

:1:

Order Below Application at Ex-274

**IN THE COURT OF SPECIAL JUDGE FOR C.B.I.**  
**FOR GREATER BOMBAY AT MUMBAI**

**CBI SPECIAL CASE NO. 83 OF 2003**

(Case No. RC4(E)/2002/CBI/BS & FC/Mumbai dated 10/05/2002)

ANUP KUMAR GOND,

Age 58 years, Occ.:Service,

R/o. 116, Juhu Sagar, New D. N. Nagar,

Andheri (West), Mumbai-400 053.

Applicant/

Orig. Accused No. 3

V/s.

CENTRAL BUREAU OF INVESTIGATION,

Bank Securities & Fraud Cell, Mumbai

Respondent/

Orig. Complainant

**CORAM : H.H. THE SPECIAL JUDGE,  
SHRI. JAYENDRA C. JAGDALE,  
(C. R. No. 51).**

**DATED : 10<sup>TH</sup> JANUARY, 2020.**

Mr. Karan Mehta, Ld. Adv. for the Applicant/Orig. Accd. No. 3.

Mr. A. Limosin, Ld. S.P.P. for the CBI/Respdt.

**ORAL ORDER BELOW EX-274**

1. This is an application moved by the applicant/original

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accused no.3 Anup Kumar Gond for discharge from the case as per provisions u/sec. 227 of Code of Criminal Procedure, against whom the offences punishable u/sec. 120-B r/w 409, 420, 467, 468 & 471 of Indian Penal Code and u/sec. 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 have been registered by the CBI, BS & FC, Mumbai.

2. Perused the application and heard both the parties at length.

3. Considering the facts of the case and arguments advanced by both the parties, the following points arise for my determination. I have recorded my findings against each of them with the reasons stated herein below :-

<b>SR. NO.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether there are sufficient grounds and material for proceeding to frame a charge against the applicant/original accused no. 3 Anup Kumar Gond in the case registered vide Case No. RC4(E)/2002/CBI/BS & FC/Mumbai on 10/05/2002 ?	<b>In the affirmative</b>
2	What order ?	<b>As per final order</b>

**REASONS**

**As to Point No. 1 :-**

4. At the outset, I would like to describe the backdrop situation of the present application-

The applicant/accused is arraigned as an “accused no. 3” in CBI Special Case No. 83/2003 and CBI Special Case No. 12/2006, as a public servant for the offences punishable u/sec. 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 along with sections 120-B r/w 409, 420, 465 & 467 of Indian Penal Code. The applicant/accused has placed a discharge application before this Court. This Court has rejected the said discharge application vide order dated 07/07/2010. The applicant/accused has then preferred a Writ Petition before the Hon'ble Bombay High Court, in which the Hon'ble Lordship has directed the Ld. Trial Court to re-hear the application of discharge of applicant/accused. After giving audience to both the parties, the Ld. Trial Court has discharged the applicant/accused vide order dated 02/07/2012. The prosecution agency/CBI has challenged the said discharge order vide Criminal Revision Application No. 332/2013. The Hon'ble Bombay High Court has also clubbed another Criminal Revision Application No. 333/2013, preferred by another accused Chandulal Thadani and simultaneously consider the Writ Petition filed by the present applicant/accused Anup Kumar Gond vide Writ Petition No. 4306/2014 jointly. The Hon'ble Bombay High Court has decided all the three matters on 08/07/2019, thereby the Hon'ble Bombay High Court quashed and set aside the impugned order of discharging applicant/accused Anup Kumar Gond and other accused persons. In

the same order, the Hon'ble Bombay High Court has allowed the petition filed by the CBI and dismissed the petition of applicant/accused. The Hon'ble Bombay High Court has directed this Court to conclude trial of CBI Special Case Nos. 83/2003 & 12/2006. Thereafter, the applicant/accused has preferred a Special Leave Appeal (Cri.) No. 7366/7367/2019 against the order of Hon'ble Bombay High Court. **The said Special Leave Appeal (Cri.) was dismissed by the Hon'ble Supreme Court and the order of Hon'ble Bombay High Court in Writ Petition No. 4306/2014 with Criminal Revision Application Nos. 332/2013 & 333/2013 has been confirmed by the Hon'ble Supreme Court.** Despite of the said situation, the applicant/accused had again placed the present application for discharge from the case.

5. The point of argument advanced by the Ld. Advocate of applicant/accused is that when the matter was agitated before the Hon'ble Bombay High Court and the Hon'ble Supreme Court, the Prevention of Corruption (Amendment) Act, 2018 came into force with effect from 26/07/2018, whereby the character of section 13 dealing with "criminal misconduct by a public servant" was changed. Therefore, this fresh application of discharge has been filed by the applicant/accused. The Ld. Advocate of applicant/accused has further argued regarding mollification of the rigors of criminal law due to amendment and it should be beneficial to the applicant/accused. Moreover, the said amendment does not provide for continuation of the pending proceedings under the repealed Act. Therefore, this proceeding is not maintainable.

6. In respect of above mentioned point of argument, it is

pertinent to note that the said new amendment has omitted section 13(1)(d) of the Prevention of Corruption Act, 1988. Apparently, there is no savings clause for the amendment made in the Act. It has been further argued by the Ld. Advocate of applicant/accused that General Clauses Act, 1897 is not applicable in present context due to nature of amendment of Prevention of Corruption Act, 1988. Therein, as per amendment in the Prevention of Corruption Act, 1988, section 13(1)(d) is omitted by the Legislature and the said "omission" is not amount to a repeal. However, it is important to refer sections 6 & 6-A of General Clauses Act, 1897. Herein, I would like to refer the same in its verbatim :-

**6. Effect of repeal.** - Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be

instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

**[6-A. Repeal of Act making textual amendment in Act or Regulation.** - Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

7. Thus, section 6(e) of General Clauses Act clearly spells out that the “repeal” shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment. Herein I would like to place reliance upon the observations of Hon'ble Madras High Court in the case of **Dr. S. Murukesan and other v/s. The Deputy Superintendent of Police, CBI/Anti-corruption Branch, Nungambakkam, Chennai-14 and other [2019(2) MLJ (Criminal) 444]**, wherein the Hon'ble Lordship has considered the observations of Hon'ble Supreme Court in the cases of **Shree Bhagwati Steel Rolling Mills v/s. The Commissioner of Central Excise and another [2016(3) SCC 643]**; **Fibre Boards Private Limited, Bangalore v/s. Commissioner of Income Tax, Bangalore [2015(10) SCC 333]**; **General Finance Co. and another v/s. The Assistant Commissioner of Income Tax, Punjab [2000(7) SCC 1]**; **Kolhapur Canesugar Works Ltd. and another v/s. Union of India and others [2000(2) SCC 536]** and **Messrs. Rayala Corporation (P)**

**Ltd. and another v/s. Director of Enforcement, New Delhi [1969(2) SCC 412]** and concluded at para no. 30 that the term “omission” about section 13(1)(d) of the Prevention of Corruption Act as per the Amendment Act 16 of 2018, will not have any impact on the pending proceedings as per sections 6 & 6-A of General Clauses Act, 1897. The Hon'ble Madras High Court has clearly observed by referring the conclusion of Hon'ble Supreme Court in the case of **Fibre Boards Private Limited** (cited supra), wherein it has been held that section 6-A of General Clauses Act, 1897 shows that a repeal can be by way of an express omission. Obviously, what was meant, is that an amendment which repealed a provision could do so by way of an express omission. Thus, a repeal would include a repeal by way of an express “omission”. The Hon'ble Supreme Court has also referred the earlier judgments in the cases of **Kolhapur Canesugar Works Ltd.** and **Messrs. Rayala Corporation (P) Ltd.** (cited supra), while deciding this matter. Thus, it is clear from the specific observations of Hon'ble Madras High Court that the recent Amendment Act 16 of 2018, which came into effect from 06/07/2018, wherein the provision u/sec. 13(1)(d) of the Prevention of Corruption Act, 1988 has been omitted, but, it will not affect the pending proceedings under the same sections.

8. In the light of these all above relevant factors, it is clear that, there are no sufficient grounds for discharge Accused/Applicant. The matter has already reached to its finality by order of Hon'ble High Court & Hon'ble Supreme Court. This application is purported to defeat order of Hon'ble Apex Court. Hence, I record my finding to Point No. 1 in the affirmative.

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**ORDER**

Application at Ex-274 in CBI Special Case No. 83/2003 stands rejected and disposed of accordingly.

(Order dictated and pronounced in open court.)

**(Jayendra C. Jagdale)**  
The Special Judge for CBI,  
City Civil & Sessions Court,  
Gr. Bombay.

Dated : 10/01/2020

Dictated on : 10/01/2020  
Transcribed on : 10/01/2020  
Signed on :  
Delivered to Certified :  
Copy Section on

:9:

Order Below Application at Ex-274

“Certified to be true and correct copy of the original signed judgment/order”.

Upload Date & Time : 16/12/2019 at 4.15 p.m.

Mr. Vaibhav Inarkar

Name of the Typist

H.H.J. SHRI. JAYENDRA C. JAGDALE (C. R. No. 51)

Date of pronouncement of judgment/order :-16/12/2019

Judgment/order signed by the P.O. on :-16/12/2019

Judgment/order uploaded on :-16/12/2019