MHMM150086262009

Presented on	: 10-06-2009
Registered on	: 10-06-2009
Decided on	: 20-07-2026
Duration	: 20 Yrs 01 M 10 Days

(Para 44(i) of Chapter VI of Criminal Manual)

J U D G M E N T

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
(62nd COURT), DADAR, MUMBAI
(Presided over by Nilesh N. Dhend)

(Date of the Judgment: 20th July, 2026)
Case No. 59/SW/2009
CNR No. MHMM15-008626-2009

COMPLAINANT		Reserve Bank of India Through Sanjay Kumar, Dy General Manager, Urban Banks Department, Reserve Bank of India, Mumbai.
REPRESENTED BY		Ld. Advocate Anchit Ozha for the complainant.
ACCUSED		1) Memon Co. Op. Bank, Patel and Sony Arcade, 1st floor, 234 Bellasis Road, Mumbai- 08 2) Imran Ashraf Furniturewala (Chairman) R/o:- 62- Peridot, 22A, Perry Cross Road, Bandra (W), Mumbai 50 3) Umar Abubakar Merchant (Abated) 4) Shehzad Zaveri (Director) R/o:- M/s Minawala Jewellers, Heera Panna, Haji Ali, Bhulabhai Desai Road, Mumbai- 26 5) Anwar Shakoor Zuncunia (Abated) 6) Nazim Ashraf Furniturewala (Director)

		R/o:- 62, Peridot, 22A, Perry Cross Road, Bandra (W), Mumbai-50 7) Khizer Ahmed (Director) R/o: C-34, 2nd floor, Malviya Nagar, New Delhi, 07 8) Atta Khatri (Director) R/o: ZAF, Regime Narang, 07th Road, Khar & Linking Road Junction,Khar(W), Mumbai 9) Rafique Yusuf Ingaria (Director) R/o: 58, Moghul House, 03d floor, Banian Road, Mumbai. Kapadia Complex, C wing, Flat No. 302, near Ajit Glass Factory, Jogeshwari (W), Mumbai 10) Shashi Kant Sharma (Director) R/o: C-2490, Sushant Lok-1, Gurgaon, Haryana. 11) Padmakar Shripad Telang (Abated) 12) Irfan Ashraf Furniturewala (Special Advisor to the Board) 62, Peridot, 22A, Perry Cross Road, Bandra (W), Mumbai.
REPRESENTED BY		Ld. Adv. Shri Memon for accused No. 02,04,06, 07 to 09 Ld Adv. Shri Sharma for accused No. 10. Ld Adv. Shri Vikram Sutare for accused No. 12.

1] Accused are facing trial for offence punishable under Sections 31 r/w section 46 (A) and section 47, 56 of the Banking Regulation Act, 1949 r/w section 120 (B) of Indian Penal Code. (Hereinafter referred to as "Act.").

2] Present complaint is filed by P. K. Arora, Deputy General Manager, Urban Banks Department, Reserve Bank of India, Mumbai. Subsequently, substituted by Sanjay Kumar. Accused No. 01 is M/s Memon Co-operative Bank Ltd and the complainant issued a licence No. ACD MH 155-p dated October 12, 1979 under section 22 of the Banking Regulation Act, 1949 to carry on the business of banking. The accused No. 01 got re-registered as a multi-state co-operative society under the Multi-State Co-operative Societies Act, 1984 and carried the business of banking within the area of the State of Maharashtra and Gujrat. Accused No. 01 constitutes the body as under. Accused No. 02 - chairman, Accused No. 03- vice-chairman, accused No. 04 to 10- Directors, accused No. 11- Executive Officer and accused No. 12 - Special Advisor who were in charge and responsible for the affairs of accused no. 01 for the conduct of its business at the time of default from 31.03.2006 to 23.01.2009 till the Board of Directors was superseded on 23rd January 2009 and an Administrator appointed based on the order dated 23/01/2009 passed by the complainant and as such are also guilty and liable to the proceeded under section 46 of the Act. Further, complainant bank conducted an inspection with reference to the financial position as on 31/03/2008, it was revealed that the accused No. 10 as Expert Director and Accused No. 12 as Special Advisor to the board were in charge of and responsible for the affairs of the accused no. 01 bank.

3] It is further case that, according to section 31 of Banking Regulation Act, the accused No. 01 bank was supposed to file balance sheet, profit and loss statement alongwith statutory auditors report in three copies, one copy should be supplied to the complainant within six months from the year ending which shall be extended to further three months as per circular dated 24/11/1967. It is further contended that, said compliance was to be reported under section 29 of banking regulation. It is also required that said balance sheet alongwith profit and loss statement and audit report shall be published. However, accused No. 01 bank failed to publish according to section 31 and therefore, they are guilty.

4] It is further case that the complainant's bank had declared accused no.01 bank to be a sick bank on 30/07/2004 and therefore, the frequency of inspection was to be carried out on an annual basis. Accordingly, on inspection the complainant's bank had carried out inspection for the year ending 31/03/2005, 31/03/2006, 31/03/2007 and 31/03/2008. Accordingly inspection of year ending 31/03/2006 was concluded in the year 2008 and penalty of Rs. 5 Lakhs in view of section 47 (A) (1) r/w Section 46 (4) was imposed on the accused's bank on 01/09/2008. It is further case that, it was discovered to the complainant's bank that, according to section 31 of banking regulation act, the accused bank had not disclosed the additional disclosure on "notes of account" for the year ending 31/03/2006, 31/03/2007 and 31/03/2008 in view of circular dated 30/10/2002.

5] It is further the case that, in spite of suffering loss, accused No. 01 bank has disclosed in the accounts that they are having profits, a table showing profit and loss as per statutory audit report is mentioned in the complaint. It is the case that, accused No. 01 bank has falsely shown profit of Rs. 13,34,000/- 5,95,000/-, 5,77,000/- for above year ending, however, they have suffered a loss of Rs. 5409.52 Lakh, Rs. 7493.65 Lakhs and Rs. 9153.12 Lakhs for the above period and deliberate have omitted to furnish complete report by annexing the statutory report alongwith documents supplied to the complainant's bank. As such, accused No. 01 bank has committed willful default and therefore, liable under section Banking Regulation Act. Accused No. 01 bank by making a false statement willfully or willfully omitting to make a material statement and had committed an offence under section 46 (1) of Banking Regulation Act. It is further the case that, according to section 46(5), the person in charge of the bank according to Co-Operative Bank Act r/w section 56 of the said Act are to be prosecuted for the contravention. Thereby all accused in furtherance of their common intention and in collaboration with each other committed an offence punishable under section 46 r/w 31 and 56 of the Banking Regulation Act 1949 and section 120-B of Indian Penal Code, 1860.

FRAMING OF CHARGE

6] Charge came to be framed against all accused. They have pleaded not guilty.

7] In order to substantiate its contention, the complainant has examined C.W. No. 01 Sanjay Kumar (Exh.60).

8] All incriminating circumstances appearing against the accused were referred to them while recording their statement under Section 313 of Cr. P. Code. Their defence is of total denial and false implication. Further, accused No. 02 have examined himself at Exh. 182 and accused No. 10 have relied upon documentary evidence by calling said documents by way of production warrant.

9] Following points arose for determination on which findings are recorded for the reasons stated thereunder.

SR. NO.	POINTS FOR DETERMINATION	FINDINGS
1	Does the complainant's bank prove that, for the period of 31/03/2006, 31/03/2007 and 31/03/2008 when accused no. 02 was Chairman, accused nos. 4, 6 to 9 were Directors, accused No. 11 was General Manager- Chief Executive Officer and accused No. 12	In the negative

	was Special Advisor to the Board of accused No. 01 and made false statement willfully and willfully omitted material statement in balance sheet and other documents of about loss and profit of accused no. 01 to the Reserve Bank of India and thereby committed an offence punishable under section 31 r/w section 46 (A) and section 47, 56 of Banking Regulation Act, 1949 r/w section 120-B of Indian Penal Code as alleged ?	

REASONS

AS TO POINT NO 01

10] Heard arguments of both sides at length.

11] Ld Advocate for the complainant going through the evidence of the representative of the complainant's bank and the evidence given by accused no. 02 have argued that the complainant's bank has examined Mr. Sanjay Kumar, who is deputy manager and authorised by the bank to give evidence. He further submitted that all the designations of accused are elaborated in the evidence. He further submitted that, it is not disputed that the accused No. 01 bank was declared to be a weak bank and therefore, was under the supervision of the complainant. He further submitted that, accused No. 01 bank had shown profit from unrealized interest income and had not shown in the balance sheet and profit and loss statement that the bank was suffering losses. The deposition of C.W.No.01 further discloses that, according to section 29 of Banking Regulation Act, it is necessary to publish auditor reports in local news papers and it was necessary to publish the same on yearly basis. However, accused No. 01 bank had published incorrect auditors and performance reports, a copy of which was sent to the complainant's bank. It is further deposed that, the complainant's bank had imposed Rs 5 lakh fine after it was declared to be a weak bank. Accordingly, inspection of the accused's bank was carried out on a yearly basis from the year 2005 to 2008. As there was no improvement or progress in the activity of the bank on 23/01/2009, the said accused’s bank was superseded by appointing an administrator Mr. R. B. Iyyer as per order of V. L. Das, then executive director of the complainant's bank. Said order is marked as Exh. 141 during evidence. Said order was acknowledged by P.S. Telang, General Manager of the accused's bank and acknowledgment is filed at Exh.142. In order to show that, accused no. 02 to 12 were incharge, the complainant bank had submitted 43rd annual report by which it can be seen that, accused No. 02 to 12 were directors, executive officers and legal advisors of the accused No. 01 bank. The 43rd Annual Report is marked as Exh.143. According to argument, accused No. 02 to 12 were responsible and were liable to follow the guidelines issued by complainant's bank, however, on perusal of Exh. 146 to 148 i.e. balance sheet and profit and loss statement for the year 2006 to 2008 in which the accused bank had not annexed the report of statutory auditor alongwith balance sheet and profit and loss statement. A statutory audit report is filed by the complainant’s bank at Exh. 151 and 152. It was further argued that, by an order dated 30/10/2002 the bank was directed to furnish true and correct extract of their bank and also to publish irregularities pointed out by the auditor in the section of notes of audit.

12] On the basis of evidence given by accused No. 02, he submitted that, this accused has produced on record Article A i.e. newspaper of Hindusthan Urdu Delhi which was subsequently marked as Exh.194 in the cross examination. He further pointed out Exh. 194 stated that, in the said newspaper, accused have admitted to have published wrong information which was tried to be clarified by way of "corrigendum due to omission" and admitted the default. He further submitted that, according to section 31 of Banking Regulation Act, it was mandatory to comply with the compliance in the section 29 of the said Act by furnishing fully true and correct statements alongwith statutory auditor report in newspaper and also to forward the same to the complainant's bank. He drew my attention towards documents at Exh. 146 to 148 stating that the accused's bank has shown the profit instead of loss and has also not published the same as specified by the section. More so, he further submitted that, statutory auditors report was not attached with the said statement and came to be forwarded afterwards to the complainant's bank and marked as Exh. 151 and 152. During cross examination of the accused he admitted said fact and therefore, when the complainant had proved that, accused no.02 to 12 were incharge according to 43rd Annual Report and were looking after business of accused no. 01 bank, the responsibility shifts upon the accused to show that there was no default. He further pointed out that the accused no. 10 have filed the documents which are not proved by oral evidence and therefore, those should not be considered.

13] Ld Advocate for the complainant further submitted that, accused co-jointly have committed said offence and as per section 31 of Banking Regulation Act, those who are responsible for the affairs of the society/accused No. 01 are seen to have committed and omission in submitting the returns by not attaching the statutory auditors report and therefore, liable for punishment. He further submitted that, when there is willful default on the part of the accused while submitting profit and loss, balance sheet and statutory audit report in three copies and published the same in a local newspaper, then the accused are to be prosecuted and punished. He further submitted that, cogent evidence has been brought on record by the complainant, who is authorized for giving evidence, filing of complaint and therefore, accused are liable for conviction.

14] Ld Advocate for the accused No. 10 submitted that, he is a nominated director, as per complaint "expert director", and it reveals from the evidence, however, it has to be seen when he was appointed, he submitted that, in year 2008 the accused No. 10 was appointed as a director by nomination. On 25/09/2008 this accused had reported to the complainant bank regarding the transactions that took place in accused no. 01 bank. It was further submitted that, complainant's bank willfully did not produce the documents, said documents, however, have relied only upon the 43rd Annual General Report of accused No. 01 bank. For the period of 2005-2006, 2006-2007 and 2007-2008, this accused was not related to the bank. He came to be nominated as per the suggestion of complainant's bank in the year 2008 and thereafter, the bank was superseded by the administrator on 23/01/2009. Under such circumstances, there is no role of accused No. 10 in the said offence and prayed for acquittal. While praying for acquittal, he submitted that, the documents are produced by the witness and already referred to the complainant witness during cross examination and marked as Exh. 165 and therefore, the complainant's bank should compensate this accused he lastly prayed.

15] On behalf of accused No. 12 who is a special advisor of accused No. 01 bank, argued that there is no document on record to specify the role of this accused. He is the advisor and legal or otherwise are expected to be proved by the complainant in his evidence. But, on cross examination the complainant admits that they do not have any document to show that there was any advice given by the accused No. 12 and therefore, he is entitled for acquittal.

16] On behalf of accused No. 2,4, 6 to 9 it was argued that the complainant's bank had failed to lead the 'best evidence' because, despite being in existence V.S.Das who had authorized the accused bank in the hands of administrator was required to be examined which would have shown the reasons for appointment of administrator. The complainant had failed to further examine the complainant P. K. Arora who has retired from his services. Not at fault, he led an example of a police case, stating that even though the police officer retired from his services, he comes for the evidence before the Court for his institution. In this case, the complainant was in a position to bring these witnesses before the Court, so that there could be best possible evidence on record to conclude that the accused are at fault.

17] During his further argument he pointed out that, according to section 41 of Multi State Co.Op Bank, "the board of directors are erected by members in general body meetings while the executives are appointed by the member to look after the day to day business of the Multi State Co Op Bank. In this case, accused No. 11 was the chief executive officer appointed for working of accused no. 01 and he was a full time employee of accused No. 01. Under such circumstances under section 47 penalty can be imposed upon the defaulted bank which may be up-to 1 crores or twice the amount involved in the contravention or default. However, in this case, a fine of Rs. 5 lakhs was imposed by the complainant bank on accused no. 01 and it has been paid for the inspection concluded in the year 2008 by speaking order dated 01/09/2008. Then, it was the complainant to show why the accused are again prosecuted for the similar offence as after that date approximately the process of superseding the accused bank had taken place and was superseded on 23/01/2009. On the basis of same inspection this case is filed.

18] He further submitted that, on going through documents Exh. 146 to 148, it can be seen that, those are profit and loss and balance sheet of accused no. 01,however, the annexure is not attached. He further stated that, accused No. 11 was chief executive officer who after his services from Reserve Bank of India i.e. complainant bank have taken over charge of accused no. 01 bank and he was an expert in the same. He further relied on Exh. 186 i.e. specifically second page of Exh. 186 in which “do and don't” for corresponding bank alongwith accused bank was led down by the complainant bank. He further pointed out that as per order of the complainant bank executive officer shall take over the function of the accused no. 01 and the rest of the board of directors were not allowed to participate in the day to day activities. He further pointed out that the witness examined by the complainant bank was appointed in the year 2016. He does not have his own and adequate knowledge about the transaction and default committed by accused no. 01. He is unaware of what was earned (profits) by Bank of Baroda after accused no. 1 bank was superseded by Bank of Baroda by way of merger. He further submitted that, it is defence of the accused that, Bank of Baroda have earned huge profit after merger of accused no. 01 bank, however, this witness seems to be ignorant of the fact to produce the evidence about what profit and losses were earned or lost by bank of baroda after merger of accused no. 01 bank. He further submitted that there was no litigation against accused no. 01 bank and its directors, either civil or criminal for recovery of any amount by its original stake holder, this complaint is the outcome of the arbitrary decision by which the merger took place.

19] On the point of statement furnished by the complainant bank on record Exh. 146 to 148, it is shown that, the accused no.1 bank have earned profits, however, according to complainant there were losses, the statutory auditor report in the form of annexure was not forwarded to the complainant and was not published. However, the same was filed by the complainant themselves before the Court and marked Exh.151 and 152. The paper publication at Exh. 194 is also on record. Only on the basis of these documents the complainant bank is before this Court and praying for punishment for the board of directors, who are reputed persons in their society.

20] After hearing both sides, it was necessary to scrutinize the evidence. Complainant's bank has examined its authorised representative i.e. Sanjay Kumar (CW-1). He deposed that, he was working as Deputy General Manager, RBI, Mumbai. He joined the department of Co.Op Bank Supervision branch in the year 2016. The present complaint was filed by P.K.Arora, the then Deputy General Manager of RBI. He was authorised on 27/02/2017 as a representative of RBI to conduct and participate in the matter by Executive Director of RBI namely Shri Sudarshan Sen. Accused no. 01 is registered Co.Op society and in the year 1979 the complainant bank approved accused no. 01 to engage in the business of banking for the limits of Mumbai. Accused no. 01 is also registered as Multi State Co.Op Society and got sanction to do business of banking in the State of Gujrat. Accused No. 02 Chairman, accused no. 03 vice-chairman and accused nos. 04 to 09 directors, accused no. 10 expert directors, accused no. 11 CEO and accused no. 12 was board advisor of accused no. 01. It was the duty of accused no. 02 to 12 to run accused no. 01 as per guidelines of the complainant bank. The complainant's bank is the regulator and supervisor of all the banking institutions in India. The complainant bank has power to supervise work in all the banking institutions through out India. After the supervision, the complainant bank has power to grade the banks. It also has powers to classify weak as well as strong banks on the basis of capital to risk weighted asset ratio, net non performing asset and profitability of the bank. If any bank's performance is not found up-to the mark, then it can be said it is a weak bank. The accused bank failed to follow the direction of the complainant bank then the complainant bank appoints administrator after suspension of the board. Accused no. 01 bank violated the directions of the complainants bank. It was found that accused no. 01 was showing profit from unrealized interest income. Accused No. 01 had also failed to follow the loan classification norms of the bank. Accused No. 01 had also shown profit even though it was in losses. Accused No. 01 had also failed to submit correct and true, profit and loss statements vide section 31 of the Bombay Regulation Act. Accused No. 01 bank published incorrect auditors report and performance report. Besides, the same had been sent to the complainant bank. He further deposed that, after knowing that accused no. 01 did the alleged act, the complainant's bank imposed a penalty of Rs. 5,00,000/-. On 30/06/2004 accused no. 01 bank declared as weak bank. The complainant bank started inspecting accused no. 01 bank on yearly basis. The inspection was held yearly basically from 2005 to 2008. But, there was no progress in the activity of accused no. 01 bank. Therefore, on 23/01/2009 administrator was appointed by suppression of the board. He further deposed V. S. Das was then executive director appointed to R.B.Iyyar as administrator of the bank. V. S. Das retired from the long bank. Further, order dated 23/01/2009 was forwarded to the accused by the complainant. The CEO of the accused bank has acknowledged the receipt of said order. From 31/03/2006 to 23/01/2009 accused no. 02 to 12 were in charge. The bank has submitted the 43rd Annual Report to RBI where names of all accused have been published. Accused no. 10 and 12 are arrayed as an accused because accused no. 10 was an expert director, while accused no. 12 was special advisor of the board of the bank. There was default in the year 2006 to 2008 as per RBI inspection report. On default called the explanation from the bank and also imposed penalties. Accordingly, they superseded the bank and put the bank under their directions. They superseded the bank and appointed the administrator. Finally they got said bank merged with Bank of Baroda to protect depositors interest and in larger interest of the banking system. They were supposed to run as per RBI guidelines and as per banking regulation act. They have not followed regulations and guidelines issued. According to guidelines they were to produce a true and correct picture of their balance sheet and profit and loss certificate of the bank duly certified by statutory auditors. Instead of that, they have produced a false balance sheet and profit and loss statement. Thus, they have misled all the stake holders like depositors, share holders and regulators of the bank. During inspection it was noticed that, bank was weak so it requires inspection on a yearly basis. During inspection 2006 to 2008 it was found that the bank incurred loss and the balance sheet of the accused bank showed profit. Further, the accused bank was not following directions issued by the complainant from time to time. So they superseded the bank and its board. On 30/10/2002 they directed the bank to furnish the bank true and correct extract of their bank and to publish the irregularities pointed out by statutory auditors of the bank, in the section notes of the auditor. It was observed that, report given by statutory auditors was not published by the accused in their annual report.

21] Cross examination on behalf of accused No. 2, 4, 6 to 9 discloses that the depositors have not made any complaint against the accused bank as they were paying the interest of the depositors on time. It is further admitted that, as the bank was merged into Bank of Baroda depositors' interests were absorbed by that bank. It is further admitted that, he cannot assign as to how much profit was earned by Bank of Baroda after its merger and that the bank of baroda had not kept separate accounts of the account holder in the accused bank. It is further admitted that, accused no.12 was special advisor and not the executive and therefore, not the member of the board. It is further seen from the cross examination that, P.K. Arora is not examined before the Court as he is retired from his services and therefore, was not asked by the complainant bank to come in the Court for evidence. Case was put forth that, on 26/01/2009 complainant's bank had issued a letter thereby allowing accused bank to resume banking transaction, initially it was not answered, however, subsequently the witness could not produce said document on record. The letter dated 26/01/2009 was produced alongwith list Exh.161. However, subsequently, after giving an opportunity for search of the letter in the records of complainant's bank, the witness deposed that he was not able to search said letter, however, admitted that said letter was issued by V. S. Das, then executive director to identify his signature. According to defence it can also be seen that on 23/01/2009 the order of superseading was passed and said letter is at Exh. 68. However, on 26/01/2009 the said letter was withdrawn. It is further brought on record that he cannot assign on 30/10/2002 what default was committed by the accused bank. It is further admitted that, the complainant bank has not taken any action against internal and external auditors nor any action was filed against the accused bank for misappropriation of funds of depositors, by the complainant bank or depositors. He cannot assign the date on which the statutory report was received to the complainant bank.He further admitted that, the balance sheet, profit and loss statement and statutory audit report forms two different parts.

22] Cross examination on behalf of accused No. 10 was based upon documents of the appointment of this accused in the accused bank. It was brought on record that this accused was the nominee director of Neftcap and not the elected director. Document Exh. 162 i.e letter dated 25/09/2008 was referred to the witness and he admits it to be not filed by the complainant's bank and has to search in their record. He cannot state that nomination of accused No. 10 was accepted in February 2008. By referring Exh. 163, i.e. order dated 01/09/2008 it was admitted that, the penalties were imposed on accused bank and no individual responsibility was fixed by imposing penalty. They have not produced any document to show that, accused no. 10 was involved in any fraudulent activity. He seems to be unaware of the appointment of accused no. 10 as a nominee director.

23] It is admitted by the witness in cross examination for accused no. 10, after giving opportunity to search the record in the complainant bank. Further, cross examination discloses that, as per Exh. 165 he cannot assign when the accused no. 10 was appointed as a nominee director. The witness further was unable to find on their record letters dated 18/08/2008 and 25/09/2008 by which accused No.10 came to be nominated as a director and the communication by this accused to the complainant bank. He denies to admit the deliberate act of destroying these documents. He further admits that, inspection report of financial year of 2005-2006, 2006-2007 are not filed on record. He denies that P.K. Arora having full knowledge about the concealment of the documents for charging the accused in the present case.

24] Cross examination on behalf of accused no. 12 discloses that this witness is unaware when the accused joined as an advisor in the accused bank. He further admitted that, at the time of filing the complaint, he was not serving in the concerned department of the complainant bank There is no document to show what act has been committed by accused no. 12 while acting as a special advisor.

25] Further, accused No. 02 Imran Ashraf Furniturewala (D.W. 01) has examined himself at Exh.182. In his evidence he have produced on record circular of RBI dated 01/07/2009 at Exh.187, letter dated 26/01/2009 and also circular dated 27/01/2009, newspaper of Hindustan Urdu Delhi at Exh.194 which was initially marked as Article A, balance sheet on which pointification is mentioned in the category of accounts at page 68, 70 and 71, the complainant alleged that he have not printed the said balance sheet, however said copy produced by complainant. Further, on 26/01/2009 when he met with V.S Das, he supplied a copy of the newspaper at Exh.194, thereafter, V. S. Das had issued the order dated 26/01/2009 marked as Exh. 188.

26] From cross examination it seems that the complainant is aware about the handling of accused No. 01 Bank at the hands of accused No. 11 P.S.Telang who was appointed as a Assistant General Manager of Accused No. 01 Bank alongwith his team. The blame game that accused No. 02 to 12 were incharge of accused no. 01 bank runs in cross examination. Reference of documents produced by complainant's bank at Exh. 165, 143, 146 to 148, 150, 151, 152 were referred to this witness. By showing particulars appearing in the document in its paragraph and points. A new case that Rs. 5 Lakhs penalty was imposed by RBI for several times was put up to this witness. Witness admits that, as per letter Exh. 149 a 5 Lakh penalty was imposed upon the accused bank. He further admits that the statutory auditor appointed was Shah and Gupta Chartard Accountant company, however, volunteers that, as per suggestion of registrar of Complainant's bank, it came to be appointed. Referring Exh 146 to 148 i. e. balance sheet for the year ending 2007 to 2009 were shown to the witness, confirming that, it do not bear notes of account. Witness admits that, profit and loss statement for the year ending 31/03 2006 to 31/03/2009 Exh. 149 bears his signature, however, denies to have submitted incorrect, hiding the loss and showing the profit. As the newspaper was referred to this witness marked as Exh. 194. It was answered by this witness to a question corrigendum due to Omission was put to which he answered that it was published by the Chief Executive Officer. Rest of cross examination is of denial.

27] Other accused have not entered in witness box. However, accused No. 10 have filed documents in support of his defence and referred above in arguments for this accused. Needless to mention these documents were referred to the complainant's witness during his cross examination, hence, I do not reiterate the same.

28] Defence as raised by accused in their statement referred to non responsibility of accused no. 02 to 12 in conducting the business of accused no. 01.

29] Once again I have pondered over the evidence and arguments based upon documents filed on record. It is seen that the case of the complainant is based upon two aspects, first that the accused no.01 bank through its directors i.e. accused no 02 to 12 have suppressed the losses caused to them and on the other hand have shown the profit, secondly that the accused No. 01 bank have not provided three sets of balance sheet, profit and loss account alongwith annexure of statutory audit report and therefore, are charged for the offence under section 31 r/w 46 (1) and 47

(5) of Banking Regulation Act.

30] Discussing the first aspect, the complainant had raised a case of suppression of losses. On going through entire evidence I have not found on record balance sheet and profit and loss statements and also a statutory auditors report by which the complainant bank had come to the conclusion that accused bank had suffered a loss and shown profits except the attachment to Exh 151 and 152. Balance sheet, profit and loss statement Exh 146 to 148 are placed on record. The witness was cross examined on that aspect pointing to the balance sheet and profit and loss account statement, it cannot be seen from where the conclusion has been arrived at by the complainant bank, has not been proved through the evidence. On the other hand balance sheet dated 31/03/2006 alongwith statutory audit report and signature of the associates of Shah and Gupta Company are seen to be endorsed on the same. Balance sheet at the last disclosures to be verified by Shah Gupta and Company (Photo copy). Similar is the situation with the statements for the year ending 31/03/2007 and 31/03/2008. All three statements were referred to as Exh 146 to Exh. 148. To the surprise the balance sheet showing profit as narrated by the complainant in his evidence is seen absent from record. From where the reference was acquired by the complainant bank was required to establish by way of strict proof. This being a criminal case it was the complainant who should have shown by way of evidence that there were losses and the profit came to be shown. Annexure report Exh. 151 and 152 filed on record for the year ending 31/03/2006 and 31/03/2007 are the documents where in the auditor Shah and Gupta company have shown that the accused N.01 bank have shown profit instead of loss. How this conclusion has been arrived at has to be proved by the complainant's bank but has not. The complainant bank had not examined representative of Shah Gupta and Company to prove the contents in Exh. 151 and Exh. 152 in its true sense. The complainant bank had produced the document through its authorised signatory but only for the reference said documents are marked as Exhibits number. The conclusion arrived by Shah Gupta and Company is not proved. Even though the complainant's bank have referred these documents alongwith Exh. 146 to 148. How it co-relates to the contentions in the complaint has not been proved. Meaning to say that everything in a criminal case is required to be proved beyond reasonable doubt. More particularly stating that, the complainant bank had failed to prove that the accused no. 01 bank had suppressed the losses by showing profit.

31] Secondly, it is to be seen whether there was suppression of the fact that in a disclosure statement, the complainant's bank is with the case that the accused bank has not published the statement by attaching the report of statutory auditors and that they failed to submit statutory auditor report to the complainant bank. On this point Ld Advocate for the complainant had pointed out fax copy with endorsement Exh. 151 dated 05/11/2007 the fax endorsement discloses that the annexure to the statutory auditor report was sent to complainant's bank on 02/06/2009. Similar is the case with Exh. 152, however, on said exhibit there is no such endorsement. Curiously, I have gone through Exh. 152 but no endorsement was found. Accused also have not filed any outward regarding the same,however, it was submission of Ld Advocate that the accused no. 01 bank has been merged into bank of baroda and therefore, they could not acquire the same, otherwise they would have to produce. I do not find anything adverse to state that, it is an admitted fact that the records of accused no. 01 bank was acquired by an administrator appointed by the complainant bank and was then merged with bank of baroda. It is the case of the complainant and therefore, the arguments advanced on behalf of the accused are acceptable on the point of non production of outward register.

32] It is admitted fact that, by a letter dated 23/01/2009 accused no.01 bank was superseded by the complainant's bank by appointing administrator, then question arises in respect of a letter produced by the accused in the cross examination of complainant witness of dated 26/01/2009 by which the accused bank was allowed to continue financial transaction. The letter has been admitted by the witness of the complainant and therefore, it is not clear on record what had happened after superseading the accused's bank and thereafter, allowing the bank to carry out the transaction.

33] Ld Advocate for accused have also challenged the authority of the witness to give evidence on the facts which were within the knowledge of P.K Arora who had filed the complaint. As advanced by the Ld Advocate in his argument P.K. Arora has retired. But, there is no record to show his inability to give evidence before the Court, therefore, the illustration of a police officer as discussed above in argument is required to be considered.

34] It is to be considered that, accused No. 02 to 09 are elected as a board of directors. In view of the circular issued by the complainant bank marked as Exh. 187 dated 01/07/2009. There is a column of do's and don't for disciplinary action to be taken in the working of accused No. 01 bank. On going through it reveals that the board of directors are not allowed to participate in day to day function of the bank, involve themselves in the routine or every day business and in the management functions, send instructions/ directors to any individual officer/employee of the bank in any manner. If the complainant's bank had issued such a circular then according to section 46 (1) explanation of the Banking Regulation Act CEO i.e. accused no. 11 would be considered to be liable for the acts of accused no. 01 and there is no role of accused no. 02 to 10 and 12 in day to day functioning of accused no 01 bank. Mean to say that accused no. 01 and accused no.11 would have been a necessary party in this case. Accused No. 02 and 3 alongwith accused no.01 and 11 have signed Exh. 146 to 148 and endorsement on a newspaper on Exh. 194 that had been published, the accused are arrayed as an accused in this case. Non participation of these accused was directed by RBI and still they are made an accused.

35] The whole case of the complainant's bank is depending upon Exh 146 to Exh. 148 r/w Exh. 151 and Exh. 152 which are the reports submitted by Shah Gupta and Company. But, the representative of said company i.e statutory auditors has not been examined by the complainant in order to bring home the guilt against accused No. 01 and 11. As per the case filed by the complainant it can be seen that, inspection of accused no. 01 bank for the year ending 31/03/2006 to 31/03/2008 which was concluded in the year 2008, the accused bank was imposed the penalty on 01/09/2008 of Rs. 5 Lakhs. Said letter is issued by the complainant bank reflects at Exh. 149 and the accused bank was put to suppression alongwith its board of directors by letter dated 23/01/2009. It is at **Exh. 141**. The suppression order was passed by the complainant's bank and receipt of acknowledgment by the executive officer i.e. the accused No. 11 is filed on record at Exh. 142. Similarly, a letter dated 26/01/2009, according to defence, was issued on the day of holiday by V. S. Das regulating the transaction of accused no. 01 bank. Important point which is required to be stated is that, the complainant bank had not examined the statutory audit i.e. Shah Gupta and Company which was nominated to conduct the audit of accused NO. 01 bank at certain intervals after the bank was declared to be a weak bank. There is no report which discloses that, accused No. 01 had suffered a loss and still have shown the profit.

The balance sheet showing profit is not on record. Even though Shah Gupta and Associates have furnished Exh 146 to 148 and statutory reports at Exh. 151 and Exh. 152, according to the case of complainant Exh. 151 and Exh. 152 should have formed the part of Exh. 146 to Exh. 148. But, the accused have failed. As discussed above, the records are not available with the accused, accused No. 01 Bank of Baroda. More particularly, Exh. 151 discloses that, by way of facts the statements were forwarded to the complainant bank on 02/06/2009. But, the statements prepared by statutory auditors for the year ending 31/03/2007 were prepared on 05/11/2007 and on perusal of Exh 152, it was prepared on 29/11/2006 for the year ending 31/03/2006. Complaint bank has also not filed on record inspection reports to demonstrate that they have inspected accused No. 1 bank and who was appointed for the same is also a question. The whole case of the complainant bank is dependent on the report of ShahGupta and Company.

36] As per section 31 which reads as under :-

> "Submission of returns.—The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer:
>
> Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months:
>
> 5 [Provided further that a regional rural bank shall furnish such returns also to the National Bank".

Said circular was subsequently amended as per the case of the prosecution and an additional period of three months was granted to the bank working under the complainant bank to submit their returns. Accordingly, as per report of the witness who has not been examined i.e. Shah Gupta Company, the case has been filed. What default willfully had been committed is non affixing the annexure by the accused No. 01 bank alongwith balance sheet and profit and loss statement to which the record does not disclsoes to be the default as per the case of the complainant itself.

37] For the offences under section 31, section 46(1) provides for the punishment which reads as under :-

> 46. Penalties.—(1) Whoever in any return, balance-sheet or other document 2[or in any information required or furnished] by or under or for the purposes of any provision of this Act, willfully makes a statement which is false in any material particular, knowing it to be false, or willfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and 3[or with fine, which may extend to one crore rupees or with both].

38] In the present case, a penalty has already been imposed by the complainant's bank after its inspection and on the report of statutory auditors of Rs. 5 lakhs against accused No. 01 bank. What more punishment is expected when the accused bank has been suppressed and superseded by the complainant bank in view of said report. I made this statement because whole of the case depends upon the statutory auditors report who had concluded that, in words of complainant's bank, "accused no. 01 was showing profit from unrealized interest income. Accused No. 01 had also failed to follow the loan classification norms of the bank. Accused

No. 01 had also shown profit even it was in losses. Accused No. 01 had also failed to submit correct and true profit and loss statement vide section 31 of the Bombay Regulation Act".

39] As discussed above, what was the true and correct statement and what false statement was submitted by the accused No. 01 bank has not been distinguished and elaborated by the complainant's bank through cogent and strong evidence. Admittedly, the witness appearing on behalf of complainant's bank had narrated the contents in the complaint being Deputy General Manager of the complainant's bank which is acting as a guardian to all the banks in India. Being a Deputy Manager it was expected that the witness could have submitted a true and correct statement before the Court without suppressing the fact that on 26/01/2009, the complainant bank had allowed to continue with the transactions and accordingly, had not produced the said letter before the Court. In respect of accused No. 10 as defended by way of document he was admitted in accused Bank as a nominee director. However, the said letter has also not been produced by the complainant, it was the responsibility of complainant's bank to prove the said alongwith dates of nomination of accused No. 10. However, they have not. Accused No. 10 had defended that, according to norms given by complainant bank he was appointed through NeftCaf and documents are filed on record in defence. Even though denied, based upon Exh 143, i.e. 43rd Annual Report of accused No. 01 bank still the facts remains on record that accused No. 10 was nominated in the year 2008 and prior to that he had no role in the transactions and business of accused No. 01 bank.

40] Accused No. 12 is the Special Advisor, what role was assigned to him has not been specifically proved by the complainant bank. On the other hand, it is admitted by the witness that he does not know what advice was given by accused No. 12 to accused No. 01 in conduct of business. On perusal of record the responsibility of such special advisor who may or may not be legal practitioner was required to be proved and it has not been.

41] Accused are charged on two counts and those are discussed above. In absence of the proof by examining the witnesses such as original complainant P. K. Arora, V. S. Das and Shah Gupta Company, the complaint shall fail and therefore, on the basis of evidence led by complainant there is no adequate proof to the involvement of all the accused in willful default as stated by the complainant.

42] In cross examination of accused No. 02 the case of the complainant was put forth in order to prove the contents in the document relied on by the complainant, admitted or denied by the said accused, it cannot aid the complainant's bank to prove the case. It is a settled principle of law that the complainant/ prosecution had to prove its own case beyond reasonable doubt and that the case of the accused should always be defended on reasonable preponderance. In this case, even though certain things in the circular and exhibits were admitted by the accused in the cross examination, it does not stand good to prove the case of the complainant's bank. I mean to say that, the complainant cannot be allowed to use the shoulder of the defence to bring the case to trial by saying that the facts are admitted by the accused.

43] More over, in view of section 46(A) of Banking Regulation Act, "Every chairman who is appointed on a whole-time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860)". In view of this section, what is the compliance made by the complainant's bank has not been proved or elaborated, of whom the sanction would be required, whether the permission from Registrar of Co-Op Society would be required or what procedure is to be followed has not been brought on record. Moreso, it is to be particular to state that no inspection record is filed and proved on the file of this court. Under such circumstances, I answered point No.01 into negative and in the result of the above discussion the following order is passed.

ORDER

[1] Accused are acquitted of offences punishable under Sections 31 r/w section 46 (A) and section 47, 56 of the Banking Regulation Act, 1949 r/w section 120 (B) of Indian Penal Code vide Section 248 (1) of Cr. P. Code.

[2] Accused are directed to comply with the provision of Sec. 437-A of Cr.P.Code by furnishing PB and S.B of Rs.15,000/-.

[3] Judgment is pronounced and dictated in Open Court.

NILESH NITIN DHEND

Digitally signed by NILESH NITIN DHEND
Date: 2026.07.20 17:49:31 +0545

(Nilesh N. Dhend)
Judicial Magistrate (First Class),
62nd Court Dadar, Mumbai.

Place : Mumbai.
Date : 20/07/2026

Dictated on : 20/07/2026
Transcribed on : 20/07/2026
checked on : 20/07/2026
Signed on : 20/07/2026

NILESH NITIN DHEND

Digitally signed by NILESH NITIN DHEND
Date: 2026.07.20 17:49:35 +0545

(Nilesh Nitin Dhend)
Judicial Magistrate (First Class),
62th Court, Mumbai