

IN THE HIGH COURT OF DELHI AT NEW DELHI

Criminal M.A. No. _____ of 2020

IN

Criminal L. P. No. 185 of 2018

In the Matter Of:

Central Bureau of Investigation

...Appellant

Versus

A. Raja and Ors.

...Respondents

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Date: 22.01.2020

Applicant/Respondent No. 3

Place: New Delhi

Through

Deepanshu
**Deepanshu Choithani and
Shailesh Pandey
Advocates**
Chamber No. 27, Patiala
House Court, New Delhi-
110001
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In the Matter Of:

Central Bureau of Investigation ... Appellant

Versus

A. Raja and Ors. ... Respondents

URGENT APPLICATION

To

The Deputy Registrar
High Court of Delhi,
New Delhi.

Sir,

The accompanying Petition may be treated as an Urgent one as
urgent directions are prayed for.

Date: 22.01.2020

Applicant/Respondent No. 3

Through

Place: New Delhi

**Deepanshu Choithani and
Shailesh Pandey
Advocates**

Chamber No. 27, Patiala
House Court, New Delhi-

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IN THE HIGH COURT OF DELHI AT NEW DELHI
Criminal M.A. No. _____ of 2020

IN

Criminal L. P. No. 185 of 2018

In the Matter Of:

Central Bureau of Investigation ... Appellant

Versus

A. Raja and Ors. ... Respondents

**APPLICATION BY AND ON BEHALF OF RESPONDENT NO.
3 R.K CHANDOLIA SEEKING NECESSARY ORDERS AND
DIRECTIONS FROM THIS HON'BLE COURT**

Most Respectfully Showeth:

1. That the Appellant Central Bureau of Investigation has prayed for Leave to Appeal to be granted to the Appellant against the judgment dated 21.12.2017 passed by the Court of Sh. O. P. Saini, Ld. Special Judge, Patiala House Courts, New Delhi (hereinafter referred to as the "**Ld. Special Judge**") in the case titled as CBI Vs. A. Raja bearing Complaint Case No. 01/2011. The applicant in the present application has been arraigned as Respondent No **3** by the appellant in the impugned appeal. The present applicant was accused No **3** before the Learned Trial Court and was acquitted vide the impugned Order.
2. The Ld. Trial Court had charged in its order on charge dated 22.10.2011 the applicant as follows :

"Eighthly, you R. K. Chandolia, while working as Private Secretary to MOC&IT, as above, and as such, a public servant, by corrupt or illegal means or by otherwise abusing your position as such public servant and in pursuance to a criminal conspiracy illegally

helped in granting of UAS Licences and allocation of spectrum to M/s Swan Telecom (P) Limited and M/s Unitech Wireless (Tamil Nadu) Limited, and thereby two companies obtained pecuniary advantage to the tune of Rs. 7105 crore by offloading their shares and thereby you committed an offence punishable under Section 13(2) read with 13(1)(d) of the PC Act read with 120-B IPC and within my cognizance."

(Emphasis Supplied)

3. It is submitted that, the Charge Sheet as filed by the CBI against Respondent No.3 and others is *inter-alia* u/s 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 apart from the alleged offences under the Prevention of Corruption Act, 1988 and Indian Penal Code, 1860 IPC. Vide the impugned order dated 21.12.2018, the present applicant was acquitted of the charge to commit conspiracy for the offences under Section 409, 420 and 467 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. It is submitted however that subsequent thereto the Government of India, vide an amendment notified on 26.07.2018, has *inter alia* amended the Prevention of Corruption Act, 1988 by notifying the Prevention of Corruption (Amendment) Act, 2018 (PC (Amendment) Act, 2018).
4. The contentions raised in the present Application may kindly be treated as a Preliminary Issue by this Hon'ble Court. The issue for the consideration of this Hon'ble Court is that whether in view of the amendment to the criminal statute the

present Applicant/Respondent No.3 can be asked to argue the matter on the merits in respect of grant of Leave to Appeal of the appeal filed by the Appellant CBI or not? For seeking this Hon'ble Courts leave to appeal the Appellant CBI has merely partially read out before this Hon'ble Court the FIR and the Charge-sheet in the present case. The CBI Appellant did not refer to the charge and evidence viz a viz the charges framed to such this Hon'ble Courts indulgence. Be that as it may, it is respectfully submitted that the Appeal itself has become infructuous in view of the recent amendment to the Prevention of Corruption Act, 1988 ('PC Act').

5. It is most respectfully and humbly submitted that arguing in detail and opposing the application of the Appellant CBI for Leave to appeal by the present Applicant/Respondent No.3 shall lead to wastage of judicial time of this Hon'ble Court in view of the PC (Amendment) Act 2018, coming in force. It would have been appropriate and common sensical for the Appellant CBI to have brought the fact of the amendment to the PC Act, 1988 and the notification of the PC (Amendment) Act, 2018 to the notice of this Hon'ble Court so as to seek directions from this Hon'ble Court as to whether the Appeal is itself infructuous or not? Once again as in during the trial the Appellant CBI has not come with clean hands before this Hon'ble Court and has attempted and continues to attempt

to mislead this Hon'ble Court with the aim to obtain grant of leave to appeal from this Hon'ble Court, in respect of an alleged crime when the penal statute for such an alleged crime has ceased to exist on the statute book. This is even more pertinent in the background of the fact that the present appeal by the appellant CBI is an appeal against acquittal and not against any interim orders and/or conviction.

6. The contentions in the present Application are not that the Leave to Appeal ought not to be granted but that the Appeal has itself become infructuous in the light of the recent amendment to the PC Act 1988. The synopsis of the grounds relied upon by the present Applicant/Respondent No.3 are hereinbelow:

1. AMENDMENT TO THE PC ACT, 1988
2. JUDICIAL VIEW AS REGARDS BREACH OF RULES AND REGULATIONS AND WHETHER THEY AMOUNT TO CRIMINAL MISCONDUCT
3. BENEFICIAL IMPACT OF THE AMENDMENT TO THE PENAL STATUTE IS REQUIRED TO BE CONSIDERED IN PENDING MATTERS AGAINST THE PRESENT APPLICANT
4. WHEN THE RIGORS OF THE PC ACT 1988 HAVE BEEN MOLLIFIED, THEN THE BENEFIT OF THE SAME OUGHT TO BE EXTENDED RETROSPECTIVELY TO THE PRESENT APPLICANT ESPECIALLY AS THE PRESENT APPLICANT AND ALL OTHER ACCUSED WERE ACQUITTED UNDER THE STRINGENT SECTION 13(2) READ WITH 13(1)(d) OF THE PC ACT 1988.
5. INTENTION OF THE AMENDMENT TO SECTION 13 OF THE PREVENTION OF CORRUPTION ACT IS FOR THE BENEFIT OF THE SOCIETY AND THUS THE ACCUSED AND THEREFORE IN TERMS OF THE PRINCIPLES OF BENEFICIAL CONSTRUCTION, CONTINUATION OF ANY PROCEEDINGS

UNDER THE STRINGENT SECTION 13(2) READ WITH 13(1)(d) OF PREVENTION OF CORRUPTION ACT 1988 IS NOT PERMISSIBLE.

6. RECENT VIEWS TAKEN BY COURTS WITH REGARDS TO MOLLIFICATION OF RIGORS OF LAW

6.1. Instance when prosecution under Section 497 IPC was stayed after the same was declared unconstitutional

6.2. Instance when all prosecution under Section 377 IPC were struck down after the same was declared unconstitutional

6.3. Instance in a somewhat similar situation when punishment given under unamended Food Adulteration Act was modified by the Hon'ble Supreme Court after the punishment was reduced to only fine

7. THAT WHEN THE ISSUE REGARDING APPLICATION OF AMENDMENT OF PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018 IS PENDING BEFORE THE HON'BLE DIVISION BENCH OF THIS HON'BLE COURT

8. CONCLUSION

1. AMENDMENT TO THE PC ACT, 1988

1.1. It is submitted that by virtue of the Prevention of Corruption (Amendment) Act, 2018, Section 13 of the Prevention of Corruption Act, 1988 has been substituted. The comparison between the earlier provision and the substituted provision is as under for the ready reference of this Hon'ble Court:

<i>Under the Old PC Act</i>	<i>Under the Amended PC Act</i>
<i>Criminal misconduct by a public servant</i> "(1) A public servant is said to commit the offence of criminal misconduct, —	<i>Criminal misconduct by a public servant</i> " (1) A public servant is said to commit the

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person for himself or for any other person any gratification other than legal remuneration as active or reward such as is mentioned in section 7; or (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or (d) if he,— (i) by corrupt or illegal means, obtains for	offence of criminal misconduct,— (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or (b) if he intentionally enriches himself illicitly during the period of his office. Explanation 1.-- A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for. Explanation 2.-- The expression "known sources of income" means income received from any lawful sources.] (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine.
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himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public, interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—

For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to

**ten years and shall also
be liable to fine.**

- 1.2. From a bare perusal of the above table, it is clear that the rigors of law w.r.t. offence of criminal misconduct under The PC Act, 1988 have been mollified, by the PC (Amendment) Act 2018 and which is abundantly clear from the perusal of the table below:-

UNDER THE OLD ACT	UNDER THE AMENDED ACT
Covers 6 types of Offences	Covers 2 Types of Offences
A. Fraudulent misappropriation of property in the control of public servant.	A. Fraudulent misappropriation of property entrusted to a public servant.
B. Possession of monetary resources or property disproportionate to known sources of Income.	B. Intentional enrichment by illicit means during the period of office.
C. Habitually taking a bribe or valuable thing for free.	<i>This would involve amassing resources disproportionate to one's known resources of Income. Only then it shall be presumed that the person intentionally enriched himself</i>
D. Obtaining a valuable or reward illegally.	
E. Abuse of position to obtain a valuable thing or monetary reward.	
F. Obtaining valuable thing or monetary	

reward without public interest.	
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- 1.3. Pertinently, post amendment of Section 13 of the Prevention of Corruption Act, 1988, Section 13(1) has been substituted and as such, PC (Amendment) Act, 2018 and amended Section 13 therein is directly relevant for the adjudication of the present appeal. It is respectfully submitted that this Hon'ble Court has to take cognizance of this fact at the inception of this appeal and determine as to whether the acts attributed to the present appellant would amount to a crime under the amended Section 13 of the PC (Amendment) Act, 2018 or not ? Only once the Appellant CBI satisfies this Hon'ble Court about this basic fact, can the Appellant CBI argue for leave to appeal and expect the present applicant to respond.
- 1.4. It is respectfully urged that the Prevention of Corruption Amendment Act, 1988 does not contain any savings clause and the legislature has not thought it fit to amend Section 30 of the Prevention of Corruption Act, 1988 so as to save prosecutions launched under the unamended portions of the Prevention of Corruption Act, 1988.
- 1.5. It is a settled proposition of law that once an act is repealed it must be considered as if it had never existed and the same would be considered obliterated from the

statute books. [State of Uttar Pradesh v. Hirendra Pal Singh (2011) 5 SCC 305, Paragraph 22].

2. JUDICIAL VIEW AS REGARDS BREACH OF RULES AND REGULATIONS

WHETHER AMOUNT CRIMINAL MISCONDUCT

2.1. That from a catena of judgments by the Hon'ble Supreme Court it is clear that mere violation of procedures and rules or irregularities can not be held to be Criminal misconduct under Section 13 (1) (d) of the Prevention of Corruption Act, 1988. It is respectfully submitted that even under the stringent Sec 13(2) read with Section 13(1)(d) this applicant and other accused were found to be innocent. It would therefore be unconscionable to allow the Appellant CBI to continue with this appeal.

2.2. It is submitted that as regards mere allegation of breach of rules and regulations, the Hon'ble Supreme Court of India in **C K Jaffer Sharief vs. State, (2013) 1 SCC 205** at page 211, has held as under:

“.....If in the process, the rules or norms applicable were violated as per the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct that dishonest intention is the gist of the offence under 13(1)(d) is implicit in the words used i.e corrupt or illegal means and abuse position of a public

servant”.

- 2.3. Further, the Hon'ble Supreme Court of India in **S.K. Kale Vs. State of Maharashtra AIR 1977 SC 822** has held as under:

“Even assuming that the accused departed from the normal procedure in view of the urgent necessity of articles it cannot be said that this was done with a corrupt or oblique motive”.

- 2.4. That the Hon'ble Supreme Court of India in **A. Sivaprakash Vs. State of Kerala, (2016) 12 SCC 273** has held as under:

“22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence.”

- 2.5. Hence, from the above quoted judgments, it is clear that mere violation of procedure & rules or irregularities, which the applicant was accused off and subsequently acquitted, has not been held to amounting to criminal misconduct under Section 13 (1) (d) of the Prevention of

Corruption Act, 1988. Moreover, the present applicant and other accused persons have been exonerated from having violated any alleged procedure or rules and as such allowing the Appellant CBI to continue this appeal against the Applicant would amount to grave injustice and more so contrary to the current law of the land.

3. NO ALLEGATION OF ILLEGAL GRATIFICATION AGAINST THE PRESENT APPLICANT

- 3.1. That, the amendment to the Section 13 of the PC Act, 1988 is relevant in the present case as the acts which are considered as criminal misconduct post amendment are limited only to dishonest or fraudulent misappropriation of property or illegal enrichment. In this case there is no allegation by the Appellant CBI against the applicant of dishonest or fraudulent misappropriation of property or illegal enrichment by the present applicant.
- 3.2. That it is submitted that *mens rea* coupled with benefit of pecuniary advantage or reward to the public servant is sine qua non for offence of criminal misconduct. However, it is not the case of the prosecution that the present applicant demanded or obtained any illegal gratification or pecuniary advantage or monetary reward for undertaking the acts as alleged.
- 3.3. That as such, the judgment of this Hon'ble High Court of Delhi in the matter of **Runu Ghosh v CBI, Crl. A. 482/2002** shall have no application in view of the amended law.

3.4. Because even in terms of the stringent Section 13(1)(d) of the PC Act 1988, the demand and acceptance of the money for doing a favor in discharge of his official duties is sine qua non for conviction of the Acused. Reliance is placed on **Veerchand Jain vs State of Chattisgarh, 2012 SCC OnlineCHH276 at page 279** and the absence of such an allegation against the applicant also make the present appeal by the Applicant CBI liable to be dismissed.

3.5. As the trial against the appellant and other accused persons resulted in an acquittal the present appeal by the Appellant CBI is liable to be dismissed in terms of the ratio held in **Krishan Chander V. State of Delhi, (2016) 3 SCC 108 wherein** it has been held as under:

“39. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW 2) which is the sine qua non for convicting him for the offences punishable under section 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.”

3.6. Moreover, as the trial against the appellant and other accused persons resulted in an acquittal the present appeal by the Appellant CBI is liable to be dismissed in terms of the ratio held in the Hon'ble Supreme Court in **State of Maharashtra vs. Dnyaneshwar Laxman Rao**

Wankhede, (2009) 15 SCC 200 wherein it has held as under:

“16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety.....”

3.7. Further, as the trial against the appellant and other accused persons resulted in an acquittal the present appeal by the Appellant CBI is liable to be dismissed in terms of the ratio held in **Khaleel Ahmed Vs. State Of Karnataka, (2015) 16 SCC 350**, wherein it has been held as under:

“17. We will first address the contention regarding proof of demand of illegal gratification. It is well-settled position of law that demand of illegal gratification is sine qua non for the offences under Sections 7 and 13(1)(d). Conversely, in the absence of proof of demand of illegal gratification, the offences under Section 7 and 13(1)(d) cannot be made out.”

4. IMPACT OF THE AMENDMENT IS REQUIRED TO BE CONSIDERED ON THE PENDING MATTER AGAINST THE PRESENT APPLICANT

4.1. In view of the fact that there are no allegations of receipt of any illegal gratification by Respondent No.3/ present

Applicant, the impact of the amendment is required to be considered on the present appeal especially as the present applicant and all other accused have been acquitted after an arduous trial conducted on day to day basis for almost 7 years. The view taken by the **Constitutional Bench** judgment of the Hon'ble Supreme Court of India in **Kolhapur Canesugars Works Ltd and Another (2000) 2 SCC 536**, is most relevant wherein it has been held as under:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is] introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose

may be initiated under the new provision."

(Emphasis Supplied)

- 4.2. That, further the present appeal by the Appellant CBI is liable to be dismissed, especially as the present applicant and all other co-accused have been acquitted, in terms of ratio held by the Constitutional Bench of the Hon'ble Supreme Court in a landmark judgment in **Navtej Singh Johar & Ors. Versus Union of India thr. Secretary Ministry of Law and Justice (2018) 10 SCC1**, held as under:

"21. Conclusion

i.

*ii. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the reopening of any concluded prosecutions, **but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.***

iii. ...

iv. The judgment in Suresh K. Koushal & Anr. v. Naz Foundation & Ors.⁵⁷ is hereby overruled for the reasons stated in paragraph"

- 4.3. That from the amendment it is clear that the intention of the legislature is of repeal of Section 13 of the PC Act, 1988. The Hon'ble Supreme Court in **Saverbhai Amaidas v. State of Bombay** reported in AIR 1954 SC 752 has held,

*"In other words, he considered that the question of enhanced punishment under Act No. XXXVI of 1947 was a matter different from that of mere punishment under the Essential Supplies (Temporary Powers) Act and its amendments; and in this, with respect, he fell into an error. The question of punishment for contravention of orders under the Essential Supplies (Temporary Powers) Act both under Act No. XXXVI of 1947 and under Act No. LII of 1950 constitutes a single subject matter and cannot be split up in the manner suggested by the learned Judge. On this principle rests the rule of construction relating to statutes that "when the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one." (Maxwell on Interpretation of Statutes, 10th Edition, pages 187 and 188). "It is a well settled rule of construction", observed Goddard J. in *Smith v. Benabo*(1), "that if a later statute again describes an offence created by a previous one, and imposes a different punishment, or varies the procedure, the earlier statute is repealed by the later statute: see *Michell v. Brown*(2), per Lord Campbell."*

- 4.4. The Hon'ble Supreme Court in the case of **Bhagat Ram Sharma v. Union of India** reported in (1988) Supp SCC 30 held that the legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted shall have the effect of repeal of existing provision. It was held therein that there is no distinction between repeal and amendment, relevant portion is as under:-

"It is a matter of legislative practice to provide while enacting an amending law,

that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. In Sutherland's Statutory Construction, 3rd edition., vol. 1 at p. 477, the learned author makes the following statement of law:

"The distinction between repeal and amendment as these terms are used by the Courts, is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitle the Act as an amendment. When a provision is withdrawn from a section, the Legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal-the abrogation of an existing statutory provision-and have

therefore applied the term 'implied repeal' and the rules of construction applicable to repeals to such amendments."

Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred."

- 4.5. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted, in terms of ratio held by Hon'ble Supreme Court of India in **General Finance Co. and Ors. Vs. Assistant Commissioner of Income Tax, Punjab Appeal (Crl.) 442 of 1994**, has held as under:

"Net result of this discussion is that the view taken by the High Court is not consistent with what has been stated by this Court in the two decisions aforesaid and the principle underlying Section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276DD stood omitted from the Act but not repealed and hence, a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission.

Hence, we allow this appeal, set aside the order of the High Court and quash the proceedings for prosecution."

4.6. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted in terms of ratio held by, the Hon'ble Supreme Court of India in **Gottumukkala Venkata Krishnamraju Vs. Union of India (UOI) and Ors.** MANU/SC/0950/2018 has held as under:

"15. The effect, thus, would be to replace Section 6 as amended with the intention as if this is the only provision which exist from the date of introduction and the earlier provision was not there at all. The effect of this would be that all those incumbents who are holding the post of Presiding Officer on September 01, 2016 would be governed by this provision.

16. When we examine the matter in the aforesaid perspective, the question as to whether Section 6, as amended, is to be given retrospective effect or not, does not arise for consideration. The Petitioners are right in submitting that persons who demitted the office prior to the amendment are not sought to be covered by the amendment. Had the provision been retrospective then it would have benefited those persons as well. No such case is set up by any of the Petitioners or any other person, it is only the incumbents who are serving as on the date of the amendment are sought to be covered.

17. Though in a different context, the judgment in Boucher Pierre Andre throws some light on the issue at hand, as can be discerned from the following discussion in that case:

1.

2 . The question which arises for determination in this petition is a narrow one and it rests on the true

interpretation of Section 428. Is this Section confined in its application only to cases where a person is convicted after the coming into force of the new Code of Criminal Procedure, or does it also embrace cases where a person has been convicted before but his sentence is still running at the date when the new Code of Criminal Procedure came into force? It is only if the latter interpretation is accepted that the Petitioner would be entitled to claim the benefit of the Section and hence it becomes necessary to arrive at its proper construction. Section 428 reads as follows:

... ..
This section, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the Clause "where an Accused person has, on conviction, been sentenced to imprisonment for a term". There is nothing in this Clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure. The language of the Clause is neutral. ... The Section operates prospectively on the sentence which yet remains to be served and curtails it by setting off the period of detention undergone by the Accused person during the investigation, inquiry or trial of the case. Any argument based on the objection against giving retrospective operation is, therefore, irrelevant."

- 4.7. In this regard furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted in terms of ratio held by the Hon'ble High Court of Kerala in **Prasant Vs. Food Inspector, Kannur**

Municipality Crl M.C. No. 204/2007, wherein it has been held that in respect trials that have been concluded and which have resulted in an acquittal that:

13. The decision of the Delhi High Court in B.L. Kohli &Anr. v. Delhi Administration(MANU/DE/0245/1986 : 1986 (3) PFA Cases 140) has also been cited in connection with this case where it was held that so long as the prosecution of the accused is not concluded by a judgment of conviction, the proceedings against him are to be regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The rule of beneficial construction requires that even ex post facto law in such a case should be applied to mitigate the rigour of the law. The principle is based on sound reason and common sense, the learned counsel argues.

14. ... But in the case on hand the case was pending trial and was not concluded by a Judgment. Relying on the decision in Dalmia Dairy Industries Ltd. v. State of Haryana (MANU/PH/0157/2001 : 2001 (1) FAC 164) and Prem Chand v. State of Haryana (1993(2) FAC 178) cited supra, the learned counsel submits that when the prescribed standard is changed by the amendment to Rules and Appendix and when the sample did conform to the requirements of the substituted Rule, (the amended standard) then the benefit of the substituted Rule must be given to the accused. Since the effect of the amendment is mollification of the rigour imposed by the earlier Rule, certainly the standard or Rule which has substituted the earlier one, being beneficial in nature, must certainly be made applicable and if so the benefit must be extended to the accused, since the case has not been concluded by a judgment of conviction. But, it

cannot be extended to cases, which after trial, ended in conviction. As such, I find that the further proceedings against the petitioners have to be quashed."

- 4.8. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted in terms of ratio held by Hon'ble High Court of Bombay in **IMP Powers Ltd. Vs. Commissioner of Income Tax** **2017 SCC OnLineBom 5062**, has held as under:

"2). The petitioners are accused in CC no.583/SW of 2013(old no 883/S/1991) for prosecution under section 276DD and 278B of the income Tax Act filed in the year 1991. Section 276DD income Tax Act has been omitted by direct Taxes Law Amendment Act, 1987' with effect from 1st April, 1989 without any savings clause. The apex court by the decision cited has held that "In the Income Tax Act section 276DD stood omitted from the act but not repealed and hence a prosecution could not have been launched or continued by invoking section 6 of general Clauses Act after it's omission."

3). The difficulty expressed by the trial court in the impugned order even in the face of the decision of the Apex Court is of it's power and authority to drop the proceedings in view of issuance of summons. At para 6 of the impugned order, while agreeing with the submissions on behalf of the petitioners that in view of omission of section 276 DD from the Income Tax Act, the prosecution of the petitioner regarding offence punishable under section 276DD cannot be launched or continued, the learned judge has expressed his difficulty by stating

that process has already been issued. The proceeding have been tried as summons case, plea of the petitioners is recorded and the evidence started. In these circumstances now the order of quashing of the proceedings is required to be passed by this court. Hence the petitioners are allowed in terms of prayer clause (b)"

5. BECAUSE WHEN THE RIGORS OF THE PC ACT 1988 HAVE BEEN MOLLIFIED, THEN THE BENEFIT OF THE SAME OUGHT TO BE EXTENDED RETROSPECTIVELY ESPECIALLY IN CASES WHICH HAVE RESULTED IN AN ACQUITTAL UNDER THE STRINGENT PROVISIONS OF SECTION 13(2) READ WITH SECTION 13(1)(d).

5.1. It is submitted furthermore that from the present amendment of Section 13 of the PC Act, it is clear that the rigors of the Act have been mollified in favour of the accused person. In such a situation when the rigors of the Act have been mollified, then the benefit of the same ought to be extended in pending matters especially when in the case under consideration the Appellant and other co-accused were acquitted after a day to day trial lasting almost 7 years under the more stringent provisions of Section 13(2) read with Section 13(1)(d).

5.2. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held by Hon'ble High court of Allahabad in the matter of **Shyam Lal v State, 1968 Cri LJ 1461**, wherein it was observed as under:

“The above rule of construction is based on principle that until the proceedings have reached final judgment in the Court of last resort, that Court, when it comes to announce its decision, must conform to the law then existing”.

.....

“ It seems to us clear that the true rule of construction of a penal statute is that where the legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigour of the law in the light of past experience and changed social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted by a new law which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest”

(Emphasis Supplied)

5.3. That furthermore the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted

as has been held by Hon'ble Supreme Court in **Rattan Lal vs State Of Punjab, 1965 AIR 444, 1964 SCR (7) 676** it has been held that an ex-posto facto law which is beneficial to an accused is not prohibited by clause (1) of Article 20. Relevant portion is as under:-

"The first question is whether the High Court, acting under S. 11 of the Act, can exercise the power conferred on a court under S.6 of the Act. It is said that the jurisdiction of the High Court under S. 11(3) of the Act is confined only to a case that has been brought to its file by appeal or revision and, therefore, it can only exercise such jurisdiction as the trial court had, and in the present case the trial court could not have made any order under S. 6 of the Act, as at the time it made the order the Act had not been extended to Gurgaon District. On this assumption, the argument proceeds, the Act should not be given retrospective operation, as, if so given, it would affect the criminal liability of a person for an act committed by him before the Act came into operation. In support of this contention a number of decisions bearing on the question of retroactivity of a statute in the context of vested rights have been cited. Every law that takes away or impairs a vested right is retrospective. Every ex post facto law is necessarily retrospective. Under Art. 20 of the Constitution, no person shall be convicted of any offence except for violation of a law in force at the time of the commission been inflicted under the law in force at the time of the commission of the offence.

But an ex post facto law which only mollifies the rigour of a criminal law does not fall within the said prohibition.

If a particular law makes a provisions to that effect, though retrospective in operation it will be valid.

The question whether such a law is retrospective and, if so, to what extent depends upon the interpretation of a

particular statute, having regard to the well settled rules of construction".

5.4. That furthermore the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held by the Hon'ble Guwahati High Court in **Md. Abdul Haque vs. Srimati Jesmina Begum Choudhary, 2012 SCC On Line Gau 143**, has held as under:

"Only those enactments which only relax the existing procedure of mollify the rigor of criminal law can be given retrospective effect."

5.5. Moreover, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted, on the same principles as held in **Sundar Lal vs MCD, 1970 SCC Online Del 93**, wherein this Hon'ble Court in an appeal against the conviction of the accused under S. 7/16 of the Preservation of Food Adulteration Act, contended in this behalf that during the pendency of the proceedings in the High Court the standard of compounded Hing was changed by Notification No. G.S.R. 382 dated 09.03.1966 and that his sample confirmed to this new standard and he was therefore, entitled to acquittal. The result of the analysis showed that the ash insoluble in HCL (Sand) present in the sample

was 10.5%. It was because of this that the Public Analyst declared it adulterated. According to the original standard the presence of sand was totally prohibited and no ash insoluble in Hydrochloric Acid was allowed. However, according to the new standard ash insoluble in dilute hydrochloric acid can be present up to 1.5%. Similar principles apply in the present cases in so far as the present applicant is concerned. On similar grounds while giving retrospective effect to the notification, this Hon'ble Court held as below:

"That in the light of above, the appellant Court must give effect to the standard of the Compounded Hing as it stood at the time of hearing of the appeal and the notification substituting a new standard in place of the old one must be given a retrospective operation."

5.6. That furthermore the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held by the Hon'ble Supreme Court of India in **T. Barai v Henry Ah Hoe, (1983) 1 SCC177** at page 191 that:

22..... It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. **But insofar as the Central Amendment Act**

reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction require that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense.

- 5.7. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held by Hon'ble Supreme Court of India in the matter of **Nemi Chand v. State of Rajasthan, 2016 SCC OnLine SC 1715** relying on **T. Barai v. Henry Ah Hoe, (1983) 1 SCC 177(supra)**, wherein it was held that the benefit in any appeal must go to the accused when the rigor of criminal law has been mollified by the amendment.
- 5.8. The Applicant states that Section 372 of Cr.P.C. 1973 does not permit an appeal unless specifically provided under the Code (which is applicable in the instant case) and in cases of judgment of Trial Court resulting into "acquittal", section-378(3) prohibits any appeal to the High Court except with the leave of the Hon'ble High Court. Admittedly, no leave to appeal has been granted by this Hon'ble Court against the final judgment dated 21.12.2017 reduced by the Ld. Trial Court and that the application for grant of leave to appeal against the same

is still pending consideration of this Hon'ble Court. It is submitted by the present Applicant that in view of the aforesaid provisions Appeal against Judgment of Acquittal is not a "vested right" in favour of the Appellant CBI, more so in view of the Prevention of Corruption (Amendment) Act, 2018 coming into force subsequent to the impugned judgement of the Ld. Trial Court which lead to an acquittal of the applicant and all other accused persons under far more stringent provisions of the Sec.13(2) read with Sec.13(1)(d) of the PC Act 1998. On the contrary, the Applicant and other Accused persons have acquired a vested right after having been declared "Innocent" and exonerated from all the charges including but not limited to under the stringent section 13(1)(d) of P.C. Act which is no longer a law in force. In view of the same this Hon'ble Court is duly bound to weigh the allegation of the Appellant CBI against the applicant from the prism of the PC (Amendment) Act 2018 at the inception stage itself.

5.9. Hence, it is submitted that the present Petition deserves to be allowed and appeal of the applicant CBI against the present applicant liable to be dismissed.

6. INTENTION OF THE AMENDMENT TO SECTION 13 OF THE PREVENTION OF CORRUPTION ACT IS FOR THE BENEFIT OF THE SOCIETY AND THUS THE ACCUSED AND THEREFORE, IN TERMS OF THE PRINCIPLES OF BENEFICIAL CONSTRUCTION, THE CONTINUATION OF ANY PROCEEDINGS UNDER THE STRINGENT SECTION 13(2) READ WITH SECTION 13(1)(D) PREVENTION OF CORRUPTION ACT 1988 IS NOT PERMISSIBLE.

- 6.1. That from the very perusal of the PC (Amendment) 2018, it is clear that the same is beneficial in nature, as the same seeks to remove the mischief of the investigating agencies and resulting gross misuse of the same, due to which, there has been a syndrome of Policy Paralysis in the Government, as in the public servants were not even taking bonafide action, as doing so brought into question the possibility of being accused of criminal misconduct even if such an act was bonafide lack of judgment or bonafide decision having gone wrong.
- 6.2. That the intention of the Prevention of Corruption Act 1988 was only to deal with a situations, wherein public servants demanded and accepted bribe/ illegal gratification for performing official acts/duties are criminally prosecuted.
- 6.3. However, the PC Act 1988 over the years was misused by over zealous investigating agencies often acting on behalf of vested interests, and even bonafide decisions taken by public servants were often questioned on the basis of the benefit of hindsight. The investigating agencies in such cases ended up alleging criminal misconduct under Section 13 (1) (d) (iii) of the Prevention of Corruption Act, 1988 even though, the same was never the intention of the legislature.
- 6.4. As such, over a period of time the over zealousness of the investigating agencies grossly affected the functioning

and decision making, of public servants and thus the Government. Public servants became wary of taking bonafide decisions as they constantly feared that their decision taken at some point of time would possibly lead to a criminal charge many years down the line (in some cases after retirement of such public officials as in the case of the present Applicant) and thus, leading to a chaotic situation.

- 6.5. Moreover, the Ld. Division Bench of this Hon'ble Court in ***Runu Ghosh vs CBI CrI. A. 482/2002*** had included within the purview of criminal misconduct even cases of gross negligence without any proof or charge of payment of illegal gratification under the category of cases under Section 13 (1) (d) (iii) of the Prevention of Corruption Act, 1988.
- 6.6. That further, while the Hon'ble Supreme Court of India in ***C.K. Jaffer Sharief vs State (through CBI) 2013 [1] SCC 205*** did not decide the validity of ***Runu Ghosh (supra)***, but held that it is mandatory to have mens rea to commit the offence under Section 13 (1) (d) of the Prevention of Corruption Act, 1988, investigating agencies continued to charge public servants even when there was no allegation of any pecuniary benefit obtained by such public servants.
- 6.7. The constitutional validity of the said very provision of Section 13 (1) (d) (iii) of the Prevention of Corruption Act,

1988 was examined by the Hon'ble Supreme Court of India in matter titled as **Dr. Manmohan Singh Vs. CBI bearing SLP (Criminal) [CRLMP] 5056-5057/2015**. The copy of the order is annexed herewith and marked as **Annexure-B**.

6.8. In **R. Sai Bharathi Vs. J. Jayalalitha and Ors 2004 (2) SCC 9**, wherein various aspect have been dealt with and after dealing the various aspects the Hon'ble Supreme Court held that no offence has been made out and **most importantly** the Apex Court has specifically concurred with the findings of Hon'ble Madras High Court in **J. Jayalalitha vs. State 2002-1-LW (Crl) 887** on the aspect of Section 13(1)(d). Relevant portion of **R. Sai Bharathi Vs. J. Jayalalitha and Ors 2004 (2) SCC 9** has been quoted as under:

"34. To attract provisions of Section 13(1)(d) of the Prevention of Corruption Act, public servant obtains for himself or any other person any valuable thing or pecuniary advantage

- (i) by corrupt or illegal means, or*
- (ii) by abusing his position as public servant, or*
- (iii) without any public interest.*

35. The circumstances under which the properties were purchased by M/s Jaya Publications and M/s Sasi Enterprises cannot be treated as one obtained in the circumstances arising in Section 13(1)(d). The facts established in the case point out that the properties are not purchased by corrupt or illegal means or by abusing the official position as public servant to obtain pecuniary advantage discarding public interest. The purchase was effected through open sales held by TANSI. The right to sell the properties in question was available with the

Corporation which chose to do so in favour of M/s Jaya Publications and M/s Sasi Enterprises. **It is not established that A-1 or any other person obtained for herself any valuable thing or pecuniary advantage by abusing her position as public servant.** On the other hand, as stated earlier, the properties in question were sought to be sold from time to time and pursuant to such steps taken the properties had been sold to two firms in question. The sale has been held pursuant to various resolutions of the Government since 1985 and that the putting up of the properties in question for sale itself was not against any public interest. When the two firms of which A-1 is a partner offered appropriate price the same having been accepted, it cannot be said that it has resulted in obtaining any pecuniary advantage or valuable thing by abuse of the official position. If the properties in question were sold by TANSI in public interest, the obtaining of the same through purchase in such a transaction for valuation consideration which does not fall below market value does not come within the scope of Section 13(1)(d). **Thus, the charge under Section 13(1)(d) is not established and we concur with the findings recorded by the High Court in this regard.**

(emphasis supplied)

Relevant portion of judgment in the case of **Jayalalitha vs.**

State 2002-1-LW(CrI) 887 which has later been concurred

by Hon'ble Apex Court has been quoted as under:

"58.

The Supreme Court, after considering the provision and the law on the subject, held that abuse of position must necessarily be dishonest so that it may be proved that the accused caused deliberately wrongful loss by obtaining pecuniary benefit. As I have already observed, the prosecution did not establish, by any evidence, that the first accused obtained pecuniary advantage by abusing official position as a public servant. Section 13(1)(d) of the Prevention of Corruption Act is, therefore, not made out."

6.9. That as such, the Prevention of Corruption (Amendment) Act, 2018 was introduced to remedy such gross misuse of power of launching criminal prosecution by investigating agencies against honest officers, who may have been negligent, even grossly negligent, but were not accused of receiving any illegal gratification.

6.10. It is submitted that when the act is beneficial in nature, then Section 6A of the General Clauses Act shall not apply. In this regard, reliance is placed upon judgment titled **New India Assurance Co. Ltd. v. C. Padma, (2003) 7 SCC 713**.

6.11. The intention the legislature is further clear from the contents of Report Of The Select Committee Of Rajya Sabha On The Prevention Of Corruption (Amendment) Bill, 2013, wherein it was observed as under:

The present amendment proposes to alter the said Section to the extent of deleting Section 13(1)(d)(iii) which may not be appropriate to contain corruption where bureaucrats in connivance with politician causes pecuniary benefit to any private party without having proper consideration of public interest. A three Bench judgement of Delhi High Court in the matter of **Runu Ghosh and others Vs. Central Bureau of Investigation (CBI)** has upheld the said Section in 2011 which has not yet been overruled by the Supreme Court. **However, most stakeholders agreed to the amendment proposed by the Government.**
(emphasis supplied)

6.12. Importantly, in reply to the question raised in the Lok Sabha as to whether the Prevention of Corruption Act,

1988 is slowing down decision making process as its purview does not confine only to corruption, bribery complied with dishonest behaviour but also to bonafied decisions gone wrong, the Minister of State Sh. Jitender Singh on the floor of the house stated that the un-amended provision did not have the necessity of element of mens rea and hence its often misuse had the tendency to slow down the Governments decision making process. It is respectfully submitted that in the instant amendment the legislative amendment is clearly for the repeal of the section 13 (1)(d) PC Act, 1988 and replacing it with PC (Amendment) Act 2018..

6.13. Relevant portion of the Lok Sabha debate is quoted as under for ready reference:-

*"GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS LOK SABHA*

UNSTARRED QUESTION NO: 1286

*ANSWERED ON: 25.07.2018
Prevention of Corruption Act*

*Shrirang Appa Barne
DHARMENDRA YADAV
VINAYAK BHAURAO RAUT
SHIVAJI ADHALRAO PATIL
ANANDRAO ADSUL
PRITAM GOPINATH MUNDE*

*Will the Minister of PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS be pleased to
state:-*

*a) whether the Prevention of Corruption Act
(PCA) is slowing down decision making as it*

does not confine corruption to bribery or dishonest behaviour;

(b) if so, the details thereof and the reasons therefor;

(c) whether the Union Government has set up a high level group to study the clauses of the aforesaid Act which are responsible for delaying the decision making and if so, the findings thereof;

(d) whether the Union Government is considering amendment in the PCA to ensure that bonafide decisions that subsequently turn wrong are not treated as acts of corruption; and

(e) if so, the time by which the final decision is likely to be taken in this regard?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE
(DR. JITENDRA SINGH)

(a) to (e): The provision of section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988 as it presently exists is as follows:

"13. Criminal misconduct by a public servant.
(1) A public servant is said to commit the offence of criminal misconduct,-

.....
(d) if he,----

.....
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;....."

The aforesaid provision does not carry the element of mens rea and thus does not confine such type of corruption to bribing of a public servant or any dishonest behavior by him. This raises apprehensions and fears in the mind of public servant which prima facie have the potential of impeding and slowing down decision making.

The Prevention of Corruption (Amendment) Bill, 2013, for amending the Prevention of Corruption Act, 1988, was introduced in the Rajya Sabha on 19.08.2013. The Bill after having been considered by the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its 69th Report and the Law Commission of India in its 254th Report, was also examined by the Select Committee of Rajya Sabha, which submitted its report on the Bill to the Rajya Sabha on 12th August, 2016.

Recommendations made by the Select Committee in its report on the Bill were considered by the Government and official amendments were moved on the Bill as reported by the Select Committee of the Rajya Sabha.

The Bill was taken up for discussion and passed by the Rajya Sabha on 19th July, 2018 during its current 246th Session. Further, it was taken up for discussion and passed by the Lok Sabha on 24th July, 2018 during its current 15th Session of the 16th Lok Sabha."

(Emphasis Supplied)

6.14. It is settled proposition of law that the speech of the member introducing the bill is a tool of interpretation of the law as has been held by the Hon'ble Supreme Court in the case of K.P Vargheese vs Income Tax Officer, Enakulum (1981) 4 SCC 173, Para 8 and Union of India vs Martin Lotteries Agencies Ltd (2009) 12 SCC 209, Para 38.

6.15. Even Section 6 of the General Clauses Act shall not apply, when a different intention appears. From the very nature of the amendment of the Prevention of Corruption Act,

1988, it is clear that there is a different intention in the PC (Amendment) Act 2018, more so, as there is **no "saving clause"** in the Prevention of Corruption Amendment Act, 2018. In this regard, ***Kolhapur Canesugars (supra)*** is instructive, wherein the very aspect of 'saving clause' has been dealt with.

6.16. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held in **Sunder Lal Vs. M.C.D 1971CriLJ154**, wherein this Hon'ble Court held that,

9.we must give a effect to the standard of compounded Fling as it stands today. **Notification No. G. S. R. 382, dated 9th March, 1965 which substituted a new standard in place of old, must be given a retrospective operation.**

6.17. That furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held in **State through CBI, Delhi vs. Gian Singh AIR1999 SC 3450**, wherein it was held that when a provision has been downgraded, the benefit thereof ought to be given to an accused. It was held thus:-

34- *what is the jurisprudential philosophy involved in the second limb of Clause (1) of Article 20 of the Constitution? "No person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence." It is a fundamental right of every person that he should not be subjected to*

greater penalty than what the law prescribed, and no ex post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.

6.18. That the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted as has been held in **Baser Vs. State of Kerala 2004 3 SCC 609**, placing reliance on *Ratan Lal v. State of Punjab 1965CriLJ360* and *T. Barai v. Henry Ah Hoe and Anr.1983CriLJ164*, when the Hon'ble Supreme Court held that:

12- there is no doubt as to the correctness of the principle on which the two judgments of the High Courts rely. All statutes must be interpreted as prospective in operation, unless retrospectivity is expressly declared by the statute or to be inferred as the necessary intendment from the language used in the statute. As far as the amendments introduced in the NDPS Act, 1985, by Act 9 of 2001 are concerned, Section 41, in terms, says that the Amending Act would apply to all cases pending before the Court or under investigation on the date of commencement of the Amending Act.

In other words, it is to be applied retrospectively.

*If the Act had contained any provisions to the detriment of the accused, then undoubtedly, it would have been hit by the rule against post facto legislation contained in Article 20(1). **However, we find that the amendment (at least the ones rationalising the sentencing structure) are more beneficial to the accused and amount to mollification of the rigour of the law. Consequently, despite retrospectivity, they ought to be applied to the cases pending before the Court or even to cases pending investigation on the date on which the Amending Act came into force. Such application would not be hit by Article 20(1) of the Constitution.***

6.19. Hence, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted on the principles laid down in catena of judgement wherein it has been held that that the benefit of the Amendment to an Act ought to be provided to the Applicant/ Respondent.

7. VIEWS TAKEN BY COURTS WITH REGARDS TO MOLLIFICATION OF RIGORS OF LAW

7.1. It is submitted that recently Section 377 IPC as well Section 497 IPC was struck down as unconstitutional by the Hon'ble Supreme Court. In view of the same all Courts of India were pleased to take a view favoring the accused considering that the rigors of law have been mollified.

7.2. Instance where prosecution under Section 497 IPC was stayed after the same was declared unconstitutional

The Hon'ble High Court of Rajasthan, in the matter titled as **Anuj Sharma S/o Shri D. D. Sharma B/c Brahmin v. State of Rajasthan & Anr., S. B. Criminal Miscellaneous (Petition) No. 89/2019** vide order dated **22.01.2019**, was pleased stay all further proceedings of the trial court in the light of the fact that Section 497 IPC was declared unconstitutional, relevant portion is as under:-

"Relies upon Joseph Shine vs. Union of India, AIR 2018 SC 4898 to contend that the Constitution Bench of the Supreme Court has held Section 497 of Indian Penal Code to be ultra vires of the Constitution.

Issue notice to the respondents for 14.3.2019.

List this case on 14.3.2019. Meanwhile, further proceedings in the court below shall remain stayed."

7.3. Instance where prosecution under Section 377 IPC was struck down after the same was declared unconstitutional

The Hon'ble High Court of Bombay, in the matter titled as **Daniel Crasto v. The State of Maharashtra, Criminal**

Writ Petition No. 4470 of 2012 vide judgment dated 30.01.2019, was pleased to set aside an order refusing to discharge the accused from the offence punishable under Section 377 of the Indian Penal Code after the same was declared unconstitutional, relevant portion is as under:-

"3. Heard submissions and perused the FIR and other documents. The complainant has grievance against her husband, who is gay and kept sexual relations with male friends i.e., the petitioner. The Supreme Court in the case of Navtej Singh Johar & Ors. vs. Union of India has held section 377 of the Indian Penal Code insofar as it criminalises consensual sexual conduct between the adult of same sex, as unconstitutional. In the present case, both were having extra marital consensual sexual relationship. Though it may be a ground for divorce on the ground of cruelty to the complainant, it does not constitute offence under section 377 because both are adults and had sexual relationship by consent. In this case, there is no victim. The complainant wife is an aggrieved person but she cannot be called as a victim under section 377 of W.P. (Cri.) No.76 of 2016 & Others decided on 6.9.2018 wp.4470.2012_(J).doc the Indian Penal Code. There are allegations against the husband having unnatural sexual intercourse with her.

4. Under such circumstances, the order passed by the learned Adhoc Additional Sessions Judge, Greater Mumbai dated 23.11.2012 refusing to discharge the petitioner/accused from the offence punishable under section 377 of the Indian Penal Code is hereby quashed and set aside. Accordingly, the petitioner/accused is hereby discharged from section 377 of the Indian Penal Code.

5. Rule made absolute accordingly."

7.4. Instance where punishment given under unamended Food Adulteration Act was modified by Hon'ble

Supreme Court after the punishment was reduced to only fine

The Hon'ble Supreme Court of India, in the matter titled as **Trilok Chand v. State of Himachal Pradesh, Criminal Appeal No. 1831 of 2010** vide order dated **01.10.2019**, was pleased to reduce punishment owing to the fact that rigors of law was mollified by the legislature, relevant portion is as under:-

"We have considered the respective submissions. In Criminal Appeal No. 214 of 2006, this Court relied on a decision in T. Barai vs. Henry Ah Hoe and Another [(1983) 1 SCC 177] wherein it was opined that since the amendment was beneficial to the accused persons, it could be applied with respect to earlier cases as well which are pending in the Court observing:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and

common sense. This finds support in the following passage from *Craies on Statute Law*, 7th Edn., at pp. 388-89:

A retrospective statute is different from an *ex post facto* statute. "Every *ex post facto* law...." said Chase, J., in the American case of *Calder v. Bull* "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto* within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

In view of the same, the present appeal is allowed in part and the sentence imposed upon the appellant is modified by imposing a fine of Rs.5,000/- only, which shall be deposited within 30 days before the Trial Court. On deposit of the amount, the bail bonds of the appellant shall stand discharged."

7.5. Furthermore, the present appeal by the Appellant CBI is liable to be dismissed especially as the present applicant and all other co-accused have been acquitted under the stringent provisions of Sec.13(2) read with Section 13(1)(d) of the PC Act 1988 and the PC (Amendment) Act 2018 has come in force thus rendering the appeal of the Appellant CBI as infructuous.

8. ISSUE REGARDING APPLICATION OF AMENDMENT TO PREVENTION OF CORRUPTION ACT, 1988 IS PENDING BEFORE HON'BLE DIVISION BENCH OF THIS HON'BLE COURT

8.1. It is most respectfully and humbly submitted that a **Crl (Ref) No. 1/2019 'Court on its own Motion vs State'** wherein a batch of petitions challenging continuance of proceedings under the earlier provisions of Section 13 of the PC Act, 1988 is pending before the Hon'ble Division Bench of this Hon'ble Court. Pertinently, in some of the Petitions the Hon'ble Division Bench of this Court was also pleased to pass interim orders in favour of the Petitioners therein.

8.2. It is most respectfully and humbly submitted that in the above referred criminal reference, following important questions of law have been raised which will be determined by the Hon'ble Division Bench of this Hon'ble Court:

- a) What is the relevant date for application of Prevention of Corruption Amendment Act 2018 if case is pending trial?
- b) Whether the amendment to Section 19 of Prevention of Corruption Act 1988 dated 26.07.2018 is to be read retrospectively being beneficial to the accused?

8.3. Further, the Hon'ble Division Bench vide order dated 15.03.2019 passed in **Crl (Ref) No. 1/2019 'Court on its own Motion vs State'** has observed that point of law raised in the said Criminal Reference is of wide import and requires meticulous consideration. Relevant portion is as under:-

"Having heard learned counsel appearing before the Court, we are of the considered view that the point of law raised in the present Criminal Reference is of wide import and requires meticulous consideration.

In this view of the matter, we appoint Mr. Siddharth Yadav, Advocate as Amicus Curiae, to assist the Court. A copy of the Criminal Reference paper book be provided to him, forthwith."

Copy of the order dated 15.03.2019 passed in **Crl (Ref) No. 1/2019 'Court on its own Motion vs State'** has observed that point of law raised in the said Criminal Reference is of wide import is marked herewith and annexed as **Annexure A**.

8.4. It is most respectfully and humbly submitted that there are several other petitions pending before this Hon'ble Court which raise similar questions of law as to the applicability of the PC (Amendment) Act 2018 in cases where persons to the have been charged under the Prevention of Corruption Act, 1988 a list of those petitions are as follows:

Sr.No	Case Name	Case Number
1)	GOPAL DIKSHIT Vs CBI	(CRL.REV.P.1162/2018)
2)	SUSHIL KUMAR SHARMA VS CBI.	(CRL.M.C.2184/2019,CRL.M.A Nos. 8726/2019(For stay) & 9572/2019 (for stay)
3)	KARAMVIR SINGH VS CBI	(CRL.REV.P.26/2019)
4)	MASHKOOR AHMAD & ANR VS CBI	(W.P.(CRL) 3811/2018 &CRL.M.A.49831/2018 (For Stay)
5)	P.K THIRWANI Vs CBI	(W.P.(CRL) 3906/2018 & CRL.M.A. 50303/2018 (for stay)
6)	MAHINDER SINGH Vs CBI	(W.P.(CRL) 202/2019 & CRL.M.A.1424/2019 (for Stay)
7)	SURESH CHANDRA GUPTA VS CBI	(W.P.(CRL) 984/2019)
8)	RAM NATH VS CBI	(W.P.(CRL) 1168/2019)
9)	S.SUBRAMANYAM VS CBI	(W.P.CRL) 1186/2019)
10)	AKHAND PRATAP SINGH VS CBI	(W.P.(CRL) 1209/2019)
11)	SHYAM SUNDER CHHABRA Vs CBI	(W.P(CRL) 1441/2019 & CRL.M.A.10572/2019(for stay)

12)	VINAY KUMAR JAIN Vs CBI	(W.P.(CRL) 1519/2019 & CRL.M.A.11164/2019(for Stay)
13)	P.K. GIROTRA VS CBI	(W.P.(CRL) 1864/2019)
14)	RAKESH KUMAR SRIVASTAVA VS CBI	(W.P.(CRL) 2044/2019)
15)	U.S. BHATNAGAR VS CBI	(W.P.(CRL) 2668/2019)
16)	U.S. BHATNAGAR VS CBI	(W.P.(CRL) 3027/2019)

8.5. It is most respectfully and humbly submitted that the coordinate bench of this Hon'ble Court in **Mashkoor Ahmad & Anr VS CBI W.P.(CRL) 3811/2018** and in **P.K Thirwani Vs CBI W.P.(CRL) 3906/2018** was pleased to refer the matter to Hon'ble Division Bench of this Hon'ble Court, for consideration where in the petitioner raised similar questions of law. Moreover, in the case of the present applicant the Hon'ble Supreme Court monitored the trial which carried on a day to day basis for almost 7 years and which finally resulted in an acquittal of all accused. The question therefore arises is whether this Hon'ble Court will allow further ignominy and mental harassment to the applicant, at the hands of the Appellant CBI when in law the appeal is not only infructuous but also non-est and thus liable to be dismissed in-limine. This Hon'ble Court ought to take serious notice of the fact that the appellant CBI has clearly hidden the vital fact of the

PC (Amendment) Act 2018 coming into force, from this Hon'ble court and therefore clearly the Appellant CBI has not come with clean hands before this Hon'ble Court and therefore also this Hon'ble Court must not give any leeway to the Appellant CBI and must dismiss the appeal in the harshest of terms. Copy of the relevant orders passed in the case of **Mashkooor Ahmad & Anr VS CBI W.P.(CRL) 3811/2018** and in **P.K Thirwani Vs CBI W.P.(CRL) 3906/2018** wherein Hon'ble Coordinate Bench of this Hon'ble Court was pleased to refer the matter to Hon'ble Division Bench are marked herewith and annexed as **Annexure B.**

9. CONCLUSION

- 9.1. It is therefore most respectfully and humbly submitted that in view of the P.C. (Amendment) Act 2018 coming into force and the law enumerated above and what is stated hereinabove, it is imperative and in the interest of justice that the "preliminary issue of maintainability" of the Criminal Leave Petition seeking grant of leave must be considered and decided.
- 9.2. It is further submitted that in the light of the universal jurisprudence and the view taken by various courts with regard to mollification of rigors of law and in view of the petitions pending before the Division Bench of this Hon'ble Court challenging continuance of proceedings in

view of the PC (Amendment) Act, 2018 coming into force, it is submitted that the issue of continuance of proceedings qua the present Applicant, in view of the very roots of its unconstitutionality and which goes to the heart of the matter and therefore the present Appeal ought to be dismissed with costs or at the highest kept in abeyance till the division bench of this Hon'ble Court rules in the CRC (Ref) No.1/2019, Court on its own Motion v/s State.

7. The present Application has been filed in the most bonafide manner as advised under law.

PRAYER

It is, therefore, most respectfully prayed before this Hon'ble Court that in view if the abovementioned facts and circumstances of the present case, this Hon'ble Court may be pleased to:

- A. To decide the preliminary issue regarding the continuance of the present leave to appeal after coming into force of the Prevention of Corruption (Amendment) Act 2018 more so in the light of the grounds raised in the present application;

AND

- B. In the event that this Hon'ble Court after hearing the parties decides the issue as above in favour of Applicant then this Hon'ble Court be also pleased to reject the Crl L.P No 185 of 2018 or in the alternative keep the present appeal into abeyance till the division bench of this Hon'ble Court rules in the CRC (Ref) No.1 of 2019, titled "Court on its own Motion V/S

State” or in the alternative refuse to grant leave with respect to findings/acquittal pertaining to Section 13 (1) (d) of the Prevention of Corruption Act, 1988;

AND

C. Pass any other necessary and appropriate orders and direction, as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

Dated: __.01.2020

Applicant/Respondent No.3

Place: New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

Criminal L. P. No. 185 of 2018

In The Matter Of:

Central Bureau of Investigation

... Appellant

Versus

A. Raja and Ors.

... Respondents

AFFIDAVIT

**AFFIDAVIT OF R.K CHANDOLIA S/O R.N CHANDOLIA R/O
D-II/334, VINAY MARG, CHANAKYAPURI NEW DELHI,
AGED ADULT**

I, the above named deponent, do hereby solemnly affirm and declare as under:

1. That I am the Respondent No.3 in the above mentioned matter and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the accompanying application has been drafted under my instructions and the contents of the same are true and correct.
3. That the contents from Para No 1 to 7 are true to my knowledge as per the records of the case and are based on legal advice, which I believed to be true.
4. That the contents of the accompanying application may kindly be read as a part and parcel of this affidavit and the same is not repeated for the sake of brevity. The contents of the same have been read over to me in vernacular.

[Signature]
I identified the deponent who has signed in my presence



[Signature]
DEPONENT

VERIFICATION

CERTIFIED THAT THE DEPONENT R.K. Chandolia was verified at New Delhi on the 22 JAN. 2020 Day of Jan, 2020 that the contents of the above affidavit are true and correct to my knowledge and nothing material has been concealed there from.

Identified by Shri/Smt. R.N. Chandolia at Delhi
has solemnly affirmed before me at Delhi
at SI. No. 117/18
that the contents of the affidavit which have been read & explained to him are true and correct to his knowledge.

[Signature]

22 JAN 2020 Oath Commissioner
New Delhi

[Signature]
DEPONENT

ANNEXURE - A

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IN THE HIGH COURT OF DELHI AT NEW DELHI**CRL.REF. 1/2019****COURT ON ITS OWN MOTION**

..... Petitioner

Through
versus**STATE**

..... Respondent

Through Mr. Narender Mann, Spl. PP for CBI.
Mr. Aditya Wadhwa and Mr. Abhinav
Sethi, Advocate for accused No. 1.
Mr. Raj Mohan Gupta, Advocate for
accused No. 2.**CORAM:****HON'BLE MR. JUSTICE SIDDHARTH MRIDUL****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****ORDER****%****15.03.2019**

Having heard learned counsel appearing before the Court, we are of the considered view that the point of law raised in the present Criminal Reference is of wide import and requires meticulous consideration.

In this view of the matter, we appoint Mr. Siddharth Yadav, Advocate as Amicus Curiae, to assist the Court. A copy of the Criminal Reference paper book be provided to him, forthwith.

List on 29th April, 2019 for further proceedings.

SIDDHARTH MRIDUL, J**MANOJ KUMAR OHRI, J****MARCH 15, 2019****RS**

ANNEXURE - B

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 3811/2018 & CrI.M.A. 49831/2018**
MASHKOOR AHMAD & ANR. Petitioner
Represented by: Counsel (appearance not given)

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent
Represented by: Mr. Anil Grover, Spl. PP. with Mr.
Shivesh Pal Singh, Adv.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****ORDER**% **23.05.2019**CrI.M.A. 11137/2019

Exemption allowed subject to just exceptions.

CrI.M.A. 11136/2019

By this application the petitioner seeks listing of the present writ petition and application before the Division Bench dealing with CrI.Ref.No.1/2019 as the issue involved in the present petition is the same as referred to by the learned ASJ in CrI.Ref.No.1/2019.

Ordered accordingly.

Application is disposed of.

W.P.(CRL) 3811/2018 and CrI.M.A. 49831/2018

List this petition before the Division Bench dealing with CrI.Ref.No.1/2019 on 27th May, 2019 subject to orders of Hon'ble the Chief Justice.

MUKTA GUPTA, J.**MAY 23, 2019 /'ga'**

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 3906/2018

P.K. THIRWANI

..... Petitioner

Represented by: Mr.Anuj Chauhan, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Mr.Anupam S.Sharma, SPP for CBI
with Ms.Apoorva Ahuja, Advocate

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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22.05.2019

Crl.M.A.No.11043/2019

Allowed subject to just exceptions.

Crl.M.A.No.11042/2019

By this application, the petitioner states that the issue involved in this petition has been referred by learned ASJ to this Court which is pending hearing before the Division Bench in Crl.Ref.No.1/2019.

List this petition also before the Division Bench dealing with Crl.Ref.No.1/2019 subject to orders to Hon'ble the Chief Justice on 27th May, 2019.

Application is disposed of.

MUKTA GUPTA, J.

MAY 22, 2019

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Criminal M.A. No. _____ of 2020

IN

Criminal L. P. No. 185 of 2018

In the Matter Of:

Central Bureau of Investigation

...Appellant

Versus

A. Raja and Ors.

...Respondents

**APPLICATION ON BEHALF OF THE RESPONDENT NO. 3
UNDER SECTION- 482, CrPC SEEKING EXEMPTION FROM
FILING CERTIFIED COPIES OF THE ANNEXURES, TRUE TYPED
COPIES OF DIM ANNEXURES AND ALSO FOR NOT LEAVING
PROPER MARGINS.**

MOST RESPECTFULLY SHOWETH:

1. That the contents of the accompanying Application are not being repeated herein for the sake of brevity and the same may kindly be read as part and parcel of the present Application.
2. That for the proper and appropriate adjudication of the controversy involved in the matter, Respondent No. 3 has relied on certain Annexures, certified copies whereof are not readily available with the Respondent No. 3.
3. That the present Application has been moved bonafide and in the interest of justice.

PRAYER:

In the view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Kindly exempt the Respondent No. 3 from filing the certified copies of the Annexures, etc. and also from filing typed copies of the dim Annexures and also for not leaving proper margins.

AND

- ii. Pass any other necessary and appropriate orders and direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

It is prayed accordingly

Date: **22.01.2020**

Applicant/Respondent No. 3

Place: **New Delhi**

Through

Deepanshu
**Deepanshu Choithani and
Shailesh Pandey
Advocates**
Chamber No. 27, Patiala
House Court, New Delhi-
110001
#9999268029

IN THE HIGH COURT OF DELHI AT NEW DELHI

Criminal L. P. No. 185 of 2018

In The Matter Of:

Central Bureau of Investigation

... Appellant

Versus

A. Raja and Ors.

... Respondents

AFFIDAVIT

**AFFIDAVIT OF R.K CHANDOLIA S/O R.N CHANDOLIA R/O
D-II/334, VINAY MARG, CHANAKYAPURI NEW DELHI,
AGED ADULT**

I, the above named deponent, do hereby solemnly affirm and declare as under:

1. That I am the Respondent No.3 in the above mentioned matter and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the accompanying application has been drafted under my instructions and the contents of the same are true and correct.
3. That the contents from Para No 1 to 3 are true to my knowledge as per the records of the case and are based on legal advice, which I believed to be true.
4. That the contents of the accompanying application may kindly be read as a part and parcel of this affidavit and the same is not repeated for the sake of brevity. The contents of the same have been read over to me in vernacular.



[Signature]
DEPONENT

VERIFICATION

CERTIFIED THAT THE DEPONENT R.K. Chandolia S/o, W/o, D/o R.N. Chandolia Identified by Shri/Smt. Mukul T. Chandolia has solemnly affirmed before me at Delhi on 22 JAN 2020 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

that the contents of the affidavit which have been read & explained to him are true and correct to his knowledge.

(R)

22 JAN 2020
Oath Commissioner
New Delhi

[Signature]
DEPONENT