.
- b. The information memorandum shall be dated and signed by all the directors.

- c. SEBI is empowered to specify such other disclosures to be made in the information memorandum as it deems fit.
- d. The information memorandum shall be sent to the investors within one week from the date of the information memorandum.
- e. The information memorandum shall explicitly state that investors desirous of continuing with the collective investment scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the collective investment scheme.
- f. The investors who give positive consent shall continue with the collective investment scheme at their risk and responsibility.
- g. If the positive consent to continue is received from only 25% or less of the total number of existing investors, the collective investment scheme shall be wound up.
- h. The payment to investors shall be made within three months from the date of the information memorandum.

- i. On completion of the winding up, the existing collective investment scheme shall file reports with SEBI as may be specified.

12) Regulation 65 of the CIS Regulations provides that SEBI may also initiate criminal prosecution under Section 24 of the SEBI Act. SEBI has to administer the provisions of the CIS Regulations including the provisions of Chapter IX dealing with existing collective investment schemes and take necessary action against non-compliant companies and their directors in accordance with law.

13) The 1st Accused in the instant case is the company and second to fourth Accused are the Directors of the 1st Accused Company and business is being carried on in the name of Bon Plantations and Exports Limited (hereinafter referred to as the 1st Accused company). The Company was incorporated under the Companies Act, 1956 and is operating a CIS for which it has raised an amount of Rs.2,21,18,500/- from the general public. The company is subjected to Regulations under the CIS Regulations, 1999.

14) SEBI vide its letters dated 13.12.1999 and 29.12.1999, directed the 1st Accused company to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined.

- 15) The Complainant states that the 1st Accused Company had neither applied for the registration nor took steps for winding up of the schemes and repayment to the investors as mandated under the CIS Regulations and as such had attracted the provisions of Section 12(1B) of the SEBI Act, Regulations 3, 5(1) read with Regulation 68, 73 and 74 of the said CIS Regulations. The other Accused persons i.e. A2 to A5, being the directors of the said 1st Accused company are liable, in terms of section 27 of the SEBI Act, for the aforesaid violations by the said company.
- 16) On 07.12.2000 the Complainant by exercising the powers conferred under Section 11B of the SEBI Act directed the Company to refund the money collected by them under the aforesaid Collective Investment Scheme to the persons who invested thereon within a period of one month from the date of the said Directions. The aforesaid directions were communicated to the 1st Accused Company vide letter dated 18.12.2000. It is submitted that despite repeated directions by the Complainant, the Accused did not comply of the said directions which goes to show that the Accused are purposely with dishonest intentions are evading the repayment of the amounts collected by it from the investors. The 1st Accused Company raised a large amount of money from the public and its failure to refund the amounts to the investors who invested their hard- earned money in the schemes operated by the Company and caused huge pecuniary loss to them. The Supreme Court in Sahara India Real Estate Corporation Ltd. and Others v. SEBI and Another reported in (2012) 4 CompLJ1 (SC) has clearly held even in such cases, companies who have

claimed to have collected huge sums are bound to comply with the directions of SEBI in respect of CIS investments and collections. The Apex Court had further held that even in the absence of a complaint from a private investor, SEBI, being the watch dog of right of investors has the statutory duty and right to investigate into matter and to do all things necessary to ensure that the rights of investors are safeguarded.

- 17) It is submitted that Second to fourth Accused are the Directors of the Company and are the persons who are as such in charge of and responsible for the conduct of business of the 1st Accused Company and are hence liable for the violations of the Company as provided under Section 27 of the SEBI Act.
- 18) It is pertinent to mention that the Complainant has provided enough supporting documents to prove the offences committed by the petitioners who are directly held liable for its business affairs. It is the requirement of the said company to register its collective investment scheme (CIS) with this Complainant under the CIS Regulations and non-registration of same would make the said scheme disregard of Regulations and the same has to be wound up by returning back the money collected from investors and failure to do so will automatically entitle this Complainant to take action against the company and its directors (Accused No. 2-4) who are responsible for the operations of the Company and thus, are liable under section 27 of the SEBI Act.

II. Legal provisions violated by the Accused:

19. Sec.12 (1B) of SEBI Act, Reg.5 (1) read with Regulations 68(1), 68(2), 73 and 74 of the CIS Regulations. Violation of the said provisions are punishable u/s Sec.24 (1) of the SEBI Act. The directors of the Accused no.1 company, are jointly and severally liable, under section 27 of the SEBI Act, for the default and contravention of law.

III. Evidences / documents before the Hon'ble Court:

A. Evidence led by Prosecution

20. In order to prove the case beyond reasonable doubt, the complainant examined Mr.Pradeep Ramakrishnan as its witness. Exhibits Nos. 1 to 9 were marked through Prosecution Witness 1 (PW1) viz. Mr. Pradeep Ramakrishnan.
- a) The Public Notices issued by the complainant dated 18.12.1997 and 10.12.1999 are filed and marked as Exhibit P2 and P3.
- b) The letters dated 13.12.1999 and 29.12.1999 sent by the complainant (SEBI) to the 1st Accused (marked as Exhibit P4 and P6) inter alia directing the Company to wind up the scheme since no application for registration has been made by the Company and to formulate scheme of repayment to repay the investors.
- c) The Complainant issued Directions (marked as Exhibit P8) under section 11B of SEBI Act directing the Accused persons to refund the money collected under the schemes

with returns due to the investors within a period of one month, failing which the Complainant may take any or all of the following actions;

- (i) launch prosecution under section 24, SEBI Act, 1992,
 - (ii) debar promoter/directors/managers/persons in charge of the business from the capital market for a period of 5 years.
 - (iii) write to state government/local police to register civil/criminal case and/or to Department of Company affairs to initiate the process of winding of the company.
- d) The letter from the 1st Accused company informing about the quantum of money collected from the public is marked as Exhibit No.9.

21. The PW1 has clearly stated that the Accused no. 1 company has failed to refund the monies to its investors or get itself registered as a CIS, thereby contravening the provisions of law as alleged in the complaint. Further, Accused persons A2 to A5, being the directors of the Accused no.1 company, are jointly and severally liable, under section 27 of the SEBI Act, for the default and contravention of law.

B. Admission made by and Accused during the cross examination:

22. The Criminal OP filed by him for quashing the complaint as against him. was dismissed by the Hon'ble High Court Further, he has not produced the Form 32 before this Hon'ble Court to show his removal from the Directorship.

23. It is submitted that when the 2nd Accused person had admittedly not produced the

Form-32 relating to his cessation of directorship in the 1 Accused company and hence no relevant proof has been submitted by the said person.

C. Admission made by 4th Accused during the cross examination

24. It is admitted that investment was received from the investors in the year 1993 and the amount collected from the investors is admittedly around Rs.2 Crores.

D. Evidence led by Defense:

25. Documents/ records pertaining to transfer of land from the 1 Accused Company to the remaining investors who did not give positive consent to continue with the existing collective investment scheme has been marked as Exhibit D 1.

26. Documents/records pertaining to positive consent provided by investors to continue with the existing collective investment scheme has been marked as Exhibit D 2.

IV. Points for argument:

27. The Accused persons have been operating CIS and mobilized funds/monies from public investors in the CIS. A CIS cannot be launched and operated without obtaining a certificate of registration under section 11(2)(c) of the SEBI Act read with regulations 3 and 5 of the CIS Regulations.

28. Accused No. 5 has admitted in his examination given under section 315, Code of

Criminal procedure, 1973 that the Accused company received investments from investors and claimed to have registered land in the names of investors. As per the agreement between the company and the investors, the land was given to company for maintenance, who did planting and irrigation. The activities conducted by the company are in the form of Collective investment scheme.

29. In terms of Chapter IX of the CIS Regulations, any person (like the Accused company and its directors) who has been operating a CIS at the time of the commencement of the CIS Regulations is deemed to be an existing CIS and mandated to comply with the provisions of the said Chapter IX by making an application for seeking registration as a CIS irrespective of the amount of money mobilized. The 1st Accused company and its directors did not obtain the necessary registration and hence, as per regulation 73(1) of the CIS Regulations had to wind up the existing scheme/CIS and refund to their investors as per the terms of the scheme/promise made to investors and submit the report to SEBI.
30. As per Regulation 73(3), the information memorandum shall be signed by all the directors. However, the Information Memorandum produced by DW2 in Evidence is only signed by A3.
31. It is case of the Accused that the 1 Accused Company obtained positive consent from more than twenty-five percent (25%) of its investors in terms of Regulation 73(6) and

73(7) of the CIS Regulations in this regard, the Complainant submits that as per Regulation 73(6) the information memorandum shall explicitly state that investors desirous of continuing with the collective investment scheme shall give a positive consent within one month from the date of the information memorandum to continue with the collective investment scheme. However, no such statement has been made in the Information Memorandum sent to the investors. Furthermore, there is no evidence to support the contention of the 1 Accused Company that the documents at Exhibit D 2 constitute as positive consent of more than twenty-five per cent (25%) of its investors. In view of the aforementioned, the consent obtained by the Accused persons cannot be and ought not be treated as valid and in compliance with regulation 73. Thus, no credence shall be given to the information memorandum and the consent said to have been obtained from the investors.

32. As per regulation 73(8), the payment to the investors has to be made within three months of the date of the information memorandum. No evidence has been provided by the Accused persons to prove that monies had been refunded to the non-consenting investors. The Accused, as per DW2 statement, has stated that land has been given to non-consenting investors. Without prejudice, it is submitted that there is no co-relation to the lands given to the persons as regards their investments. Further, the regulations mandate only return/refund of monies and does not provide for any other mode. In a plethora of judgments, the Hon'ble Supreme Court has held that if a statute requires a thing to be done in a particular manner, it should be done in

that manner or not all (See Ramachandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915, Shiv Kumar Chadha etc., v. Municipal Corporation of Delhi and others 1993 SCC (3) 161). The Hon'ble Supreme Court in Ramachandra Keshav Adke v. Govind Joti Chavare AIR 1975 SC 915 observed as follows:

"A century ago, in Taylor v. Taylor (1875) 1 Ch D 426, Ind. App. Jessel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council in Nazir Ahmed v. Emperor, 63 Ind. App. 372; AIR 1936 PC 253 (2) and later by this Court in several cases, Rao Shiv Bahadur Singh v. State of Vindhya Pradesh (1954) SCR 1098, AIR 1954 SC 322, Deep Chand v. State of Rajasthan (1962) SCR 662: AIR 1961 SC 1527....."

33. Hence, when monies had to be refunded as per the CIS Regulations, claiming to have settled lands cannot be in compliance and ought to be rejected.

V. Judgments relied by the Complainant

34. Attention of this Ld. Court is invited to the Judgment delivered by Hon'ble High court of Delhi dated 08.02.2011 in Crl Appeal No. 220/2010 (Ankur Forest & Project Development India Ltd. & Ors v. SEBI) upholding the order passed by the Ld. Sessions Judge dated 29.01.2010 convicting the Accused persons (Company as well

as the directors) for violation of Regulations 5(1) read with regulations 68(1), 68(2), 73 & 74 of SEBI CIS Regulations 1999 r/w Section 24 & 27 of the SEBI Act. In this case as well the company did not comply with regulation 74 which provided for the procedure as contemplated under regulation 73 to formulate the scheme of repayment. Merely writing to the respondent that appellant was desirous of taking benefit of scheme under section 12 (1b) the appellant was not absolved from the further liabilities. The Order passed by the Hon'ble Delhi High Court was impugned before the Hon'ble Supreme Court in appeal which was also dismissed by the Hon'ble Supreme Court vide its order dated 23/9/2011.

35. In *Sunita Bhagat and others vs. SEBI*, the Hon'ble Delhi High Court in Para No.12 observed:

"The Company, therefore, clearly contravened the provisions of SEBI CIS Regulations, 1999 by not sending memorandum as per the requirement of the Regulations to its investors within two (2) months of receipt of intimation from SEBI and not making payment to all its investors within three (3) months of the date of memorandum."

36. In *Shalendar Kaushik and others vs. SEBI and another*, the Delhi High Court in Para 10 had taken a similar view that since the company contravened the provisions of regulations 73 and 74 CIS regulations had dismissed the appeals filed by the

company thereby confirming the order of conviction of the Accused under section 24 of the Act by the Trial Court.

37 In Radheshyam Surajnal and Bombay High Court in Para 14 and 15 had held that the company or the directors cannot be exonerated and the statutory provision would not render any person liable to be punished if he proves that offence was committed without his knowledge for that he has exercised due diligence to prevent the commission of offence.

38. In M/s PGF Limited and others vs. Union of India and SEBI, the Hon'ble Supreme Court had held in Para 54 and 55 that collecting the money under joint venture schemes and not refunding the same to the customers despite the regulations of SEBI would be liable to be punished for the offence and the appeal filed by the said appellants was dismissed.

39. In M/s Rhodanthe Agro Limited Vs Securities and Exchange Board of India, the Hon'ble Madras High Court held as under

"23. In the above said circumstances, I am of the opinion that the non compliance of Regulations 75 and 74 for winding up the company is continuing in nature. Hence, the trial court is correct in coming to the conclusion that the offence is continuing in nature. Section 24 of the SEBI Act is amended by SEBI Act (Act No. 59 of 2002)

with effect from 29.10.2002 and the offence under the Act was punishable with Imprisonment for a term which may extend to ten years or with fine which may extend to 25 crore or with both. In such circumstances, I am of the opinion that the petition is not bared by limitation under Section 468 of Or.P.C

40. In view of the foregoing, the 1 Accused company and the other persons A2-A5 (directors of the 1 Accused company) have contravened the provisions of section 12(1) (B) of the SEBI Act and Regulation (1) read with Regulation 68 (1), 68 (2), 73 and 74 of the CIS Regulations. The said contravention makes them punishable under Section 24(1) of the SEBI Act. which provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. The directors of the 1 Accused Company, are jointly and severally liable, under section 27 of the SEBI Act. for the default and contravention of law.

41. The present case is a case where the offence is continuing in nature as long as the refunds remain to be made to the public investors,

42. In view of the foregoing, this Hon'ble court may be pleased to allow the complaint and convict the Accused under section 24(1) read with section 27 of SEBI Act and

pass such further orders as this Hon'ble court may deem fit in the circumstance of the case and thus render justice.

10. The learned counsel for the defence in his oral as well as written submissions submitted as below :

The Accused above named beg to state as follows:

1. The complaint has been filed as against the Accused on the ground that the 1 Accused had violated Section 12 (1B) of the SEBI Act, 1992 and Regulations 5, 68, 73 and 74 of the SEBI (CIS) Regulations, 1999 and that it is punishable under Section 24(1) of the SEBI Act and that the Accused 2 to 5 are directors of the 1^a Accused and are liable for violations of the 1^a Accused under Section 27 of the SEBI Act. The above named Accused nos. 1, 4 & 5 are not liable for any of the alleged offences and the very complaint as against them is not maintainable on facts, in law and is premature and is a clear abuse of process of law.

2 The complaint filed in this case is an almost verbatim reproduction of the complaint discussed by the Hon'ble Supreme Court of India in paragraph no.25 of its judgment dated 15.07.2016 in the case of SEBI -vs- Gaurav Varshney' in Criminal Appeal Nos.827 to 830 of 2012 (annexed herewith), Only the value of the collected amount differs in the complaint before this Hon'ble Court. The Hon'ble Supreme Court of India in paragraph nos 32 to 42 of the judgment has clearly held that the complaint is not maintainable, as it doesn't reveal the particulars of accusation and that in the absence of the particulars of the offence, no one could be tried or punished for the same. It was also held that no amount of evidence can be

looked into, for an accusation not levelled or made out in a complaint and that this is one of the basic tenets of Criminal jurisprudence (Paragraph Nos.31 to 34 of the judgment). It also held that the provisions of Sections 251 and 465 of Cr.P.C. cannot save the scenario for the complainant (Paragraph Nos.35 to 42 of the judgment).

3. The complaint in this case, when on comparison with the complaint mentioned in paragraph no.25 of the said judgment, it can be seen that paragraph nos.6 to 19 and the relief portion in the present complaint are almost verbatim with paragraph nos.8 to 21 and relief portion of the complaint reproduced in the judgment. At the outset, for such reason, it is amply clear that the complaint before this Hon'ble court is not maintainable, due to the fact that it is covered by the said judgment of the Hon'ble Supreme Court of India, which has held the verbatim worded complaint to be not maintainable.

4. The documents, namely Exhibits P1 to P8 marked by PW1 in his chief examination are all Xerox copies and are not admissible in evidence. No originals have been brought before this Hon'ble court and none of these documents are proved in accordance with law. PW1 had been cross examined on the non-veracity and non-reliability of the complainant side exhibits.

5. It is pertinent that PW1 had no authorization to depose and give evidence on behalf of the complainant. The document in Exhibit P1 which according to him is the letter of authority, has been issued by Regional Manager of SEBI, who has no power to delegate. No document

has been filed by the complainant to show such delegation of powers. The document purported to be issued by the chairman of SEBI, bears no signature of the chairman and all of these documents are purported to have been signed by the Regional Manager, whose powers to delegate is not proved before this Hon'ble court. Even assuming without admitting that Exhibit P1 has been issued by the complainant, even then page no.2 of the exhibit (mentioned as page no.26 of 37 in the document) shows that it is only the Regional Manager with the approval of the DGM who has powers to file complaints and affidavits before courts. There can be no further delegation of powers.

6. The 1st Accused had been running a collective Investment Scheme (CIS), even before the coming into force of Section 12(1B) of the SEBI Act, which came into force on 25.01.1995. Hence, the 1st Accused falls under proviso category of Section 12(1B) of the SEBI Act. The 1st Accused had entered plantation business and identified land for the persons who were interested in growing plantations (investors), after which the lands were registered in the name of the investors through the 1st Accused, for the money paid by the investors to the 1st Accused. Only the maintenance of the plantations including the fixation of the number of trees and the type of trees were undertaken by the 1st Accused for the investors. This plantation business of registering the land in the name of the investors had commenced from the year 1987 and a clear platform for this was set between the years 1993 & 1995.

7. It is also to cater to the category of persons including the 1st Accused, who come under the proviso to 12(1B) of the SEBI Act, that the CIS Regulations were brought forth in the

year 1999. In any case, Regulation No.9(c) of the CIS had laid down that any applicant for a certificate of registration from the Board (SEBI) shall have a net worth of Rs.3 Crores. Regulation 2(s) defines "net worth" as the aggregate value of equity capital and free reserves. As the 1st Accused only had a paid up capital (equity capital) of Rs.5.02 lakhs (Auditor's report of the 1st Accused is in exhibit D9 and the paid up capital is admitted by PW1 in his cross examination), there was no chance for the 1st Accused to obtain such Certificate from the Board, and hence the 1st Accused had taken the exit route prescribed under Regulation 73 of SEBI (CIS) Regulations 1999.

8. Regulation 73(6) of the CIS Regulations, 1999 lays down that the company managing the CIS shall give information memorandum to its investors desirous of continuing with it, and if positive consent is received from more than 25% of the total number of existing investors, then such investors shall continue with the CIS at their risk and responsibility Regulation 73(7) of CIS Regulations lays down that if positive consent is received from 25% or less of investors, the company managing the CIS shall be wound up.

9. The 1st Accused had sent information memorandum to all investors seeking their response in the matter, for which, as on January 2001, the 1st Accused had obtained positive consent as mentioned in Regulation 73(6) and (7), from 88.05% of its investors. This fact along with the copies of the consent forms/information memorandum received from the investors together with their details thereof were sent by the 1st Accused to the complainant and the same was received by the complainant on 09.01.2001 even as per their own

admission (as can be seen from Exhibit P9). This fact has been suppressed in the complaint. The complainant itself having accepted that there was communication and proof from the 1st Accused about having obtained positive consent of more than 25% of the investors, there could not have been any complaint against the Accused, as the exit route under Regulations 73(6) and (7) have been satisfied by the Accused. The originals of these information memorandum are to be kept with the 1st Accused as per the SEBI notification dated 31.07.2000, as admitted by PW 1 in his cross examination. Hence the alleged non-submission of originals of the information memorandum to the complainant cannot be held against the Accused, as it was kept in the custody of the Accused only as per the directions of the complainant. The information memorandum through which positive consent of about 93.7% of investors was obtained by the 1st Accused, have been filed before this Hon'ble court as Exhibit D10 series through DW2 (A5). The encumbrance certificates showing the ownership of the lands with the investors and the execution of the sale deeds to them through the Accused from the year 1987 and the subsequent sales made by such investors between the years 1987 to 2022, have been filed before this Hon'ble court as Exhibit DE series together with the certificate under Section 65(B) of the Indian Evidence Act through DW2.

10. The 1st Accused had sent letter dated 18.01.2001 (Exhibit D2 marked through PW1), expressing non-possibility of obtaining the certificate of registration due to its net worth being below Rs.3 Crores, and that the 1st Accused had registered all the land in favour of the investors, and that positive written consent has been received from 88.05% of the total

investors. The complainant had sent the communication dated 30.01.2001 (marked as Exhibit DI through PW1) to the 1st Accused recording the letter in Exhibit D2 and agreeing for continuing with the investors at their own risk and responsibility. The 1st Accused had sent a further letter dated 28.02.2001 (marked as Exhibit D3 through PW1) stating that further consent has been received from investors and that 93.7% of the investors have given positive consent for continuing with the Accused. All of these have been held back by the complainant in the complaint and these documents had been marked through PW1 in his cross examination on behalf of these Accused. Further, the status note on collective investments of the SEBI has been marked as Exhibit D11 through PW1 in his cross examination by these Accused. This is a document admitted by PW1. Clause No.3.7 in page no.4 of Exhibit D11 shows that exit route under Regulation 73 has been provided for 10 companies similar to the 1st Accused as these companies have obtained positive consent from more than 25% of the investors to continue with the scheme, and that these companies do not come within the purview of SEBI (CIS) Regulations and the interested investors continued to remain investors in these companies at their own risk. Hence, it is clear that most unfortunately the complainant has adopted selective targeting in the case of the 1st Accused, as by its own status note, the exit route has been provided to 10 other similarly placed companies.

11. There is no cause of action for the complaint, also due to the happening of events after the period mentioned in the complaint and due to the change of circumstances occasioned due to Exhibits P9, and DI to D3. The Exhibits D8 to D10 shows that there is no culpability

on the part of these Accused, and hence no prosecution will lie against these Accused in this matter.

12. Even according to the complaint, the cause of action for the complaint had arisen on 07.12.2000, through an alleged communication of that date by the complainant. This communication has been marked as Exhibit P8 through PW1. It has been categorically admitted by PW1 in his cross examination that there is no proof of publication of this communication or even service of such communication on the Accused. He only says that it was published in the internet, even for which there is no proof or certificate filed under 65(B) of the Indian Evidence Act. If this communication is not considered as proved, then the complaint itself is barred by limitation. The Hon'ble Supreme Court of India has categorically held in paragraph nos.77 to 82 of the referred judgment that Section 24 of the SEBI Act was amended on 29.10.2002 and for any alleged offence arising before that period, the punishment was an imprisonment of one year or fine or both, and that since Section 468 of Cr.P.C. stipulated the period of limitation as one year for an offence punishable with the term of imprisonment of one year, the complaint filed after one year was barred by limitation. It also shows that the alleged offence under the SEBI Act is not a continuing offence. In the present case, the date of complaint even as per the complaint is 28.12.2001, which is almost a year before the date of amendment dated 29.10.2003 of Section 24 of the SEBI Act. If Exhibit P8 is not considered as proved, then the complaint is barred by limitation, as the date of the earlier alleged communication from the complainant in Exhibit P6 is in December 1999, which is about 2 years before the alleged date of the

filing of this complaint. There is no question of any retrospective application of the amendment as is clear from the Judgment of the Hon'ble Supreme Court of India.

13. The letters or notices of the complainant, alleged in the complaint and marked as Exhibits 12 to P8 through PWI, neither form part nor are mentioned in any communications of the 1st Accused to the complainant, which makes it clear that these alleged communications of the complainant have not been reached or served on the Accused. Moreover, the cause of action for the complaint become unsustainable through the communications between the complainant and the 1st Accused in Exhibits P9 and D1 to D3.

14. The 5th Accused who has appeared and answered the questions put to him under Section 313 of Cr.P.C, has stated that this complaint is a false complaint and that lands had been registered in favour of the investors and hence, there is no requirement for any money to be returned in this regard. The "due date of promised return" found in Serial No. 7(b) of the information memorandum in Exhibit D10 series, only denotes the number of trees, its type and cubic feet of wood promised to be returned to the investors after its maintenance by the 1st Accused. It has no reference to any return of money, as is evident from the document.

15. The Hon'ble Supreme Court of India in the referred judgment, has clarified on the applicability of Regulations 5 and 68 to 73 of the SEBI (CIS) Regulations 1999. Regulation 74 applies only to the companies which are to be wound up in the manner provided under Regulation 73, if they don't take the exit route provided under Regulations 73(6) and (7)),

and hence is not applicable to the Accused. The 4th Accused and the 5th Accused have not been in charge of the affairs and the day to day management of the 1st Accused. There have been no clear and appropriate pleadings in the complaint or proof submitted by the complainant to prove otherwise, which does not satisfy the requirements under Section 27 of the SEBI Act, as held by the Hon'ble Supreme Court. The communications of the 1st Accused have been made by the 3rd Accused, who has died during the pendency of this case.

Hence, the complaint does not make out any offence as against these Accused and hence these Accused are entitled for acquittal in the matter, in the interests of justice.

11. This court has given its thoughtful consideration to the rival submissions put forth by either side. It is the case of the complainant that in terms of Reg.73 (1) of the CIS regulations, an existing collective investment schemes which failed to make an application for registration with SEBI, shall wind up the existing collective investment schemes and repay the amounts collected from the investors. Further, in terms of Reg.74 of the CIS regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Reg 73. However, the Accused No. 1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Sec. 12 (1B) of Securities and

Exchange Board of India Act, 1992 and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the said regulations.

12. According to the complainant, on December 7, 2000 SEBI by exercising its powers conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992 directed the Accused no.1 to refund the money collected under the aforesaid collective investment schemes of the Accused. No.1 to the persons who invested therein within a period of one month from the date of the said directions. A copy of the said directions are annexed and marked as Annexure- B. Despite repeated directions by SEBI, the Accused No. 1 did not comply with the said Regulations and from this, it is clear that the Accused No. 1 is intentionally and with dishonest intentions evading the repayment of the amounts collected by it from the investors. The Accused No.1 raised a total amount of nearly Rs. 2.21 Crores by its own admission and its failure to refund the amounts to the general public who invested their hard-earned money in the schemes operated by the Accused No. 1, caused huge pecuniary damage to them. In view of the above, it is charged that the Accused No.1 has committed the violation of Sec. 12 (1B) of Securities and Exchange Board of India Act, 1992 and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Sec.24 (1) of Securities and Exchange Board of India Act, 1992.

13. In order to prove its case, the complainant has examined its Assistant General Manager as P.W.1. P.W.1 has deposed in his evidence in line with the complaint and

marked Ex.P1 to P9. On careful perusal of the records, it is found that the Public Notices issued by the complainant dated 18.12.1997 and 10.12.1999 are filed and marked as Exhibit P2 and P3. The letters dated 13.12.1999 and 29.12.1999 sent by the complainant (SEBI) to the 1st Accused were marked as Exhibit P4 and P6. As per Ex.P8, the Complainant issued Directions under section 11B of SEBI Act directing the Accused persons to refund the money collected under the schemes with returns due to the investors within a period of one month, failing which the Complainant may take any or all of the following actions;

- (i) launch prosecution under section 24, SEBI Act, 1992,
- (ii) debar promoter/directors/managers/persons in charge of the business from the capital market for a period of 5 years.
- (iii) write to state government/local police to register civil/criminal case and/or to Department of Company affairs to initiate the process of winding of the company.

The letter from the 1st Accused company informing about the quantum of money collected from the public was marked as Exhibit No.9.

14. According to the learned counsel for the complainant, the Accused herein have operated Collective Investment Schemes, failed to obtain provisional registration and permanent registration and further they have violated the provision u/s 12(1B) of the SEBI Act and Regulations 3, 5(1) read with Regulation 68, 73 and 74 of the Regulation and therefore, the Accused herein are punishable u/s 24(1) and 27 of SEBI Act.

15. The first and foremost contention of the learned counsel for the Accused A1, A4 and A5 is that the complaint does not disclose any offence and therefore, the complaint itself is not maintainable before this court. According to the learned counsel for the defence, the present complaint is nothing but almost verbatim reproduction of the complaint discussed by the Hon'ble Apex Court in its judgment dated 15.07.2016 in the case of SEBI vs. Gaurav Varshney in Criminal Appeal Nos.827 to 830 of 2012. The learned counsel for the defence brought to the notice of this court that only the value of the collected amount differs. According to the learned counsel for the defence, the Hon'ble Supreme Court of India in paragraph Nos.32 to 42 of the judgment has clearly held that the complaint is not maintainable, as it does not reveal the particulars of accusation and that in the absence of the particulars of the offence, no one could be tried or punished for the same. It was also held that no amount of evidence can be looked into, for an accusation not leveled or made out in a complaint and that this is one of the basic tenets of Criminal Jurisprudence. Further, the Hon'ble Apex Court held that the provisions of Sections 251 and 465 of Cr.P.C. cannot save the scenario for the complainant. The Hon'ble Apex Court in Paragraph-25 of its judgment extracted the complaint averments, which was discussed in the said judgment. The said paragraph-25 is extracted hereunder below for better appreciation :

“7. The accused no. 1 is a company registered under the provisions of the Companies Act and the accused nos. 2 to 11 are the directors of the accused no. 1 company. The accused nos. 2 to 11 are the persons incharge and responsible for the day to day affairs of the company and all of them were actively connived with each other for the commission of offences.

8. The accused no. 1 is operating collective investment schemes and raised an aggregate amount of Rs.14,63,279/- (Rupees fourteen lakhs sixty three thousand two hundred seventy nine only) from the general public.

9. The accused no. 1 company filed information/details with SEBI regarding its collective investment schemes pursuant to SEBI press release dated November 26, 1997, and/or public notice dated December 18, 1997.

10. In terms of Chapter IX of the said regulations, any person who had been operating a collective investment schemes at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a collective investment scheme shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations.

11. SEBI vide its letters dated December 15, 1999/December 29, 1999 and also by way of a public notice dated December 10, 1999 gave intimation to the accused no. 1 directing it to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February 28, 2000.

12. SEBI having regard to the interest of investors and request received from various persons operating collective investment schemes extended the last date of submitting the application by existing entities upto March 31, 2000 and the same was declared by SEBI vide a press release and a public notice.

13. However, the accused no. 1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations.

14. It is submitted that in terms of Regulations 73(1) of the said regulations, an existing collective investment schemes which failed to make an application for registration with SEBI, shall wind up the existing collective investment schemes and repay the amounts collected from the investors. Further, in terms of Regulation 74 of the said regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

15. However, the accused no. 1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Section 12(1B) of Securities and Exchange Board of India Act, 1992 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the said regulations.

16. On December 7, 2000 SEBI by exercising its powers conferred upon it under [Section 11B](#) of Securities and Exchange Board of India Act, 1992 directed the accused no. 1 to refund the money collected under the aforesaid collective investment schemes of the accused no. 1 to the persons who invested therein within a period of one month from the date of the said directions.

17. However, despite repeated directions by SEBI, the accused no. 1 did not comply with the said regulations and from this, it is clear that the accused no. 1 is intentionally and with dishonest intentions evading the repayment of the amounts collected by it from the investors.

18. The accused no. 1 raised a total amount of Rs.14,63,279/- (Rupees fourteen lakhs sixty three thousand two hundred seventy nine only) by its own admission and its failure to refund the amounts to the general public who invested their hard-earned money in the schemes operated by the accused no. 1, caused huge pecuniary damage to them.

19. In view of the above, it is charged that the accused no. 1 has committed the violation of Section 11B, 12(1B) of Securities and Exchange Board of India Act, 1992 and Regulation 5(1) read with Regulations 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punished under Section 24(1) of Securities and Exchange Board of India Act, 1992.

20. The accused nos. 2 to 11 are the Directors of the accused no. 1, and as such persons in charge of and responsible to the accused no. 1 for the conduct of its business and are liable for the violations of the accused no. 1, as provided under Section 27 of Securities and Exchange Board of India Act, 1992.

21. The violation of the aforesaid laws by the accused were the acts of omission and were occurred within the jurisdiction of this Hon'ble Court and as such this Hon'ble Court has got jurisdiction to try punish the accused. This complaint is within the limitation. The complainant craves

the leave of this Hon'ble Court to produce the documents referred to hereinabove as and when required.

PRAYER It is, therefore, most respectfully prayed to this Hon'ble Court to summon the accused and punish them in strictest terms as provided by law in the interest of justice."

16. On close scrutiny of the complaint averments extracted above by the Apex Court and the complaint averments in the present case, it makes it very clear that both are almost same, except the amount collected by way of Collective Investment Scheme. The Hon'ble Apex Court expressed its dissatisfaction to the said complaint and ultimately held that the said complaint is not maintainable. The relevant discussion are made in paragraph 32 to 42 of the said judgment, which is also clearly extracted below :

"32. Having given out thoughtful consideration to the factual assertions contained in the complaint, it is not possible for us to agree with the learned senior counsel representing 'the Board', for the simple reason, that a perusal of the above factual assertions, reveal two accusations against the Accused. Firstly, that the Accused did not apply for registration under the Collective Investment Regulations. And secondly, the Accused did not take any steps for winding up of the collective investment scheme(s) being operated by them, refunding deposits made by the investors, as per the provisions of the Collective Investment Regulations. The basis of the accusations levelled against the Accused was not, that they had no right to commence a collective investment venture, during the period between 25.1.1995 when Section 12(1B) of the SEBI Act came to be inserted, till the requisite certificate of registration was sought. The complaint

did not include any direct or indirect insinuation, that the Accused had unauthorisedly commenced operations of a collective investment scheme, after 25.1.1995. Even the date of commencement of the collective investment operations, by the Accused, was not expressed in the complaint. It was imperative for 'the Board', to lay the above charge, through express assertions, for proceeding against the Accused, for violation of the non-proviso mandate, under Section 12(1B).

33. We are mindful of the fact that, paragraph 15 of the complaint relied upon by the learned senior counsel, does make a reference to the violation of Section 12(1B), but the violation alleged is on account of having not applied for registration, for carrying on the collective investment scheme, and alternatively, for not having taken steps to wind up the collective investment undertaking by making refunds to the investors, as provided for under the Collective Investment Regulations. In our considered view, reliance placed on the two paragraphs of the complaint is clearly insufficient, for the purpose canvassed by the learned senior counsel representing 'the Board'. We are of the view, that the above assertions in the complaint, assumed that the respondents were "existing" operators (prior to 25.1.1995).

Because in our view, only "existing" operators, had to wind up, if they choose not to conform with the Collective Investment Regulations (after their notification). 34. There can be no doubt whatsoever, that the particulars of the offence, of which an Accused is charged, have to be clearly stated to him. In case the Accused in the present case were to be charged for having

violated Section 12(1B) as new operators under the non-proviso category, it was imperative to inform them of all the relevant particulars, namely, that they had unauthorisedly commenced a collective investment scheme, during the period when there was a complete bar, against commencing to sponsor or carry on a collective investment scheme. In the absence of the above particulars of the offence, they could not have been tried or punished for the same. No amount of evidence can be looked into, for an accusation not levelled or made out, in a complaint. This is one of the basic tenets of the criminal jurisprudence.

35. We will now proceed to deal with the second submission, advanced at the hands of the learned senior counsel, for 'the Board'. In support of his second submission, the learned senior counsel relied on Section 251 of the Cr.P.C. The said provision is reproduced hereunder:- "251. Substance of accusation to be stated.- When in a summons-case the Accused appears or is brought before the Magistrate, the particulars of the offence of which he is Accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge." A perusal of Section 251 leaves no room for any doubt, that "... the particulars of the offence of which he is Accused shall be stated to him...". The particulars for an offence postulated for the non-proviso category (-where the activity of a collective investment scheme, is commenced after 25.1.1995), under Section 12(1B) of the SEBI Act, would be the date on which the Accused commenced sponsoring or carrying on a collective investment scheme. If such date fell within the period when the initiation of a new collective investment endeavour stood barred under Section

12(1B), the Accused had to be accosted of the same. And only thereupon, the Accused would have understood, what charge was being levelled against him. Merely mention of the statutory provision, namely, Section 12(1B) of the SEBI Act, would not amount to disclosing to the Accused, the particulars of the offence of which they were Accused. One cannot lose sight of the fact, that implications for the proviso category (-those who commenced operations before 25.1.1995) and the non-proviso category (-those who commenced operations after 25.1.1995) are different. A perusal of the charge sheet reveals, that the respondents herein were being treated as belonging to the proviso category. But learned counsel for 'the Board' desires us to treat them as belonging to the non-proviso category, and to proceed against them for having engaged themselves in activities concerning collective investment, on the basis of the material available on the record of the case. This, in our considered view is clearly impermissible. We are also of the view, that Section 251 of the Cr.P.C. will not remedy the above defect and deficiency in the complaint. In the above view of the matter, for the reasons recorded hereinabove, and additionally, for the reasons recorded while rejecting the first contention advanced at the hands of the learned senior counsel for 'the Board', we find no merit in the submission founded on Section 251 of the Cr.P.C.

36. The third submission advanced on behalf of 'the Board', was based on the determination rendered by the trial Court, that the Accused had violated Section 12(1B) of the SEBI Act. Learned senior counsel pointed out, that the date of incorporation of M/s. Gaurav Agrigenetics Ltd. (-3.7.1995), of which the respondents/Accused were directors, was clearly brought out by way of concrete

evidence, before the trial Court. M/s. Gaurav Agrigenetics was undisputedly incorporated after 25.1.1995. It was further urged, that neither of the Accused directors disputed the fact that the company of which they were promoter-directors, was actually carrying on a collective investment scheme. Such being the undisputed factual position, it was asserted, that a breach of Section 12(1B), as applicable to the non-proviso category, was clearly established. And further, that such breach was affirmed by the trial Court. It was, therefore, the contention of the learned senior counsel representing 'the Board', that it was no longer open to the Accused to canvass, that the particulars of the offence under Section 12 (1B) were not clearly disclosed, in the complaint filed by 'the Board'.

37. We have given our thoughtful consideration to the contentions advanced at the hands of the learned senior counsel, in support of his third submission. We are, however, inclined to accept the submissions advanced at the hands of the Accused. Neither the complaint nor the charge-sheet filed against the Accused before the trial Court demonstrates, that the company in question commenced its collective investment activities on its own for the first time after 25.1.1995. It could well be, that an existing collective investment scheme covered by the proviso category under Section 12(1B), came to be purchased or taken over by the concerned company, after its incorporation. There is no bar against a newly incorporated company, restraining it from taking over an existing business. If that was the case, there would be no violation of Section 12(1B), since an existing collective investment scheme, which came into existence prior to 25.1.1995, could legitimately continue its operations under the proviso to Section 12(1B), without a certificate of registration, till

the framing of the Collective Investment Regulations. Therefore, merely the fact that the company under consideration was incorporated after 25.1.1995, in our view, would not be sufficient to demonstrate the culpability of the Accused, insofar as, the restraint against fresh commencement of collective investment activities under Section 12(1B) of the SEBI Act is concerned. In the above view of the matter, we find no merit even in the third submission advanced on behalf of 'the Board'.

38. The last submission advanced at the hands of the learned senior counsel for 'the Board', was based on Section 465 of the Cr.P.C. The said provision is extracted hereunder:- "465. Finding or sentence when reversible by reason of error, omission or irregularity.- (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

Relying on Section 465 of the Cr.P.C. it was contended, that after the

conclusion of a criminal case, resulting in recording an order of conviction, and also, the imposition of sentence, neither the findings nor the sentence were open to be revised or altered, merely "... on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code...". It was accordingly urged, that the mention of Section 12(1B) of the SEBI Act in the complaint, should be taken as sufficient to understand the particulars, on the basis whereof, the Accused were being proceeded against. It was accordingly submitted, that there was no justification whatsoever, in view of the clear mandate contained in Section 465 of the Cr.P.C., to interfere in the findings recorded by the trial Court, and/or to interfere with the sentence imposed. In addition to the aforesaid contention it was pointedly urged, that sub-Section (2) of Section 465 of the Cr.P.C. provided the benchmark, for interfering with such findings and sentence. It was submitted, that interference would only be permissible, in situations where the omission or irregularity would result in "failure of justice".

39. It was submitted, that the entire factual scenario was clear and transparent, and known to one and all. The date of incorporation of the concerned company, wherein the Accused were directors, is a matter of record, substantiated through cogent evidence produced before the trial Court. The fact that the Accused were directors of M/s. Gaurav Agrigenetics Ltd., was also undisputed. Neither the company concerned nor the Accused, had contested the fact, that they had sponsored or had been carrying on a collective investment scheme, which was initiated after 25.1.1995. Based on the undisputed and clear factual position narrated above, it was asserted, that no

one could arrive at the conclusion, in the facts and circumstances of the case, that the findings recorded by the trial Court, had occasioned a “failure of justice”.

40. In order to support the above contention, the learned senior counsel for ‘the Board’, placed reliance on State of M.P. vs. Bhooraji, (2001) 7 SCC 679, wherefrom the Court’s attention was drawn to the following observations:-

“8. The real question is whether the High Court necessarily should have quashed the trial proceedings to be repeated again only on account of the declaration of the legal position made by the Supreme Court concerning the procedural aspect about the cases involving offences under the SC/ST Act. A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert “a failure of justice”. Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial. This is because the appellate court has plenary powers for revaluating and reappraising the evidence and even to take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes unpreventable for the purpose of averting “a failure of justice”. The superior court which orders a de novo trial cannot

afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the trouble to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation.

12. Section 465 of the Code falls within Chapter XXXV under the caption "Irregular Proceedings". The Chapter consists of seven sections starting with Section 460 containing a catalogue of irregularities which the legislature thought were not enough to axe down concluded proceedings in trials or enquiries. Section 461 of the Code contains another catalogue of irregularities which in the legislative perception would render the entire proceedings null and void. It is pertinent to point out that the former catalogue contains the instance of a Magistrate, who is not empowered to take cognizance of offence, taking cognizance erroneously and in good faith. The provision says that the proceedings adopted in such a case, though based on such erroneous order, "shall not be set aside merely on the ground of his not being so empowered".

13. It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions division are not liable to be set at naught merely on that ground. However, an exception is provided in that section that if the court is satisfied that

proceedings conducted erroneously in a wrong sessions division “has in fact occasioned a failure of justice” it is open to the higher court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated ipso facto merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned a failure of justice. Then alone the proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned a failure of justice. 14. We have to examine Section 465(1) of the Code in the above context. It is extracted below: “465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.”

15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error,

omission or irregularity has occasioned “a failure of justice” the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by “a failure of justice” occasioned on account of such error, omission or irregularity? This Court has observed in Shamnsaheb M.Multtani v. State of Karnataka, (2001) 2 SCC 577, thus: (SCC p. 585, para 23): “23. We often hear about ‘failure of justice’ and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression ‘failure of justice’ would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment), (1977) 1 All ER 813. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. 23. We conclude that the trial held by the Sessions Court reaching the judgment impugned before the High Court in appeal was conducted by a court of competent jurisdiction and the same cannot be erased merely on account of a procedural lapse, particularly when the same happened at a time when the law which held the field in the State of Madhya Pradesh was governed by the decision of the Full Bench of the Madhya Pradesh High Court. The High Court should have dealt with the appeal on merits and on the basis of the evidence already on record. To facilitate the said course, we set aside the judgment of the High Court impugned in this appeal. We remit the case back to the High Court for disposal of the appeal afresh on merits in accordance with law and subject to the observations made above.”⁴¹. We have given our thoughtful consideration to the last submission advanced at

the hands of the learned senior counsel for 'the Board'. It is, however, not possible for us to accept the same. We are of the considered view, which clearly emerges from the observations rendered in Bhooraji's case (supra), that Section 465 of the Cr.P.C. pertains to omissions or irregularities in matters of procedure. It is, therefore, that both the sub-Sections of Section 465, pointedly refer to proceedings under the Cr.P.C. Added to the above it is of some significance, that Chapter XXXV of the Cr.P.C. include Sections 460 to 466. The heading of the instant Chapter is "Irregular Proceedings". Not only that, each one of the Sections in Chapter XXXV of the Cr.P.C. make pointed reference only to matters of procedure. There can be no doubt, therefore, that omissions and/or irregularities in matters of procedure can be overlooked, subject to the condition, that such an omission or irregularity does not occasion "failure of justice". This is our understanding of Section 465 of the Cr.P.C.

42. Having so interpreted Section 465 of the Cr.P.C., we may also indicate, that material facts constituting the offence, for which an Accused is being charged, must mandatorily be put to the Accused. Lack of material facts, which are vital to establish the ingredients of an offence, cannot be viewed as a procedural omission. The above requirement is not procedural, but substantive. Accordingly, it is not possible for us to accept that the lapse which the appellant desires this Court to overlook and exempt, can be overlooked under Section 465. We are also of the considered view, that irregularity and omission in the present case, in not disclosing to the Accused, the particulars of the offence for which they were being proceeded against, would occasion "failure of justice". Thus viewed, it is not

possible for us to accept the contention advanced at the hands of the learned senior counsel, that the pending proceedings before the trial Court, should not be interfered with."

17. From the above discussions it is clear that the Hon'ble Apex Court has come to conclusion that the complaint averments without any particulars of accusation could not make out an offence and in the absence of particulars of offence, no one can be tried or punished for the same. The said decision of the Hon'ble Apex Court is squarely applicable to the case on hand, as here also, the complaint averments does not spell out the exact particulars of the accusation as against the Accused herein. The accusation are vague, bald and general in nature. Therefore, this court is of the considered view that the Accused herein are also entitled to the benefit of the decision of the Hon'ble Apex Court in SEBI vs. Gaurav Varshney cited supra.

18. Further, the learned counsel for the defence contended that in this case, one Pradeep Ramakrishnan was examined as P.W.1 and he claimed to be the Assistant General Manager of SEBI and according to P.W.1, he was authorised to let in evidence for and on behalf of the complainant vide Ex.P1. The learned counsel for the defence contended that Ex.P1 is said to be the letter of authority, but, it was given by the Regional Manager of the SEBI, who has no power to delegate. No document has been filed to show that he has such a power of delegation. The document purported to be issued by the Director of the SEBI, there is no signature and all the documents purported to be signed by the Manager. Further,

he contended that even assuming that Ex.P1 is issued by the complainant, page-2 of the Ex.P1 shows that only the Regional Manager with the approval of the DGM who has powers to file complaints and affidavits before courts. There can be no further delegation of powers.

19. On careful perusal of Ex.P1, it is found that a photostate copy of the Letter of Authority said to have been issued by C.B.Bhave, Chairman of SEBI is marked as Ex.P1. It was not made clear as to why the original Letter of Authority was not produced before this court. As per Sec.65 of the Evidence Act, unless the circumstances mentioned in Sec.65 is proved, no secondary evidence can be let in before the court. Therefore, without proving the absence of original, the photostate copy filed by the complainant to prove the Letter of Authority cannot be proved by way of secondary evidence.

20. Further, on careful perusal of Ex.P1, it is found that the Chairman of the SEBI has authorised one S,V.Divya, Manager to sign or affirm Vakalatnamas, Complaints, Plaints, Applications, Petitions, Written Statements, Replies, Affidavits etc. The said Divya has filed the complaint before this court. Further, she was not examined before this court and it was not made clear before this court as to why the said Divya was not examined before this court. Further, on careful perusal of Ex.P1, it is not authorised the said S.V.Divya, Manager to delegate her powers to some other person. It is well established principle of law that delegatus non potest delegare, that the delegate cannot further delegate. Therefore, it is clear that the evidence of P.W.1 before this court is of no authorisation and

this court cannot act upon the said evidence.

21. Further, on careful perusal of Ex.P1, it is found that one Regional Manager has authorised P.W.1 herein to appear and prosecute criminal complaint filed before this court. The said authorisation does not authorise PW1 to depose before this court. The Hon'ble Apex Court in S.Kesari Hanuman Goud vs. Anjum Jehan reported in (2013) 12 Supreme Court Cases 64, has clearly held that an act before the court does not include deposing before the court for and on behalf of the Principal. It would be useful to refer to the following observations of the Hon'ble Apex Court for better appreciation:

“23. It is a settled legal proposition that the power-of-attorney holder cannot depose in place of the principal. The provisions of Order 3 Rules 1 and 2 CPC empower the holder of the power of attorney to “act” on behalf of the principal. The word “acts” employed therein is confined only to “acts” done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term “acts”, would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any “acts” in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled (sic liable) to be cross-examined. (See: Vidhyadhar v. Manikrao, Janki Vashdeo Bhojwani v. Indusind Bank Ltd., Shankar Finance and Investments v. State of A.P and Man Kaur v. Hartar Singh Sangha).

22. Further, on careful perusal of Ex.P1, it is found that a certified copy of the extract authorising the Manager to sign and affirm affidavit, reply, application, complaint,

petition, written statement, counter etc. is enclosed. On careful perusal of the enclosure, it is found that only page No.26 of 37 is enclosed, not the whole document. Page 26 of 37 speaks about signing and affirming affidavit, reply, application, complaint, petition, written statement, counter etc. to be filed before any Court, Tribunal, Forum, Authority etc. on behalf of SEBI. The power is delegated to the Manager of the OD with approval of DGM. If substantial legal issues are involved, LO with approval of DLA. The said page does not disclose anything about the deposing before the court. Further page 1 of 37 was also enclosed, which speaks about the General Orders of delegation of powers. Further, it is not signed by Chairman of the SEBI, instead a photostat copy of the same is enclosed.

23. Further, on careful perusal of Ex.P2,P3, P7, P8, it is found that all the above are photostat copies and no originals were filed. As stated supra, without complying Sec.65 of the Evidence Act, secondary evidence cannot be let in before this court. Further, the Hon'ble High Court and the Hon'ble Apex Court in various decisions has clearly barred marking of xerox copies of documents as there is scope for manipulation. Therefore, the photostat copies in the absence of primary evidence cannot be relied upon to prove the complaint averments.

24. Further, Ex.P4 is the letter dated 13.12.1999 issued to the 1st Accused company stating that u/s 12(1)(B) of SEBI Act, no person shall carry on any Collective Investment Scheme unless he obtains a Certificate of Registration from SEBI in accordance with the Regulations. The learned counsel for the defence brought to the notice of this court

that the case of the Accused does not fall in Sec.12(1)(B) of the SEBI Act, but it fall under the proviso of Sec.12(1)(B) of SEBI Act. Proviso to Sec.12(1)(B) of SEBI Act reads as follows :

"Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30."

25. Further, on careful perusal of Ex.P4, it is found that the complainant has called upon the 1st Accused to apply for registration by December, 14, 1999 and SEBI has not received any application from the 1st Accused company in this regard. Therefore, by applying Sec.73(1) of Regulations of SEBI (Collective Investment Schemes) Regulations, an existing Collective Investment Schemes, which has failed to make an application for registration to SEBI, shall wind up the existing Collective Scheme and repay the investors. Further, it is cited Regulation - 74 to say that an existing Collective Investment Scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulations-73. Therefore, it is brought to the notice to the 1st Accused

company to send the information memorandum to the investors within two months from the date of receipt of intimation from the Board detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount is determined. Therefore, it is directed the 1st Accused company to take steps to comply with the provision of Regulation 73. Further, Ex.P6 is also the same effect, which is dated 29.12.1999. Admittedly, no acknowledgment card was produced to show that Ex.P6 was served upon the 1st Accused company. On careful perusal of Ex.P9, it is found that the 1st Accused company has informed the SEBI that the 1st Accused company has sent Information Memorandum to all their investors stating that the 1st Accused company does not propose to start any new scheme and therefore, does not proposed to seek registration with SEBI. Therefore, it is left with the investors to decide as to whether the company should continue with the existing scheme till its conclusion or to liquidated everything and pay the investors the proceeds. Most of the investors visited the plantation and they were satisfied with the maintenance and development of the plantations. All of them were in the opinion that the company should continue with the existing scheme till its conclusion and out of the total amount collected (Rs.2,21,18,500/-), the company received the consent for 88.05%, i.e., Rs.1,94,76,500/- Further, they expressed their hope that they may get the consent from balance investors at the earliest. The said letter was received by the SEBI on 9.1.2000. Further, the Information Memorandum circulated to various investors is produced before this court vide Ex.P10 series.

26. From Ex.D1, it is found that SEBI has informed the 1st Accused company that with the consent to continue with the scheme has been received from 25% or less of the total number of existing investors, the company is advised to make repayments to all the investors and in case positive consent to continue with the scheme at their own risk and responsibility has been received from more than 25% of the investors, repayments shall be made to all the investors, who have not given their positive consent and a detailed report in this regard shall be submitted to SEBI within three and half month from the date of information memorandum. Vide Ex.D2, the 1st Accused company has informed that 88.05% of the total investors have already given their consent in writing to continue with the scheme and they prayed for some more time and requested not to take any drastic legal action. Vide Ex.D3, the 1st Accused company has informed SEBI that it obtained consent from 93.7% of investors and they are agreeing to continuation of the scheme. While it is being so, the complaint has approached the learned XXIII Metropolitan Magistrate, Saidapet by lodging the present complaint dated 27.12.2001. The complaint does not disclose that the remaining 6.3% investors were not settled and therefore, the 1st Accused company is liable to be punished. Therefore, it is clear that the complaint is made with bald allegations without any particulars of accusation in respect of the 1st Accused company and in respect of each of the individual Directors.

27. The learned counsel for the complainant relied on the decisions of the Hon'ble High Court, Delhi in Ankur Forest & Project Development India Ltd. -vs- SEBI, wherein at page No.17 the Hon'ble Delhi High Court has stated as follows :

"Learned counsel for the Appellant has strenuously relied on the compliance certificate dated 28th July, 1998 Ex. CW1/2. Learned counsel states that this document cannot be read in part as the respondent is only relying on the undertaking given by the Appellant No.1 that they will comply with any further directions on collective investment scheme that may be issued by the SEBI from time to time but are not considering their explanation in the said exhibits that they had not floated any new collective investment scheme subsequent to public notice issued by SEBI on 18 th December, 1997 and they were not mobilizing any further funds under the existing schemes. This statement of the Appellants does not absolve the Appellants of their criminal liability even if they have not floated any new CIS after the public notice issued on 18th December, 1997. In terms of Regulation 5(1) the Appellant was bound to make an application for grant of certificate within two weeks from the date of coming into force of the Regulation which mandatory requirement was not complied with by the Appellants. They did not even comply with Regulation 74 which provided for the procedure as contemplated under Regulation 73 to formulate the scheme of re-payment. Merely writing to the Respondent that the Appellant was desirous of taking benefit of scheme under Section 12(1B), the Appellant was not absolved from the further

liabilities. Moreover, in the statement recorded under Section 313 Cr.P.C. the Appellant Nos. 2 to 5 have specifically denied knowledge of Ex. CW1/2."

28. The learned counsel for the complainant further relied on the judgment in *Sunita Bhagat & Others -vs- SEBI*, wherein the Hon'ble Delhi High Court has stated as follows :

"20. No evidence has been led by any of the appellants to prove that offence punishable under section 24 of the Act was committed by the company without their knowledge or that they had exercised all due diligence to prevent commission of the said offence. Therefore, being the persons in charge of and responsible to the company for conduct of its business at the time the offence punishable under Section 24 of the Act committed by the company, the appellants have rightly been convicted under Section 24 of the Act read with section 27 thereof.

21. For the reasons stated hereinabove, I find no reason to interfere with the conviction of the appellants under Section 24 of the Act read with Section 27 thereof.

22. Section 24 has since been amended so as to enhance the

maximum substantive sentence to ten (10) years, and to prescribe a fine up to Rs.25.00 crore. The amendment clearly indicates the seriousness, which the Legislature attaches to such contraventions. The purpose obviously is to deter persons such as the appellants from trapping the gullible investors, by promising them returns which are unrealistic and can never be given. Any unwarranted leniency towards such persons will be highly misplaced, besides being detrimental to the larger interest of the society.

23. In the facts and circumstances of the case, when admittedly all the investors have not been paid and there is no documentary evidence of even a substantial number of them having been paid, I find no good ground for reducing the substantive sentences awarded to the appellants or the fine imposed on them. The appeals are, therefore, dismissed. The appellants are directed to surrender forthwith before the trial court. If they do not surrender forthwith, the trial court shall take steps to secure their presence and commit them to jail. The amount of fine, unless already paid, shall be paid within three weeks from today, failing which the appellants shall undergo the sentence awarded to them by the trial court, in default of payment of fine."

29. The learned counsel for the complainant further relied on the judgment of the Hon'ble High Court of Bombay in Radheshyam Surajmal Khandelwal and another -vs- SEBI, wherein, the Hon'ble Bombay High Court has stated as follows :

"14. The section itself contemplates a deeming provision and the Legislature has laid down that every person who was incharge of and responsible to the company for the conduct of the business of the company at the time when the offence was committed, as well as the company shall be deemed to be guilty of the offence. The said person in the capacity of the director shall be liable to be proceeded against the punished according to law. That the 3 Judge Bench Judgment in the case of Ramraj Singh has held that:

"It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case."

15. This court is of the opinion as in the present situation, it would not be open to this court to interpret the mandatory deeming provision in the Statute itself. These are rebuttable presumptions and the same can be rebutted at the time of recording of evidence. It would not be appropriate to exonerate the Accused, only upon

considering mechanically, that the complainant has not ascribed any specific role to the particular Accused persons. That by virtue of being director, Statutory provision would not render any person liable to be punished if he proves that offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of the offence. In short, the onus shifts on the Accused to disprove the allegations.

17.This Court is of the opinion that the Accused cannot get a complaint quashed merely on the ground that apart from the basic averment, no particulars are given in the complaint about his role because ordinarily the basic averment would be sufficient to send him to trial and specific role to be attributed to him could be a matter of substantive evidence. The director is to make out the case that would suggest that taking the averments in the complaint by itself and sending him to trial would be an abuse of process of Law. In view of the deeming provision, complaint cannot be quashed for the asking and that it is incumbent upon the courts to follow the statutory provisions and take the intention of Legislature to its logical end. It is in these circumstances that the Court is of the opinion that no case is made out for quashing the complaint."

30. The learned counsel for the complainant further relied on the judgment of the Hon'ble High Court of Delhi in Shalender Kaushik -vs- SEBI, wherein the Hon'ble Delhi High Court has stated as follows :

"1. Section 12 (1B) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the Act'), which came to be inserted w.e.f. 25.1.1995, provides that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme (for short 'CIS') including mutual funds, unless he obtains a certificate of registration from the Securities and Exchange Board of India (for short 'SEBI) in accordance with the regulations. The proviso to the aforesaid sub-section, permits any person, sponsoring or causing to be sponsored, carrying or causing to be carried on any such fund or scheme operating in the security market immediately before 25.1.1995, for which no certificate of registration was required prior to the said date, to continue to operate till such time Regulations are made under clause (d) of sub-section (2) of Section 30, which to the extent it is relevant, permits SEBI to make Regulations inter alia providing for the conditions subject to which certificate of registration is to be issued, the amount of fee is to be paid for certificate of registration and the manner of suspension or

cancellation of certificate of registration under Section 12 of the Act.

17. As regards sentence awarded to the appellants in Crl. A. Nos.330/2010, 331/2010 & 332/2010, being Mr. Brijinder Makkar, Mr. S.P. Kalia, Mr. Manoj Kapur respectively, though it was submitted by the appellants, during the course of arguments that the principal amount stands paid to all the investors, the learned counsel for SEBI pointed out that no material in this regard was produced either before SEBI or before the trial court despite specific opportunity given for this purpose. In the absence of production of evidence which the Company must be having in its possession and, therefore, could easily have produced either before SEBI or before the trial court, the contention of the learned counsel for the appellants cannot be accepted. In fact no receipt from any investor is annexed to the report submitted to SEBI."

31. The learned counsel for the complainant further relied on the judgment of the Hon'ble High Court of Delhi in Samarpan Agro & Livestock Ltd. -vs- SEBI, wherein, the Hon'ble Delhi High Court has stated as follows :

"14. In Vishnu Prakash Bajpai vs. Securities and Exchange Board of India, a Single Judge of this Court has also taken similar view.

It was held as under:-

"The Company N.R. Plantations (India) Limited contravened the provisions of SBI Act by not refunding the money collected by it from the persons who had invested money in its Collective Investment Schemes and this offence is a continuing offence till the time the Company complies with the regulations and directions issued by SEBI by refunding the money to the investors."

15. The view taken by the Madras High Court in M/s.Rhodanthe Agro Limited vs. Securities and Exchange Board of India (supra) is no different. It was held as under:-

"23. In the above said circumstances, I am of the opinion that the non-compliance of Regulations 73 and 74 for winding up the company is continuing in nature. Hence, the trial court is correct in coming to the conclusion that the offence is continuing in nature. Section 24 of the SEBI Act is amended by SEBI Act (Act No.59 of 2002) with effect from 29.10.2002 and the offence under the Act was punishable with imprisonment for a term which may extend to ten years or with fine which may extend to 25 crore or with both. In such circumstances, I am of the opinion that the

petition is not barred by limitation under Section 468 of Cr.P.C."

32. The learned counsel for the complainant further relied on the judgment of the Hon'ble Apex Court in M/s.P.G.F.Limited & Others -vs- Union of India and another (Civil Appeal No.6572 of 2004, wherein, the Hon'ble Apex Court held as follows :

"52. The above conclusion of ours can be culled out from the sample documents placed by the appellants before the Court. The appellants, however, failed to supply any material till date to demonstrate as to how and in what manner any of the lands said to have been sold to its customers were developed and thereby any of the customer was or would be benefited by such development, it is imperative that the transaction of the PGF Limited vis-a-vis its customers has necessarily to be examined as to its genuineness by subjecting itself to the statutory requirement of registration with the second respondent followed by its monitoring under the regulations framed by the second respondent. All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a scheme/arrangement. Apart from the sale consideration, which is hardly 1/3 of the amount collected

from the customers, the remaining 2/3 is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time. It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the

conclusion of the Division Bench in holding that the nature of activity c PGF Limited under the guise of sale and development of agricultural did fall under the definition of collective investment scheme under section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion"

33. Though the learned counsel for the complainant relied on those decisions, in this case, as stated supra, the complainant has not come up with any specific details as to how the offence was made out and has not let in any acceptable evidence before this court to prove the averments. Therefore, this court is of the considered view that the complainant failed to make out a case against the Accused that the Accused had committed violation u/s 12(1B) of Securities and Exchange Board of India Act, 1992 and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the said regulations.

34. Further, in the complaint averments, though it is contended that the Accused 2 to 5 are the Directors of the 1st Accused company and they are responsible for the day to day administration of the company, nothing was brought on record to show that at the time of Regulation was brought into force, the Accused were Directors and were responsible for the day to day affairs of the company. None of the documents were signed by the Accused 3 to 5 and even the communications were not made to them. The SEBI has not produced any document to show that the Accused 2 to 5 were actively involved in the affairs of the 1st

Accused company. Therefore, this court is of the considered view that the complainant has filed to prove its case beyond all reasonable doubt and therefore, the Accused herein are entitled for acquittal from the charges levelled against them.

35. In the result, the Accused 1, 2, 4 and 5 are found not guilty of the offences punishable u/s 24(1) of SEBI Act r/w 27 of SEBI Act and they are acquitted from the said charges. The said acquittal is recorded u/s 235(1) of Cr.P.C. Pending Trial, the Accused 3 died and therefore, the charges against him got abated.

(i) The Accused were not arrested. No bail bond was executed.

(ii) No material object was recovered and marked before this court and therefore, no property order is passed.

Dictated to the stenographer, transcribed by him,, corrected and pronounced by me in the Open Court this, the 19th day of December, 2024.

KARTHIKEYAN Digitally signed by
SHANMUGAM KARTHIKEYAN
Principal Sessions Judge, Chennai. SHANMUGAM

List of prosecution side witnesses:-

P.W.1 - Thiru.Pradeep Ramakrishnan.

List of prosecution side Exhibits:-

Exhibit No.	Date	Description of Document
Ex.P1	11.06.2010	Letter of Authority.
Ex.P2	--	Press Release of SEBI.
Ex.P3	10.12.1999	Public Notice of SEBI.
Ex.P4	13.12.1999	Letter from SEBI to the 1st accused company.
Ex.P5	3.1.2000	Acknowledgment card.
Ex.P6	29.12.1999	Letter from SEBI to the 1st accused company.

Ex.P7	--	Paper publication in Hindustan Times.
Ex.P8	7.12.2002	Copy of Directions issued by SEBI.
Ex.P9	--	Letter from 1st accused company to SEBI along with details of Scheme Participant / Investor.

List of Material Objects:-

-Nil-

List of Defence side witness and Material Objects :-

D.W.1 Thiru.Krishna Kumar K.Bhammer.

D.W.2 Thiru.V.Sreekumar,.

List of Defence side documents :-

Exhibit No.	Date	Description of Document
Ex.D1	30.1.2001	Letter from SEBI to the 1st accused company.
Ex.D2	18.1.2001	Letter from 1st accused company to SEBI.
Ex.D3	28.2.2001	Letter from 1st accused company to SEBI along with details of scheme participant / investor.
Ex.D4	1.9.998	Report of the 6th Annual General Meeting.
Ex.D5	16.6.1999	Letter from the 1st accused company.
Ex.D6	1997-1998	Annual Accounts.
Ex.D7	1998-1999	Annual Accounts.
Ex.D8	January 1987 to June 2022	Encumbrance Certificate along with Sec.65B Indian Evidence Act certificate.
Ex.D9	31.3.1999	Auditor's Report and Balance Sheet from 1999 to 2001.
Ex.D10 series	23.11.2000	Information Memorandum give by the investors.

KARTHIKEYAN SHANMUGAM
 Digitally signed by KARTHIKEYAN SHANMUGAM
Principal Sessions Judge.

Draft / Fair Judgment :

C.C.No.79/2019

Dated : 19.12.2024.