*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: November 06, 2020
Pronounced on: November 23, 2020

\+ **Crl.M.A.1731/2020 & Crl.M.A.1820/2020 & Crl.M.A.13784/2020 & Crl.M.A.14230/2020**
in
Crl.L.P.185/2018

CENTRAL BUREAU OF INVESTIGATION .... Petitioner
Through: Mr.Sanjay Jain ASG with Ms. Sonia Mathur, Senior Advocate with Mr.Ripu Daman Bhardwaj, Special Public Prosecutor with Mr. Rishi Raj Sharma & Ms. Noor Rampal, Advocates.

Versus

A.RAJA & ORS. ...Respondents
Through Mr. Manu Sharma, Ms. Ridhima Mandhar, Mr. Kartik Khanna & Mr.Vijay Singh, Advocates for respondent No.1.
Mr. Siddharth Luthra, Senior Advocate with Mr. Vedanta Varma,Mr. Sanat Tokas, Ms. Ankita Tiwari & Mr.Ayush Kaushik, Advocates for respondent No.2.
Mr.Vijay Aggarwal, Mr.Mudit Jain, Mr.Ashul Aggarwal, Mr. Shailesh Pandey & Ms. Barkha Rastogi, Advocates for respondents No. 3, 4, 13 & 14.
Mr. Atmaram N S Nadkarni, Senior Advocate with Mr. Salvador Santosh Rebello, Ms. Arzu Paul, Mr.Mahesh Agarwal, Mr. Rishi

Agrawala, Ms. Niyati Kohli & Mr. Pratham Vir Agarwal, Advocates for respondent No.5.

Mr. Varun Sharma, Advocate for respondent No. 6.

Ms. Tarannum Cheema & Mr. Akshay Nagarajan, Advocates for respondent No.7.

Mr. D. P. Singh, Ms. Sonam Gupta & Ms. Ishita Jain, Advocates for respondent No.8-M/s Unitech Wireless.

Mr. N. Hariharan, Senior Advocate with Mr. Siddharth Yadav, Advocate for respondent No.10/ Surender Pipara.

Mr. Mohit Kumar Auluck & Mr. Pramod Sharma, Advocates for respondent No.11.

Ms.Manali Singhal, Mr. Santosh Sachin, Mr. Deepak S Rawat & Ms. Aanchal Kapoor, Advocates for respondent No.12-M/s Reliance Telecom Ltd.

Mr. Sudhir Nandrajog, Senior Advocate with Mr. Sandeep Kapur, Mr.Vir Inder Pal Singh Sandhu, Mr. Abhimanshu Dhyani, Mr. Sahil Modi, Advocates for respondent No.15.

Mr. Balaji Subramanian & Ms. Ishani Banerjee, Advocates for respondent No.16.

Dr. Joseph Aristotle S. & Ms. Sneha, Advocates for respondent No.17.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

% **O R D E R**

Crl.M.A.1731/2020 (by respondent No. 2-Siddharth Behura)
Crl.M.A.1820/2020 (by respondent No. 3- R.K.Chandolia)
Crl.M.A.14230/2020 (by respondent No. 5- Vinod Goenka)
Crl.M.A.13784/2020 (by respondent No. 15- Karim Morani)

1. The above captioned four applications have been filed by the applicants/respondents challenging the maintainability of the instant petition seeking leave to appeal on the ground that it has become infructuous in view of the recent amendment to the Prevention of Corruption Act, 1988 ('PC Act'). The ground raised in these applications are that several amendments have been made to the Prevention of Corruption Act, 1988 through Prevention of Corruption (Amendment) Act, 2018 and provision of Section 13(1) (d) of PC Act, 1988 stands repealed and issue with regard to applicability of Prevention of Corruption (Amendment) Act, 2018 is pending before the Hon'ble Apex Court. Another ground taken is that a reference bearing no. Crl. Ref. 1/2019 is pending before Division Bench of this Court, which is yet to adjudicate the contentious issue of legitimacy of the repealed Section 13 (1) (d) of the Prevention of Corruption (PC) Act invoked in numerous criminal cases, and till the decision of

the reference, the instant petition seeking leave to appeal, cannot be heard.

2. The pleas raised in the four applications are almost similar and therefore, these applications are being disposed of by this common order.

3. Extensive arguments were addressed by Dr.Abhishek Manu Singhvi, learned senior counsel appearing for respondent No.1; Mr. Siddharth Luthra, leaned senior counsel for respondent No.2; Mr. Vijay Aggarwal, learned counsel for respondents No. 3,4, 13 & 14; Mr. Atmaram N S Nadkarni, learned senior counsel for respondent No.5; Mr. D.P.Singh, Advocate for respondent No.8, Mr. N.Hariharan, learned senior counsel for respondent No.10 and Mr. Sudhir Nandrajog, learned senior counsel for respondent No.15. The learned counsels appearing for other respondents have adopted the arguments addressed by above learned counsels.

4. Dr. Abhishek Manu Singhvi, learned senior counsel, Mr. Vijay Aggarwal and other learned counsels appearing for respondents submitted that it is the settled proposition of law that once an act is repealed and there is no saving clause, it has to be considered as if it

had never existed and the same would be considered obliterated from the Statute books. Reliance was placed upon the Hon'ble Apex Court's decision in ***State of U.P. v. Hirendra Pal Singh*, (2011) 5 SCC 305,** relevant portion relied upon reads as under:-

> *"22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal."*

5. Dr. Singhvi, Mr. Siddharth Luthra, learned senior counsels and Mr. Vijay Aggarwal, learned counsel and other counsels for the respondents submitted that Prevention of Corruption (Amendment) Act, 2018 does not contain any savings clause and the Legislature has not amended 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. He further submitted that mere violation of any procedures and rules or irregularities were never even held to be Criminal misconduct under Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

Reliance in this regard was placed upon decision in ***C K Jaffer Sharief vs. State (2013) 1 SCC 205*.**

6. It was submitted by Mr. Siddharth Luthra, learned senior counsel that the amendment to Section 13 of the PC Act, 1988 is very relevant, as the acts which are considered as criminal misconduct post amendment are limited only to dishonest or fraudulent misappropriation of property or illegal enrichment and in this case, there is no allegation by the CBI against the applicant/respondent represented by him of dishonest or fraudulent misappropriation of property or illegal enrichment for doing a favour in discharge of official duties. Reliance was placed upon decisions in ***Veerchand Jain vs. State of Chattisgarh,* 2012 SCC Online CHH 276**; ***Krishan Chander Vs. State of Delhi* (2016) 3 SCC 108*; State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede* (2009) 15 SCC 200** and ***Khaleel Ahmed Vs. State Of Karnataka,* (2015) 16 SCC 350**. Learned counsel also placed reliance upon decision in ***S.K.Kale Vs. State of Maharashtra* AIR 1977 SC 822** and ***A. Sivaprakash vs. State of Kerala* (2016) 12 SCC 273** to submit that even if it is assumed that the public servant had not followed the

normal procedure due to any urgency, then also it cannot be said that the act was done with an oblique or corrupt motive. However, it may be mentioned there that vide these applications the preliminary prayer of applicants/respondents is to refer the question of law i.e. effect of Prevention of Corruption (Amendment) Act, 2018 to the Division Bench and not to look into the merits of the case at this stage and to decide the fact whether there are no allegations against concerned respondents of dishonest or fraudulent misappropriation of property or illegal enrichment for doing a favour in discharge of their official duties. This question will be decided at the appropriate stage when arguments on merits of the petition will be heard and, therefore, the above contentions are not being considered and decided in these applications.

7. Dr. Singhvi and Mr. Atmaram N S Nadkarni, learned senior counsels, Mr. Vijay Aggarwal, learned counsel and other learned counsels for the respondents stated that the impact of amendment has to be considered keeping in view the fact that the respondents have been acquitted by the learned trial court. Reliance was placed upon decision of Hon'ble Apex Court in ***Kolhapur Canesugar Works Ltd.***

v. Union of India, **(2000) 2 SCC 536.** They submitted that since Section 13 (1) (d) of PC Act, 1988 stands repealed, the effect is that it stands obliterated from the Statute book and therefore, this leave to appeal is not maintainable. The relevant para runs 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 of 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 proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."*

Reliance was also placed upon decisions in ***Navtej Singh Johar & Ors. Vs. Union of India through Secretary, Ministry of Law and Justice*** **(2018) 10 SCC 1** ***and Mahmadhusen Abdulrahim***

Kalota Shaikh vs. Union of India **2009(2) SCC 47** in support of aforesaid submission.

8. Learned counsel Mr. Vijay Aggarwal and other learned counsels have also drawn attention of this Court to Section 6(a) of The General Clauses Act, 1897, which reads as under:-

> *"6. Effect of repeal. -—Where this Act, or any 1 [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*
>
> *XXXXX"*

9. Citing the difference between repeal and omission of a provision and applicability of Section 6 of General Clauses Act, learned senior counsel Dr. Singhvi, Mr. Vijay Aggarwal and other learned counsels for the respondents relied upon the decision of ***General Finance Co. v. CIT*****, (2002) 7 SCC 1,** which reads as under:-

> ***"9.*** *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 276-DD 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."*

10. In view of the settled law, it was submitted that present leave to appeal against the order of acquittal cannot be entertained.

11. Learned counsels for the respondents further submitted that though the word used may be 'amendment' in the provision, however, as per the Statements of Objects and Reasons, it is actually a case of substitution without any saving clause. It was argued that a Statute which repeals or amends must either have a saving clause or there should be an indication that the intention of the Legislature was to protect the past actions under Section 6(c) of the General Clauses Act. It was submitted that there was a specific saving and repeal provision in Section 30 of the PC Act, 1988, which reads as under:-

> *"30. Repeal and saving. —*
> *(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.*

> *(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."*

12. However, there is no saving clause in the Amendment Act and therefore, the present proceedings cannot be continued in the eyes of law. It was argued that the PC (Amendment) Act, 2018, No. 16 of 2018, did not make any change to Section 30 of the PC Act, 1988 (un-amended) nor provided saving clause for the amendments/substitutions made by PC (Amendment) Act, 2018, No. 16 of 2018 and in the absence of specific savings clause, recourse cannot be taken to the General Clauses Act 1897. Learned counsels for the respondents have also placed reliance upon the decision of the Hon'ble Apex Court in ***Sushila N. Rungta (dead through LRs) vs. Tax Recovery Officer*** **(2019) 11 SCC 795.**

13. It was further submitted that when the Act is beneficial in nature, then Section 6A of the General Clauses Act shall not apply. Reliance in this regard was placed upon decision of Hon'ble Apex

Court in ***New India Assurance Co.Ltd Vs C.Padma And Another*** **2003(7) SCC 713**.

14. It was further submitted that those enactments which relax the existing procedure or mollify the rigor of criminal law, are given retrospective effect as per the rule of beneficial construction. Learned counsels also relied upon decision of the Hon'ble Apex Court in ***T. Barai Vs. Henry Ah Hoe,*** **(1983) 1 SCC 177** and of Gauhati High Court in ***Md. Abdul Haque vs. Srimati Jesmina Begum Choudhary*** **2012 SCC OnLine 143**.

15. It was also submitted on behalf of the respondents that Section 372 Cr.P.C. does not permit an appeal unless specifically provided in the Code and in case of judgment of trial court resulting in acquittal, appeal cannot be entertained except with the leave of the Hon'ble High Court. It was further submitted that filing of an appeal against a judgment of acquittal is not a vested right in favour of the CBI and since respondents have been acquitted of the stringent provisions of Section 13(2) read with Section 13(1) (d) of the PC Act, 1988, which is no longer in force, continuation of any proceedings under the said provisions is not permissible.

16. Mr. D.P.Singh, learned counsel submitted that by applying Section 13(1)(d) of the PC Act, which has expressly been omitted by the Legislature, the fundamental right to life and personal liberty of the respondents cannot be taken away unless it is done through a procedure established by law. The amended Section 13 of the PC Act has, thus, to be followed by and it cannot be questioned in view of the unambiguous intention of the Legislature, by applying any external or internal aid of interpretation.

17. Mr. Sudhir Nandrajog, learned senior counsel placed reliance upon Report of Committee on Civil Service Reforms – July 2004, wherein in paragraph No.2.29 it is averred that in several cases, officers who took commercial decisions on the basis of available information and in good faith, were taken to task and were either prosecuted or proceeded departmentally for imposition of major penalty. Learned counsel also drew attention of this Court to paragraph No. 2.31 of the said Report wherein it is stated that Section 13 (1) (d) (iii) of the Prevention of Corruption Act ,1988, provides that if a decision of an officer benefits a person without public interest, the officer concerned can be prosecuted in a court of law of

competent jurisdiction and since all commercial decisions benefit one party or the other, it is often difficult for an officer even though acting in good faith, to ensure conformity with the aforesaid provision of law. It is also averred in the report that in such circumstances, the easiest course for the civil servant is to avoid taking a decision or refer it to a larger body or a committee to take a decision and therefore, the Committee was of the view that Section 13 (1) (d) (iii) of the Prevention of Corruption Act, 1988, which was not there in the earlier Prevention of Corruption Act 1947, needs to be given a second look so that civil servants are not inhibited from taking *bona fide* decisions. It was argued that the operation of PC Act, 1988 led to public servants being wary of taking *bona fide* decisions and therefore, it was amended and PC (Amendment) Act, 2018 was introduced by the Legislature.

18. Attention of this Court was also drawn by Mr. Sudhir Nandrajog, learned senior counsel, to the Report of the Rajya Sabha on the PC (Amendment) Bill, 2013 to submit that the Hon'ble Minister of State while presenting the Bill in Lok Sabha on 25th July, 2018 had categorically stated that the unamended provision did not

have the necessity of element of *mens rea* and hence, was often misused and, therefore, Section 13(1) (d) was repealed by PC (Amendment) Act, 2018. Learned counsel submitted that extract of speech introducing a Bill is a tool of interpretation of the law, as has been held by the Hon'ble Apex Court in ***K.P Varghese Vs. Income Tax Officer, Ernakulam*** **(1981) 4 SCC 173** and ***Union of India Vs. Martin Lotteries Agencies Ltd*** **(2009) 12 SCC 209**.

19. It was stated on behalf of learned counsels for the respondents that *draconian law* must be removed and substitution means, complete repeal of provisions. Reliance was placed upon decision of the Hon'ble Apex Court in ***West U.P.Sugar Mills Assn. Vs. State of U.P. and Others*** **(2002) 2 SCC 645.**

20. It was further submitted on behalf of the applicants/respondents that when a provision has downgraded the sentence, the benefit thereof must be given to the accused. Learned counsels for respondents have placed reliance upon decision of the Hon'ble Apex Court in ***State through CBI, Delhi vs. Gian Singh AIR 1999 SC 3450***, which reads as under:-

> ***"32.*** *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 prescribes, 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."*

21. Learned counsels further submitted that after the Hon'ble Apex Court had struck down provisions of Section 377 IPC and Section 497 IPC as unconstitutional, courts had taken a view favouring the accused considering the fact that the rigors of law have been mollified. It was contended that the punishment under the unamended Food Adulteration Act was mollified by the Hon'ble Apex Court by reducing it only to fine by decision dated 1st October, 2019 in Criminal Appeal No. 1831 of 2010, titled as ***Trilok Chand v. State of Himachal Pradesh*.**

22. Learned counsel for respondents submitted that in view of aforesaid decision of the Hon'ble Apex Court in ***Trilok Chand*** *(Supra)*, the present petition has to be dismissed, especially when the respondents have been acquitted under the stringent provisions of Section 13(1) (d) of PC Act, 1988 and PC (Amendment) Act, 2018 has come into force.

23. Learned counsels further placed reliance upon decisions in ***V.D. Bhanot Vs Savita Bhanot*** **2012 (3) SCC 183;** ***State Vs Gian Singh*** **AIR 1999 SC 3450;** ***Gajraj Singh And Ors Vs State Transport Appellate Tribunal And Ors*** **1977 (1) SCC 650;** ***R. Sai Harathi Vs J. Jayalalitha And Ors*** **2004 (2) SCC 9;** ***D.K. Trivedi And Sons And Ors Vs State Of Gujarat And Ors.*** **1986(SUPP) SCC 20;** ***Vijay Laxmi Sadho VS Jagdish*** **2001 AIR (SC) 600;** ***Central Board Of Dawoodi Bohra Community And Another Vs State Of Maharashtra and Another*** **2005 (2) SCC 673;** ***Bansidhar And Vs State of Rajasthan and Ors.*** **1989 (2) SCC 557;** ***State Of Haryana And Others Vs. Hindustan Construction Company Limited*** **2017 (9) SCC 463;** ***Sushila N. Rungta (D) Thr. Lrs. in Civil Appeal No.***10824/2018 and ***Nemi Chand V. State Of Rajasthan*** **2016 SCC**

OnLine SC 1715 ; ***CIT v. Vatika Township Private Limited*** **(2015) 1 SCC 1** to submit that 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 and the notification substituting a new standard in place of the old one must be given a retrospective operation.

24. Learned counsels for the respondents also brought to the notice of this Court that a batch of petitions challenging the continuance of proceedings under Section 13 of PC Act, 1988 is pending before the Hon'ble Division Bench of this Court wherein the question of implementation of PC (Amendment) Act, 2018 as well as its applicability with retrospective effect, are under consideration and in few cases stay order has also been granted. Learned counsels stated that a Division Bench of this Court in W.P.(CRL) 262/2018, titled as ***Sterling Biotech Ltd Vs Union Of India And Ors***, vide order dated 28th February, 2018 has adjourned the petition *sine die* observing that the validity of Section 19(3) (c) of PC Act, 1988 is pending before the Larger Bench of the Hon'ble Apex Court and judgment is awaited. In another similar petition, the said Division Bench in

W.P.(C) 8331/2017, titled as ***Sterling Biotech Ltd Vs Union Of India And Ors***; vide order dated 23rd April, 2018, has adjourned the petition *sine die* observing that the issue involved in the writ petition is pending before the Hon'ble Apex Court. Learned counsel next submitted that the said Division Bench in W.P.(CRL) 350/2018, titled as ***M/S Roshan Lal Lalit Mohan Through Lalit Mohan (Proprietor) Vs. The Directorate Of Enforcement New Delhi,*** vide order dated 30th July, 2018 and in W.P.(CRL) 2658/2018, titled as ***Gautam Khaitan Vs Union Of India & Anr.,*** vide order dated 30th October, 2019, while dealing with petitions pertaining to validity of Section 19 of Prevention of Money Laundering Act, has adjourned the matters *sine die* while observing that identical questions are pending consideration before the Hon'ble Apex Court. Learned counsel for applicants/respondents stated that this Court should adopt the similar stand and adjourn the hearing in appeal *sine die* till decision of Hon'ble Division Bench or Apex Court on the applicability of PC (Amendment) Act, 2018 is recited.

25. Learned counsels for respondents have also placed reliance upon Hon'ble Apex Court decision in ***CCE v. Dunlop India Ltd.***

(1985) 1 SCC 260 to submit that when a similar matter is pending before a Higher Court, the subordinate court should stay their hands away. Reliance was also placed upon Hon'ble Apex Court's decision in ***All India Institute of Medical Sciences Vs. Sanjiv Chaturvedi and Others*** **2019 SCC OnLine SC 118** to submit that judicial decorum and propriety demands that a judicial order, ad interim, interim or final be vacated, varied, modified, recalled or reviewed by a Bench of coordinate strength or larger strength or a higher forum, but not a smaller Bench of lesser strength, except in cases where such authority to a lower forum and/or smaller Bench is expressly conferred or implicit in the order sought to be vacated, varied, modified, recalled or reviewed. It was submitted by learned counsels that keeping in view the mollifications of rigors of law and pendency of the petitions before the Hon'ble Apex Court and the Hon'ble Division Bench challenging continuance of proceedings under the PC Act, 1988, this Court should either refer the petitions to the Division Bench or should await the outcome of the proceedings pending consideration before the Hon'ble Apex Court and the Hon'ble Division Bench.

26. Mr. Sanjay Jain, learned ASG submitted that the present appeal against acquittal was instituted on 28th March, 2018, whereas the Prevention of Corruption (Amendment) Act, 2018 came into force after institution of the appeal on 26th July, 2018 and therefore, the impact of amendment made in 2018 does not affect the present proceedings for the reason that the present proceedings arose before the Amendment to the Prevention of Corruption Act.

27. It is further submitted that the subject matter of these applications i.e. the impact of the 2018 amendment on proceedings initiated under the unamended Prevention of Corruption Act, 1988 is no doubt pending consideration before a Division Bench of this Hon'ble Court in Crl. Ref. 1/2019, *Court on its own motion Vs. State.* However, the Hon'ble Division Bench vide its order of 7th October, 2020 has directed continuation of trials under the Prevention of Corruption Act. The relevant portion of the order runs as under:-

> *"All these petitions raise common legal issues which are common to CRL.REF. 1/2019. We are informed that some of the other connected matters coming up before the Court on 11.12.2020. Accordingly, we direct that the present petitions be listed on 11.12.2020, along with other connected matters already listed on that date for hearing. ...*

> … ***We direct that in all these cases, the Trial Court may proceed with the cases pending before it, and hear submissions of the parties. The Trial Court may also pronounce judgment. In case, the accused/ petitioners or any of them are held guilty, the Trial Court may proceed to pronounce the order on sentence. However, the petitioners/ accused shall not be taken into custody till the next date of hearing"***
>
> *(emphasis supplied)*

28. On perusal of the above portion of the order dated 7th October, 2020, it is clear that though the Division Bench is seized of the matter and shall be hearing arguments on the issue on the next date of hearing, however, the Division Bench has also clarified and directed that all trials must proceed unaffected by the proceedings before it. The present proceedings being in the nature of a leave to appeal, must be heard unaffected by the reference to the Division Bench.

29. It was submitted by the learned ASG that as per the order, even proceedings which substantially affect the rights of parties; such as trial and sentencing, were directed to be continued. Thus, there appears to be no good reason not to hear arguments on leave to appeal because of pendency of the said issue. It was argued that since the Division Bench has not stayed continuation of trials and so, there

is no judicial impropriety if this Court proceeds with hearing the arguments on the leave to appeal.

30. I have heard the learned counsels for the parties and considered their rival submissions and have gone through the material placed on record as well as various decisions relied upon.

31. The contention of learned ASG during the course of arguments was that the prayer of all the respondents that the present proceedings be referred to Division Bench where the issue pertaining to applicability of PC (Amendment) Act, 2018 is pending be not accepted, as the Division Bench has itself vide its order dated 7th October, 2020 clarified that in all trials under Prevention of Corruption Act, 1988 hearing of arguments, pronouncement of judgment and even sentencing may continue, and also because respondents have not prayed or argued before this Court that the issue with regard to continuation of present proceedings in terms of PC (Amendment) Act, 2018 be decided, so, there is no impediment upon this Court to hear the arguments in the instant leave to appeal in terms of PC Act, 1988.

32. However, Mr. Vijay Aggarwal and other learned counsels have drawn the attention of this court to the prayers in their respective applications which run as under:-

Crl. M.A. 1731/2020 (R-2 Siddharth Behrua) & Crl. M.A. 1820/2020 (R-3 R. K. Chandolia

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 Applicants then this Hon'ble Court be also pleased to reject the Crl LP 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 Vs. 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.*

Crl. M.A. 14230/20 (R-5 Vinod Goenka)

a).*Pass necessary orders and directions for referring the present leave to appeal to be tagged with CRC (REF) No.1 of 2019 titled "Court on its own Motion Vs. State" which reference is pending before the Divison Bench of this Hon'ble Court;*

And

b).*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.*

Crl. M.A. 13784/2020 (R-15 Karim Morani)

a).*Send the present matter to be decided with Reference pending with the Division Bench of this Hon'ble Court;*

And

b).*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.*

33. Learned counsel Mr. Vijay Aggarwal for respondent Nos. 3, 4, 13 & 14 specifically asserted that since a specific prayer has been made in the application to decide the preliminary issue regarding the continuation of the present leave to appeal after coming into force Prevention of Corruption (Amendment) Act, 2018, he wants a verdict

from this Court on this preliminary issue. On the insistence and persistence and in deference to the prayer of the Mr. Vijay Aggarwal, learned counsel and further keeping in mind the fact that there is no stay granted by the Hon'ble Apex Court for hearing the appeals arising out of Prevention of Corruption Act, 1988, this Court has decided to give its verdict on the preliminary issue.

34. It is a settled law that the General Clauses Act applies to all enactments that have come into force after the enactment of the General Clauses Act. The same is clear from a reading of the *Introduction* of the General Clauses Act, 1897, where it is clarified that the intendment behind the enactment of the Act was to shorten the language of future statutory enactments and as far as practicable, provide for uniformity. Therefore, it is clear that the General Clauses Act is the foundation, upon which all enactments are to be constructed. The introduction to the General Clauses Act is reproduced for ready reference:-

> ***"THE GENERAL CLAUSES ACT, 1897***
> ***INTRODUCTION***
> *The General Clauses Act, 1897 is a consolidating Act It consolidated the General Clauses Act, 1868 and the General Clauses Act, 1887. Before the enactment of the General Clauses Act, 1868, provisions of the*

*Interpretation Act, 1850 were followed. The provisions of that Act and certain additions were framed together and thus emerged the General Clauses Act, 1868. The object of the General Clauses Act, 1868 was to shorten the language used in the Acts Of the Governor-General of India in Council. It contained only 8 sections. A supplementary General Clauses Act was enacted as the General Clauses Act, 1887 which contained 10 sections. The additions enacted in this Act were based on the personal experience of Sir Courteney Ilbert who drafted this Act. In 1987, the General Clauses Act of 1868 and 1887 were consolidated and a new Bill was introduced in the Council of the Governor-General on 4th February 1897. **While introducing the Bill in the Council the then Law Member pointed out that the new Bill was not intended to change the existing law. Its object was simply to shorten the language of future statutory enactments and as far as possible, to provide for uniformity of expression where there was identity of subject-matter.** It was convenient that the General Clauses Acts of 1868 and 1887, which were already on the statute book, should be consolidated to have Legislative Dictionary and rules for the Construction of Acts in one and the same enactment."*

(emphasis supplied)

35. The Hon'ble Apex Court of India in ***Shree Sidhbali Steels Ltd. v. State of U.P.,*** **(2011) 3 SCC 193,** has held that whatever the General Clauses Act says, whether as regards the meaning of words or as regards legal principles, has to be read into every Statute to which it applies.

36. The Hon'ble Apex Court in ***Devanagere Cotton Mills Ltd. v. Deputy Commissioner,*** **AIR 1961 SC 1441** has held as under:-

> ***"4.*** *Counsel for the appellants however contends that the General Clauses Act 10 of 1897 was not extended by the Part B States Laws Act to the State of Mysore and therefore the definition of "Collector" under the General Clauses Act cannot be requisitioned in aid to interpret the expression "Collector" used in the Act. But the argument proceeds upon a fallacy as to the true nature of the General Clauses Act.* ***By Section 3 of that Act, in all Central Acts and Regulations made after the commencement of the General Clauses Act, unless there is anything repugnant in the subject or context, the various expressions therein set out shall have the meanings ascribed to them by that Act. The effect of Section 3 is to incorporate it as it were as an interpretation section in all Central Acts and Regulations made after the commencement of the General Clauses Act.*** *Whenever the Central Act or Regulation made after March 11, 1897, is enacted, the General Clauses Act becomes statutorily a part thereof and by its own force it applies to the interpretation of every such enactment. Its vitality does not depend upon any territorial extension."*
>
> *(Emphasis supplied)*

37. The Hon'ble Apex Court in ***Commissioner. of Customs Vs. Dilip Kumar & Co.,*** **(2018) 9 SCC 1** has also held as under:-

> ***"17.*** *In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact the Interpretation Acts or the General Clauses Act.* ***In all the Acts and Regulations, made either by Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view.*** *If while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of the statute."*
>
> *(emphasis supplied)*

38. Thus, from the above pronouncements of the Hon'ble Apex Court, it is clear that the provisions of General Clauses Act have to be read into the provisions of every Statute which has been enacted after coming into force of the General Clauses Act. That being the case, the General Clauses Act no doubt applies to Prevention of Corruption (Amendment) Act, 2018, being a Statute which has come into force after the enactment of the General Clauses Act.

39. Learned counsels for the respondents have, however, argued that since there is no saving clause, the earlier unamended provisions, under which the respondents were prosecuted, stand effaced from the Statute book and no proceeding under these provisions can continue.

40. Let this Court first refer to Section 6 of the General Clauses Act, which runs as under:-

> ***"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."*

41. Perusal of the above provision reveals that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of

the General Clauses Act will follow unless a different intention appears from the amending Act. In other words, the amended or the repealed Act must manifest an intention against the applicability of Section 6 of the General Clauses Act. Perusal of the Prevention of Corruption (Amendment) Act, 2018 does not at all reflect any intention that Section 6 of the General Clauses Act will not apply. The amending Act does not indicate that all pending proceedings or prosecutions undertaken under the unamended Act would lapse on coming into force of the amending Act.

42. Learned counsels for the respondents have, however, vehemently argued that since there is no saving clause, the effect of repeal is that it totally obliterates the earlier Act from the Statute Book.

43. However, the Hon'ble Apex Court in number of judgments has held that mere absence of a saving clause does not rule out the operation of Section 6 of the General Clauses Act. The Hon'ble Court in ***State of Punjab v. Mohar Singh***, (1955) 1 SCR 893 has observed as under:-

> ***"8.*** *The High Court, in support of the view that it took, placed great reliance upon certain*

observations of Sulaiman C.J.in Danmal Parshotamdas v. Baburam [ILR 58 All 495] . The question raised in that case was whether a suit by an unregistered firm against a third party, after coming into force of Section 69 of the Partnership Act, would be barred by that section in spite of the saving clause contained in Section 74(b) of the Act. The Chief Justice felt some doubts on the point and was inclined to hold, that Section 74(b) would operate to save the suit although the right sought to be enforced by it had accrued prior to the commencement of the Act; but eventually he agreed with his colleague and held that Section 69 would bar the suit. While discussing the provision of Section 74(2) of the Partnership Act, in course of his judgment, the learned Chief Justice referred by way of analogy to Section 6(e) of the General Clauses Act and observed as follows [ILR 58 All 504] :

"It seems that Section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, Section 6(e) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself."

These observations could not undoubtedly rank higher than mere obiter dictum for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman, C.J., the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a

provision dealing with that question has been inadvertently omitted, Section 6 of the General Clauses Act will undoubtedly be attracted. But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. ***Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. <u>The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.</u> We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section****. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."*

(emphasis Supplied)

44. In another case titled ***BCCI v. Kochi Cricket (P) Ltd.***, **(2018) 6 SCC 287**, the Hon'ble Apex Court has reiterated the above law as follows:-

> ***"43.*** *Shri Sundaram's submission is also not in consonance with the law laid down in some of our judgments. The approach to statutes, which amend a statute by way of repeal, was put most felicitously by B.K. Mukherjea, J. in State of Punjab v. Mohar Singh [State of Punjab v. Mohar Singh, (1955) 1 SCR 893 : AIR 1955 SC 84 : 1955 Cri LJ 254] , SCR at pp. 899-900, thus: (AIR p. 88, para 8)*
>
> ***"8. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere***

> ***absence of a saving clause is by itself not material***. *It is in the light of these principles that we now proceed to examine the facts of the present case."*
>
> *(emphasis supplied)*
>
> *This statement of the law has subsequently been followed in Transport and Dock Workers' Union v. New Dholera Steamships Ltd. [Transport and Dock Workers' Union v. New Dholera Steamships Ltd., (1967) 1 LLJ 434 (SC)] at para 6 and T.S. Baliah v. ITO [T.S. Baliah v. ITO, (1969) 3 SCR 65 : AIR 1969 SC 701] , SCR at pp. 71-72."*
>
> *(emphasis supplied)*

45. Thus, it is clear that rights, privileges, obligations, liabilities and remedies under the repealed or amended Act need not be protected expressly by a saving clause. The rights which are not saved by the "saving" provision are not extinguished or stand *ipso facto* terminated by the mere fact that a new Statute repealing/amending the old Statute is enacted.

46. The Hon'ble Apex Court in its judgments has categorically held that even if the repealing or amending has a saving clause, which does not save all rights and liabilities, even in those circumstances, unless a different intention appears, all rights and liabilities, even though not explicitly saved, are protected by virtue of

Section 6 of the General Clauses Act. The Hon'ble Court in ***CIT v. Shah Sadiq & Sons***, **(1987) 3 SCC 516** has observed as follows;-

> ***"15.*** *In this case the "savings" provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever rights are expressly saved by the "savings" provision stand saved. But, that does not mean that rights which are not saved by the "savings" provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted.* ***Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c) of the General clauses Act, 1897.*** *The right to carry forward losses which had accrued under the repealed Income Tax Act of 1922 is not saved expressly by Section 297 of the Income Tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by Section 297 either expressly or by implication."*
>
> *(emphasis supplied)*

47. In ***M.C. Gupta v. CBI***, (2012) 8 SCC 669, the Hon'ble court has held as under:-

> ***"12.*** *In this connection, we may usefully refer to the decision of this Court in Bansidhar v. State of Rajasthan [(1989) 2 SCC 557] where this Court was dealing with the question whether the proceedings for fixation of ceiling area with reference to the*

appointed date i.e. 1-4-1966 under Chapter III-B of the Rajasthan Tenancy Act, 1955 could be initiated and continued after the coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act which with effect from 1-1-1973 repealed Section 5(6-A) and Chapter III-B of the Rajasthan Tenancy Act, 1955. While dealing with this question, this Court observed that: (SCC p. 567, para 21)

"21. When there is a repeal of a statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Section 6 of the General Clauses Act ensued or not … but only for the purpose of determining whether the provisions in the new statute indicate a different intention."

This Court further observed that: (SCC p. 569, para 28)

"28. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal."

This Court quoted a paragraph from its judgment in CIT v. Shah Sadiq & Sons [(1987) 3 SCC 516 : 1987 SCC (Tax) 270] . It reads thus: (Bansidhar case [(1989) 2 SCC 557] , SCC p. 570, para 28)

"28. … '15. … In other words, whatever rights are expressly saved by the "savings" provision stand saved. But, that does not mean that rights which are not saved by the "savings" provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897.' (Shah Sadiq & Sons case [(1987) 3 SCC 516 : 1987 SCC (Tax) 270] , SCC p. 524, para 15)"

13. *Thus assuming that the proceedings under the 1947 Act initiated against the appellants*

cannot be saved by Section 30(2) of the new Act because no action was taken pursuant to the 1947 Act, prior to coming into force of the new Act, saving clause contained in Section 30 is not exhaustive. Section 6 of the GC Act can still save the proceedings.

14. Viewed from this angle, clauses (c) and (e) of Section 6 of the GC Act become relevant for the present case. Sub-clause (c) says that if any Central Act repeals any enactment, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. In this case, the right which had accrued to the investigating agency to investigate the crime which took place prior to the coming into force of the new Act and which was covered by the 1947 Act remained, unaffected by reason of clause (c) of Section 6. Clause (e) says 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 and Section 6 further states that any such investigation, legal proceeding or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed. Therefore, the right of CBI to investigate the crime, institute proceedings and prosecute the appellants is saved and not affected by the repeal of the 1947 Act. That is to say, the right to investigate and the corresponding liability incurred are saved. Section 6 of the GC Act qualifies the effect of repeal stated in sub-clauses (a) to (e) by the words "unless a different intention appears". Different intention must appear in the repealing Act (see Bansidhar [(1989) 2 SCC

> ***557]). If the repealing Act discloses a different intention, the repeal shall not result in situations stated in sub-clauses (a) to (e). No different intention is disclosed in the provisions of the new Act to hold that the repeal of the 1947 Act affects the right of the investigating agency to investigate offences which are covered by the 1947 Act or that it prevents the investigating agency from proceeding with the investigation and prosecuting the accused for offences under the 1947 Act. In our opinion, therefore, the repeal of the 1947 Act does not vitiate or invalidate the criminal case instituted against the appellants and the consequent conviction of the appellants for offences under the provisions of the 1947 Act.****"***
>
> *(emphasis supplied)*

48. In another case titled ***State of Orissa v. M.A. Tulloch & Co.***, (1964) 4 SCR 461, the Hon'ble Apex Court has held as under;-

> ***"20.*** *We must at the outset point out that there is a difference in principle between the effect of an expiry of a temporary statute and a repeal by a later enactment and the discussion now is confined to cases of the repeal of a statute which until the date of the repeal continues in force.* ***The first question to be considered is the meaning of the expression "repeal" in Section 6 of the General Clauses Act whether it is confined to cases of express repeal or whether the expression is of sufficient amplitude to cover cases, of implied repeals.*** *In this connection there is a passage in Craies on Statute Law, Fifth Edn. at pp. 323 and 324 which appears to suggest that the provisions of the corresponding Section 38 of the English*

Interpretation Act were confined to express repeals. On p. 323 occurs the following:

"In Acts passed in or since 1890 certain savings are implied by statute in all cases of express repeal, unless a contrary intention appears in the repealing Act",

and on the next page:

"It had been usual before 1889 to insert provisions to the effect above stated in all Acts by which express repeals were effected. The result of this enactment is to make into a general rule what had been a common statutory form, and to substitute a general statutory presumption as to the effect of an express repeal for the canons of construction hitherto adopted."

There is, however, no express decision either in England or, so far as we have been able to ascertain, in the United States on this point. Untrammelled, as we are, by authority, we have to inquire the principle on which the saving clause in Section 6 is based. ***It is manifest that the principle underlying it is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications — express or implied — in the later enactment designed to completely obliterate the earlier state of the law****. The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed.* ***The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of***

words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that Legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a Legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for

> ***the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted. If this were the true position about the effect of the Central Act 67 of 1957 as the liability to pay the fee which was the subject of the notices of the demand had accrued prior to June 1, 1958 it would follow that these notices were valid and the amounts due thereunder could be recovered notwithstanding the disappearance of the Orissa Act by virtue of the superior legislation by the Union Parliament.***"
>
> *(emphasis supplied)*

49. In view of the above law laid down by the Hon'ble Apex Court, it is clear that even those rights which are not expressively saved by saving clause, continue to operate after enactment of new law and application of Section 6 of the General clauses Act cannot be ruled out even when there is repeal of an enactment followed by fresh legislation. Section 6 of the General clauses Act would be applicable in all such cases unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section. Thus, unless it is clearly manifested that the amending Act has destroyed or effaced the rights and liabilities under the old Act, the same cannot be inferred.

50. This Court, thus, has to examine the question whether the amending Act has destroyed the rights and liabilities under the earlier Act or not. The Hon'ble Apex Court in ***T. Barai v. Henry Ah Hoe***, (1983) 1 SCC 177, has held as under:

> ***"18.*** *Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General clauses Act though it has been specifically mentioned in the repealing Act or not, will follow, unless, as the section itself says, a different intention appears. In State of Punjab v. Mohar Singh [AIR 1955 SC 84: (1955) 1 SCR 893: 1955 SCJ 25 : 1955 Cri LJ 254] , this Court has elaborately dealt with the effect of repeal. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. "The line of inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities", in the words of Mukherjea, J., "but whether it manifests an intention to destroy them."* ***The Court held that it cannot subscribe to the broad proposition that Section 6 of the General clauses Act is ruled out when there is repeal of an enactment followed by fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.*** *Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Act and the mere absence of a saving clause is not by itself material. The Court*

therefore held that the provisions of Section 6 of the General clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the General clauses Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute which is of a temporary nature automatically expires by efflux of time. The principles laid down by the Court in Mohar Singh case [AIR 1955 SC 84: (1955) 1 SCR 893: 1955 SCJ 25 : 1955 Cri LJ 254] , have consistently been followed in subsequent cases. The old doctrine of extinguishing or effacing the repealed law for all purposes and intents except for the acts past and closed has now given way to the principles enunciated by the Court in Mohar Singh case [AIR 1955 SC 84: (1955) 1 SCR 893: 1955 SCJ 25 : 1955 Cri LJ 254] ."

(emphasis supplied)

51. Thus, the Hon'ble Apex Court from time to time in no uncertain terms has held that in order to find out whether the rights and liabilities under the repealed law have been put to an end by the new enactment, the proper approach is not to enquire if the new enactment by its new provisions has kept alive the rights and liabilities under the repealed law but whether it has taken away those rights and liabilities. It has also been held that absence of a saving clause in the new enactment preserving the rights and liabilities under the repealed enactment is neither material nor decisive of the

question as to whether the rights and liabilities under the repealed law have been put to an end by the new enactment or not. What is required to be seen is whether new enactment has taken away those rights and liabilities which were in existence under the repealed law.

52. Learned counsel for the respondents have however, placed reliance on the judgment of the Hon'ble Apex Court in the case of '***Kolhapur Cane Sugar Works Ltd. Vs. Union of India***'. However, a careful perusal of the said judgment reveals that it is distinguishable for the reason that the Hon'ble Apex Court in the said judgment was dealing with the aspect of omission of Rules 10 and 10(a) of the Central Excise Rules and the implication of the repeal of the rules without there being any saving clause having been incorporated in the Act. It was held by the Hon'ble Apex Court that the repeal of the rules are not saved by the Section 6 of General Clauses Act in the absence of any saving clause. The said principle however, is not applicable to the repeal or amendment of the Act itself. The judgment deals with the omission/repeal of the rules and the applicability of Section 6 of General Clauses Act thereof. The aspect of repeal/amendment of the Act and the applicability of Section 6 of

General Clauses Act therein was not the issue before the Constitution Bench. The judgment passed by the Hon'ble Apex Court in ***Kolhapur Canesugar Works Ltd. (supra)*** has also been discussed by the Hon'ble Apex Court in its subsequent decision in **'*Fibre Boards Pvt. Ltd. vs. CIT (2015) 10 SCC'*** and it was clarified that the judgment in ***Kolhapur case (supra)*** discusses Section 6 of the General Clauses Act qua the amendment/repeal of the rules.

53. Learned counsels for the respondents have, however, submitted that judgment of Hon'ble Apex Court in ***Fibre Boards Pvt. Ltd.(supra)***has not discussed the judgment of ***Mahamadhusen Abdulrahim Kalua Singh vs. UOI India and other (2009) (2) SCC J***, where it was held as under:-

> ***"36.*** *Parliament in its plenary power, can make an outright repeal which will not only destroy the effectiveness of the repealed act in future, but also operate to destroy all existing inchoate rights and pending proceedings. This is because the effect of repealing a statute is to obliterate it completely from the record, except to the extent of savings. If Parliament specifically excludes any saving clause in a Repealing Act, or severely abridges the provision for savings, which it has the power to do, the effect would be that after the repeal of the statute, no proceeding can continue, nor can any punishment be inflicted for violation of the statute during its currency.*

***37**. When Parliament has the power to repeal a law outright without any savings and thereby put an end to all pending prosecutions and proceedings forthwith (without any need to comply with section 321 of the Code), can it be said that it does not have the power to make a provision in the Repealing Act for the pending proceeding to continue, but those proceedings to come to an end, when a duly constituted Review Committee with a sitting or retired Judge of the High Court as Chairman, reviews the cases registered under the repealed Act and reaches the opinion that there is no prima facie case for proceeding against the accused ? Surely, the wider and larger power includes the narrower and smaller power. It should be remembered that continuation of a proceedings in respect of any offence under an Act, after the repeal of such Act, is itself as a result of a deeming fiction. Natural consequence of repeal, as noticed above, is complete obliteration including pending proceedings. Continuation of a pending proceeding is possible only on account of the deeming fiction created by the savings clause in the Repealing Act which provides for continuation of the proceedings as if the Principal Act had not been repealed. Therefore any provision in the Repealing Act for saving a pending proceeding, with any further provision for termination of such pending proceedings, is a provision relating to `winding up' matters connected with the Repealed Act. By no stretch of imagination such a provision can be termed as interference with judicial power, even assuming that such a provision in a live unrepealed statute may be considered as interference with judicial power. It is therefore unnecessary to examine whether section 2(3) of the Repealing Act is an encroachment of judicial power, though such an examination was done with reference to the challenge to section 60(4) to (7) of POTA".*

54. This Court has carefully gone through the judgment of Hon'ble Apex Court in ***Mahamadhusen Abdulrahim case (supra)***and is of the opinion that the same is distinguishable on the basis of the fact that repealing Act in the said case contained exhaustive provisions relating to savings in Sub Section (2) to (5) of Section 2 of the repealing Act. Therefore, it was held that the savings from repeal will be governed by Section 2 (2) to 2 (5) of the Repealing Act and not by Section 6 of the General Clauses Act. Moreover, since there is an earlier Five Judge Bench judgment of the Hon'ble Apex Court titled '***State of Orissa v. M.A. Tulloch & Co***. ***(supra)***which specifically states that principle of law is that every later enactment which supercedes an earlier one or puts an end to an earlier state of the law, is presumed to intend the continuation of rights accrued and liabilities incurred under the superceded enactment unless these were sufficient indications express or implied in later enactment designed to completely obliterate the earlier Statute or law and same has been relied upon by the Hon'ble Apex Court in case of ***Fibre Board (Supra).*** The contention raised by learned counsels, therefore, cannot be sustained. As per the Doctrine of stare decisis, all decisions

rendered after the judgment of Five Judge Bench decision in ***State of Orissa v. M.A. Tulloch & Co***. ***(supra)***were bound by it. Similarly, since the Hon'ble Apex Court in ***Fibre Board (supra)***has followed the binding precedent of the earlier Five Judges Bench on the same subject matter, this Court is also bound by the same.

55. Perusal of the Prevention of Corruption (Amendment) Act, 2018 nowhere reveals that it had the intention of destroying the earlier provisions and it neither indicated any express or implied intention to completely obliterate the earlier law. Moreover, this Court finds support from a recent decision of Hon'ble Apex Court with reference to the applicability of PC (Amendment Act), 2018 in Criminal Appeal No. 1662 of 2019 (Arising Out Of SLP (Criminal) No. 3632 Of 2019)**,** titled as ***The State of Telangana Vs. Sri Managipet @ Mangipet Sarveshwar Reddy,*** wherein the Hon'ble Apex Court has held as under:-

> *"37. Mr. Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in M. Soundararajan v. State through the Deputy Superintendant of Police, Vigilance and Anti Corruption, Ramanathapuram20 to contend that amended provisions of the Act as amended by Act XVI of 2018 would be*

applicable as the Amending Act came into force before filing of the charge sheet. We do not find any merit in the said argument. In the aforesaid case, the learned trial court applied amended provisions in the Act which came into force on 26th July, 2018 and acquitted both the accused from charge under Section 13(1)(d) read with 13(2) of the Act. The High Court found that the order of the trial court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. ***In the present case, the FIR was registered on 9th November, 2011 much before the Act was amended in the year 2018. Whether any offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26th July, 2018****.*

38. In view thereof, we do not find any merit in the reasonings recorded by the High Court in respect of contentions raised by the Accused Officer. The arguments raised by the Accused Officer cannot be accepted in quashing the proceedings under the Act. Accordingly, Criminal Appeal No. 1663 of 2019 filed by the Accused Officer is dismissed whereas Criminal Appeal No. 1662 of 2019 filed by the State is allowed."

(emphasis supplied)

56. A Coordinate Bench of this Court in Crl. Appeal 1186/2017, titled as ***Madhu Koda Vs. State through CBI***, decided on 22nd May, 2020 has observed that the amendments in PC Act cannot be applied to the offences prior to the changes in the provisions of the Act. The

Court rejected the contention of the learned counsel for the appellant that the PC Act was amended with effect from 26th July, 2018 and the provision of Section 13(1)(d) stands deleted by virtue of the Prevention of Corruption (Amendment) Act 2018 and further submitted that the allegations made against the appellant no longer constitute an offence, therefore, he is entitled to be acquitted by virtue of the doctrine of beneficial construction. The Coordinate Bench has observed as under:-

> *"53. However, this Court is unable to accept that the PC (Amendment) Act, 2018 seeks to repeal the provisions of Section 13(1)(d) of the Act, as it existed prior to 26.07.2018 ab initio. Mens rea is an integral part of the offence under Sub-clause (ii) of Section 13(1)(d) of the PC Act. The use of the word 'abuse' in the said Subclause indicates so.* ***Thus, there is no reason to assume that the legislative intent of repealing Section 13 of the PC Act was to exclude the said offence from the scope of PC Act with retrospective effect****.*
>
> *54. In view of the above, Section 6(d) of the General Clauses Act is applicable and persons convicted of committing the offence of criminal misconduct under Section 13(1)(d) of the PC Act would not be absolved of their offences or the liability incurred prior to the PC Act coming into force."*
>
> *(emphasis supplied)*

57. It is a cardinal principal of law that a Coordinate Bench cannot take a divergent view from another Coordinate Bench. On this aspect, the observations of the Hon'ble Apex Court in ***Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. (2010) 13 SCC 336*** are as under:-

> ***" 16.*** *Be that as it may, the High Court has referred to its Division Bench judgment in B.B. Chibber v. Anand Lok Coop. Group Housing Society Ltd. [(2001) 90 DLT 652] wherein the same provision had been considered and it had categorically been held that deeming approval was not legally permissible. In view of the above, it was neither desirable nor permissible by the coordinate Bench to disapprove the earlier judgment and take view contrary to it. More so, extension of the period from 6 months to 1 year amounts to legislation.*
>
> ***17. A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law.*** *Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel [AIR 1968 SC 372] , Sub-Committee of Judicial Accountability v. Union of India [(1992) 4 SCC 97] and State of Tripura v. Tripura Bar Assn. [(1998) 5 SCC 637 : 1998 SCC (L&S) 1426])*

> ***18.*** *In Rajasthan Public Service Commission v. Harish Kumar Purohit [(2003) 5 SCC 480 : 2003 SCC (L&S) 703] this Court held that a Bench must follow the decision of a coordinate Bench and take the same view as has been taken earlier. The earlier decision of the coordinate Bench is binding upon any latter coordinate Bench deciding the same or similar issues. If the latter Bench wants to take a different view than that taken by the earlier Bench, the proper course is for it to refer the matter to a larger Bench.*
>
> ***19.*** *In the instant case, the position before us is worse as the latter Bench has taken a divergent view from an earlier coordinate Bench, particularly taking note of the earlier decision holding otherwise, without explaining why it could not follow the said precedent even while extensively quoting the same. Judicial propriety and discipline are not served by such conduct on the part of the Division Bench. Thus, in view of the above, it was not permissible for the High Court to take the course which it has adopted and such a course cannot be approved."*
>
> *(emphasis supplied)*

58. This Court further is of the opinion that even if in the present leave to appeal, the judgment of the Coordinate Bench is ignored for the sake of arguments, still, as discussed earlier, this Court is bound by the decision of the Hon'ble Apex Court rendered in ***The State of Telangana (supra)*** because of the principles of the law of precedent. The above judgment of Hon'ble Apex Court has also been considered in W.P.(Crl.) 614/2020, titled as ***P.K.Thirwani Vs. Central Bureau of Investigation***, wherein the Division Bench of this Court in its

order dated 4th November, 2020, has refused to grant stay of proceedings. The order of Division Bench runs as follows:-

> *"**CRL.M.A. 14776/2020***
>
> *1. The petitioner has filed this application to seek stay of the trial which is proceeding before the Special Judge, CBI.*
> *2. Issue notice. Mr. Sharma accepts notice on behalf of the CBI.*
> *3. Mr. Sharma has brought to our notice the judgment passed by the Apex Court in The State of Telangana Vs. Managipet @ Mangipet Sarveshwar Reddy, Crl. Appeal No.1662/2019 decided on 06.12.20109. In paragraph 37 of the said decision, the Apex Court has observed as follows:*
>
> *"37. Mr. Guru Krishna Kumar further refers to a Single Bench judgment of the Madras High Court in M. Soundararajan v. State through the Deputy Superintendant of Police, Vigilance and Anti Corruption, Ramanathapuram, Crl. A. (MD) No. 488 of 2018 and Crl. M.P. (MD) No. 8712 of 2018 decided on 30th October, 2018, to contend that amended provisions of the Act as amended by Act XVI of 2018 would be applicable as the Amending Act came into force before filing of the charge sheet. We do not find any merit in the said argument. In the aforesaid case, the learned trial court applied amended provisions in the Act which came into force on 26th July, 2018 and acquitted both the accused from charge under Section 13(1)(d) read with 13(2) of the Act. The High Court found that the order of the trial court to apply the amended provisions of the Act was not justified and remanded the matter back observing that the offences were committed prior to the amendments being carried out. **In the present case, the FIR was registered on 9th November, 2011 much before the Act was amended in the year 2018. Whether any***

offence has been committed or not has to be examined in the light of the provisions of the statute as it existed prior to the amendment carried out on 26th July, 2018.*"*

4. Mr. Sharma has, therefore, submitted that no stay should be granted of the proceedings before the Trial Court during pendency of the writ petition.

5. Learned counsel for the petitioner has submitted that the batch of writ petitions, including the present one, is coming up for final disposal before this Court on 11.12.2020. He submits that in all other cases, the stay is operating and the petitioner should be treated in the same way.

6. ***Having heard learned counsels, we are not inclined to grant any stay for the reason that the decision of the Supreme Court in Managipet @ Mangipet Sarveshwar Reddy (supra) was not brought to our notice when we granted stay in the other matters. In the light of the said decision, it cannot be said that the petitioner has a prima-facie case in his favour. We are, therefore, not inclined to grant interim stay, as prayed for in this application.***

7. The application is, accordingly, dismissed."

(emphasis supplied)

59. In view of the decision of Hon'ble Apex Court in ***Managipet @ Mangipet Sarveshwar Reddy (supra)*** and order of Division Bench in ***P.K.Thirwani (supra)***, this Court is of the opinion that there are no reasons to *sine die* adjourn the present proceedings i.e. leave to appeal till the decision is rendered by the Division Bench in reference.

60. Learned counsels for the applicants/respondents have relied upon number of judgments in support of their case. This Court has gone through the said judgments carefully. These judgments are distinguishable on the basis of facts and circumstances stated therein. Moreover, these judgments do not apply for the simple reason that Hon'ble Apex Court has already held in ***State of Telangana (supra)*** that where an offence has been committed or not, has to be examined in the light of the provisions of the Statute as it existed prior to the amendment carried out on 26th July 2018.

61. In view of the Hon'ble Apex Court decision in ***State of Telangana (supra)*** and decision of Coordinate Bench of this Court in ***Madhu Koda (Supra)***, this Court is of the opinion that amending Act does not apply to the offences which have already taken place under the PC Act, 1988 and moreover, Prevention of Corruption (Amendment) Act, 2018 does not reveal any intention of destroying the earlier provisions and there is no intention to obliterate the earlier law, therefore, this Court is of the opinion that there is no impediment in hearing the criminal leave to appeal, since the offences in question are alleged to have been committed prior to the

coming into force of Prevention of Corruption (Amendment) Act, 2018.

62. The applications are, therefore, dismissed and stand disposed off accordingly.

63. A copy of this order be uploaded on the website of this Court forthwith.

BRIJESH SETHI, J

NOVEMBER 23, 2020
r/ak/ap