

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4306 OF 2014**

Anup Kumar Gond  
Age:54 years, Occ.:Service,  
R/o.116, Juhu Sagar,  
New D.N. Nagar, Andheri(W),  
Mumbai:400 053.

.. Petitioner

***Vs.***

1. Central Bureau of Investigation  
(BS & FC, Mumbai vide R.C. No. 27  
(A)/2002-Mumbai)

2. The State of Maharashtra

.. Respondent

**WITH  
CRIMINAL REVISION APPLICATION NO. 332 OF 2013**

Central Bureau of Investigation  
(BS & FC, Mumbai vide R.C. No. 27  
(A)/2002-Mumbai)

.. Applicant

***Vs.***

Anup Kumar Gond  
Age:43 years, Occ.:Business,  
R/o.14/23, Triveni CHS,  
Adarsh Nagar, Oshivara,  
Andheri (W), Mumbai.

.. Respondent  
(Ori. Accused No.3)

**WITH  
CRIMINAL REVISION APPLICATION NO. 333 OF 2013**

Central Bureau of Investigation  
(BS & FC, Mumbai vide R.C. No. 27  
(A)/2002-Mumbai)

.. Applicant

***Vs.***

Chandulal Thadani and Anr.

.. Respondent

Mr. Niteen Pradhan with Siddharth Sharma for Petitioner in  
Writ Petition No. 4306 of 2014 and for Respondent No.1 in  
Criminal Revision Application No. 332 of 2013.

Mr. H.S. Venegaonkar with A.L. Bhise for Applicant in Criminal Revision Application No. 332 of 2013 and Criminal Revision Application No. 333 of 2013.

Mr. Jahangir Khajotia, for Respondent/Accused No.1 in Criminal Revision Application No. 333 of 2013.

Mrs. M.R. Tidke, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.**

**Date of Reserving the Judgment : 16<sup>th</sup> July, 2018**

**Date of Direction/Clarification : 1<sup>st</sup> July, 2019**

**Date of Pronouncing the Judgment : 8<sup>th</sup> July, 2019**

**JUDGMENT (Prakash D. Naik, J.) :-**

With the consent of both the parties, matters are heard for final disposal.

The petitioner in Criminal Writ Petition No. 4306 of 2014 (Herein after referred to as Petitioner) is prosecuted vide Special Case No. 83 of 2003 for the offence punishable under Section 120-B read with 409, 420, 465, 467 and 477-A of Indian Penal Code (hereinafter referred to as IPC) and Section 13(1) (d) of Prevention of Corruption Act, 1988 (hereinafter referred to as PC Act). In the proceeding arising out of Special Case No. 12 of 2006, the petitioner is prosecuted for offence under Section 13(1) (e) of Prevention of Corruption Act. The matters were listed for directions/clarification on 1<sup>st</sup> July 2019 and again closed for Judgment.

2. The petitioner had preferred an application for discharge in Special Case 83 of 2003 before the Special Judge, CBI which was rejected vide order dated 07<sup>th</sup> July 2010. The petitioner thereafter

preferred Criminal Writ Petition No. 675 of 2011 before this Court. By order dated 03.08.2011, the order rejecting discharge application was set aside by this Court and the matter was remanded back to the learned Special Judge to consider the issue as to whether the petitioner is a public servant or not in the light of the observation of the Apex Court in the case of *S.S. Dhanoa versus Municipal Corporation of Delhi*, (1981 (3) SCC 431).

3. The trial Court thereafter heard the application for discharge in Special Case No. 83/2003 and by order dated 02.07.2012, the petitioner / accused No.3 was discharged. The said order of discharge dated 02.07.2012 is challenged by the CBI by preferring Criminal Revision Application No.332 of 2013. The accused No.4 in Special Case No. 83 of 2003 had also preferred an application for discharge before the Special Judge. The said application was also allowed and the accused was discharged of the offence under Section 13(2) read with 13(1) (c) (d) of Prevention of Corruption Act, 1988. The said order dated 02.07.2012 discharging accused No.4 Chandulal Thadani has been challenged by the CBI by preferring Criminal Revision Application No. 333 of 2013.

4. By preferring Writ Petition No. 4306 of 2014, the petitioner/accused No. 1 in Special Case No. 12 of 2006, had prayed that the Special Judge be directed to pass appropriate orders expeditiously in the said proceeding by following judgment and order dated 03.08.2011 passed by this Court in Writ Petition No. 675 of 2011 and order dated 02.07.2012 passed by the Special Judge in Special Case No. 83 of 2003.

5. The prosecution case is that the CBI registered a case on

10.05.2002 against Sanjay Agrawal, Ketan Sheth, Anupkumar Gond (petitioner) for commission of offences punishable under Section 120-B, 409, 420, 467, 468 and 477-A of IPC and Section 13(2) read with 13(1) (c) (d) of the PC Act on the basis of complaint dated 09.05.2002 received from Shri D.T. Joseph, Director General, Shipping, Mumbai. It is alleged that the petitioner, while working as Commissioner of Seamen's Provident Fund (hereinafter referred to as SPF), during the year 1998-2002 entered into criminal conspiracy with Sanjay Agrawal, Director of M/s. Lloyds Brokerage / Euroasian Securities, Shri. Ketan Seth, Director of M/s. Ketan Seth & Company, Shri. Chandulal Thadani, Senior Assistant Seamen's Provident Fund and others, the object of which was to commit criminal breach of trust and cheating the SPF which was entrusted to the petitioner, in the matter of purchase and sale of Government Securities for and on behalf of Seamen's Fund by dishonest delivery of available securities for sale to brokerage firms and not receiving the proceed and also not taking delivery of securities for which he had placed money of SPF with a broker and in pursuance of the conspiracy, the account books of SPF were falsified by petitioner Anupkumar and accused Chandulal Thadani and private persons had dishonestly received the money and securities from SPF and had never delivered the securities or sale proceed to the SPF which resulted in wrongful loss to SPF and wrongful gain to the accused. Several other wrongful acts were attributed to the accused. Considering the issue involved in this proceeding, it is not necessary to elaborate the factual matrix of the prosecution case. First Information Report was registered vide RC4(E)/2002/CBI/BS& FC /Mumbai) on 10.05.2002. Investigation was conducted. Sanction was granted by the Ministry of Railways to prosecute petitioner Anupkumar Gond for the offences punishable

under Section 120-B read with 409, 420, 465, 467, 468 and 477-A of IPC and Section 13(2) read with 13(1) (c) (d) of PC Act, 1988 and substantive offences punishable under Section 409, 420, 467, 468, 477-A of IPC and Section 13(2) read with 13(1) (d) of PC Act 1988. Sanction was granted under Section 197 of Criminal Procedure Code and under Section 19(1) of PC Act for the prosecution of petitioner for the aforesaid offences and any other offence punishable under the provisions of law.

6. On completing investigation, charge-sheet was filed before the concerned Court. Separate proceedings were initiated vide Special Case No.83 of 2003 and Special Case No. 12 of 2006. In Special Case No. 12 of 2006, the petitioner was prosecuted for offences under Section 13(1) (e) of P.C. Act.

7. The trial Court proceeded to record evidence in Special Case No. 12 of 2006. On 10.10.2011, the evidence of sanctioning authority, Sunil Kumar – Deputy Secretary, Railway Board was recorded as PW-1. The sanction order was marked at Exhibit – 43. The check period was February, 1996 to April, 2002 which is the exact tenure of the petitioner as Commissioner of SPF. Since the petitioner was discharged in Special Case No. 83 of 2003 vide order dated 02.07.2012, he preferred a Miscellaneous Application No. 60 of 2012 in Special Case No. 12 of 2006 for taking the judgment in rem. By order dated 01.11.2012, the Special Judge allowed the petitioner to produce on record the copy of order. The petitioner preferred Miscellaneous Application No. 61 of 2012 praying for a direction to the prosecution to produce the record of the said application. The said application was allowed by directing the prosecution to adduce oral and documentary evidence. Special Case

No.12 of 2006 was transferred to Court No. 51 vide order dated 16.07.2012.

8. Whereas the investigation agency CBI is aggrieved by the orders passed by the Special Judge discharging accused No. 3 and 4 who are arraigned as respondents in Criminal Revision Application Nos. 332 of 2013 and 333 of 2013. The said accused / respondents were discharged in Special Case No. 83 of 2003 for the offences under the PC Act. The petitioner in Criminal Writ Petition No. 4306 of 2014 is respondent No.1 in Criminal Revision Application No. 332 of 2013.

9. Since the issues are interlinked the petition and revision applications are disposed of by a common order.

10. According to petitioner he was an employee of Indian Railway and was on deputation to SPF as Commissioner with effect from 09.02.1996. He was appointed under Section 7 of the SPF Act by virtue of which he was an employee of SPF Board and not Government employee or a public servant.

11. Mr. Pradhan learned counsel for the petitioner and the respondent No.1 in Criminal Revision Application No. 332 of 2013 submitted that the petitioner was appointed as the Commissioner SPF under the provision of Section 7 of the Act. He joined the services of Indian Railways as a Special Class Apprentice and on completing the probation, he was posted as an Assistant Mechanical Engineer. In 1996, he was serving as a Chief Mechanical Engineer in the Ministry of Railways. By virtue of notification dated 04.04.1996 issued by the Government of India Ministry of Surface Transport, he

was appointed as a Commissioner, SPF, Mumbai with effect from 09.02.1996 for a period of 4 years. In accordance with Section 7 (7) of SPF Act, he was an employee of the Board and not a Government employee or a public servant and thus he cannot be governed by the provision of PC Act. It is submitted that the term “Board” has been defined under Section 2(b) of SPF Act as the Board of trustees of SPF constituted under Section 5. The reference to the term ‘Board’ under Section 7(7) is thus Board of Trustee of Fund appointed under Section 5 who are also appointed to manage the funds collected from employees contribution and employer-ship owners contribution. The State Government or the Central Government did not contribute to SPF. All the employees appointed to administrator the Fund are employees of Board of Trustees appointed under Section 5 of the Act. It is submitted that SPF is a Trust and its corpus is managed by the Board of Trustees. It is neither a local authority nor corporation established by or under Central, Provincial or State Act or an authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of Companies Act. The Commissioner of SPF is not a person in the service or pay of Government or remunerated by the Government by fees for the performance of duty. The petitioner is therefore not a public servant within the meaning of Section 2(c)(iii) of PC Act. It is submitted that the Supreme Court in the case of *S.S. Dhanoa versus Municipal Corporation, Delhi* (supra) has held that the officer of Indian Administrative Service who has been sent on deputation at the disposal of a cooperative society wholly controlled by the Government of India, is not a public servant within the meaning of Section 21 of IPC. It is observed that a Government employee working on deputation in a cooperative society cannot be said to be

employed in connection with the affairs of the Union within the meaning of Section 197 of Criminal Procedure Code and thus not a public servant within the meaning of Section 21 of IPC and hence sanction to prosecute was not necessary under Section 197 of Criminal Procedure Code. Learned Counsel for the petitioner also relied upon the decision in the case of *Dalco Engineering Pvt. Ltd. Versus Satish Prabhakar Padhye & Ors. (2010) 4 SCC 378*. The said decision arising out of Person with Disabilities (Equal Application Protection of Rights and Full Participation) Act 1995 under which there was reservation of seats in educational institutions for persons with disabilities. It was held that though the enactment is a social legislation, the protection under said Act is not available to private sector employees. The Establishments which are not receiving any aid from the Government cannot be covered under the said Act, 1995. It is submitted that the Apex Court referred the ratio in the case of *S.S. Dhanoa (supra)*. The petitioner was employee of the Indian Railway and on deputation he was sent to office of SPF and appointed as Commissioner of SPF. Hence the petitioner cannot be held as a public servant and cannot be tried for offence punishable under Section of PC Act, as the prosecution would be without jurisdiction.

12. Learned Counsel further submitted that the petitioner was not appointed or delegated with regulating and coercive power of the State and he was not appointed to represent the State in its relation to individual subject. After his deputation from the Railways to SPF, his ties with railways were cut off and his entire salary and allowance were paid from the Administrative fund of SPF, a Public Trust. The learned Special Judge in Special Case No. 83 of 2003 has

rightly determined the petitioner's status that he has not a public servant.

13. The reliefs prayed in Criminal Revision Application No.332 of 2013 preferred by CBI were opposed by filing affidavit in reply on behalf of respondent (accused No.3). Alongwith the reply, several documents including orders passed by the Special Court, written submissions before the Special Judge and decisions relied by petitioner were annexed. Mr. Pradhan further submitted that the SPF is autonomous, independent, non-government provident fund. It is not controlled by the Government of India. It is a Trust having its own rules of business. It is submitted that in Special Case No.83 of 2003, the authority granting sanction for prosecution was Joint Secretary, Ministry of Railways. The said sanction was granted upon petitioners repatriation to Central Railways on 20.10.2003. It is submitted that the Special Judge, after considering the legal provisions and the ratio in the case of *S.S. Dhanoa* and other decisions, discharged the petitioner from the provisions of PC Act. There is no infirmity in the said order and the laid decision is also applicable to the proceedings in Special Case No.12 of 2006, wherein the petitioner is also prosecuted for the offences under the PC Act, 1988. It is submitted that this Court, by order dated 03.08.2011, has observed that the Special Judge had not considered the submission urged by the petitioner that he was not a public servant on the basis of the judgment of Apex Court in the case of *S.S. Dhanoa*. Considering the observations of this Court, the trial Court had discharged the petitioner in Special Case No.83 of 2003. Considering the Scheme of SPF Act, it is evident from Section 3, 4, 5, 7, 8 and 15, that the Trust is a autonomous body and the working of the Trust is governed by the Board of Trustees appointed under Section 5. It is

further submitted that the concept of public servant has been elaborately considered in the case of *R.S. Naik Vs. A.R. Antuly 1984 (2) SCC 183* by the Apex Court. The Court has elaborated the test to determine where the person is a public servant. Applying the test to the present case, the petitioner cannot be termed as a public servant. It is further submitted that the meaning to the word 'public duty' enumerated under Section 2 (b) of the P.C. Act, 1988 cannot be assigned to the petitioner to bring him under purview of public servant. Learned Counsel pointed out the observations of the trial Court in the order dated 02.07.2012 and submitted that interference in the said order is not warranted. The petitioner had also relied upon the decision in the case of *Mohd. Hadi Raja Vs. State of Bihar 1982 5 SCC 391*. In para 20 of the said decision, it was observed that although the instrumentality or agency with a corporate veil for all intents and purposes may be held to be a third arm of the Government as such instrumentality discharges the duties and functions which the State intends to do as indicated in *Ajay Hasia's case (1981) 1 SCC 712*, such instrumentality or agency is none the less a juridical person having separate legal entity. Thereafter, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as government development for all purposes. It is contended by the petitioner that affairs of State means related to State functions, salary and allowances is paid from consolidated funds and State instrumentality. There are only 50 to 60 shipping companies at about 60,000 Seamen. SPF is not a State functionary. It is further submitted that public duty referred to in clause VIII of Section 2 (c) of the P.C. Act specifies the public duty in the context of any person who holds an office by virtue of which he is authorized or required to perform public duty. Holding of office

which authorizes or requires to perform public duty is a main ingredient of every office, the person is holding is not covered by clause VIII Section 2 (c) of P.C. Act. \_Public duty in a private sector and the public duty attached to the Government office have different context and repercussions. Public duty is one in the discharge of which the public, community at large has an interest as affecting their legal rights or liabilities. In the case of *S.S. Dhanoa* (supra), Super Bazaar at Connaught Place with its 12 branches at Delhi who was not an instrumentality of the State.

13A. The learned counsel for petitioner also relied upon several other decisions. The judgment in this case of *Ajay Hasia's* (supra) examined whether society registered under J & K Registration of Societies Act is on authority falling within definition of 'State' under Article 12 of the Constitution. In the decision of this Court in the case of *N. Vaghul V/s State of Maharashtra*, it was held that, chairman, director, manager and other employees of banking company are not public servants within Chapter IX, Banking Regulation Act 1949, Section 46A Banking Companies (Acquisition and Transfer of Undertaking Act). In the case of *State of Maharashtra Vs. Laljit Rajshi Shah* (supra), it was observed that the legislature no doubt in Section 161 has referred to the provisions of Section 21 IPC but such reference would not make the officer concerned 'Public Servants' within the ambit of Section 21 IPC. The State Legislation had powers to amend Section 21 IPC, the same being referable to a legislation under Entry 1 of list III of Seventh Schedule, subject to Article 254(2) of the Constitution or otherwise inclusion of the persons who are public servants under Section 161 of Cooperative Societies Act would be repugnant to the definition of public servant

under Section 21 IPC. That not having been done, it is not possible to accept the State's contention that by virtue of deeming definition in Section 161 of Cooperative Societies Act by reference to Section 21 IPC. The persons concerned could not be prosecuted for the offences under Penal Code. Both are not in *pari materia*. In another decision relied by petitioner in the case of **Federal Bank Ltd. Vs. Sagar Thomas AIR 2003 SC 4325**, it was observed that, merely because of the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of Banking Regulation Act does not mean that private companies carrying on the business or commercial activity of banking discharge any public function or public duty. This Court in the case of **Brijal Modani Vs. State of Maharashtra 2008, ALL MR (CRL) 733**, it was held that petitioner in that case discharging his duties as general manager of bank cannot be termed as Public Servants under P.C. Act. Under provisions of the Banking Regulation Act, the Central Government or any authority of the Government, RBI exercise regulatory control over the Bank registered under multi-state Cooperative Societies Act. The said control is not deep and pervasive. Reliance is also placed on decision of this court in the case of **Sridhar Subasri Vs. CBI, CBI Vs. Ramesh Gelli and others** delivered in Criminal Writ Petition No.2400 of 2008 and other connected petitions and Criminal Revision Application No. 131 of 2007. It was held that, only on this basis of Section 46-A of this Act of 1949, Section 2(c) of this P.C. Act 1988 cannot be applied to the officers of private banking company. In the case of **G.A. Montzo Vs. State of Ajmer 1957 SC 13** it was observed that, the true test in order to determined whether a person is an officer of the

government is whether he is in the service box of the government and whether he is entrusted with the performance of any public duty. In the *State of Ajmer Vs. Shirji Lal AIR 1959 SC 847* it was observed that the question whether the accused is a public servant under Section 21 of IPC depends upon the interpretation of the last part of the ninth clause of that Section. Similar issue was dealt with in *State of Gujrat Vs. Mashelkar Dwivedi (1972) 2 SCC 392 and Ramesh Kulkarni Vs. State of Maharashtra (1985) 3 SCC 606*. In the case of *Hanmant Patil Vs. State of Maharashtra 1992(2) Bom. CR 286* this Court held that office bearer or managing committee member, Director etc. of cooperative society cannot be treated as public servant within the meaning of Section 21 IPC. Mr. Pradhan submitted that, applying the ratio of the aforesaid decision to the present case, it cannot be laid that the accused is a public servant under P.C. Act

14. Shri. Venegaonkar, learned counsel for the respondent in Criminal Writ Petition No. 4306 of 2014 and for Applicant in Criminal Revision Application No. 332 of 2013 and 333 of 2013 vehemently contended that the impugned order dated 02.07.2012 passed by the Special Court discharging the aforesaid respondents in Special Case No. 83 of 2003 is contrary to law. Since the impugned order is required to be set aside, the question of considering the reliefs sought in Criminal Writ Petition 4306 of 2014 does not arise. He submitted that the trial Court has misconstrued the observation in the case of *S.S. Dhanoa* and the other decisions while allowing the application preferred by the accused. It is submitted that the accused are facing trial for commission of offence punishable under Section 120-B read with 409, 420, 465, 467, 468 and 477-A of IPC as well as

Section 13(2) read with Section 13(1) (d) of P.C. Act alongwith other accused. The contention of the accused / respondents that they are not public servant as defined under the provisions of P.C. Act is totally misplaced. The SPF was passed by the Parliament in 1966. The accused No.3 (Anupkumar) was working as Commissioner of SPF. Section 2(c) of P.C. Act, 1988 is very clear that any person in service of a Corporation established by or under the Act is a public servant. It is further submitted that the respondents are public servants. There is sufficient evidence against the respondents to prosecute them for the offences. It is submitted that Section 7(1) clearly stipulates that the Government shall appoint any SPF Commissioner who shall be the Chief Executive Officer of the Board and shall be subject to the general control and superintendence of the Board. The accused No.3 was appointed as Commissioner by the President of India vide notification. He served Government of India, Ministry of Surface Transport. Whenever the person goes on deputation, such period is counted as a part of service for pension. Public Sector Banks manage funds of a private person. However, the persons of the banks are treated as public servants. The decision in the case of *S.S. Dhanoa* case was delivered while considering the implication of Section 21 of IPC and not the provision of PC Act. The accused No.3 cannot be removed except by the Government of India. The sanction for prosecution was issued by the Railways. Section 2(c) (VIII) is attracted in the present case. *S.S. Dhanoa* case related to Section 197 of Cr. P.C.

15. Mr. Venegaonkar relied upon the decision of the Supreme Court in *State of Maharashtra & Anr. Vs. Prabhakar Rao & Anr. (2002) 7 SCC 636*. In the said decision, the Court was dealing

with the order passed by the High Court quashing the FIR alleging commission of offences punishable under Section 7, 13(2) read with Section 13(1) (d) of the P.C. Act. The High Court quashed the FIR holding that the accused was not a public servant under the P.C. Act by relying upon the decision of the Supreme Court in the case of *State of Maharashtra Vs. Laljit Rajshi Shah (2000)2 SCC 699*. The Supreme Court observed that the aforesaid decision was rendered in a case covered by PC Act, 1947 not under the Statute which is applicable in the said case. Considering the definition of the expression 'public servant' defined in Section 21 of IPC which was adopted in PC Act, 1947, the Court had taken a view that the members of Managing Committee and Chairman of the Co-operative Society under the Maharashtra Co-operative Societies Act were not 'public servants'. In the PC Act, 1988 which is relevant for the purpose of the case in hand, the definition of the expression 'public servant' is different. Section 2(c) enumerates the persons who are public servants. Considering the said provision, it was observed that under clause III of Section 2(c) any person in the service or pay of a Corporation established by or under Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government and under clause (IX), the President, Secretary and other office bearers of a registered cooperative society engaged in agriculture, industry, have been included in the definition of 'Public Servant'. The question for consideration is whether the accused comes within the purview of Section 2(c) of the PC Act. For determination of the question inquiry into facts relating to management control and funding of the society is necessary to be ascertained. The High Court has not considered this question and it had proceeded on the assessment that Section 21 of the IPC is

relevant provision for determining the question whether the accused is a public servant. Section 21 of IPC had no relevance to consider the question which has to be on interpretation of Section 2(c) of PC Act read with the relevant provision of Maharashtra Co-operative Societies Act. Mr. Venegaonkar pointed out the provisions under the SPF Act 1966. He drew my attention to the definition of Board, provision relating to constitution of the Board of Trustees, appointment of employees of Board, appointment of inspectors etc. He also pointed out the scheme framed by the Central Government in exercise of power conferred by Section 3 of SPF Act 1966. It is submitted that the petitioner and the respondent were indeed public servants within the provisions of PC Act and the Special Court has committed an error while passing impugned orders dated 02.07.2012 discharging them from the provision of the PC Act. Mr. Venegaonkar relied upon the decision in the case of *CBI Vs. Ramesh Gelli & Ors. (2016) 3 SCC 788*. In the said decision, the Supreme Court was dealing with the order passed by the High Court which was challenged by CBI dismissing the Revision Application preferred by CBI and partly allowing the petition preferred by the accused upholding order of Trial Court. The petitioner have relied upon decision of High Court which was under challenge before Apex Court. The Courts below had held that the cognizance cannot be taken against the accused, who were Director of Chairman/Managing Director and Executive Global Trust Bank on the ground that they are not a public servants. The charge-sheet was filed under Section 120-B read with Sections 420, 467, 468, 471 of IPC and Section 13(2) read with 13(1)(d) of PC Act, 1988. The trial Court declined to take cognizance of offence punishable under Section 13(2) read with 13(1)(d) of PC Act on the ground that

accused Nos.1 and 2 were not public servants on the date of the transaction. The trial Court directed that the charge-sheet be returned for being submitted to the Regular Court of Metropolitan Magistrate. The High Court upheld the order of trial Court. The question involved before the Apex Court is whether the Chairman, Directors and officers of Global Trust Bank Ltd. (Private Bank) can be said to be public servants for their prosecution under the PC Act. The Supreme Court has observed that the Global Trust Bank was a Private Sector Bank operating under banking license issued by Reserve Bank of India. The Court took into consideration the object of the PC Act, 1988. The Court also referred to Section 2(c) of the PC Act, 1988. It was observed that under sub clause VIII of Section 2(c) of the PC Act, a person who holds an office by virtue of which he is authorized or required to perform a public duty, is a public servant. Section 2(b) of PC Act defines 'public duty'. Reference was also made to Section 46-A of Banks Regulation Act 1949 which defines that the officers appointed therein shall be deemed to be public servants for the purpose of Chapter 9 of the IPC. The Supreme Court further observed that object of PC Act was to make anti-corruption Law more effective and widen its coverage. It cannot be said that the accused who are the Chairman / Managing Director and Executing Director of Trust Bank were not public servant for the purpose of PC Act. The Court need not speculate the reasons thereof, though perhaps one possible reason could be the wide expanse of the definition of 'Public Servant' as made by Section 2(c) of the P.C. Act. Reliance was also placed on the decision of the case of *State of Maharashtra Vs. Brijlal Modani (2016) 4 SCC 417*. The petitioner has relied on decision of High Court which was under challenge before Apex Court. In the said decision on behalf of State and investigating

agency it was contended that the petitioner therein would come under the definition of public servant as per Section 2(c) III & (IX) of P.C. Act, 1988. The Court considered the ratio laid down in several decisions and observed that the High Court has swayed by Article 12 of the Constitution Provisions of 1947 Act and considered that multi state society is not controlled or aided by the Government and arrived at the conclusion. It was observed that any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. It was unnecessary on the part of the High Court to enter into elaborate deliberation to arrive at the conclusion that the respondent was not a public servant. It was left to be dealt with in the course of trial whether the concerned society as ever been granted any aid or not. Mr. Venegaonkar submitted that in the light of the scope of SPF Act, the accused was a public servant. The Special Court has erroneously discharged the accused Nos. 3 and 4.

16. Learned Counsel for respondent in Criminal Revision Application No. 333 of 2013 has adopted the arguments of Mr. Pradhan. In addition he submitted that the said respondent was Senior Assistant. He submitted that as per Section 15(1) of the SPF only inspectors are held to be the public servant under Section 21 of IPC. It is further submitted that the Central Government has no power to appoint or remove him. The trial Court has rightly discharged the said respondent from the provision of the PC Act. It is therefore submitted that the revision application preferred by the CBI may be dismissed.

17. Having heard both the sides, I have perused the documents on record. The petitioner in criminal writ petition No.

4306 of 2014 was arraigned as accused No.3 in Special Case No. 83 of 2003 and accused No.1 in Special Case No. 12 of 2006. The respondent in criminal revision application No.333 of 2013 was impleaded as accused No. 4 in Special Case No.83 of 2003. The accused Nos. 3 and 4 in Special Case No. 83 of 2003 were discharged from the provisions of P.C. Act vide separate orders dated 02.07.2012 passed by the Special Court.

17A. In 1983 the petitioner joined the services of Indian Railway. After probation in 1987 he was posted at Jabalpur as Assistant Mechanical Engineer and in 1996 as Deputy Chief Mechanical Engineer under Central Railways. On 4<sup>th</sup>/11<sup>th</sup> April 1996 under a notification issued by the Government of India, Ministry of Surface Transport, shipping wing. The petitioner was appointed as Commissioner in the Leamen's Provident Fund Organization, Mumbai w.e.f. 09/02/1996 for a period of four years. The notification was issued by under Secretary to the Government of India. The petitioner continue with that post till May 2002. By Order dated 18-07-2002 the petitioner was repatriated to Ministry of Railways vide O.M. dated 18-07-2002 issued by under Secretary, Railway Board. On 17-07-1997 a Circular was issued by Government of India through Ministry of Finance allowing "Non Government Provident Fund" in General to deal with Securities in order to invest their funds for short term returns. FIR was registered on 10-05-2002. Sanction order was issued to prosecute petitioner by Joint Secretary (E & P) on 20-10-2003 under Section 197 of Criminal Procedure Code and Section 19(1) of P.C. Act 1988.

18. The petitioner had preferred an application for discharge

before the trial Court in Special Case No. 83 of 2003 vide Miscellaneous Application (Exhibit-135). In the said application, it was contended that he was not a public servant. The Special Court vide order dated 07.07.2010 rejected the said application. While rejecting the application it was observed that SPF was enacted for the benefit of Seamen's to provide Provident Fund under the Seamen's Provident Fund Act. SPF was enacted to manage this SPF Funds Board of trustees was created. The Commissioner of SPF was authorized to reform public duty. Therefore, Clause 2(c) (VIII) is applicable. The petitioner / accused No.3 then approached this Court by preferring criminal writ petition No. 675/2011. By order dated 03.08.2011, the matter was remitted back to the trial Court to consider the issue as to whether the petitioner is a public servant or not, in the light of the observations made by the Apex Court in the case of *S.S. Dhanoa*. Subsequently, the application preferred by petitioner accused No.3 was reheard by the trial Court. The accused No.4 had also preferred an application before the trial Court. Both the applications were allowed by separate order dated 02.07.2012. The Trial Court relied upon the decision in the case of *S.S. Dhanoa* (supra) and *Dalco Engineering Pvt. Ltd.* (supra). The trial Court held that the said accused are not public servant. The trial Court had also taken into consideration decisions viz. *State of Maharashtra Vs. Laljit Rajshi Shah* (supra), *Federal Bank Ltd. Vs. Sagar Thomas* AIR 2003 SC 4325, *Ajay Hasia Vs. Khalid Mujib Sehravardi* (1981)1 SCC 722, *N. Vaghul Vs. State of Maharashtra* 1986 Bank J. 634 Bombay, *Brijlal Modani Vs. State of Maharashtra* 2008 ALL MR (Cri.) 733. The Counsel for the petitioner submitted that although reference to the decisions of *S.S. Dhanoa* case was made in a subsequent decision, the said decision is not reversed by the Apex Court.

19. It would be relevant to consider the provisions of the SPF Act 1966. Section 3 deals with the scheme to be framed by the Government for establishment of provident fund. Section 2(f) defines fund means the SPF established under the scheme. As per Section 2(b) Board means the Board of trustees of the SPF constituted under Section 5. Section 4 relates to vesting of fund with Board. Section 5 refers to constitution of Board of trustees. Section 7 is with regards to appointment of employees of Board. Section 15 relates to appointment of Inspector for the purpose of Act. Subsection 4 states that every Inspector shall be deemed to be public servant within the meaning of Section 21 of IPC. The Government has also framed SPF scheme. As per Section 2(d) of the said scheme Commissioner means the Commissioner for SPF appointed under Subsection (i) of Section 7 of the Act. Section 3 refers to terms of office of chairman and trustees of the board. Subsection (i) states that the chairman of the board and every trustee of the Board referred to in Subsection 3 of Section 5 of the Act shall hold office during the pleasure of Government. Chapter III deals with the powers of Commissioner and other staff of Board of trustees. Section 44 covered under chapter VII of the scheme refers to investment of monies belonging to SPF and Section 48 refers to audit of account.

20. The question arises for consideration is whether the petitioner and respondent herein were public servant within the provision of PC Act and whether the trial Court has rightly discharged them from the prosecution under the said Act vide impugned orders on the ground that they are not public servants. The enactment of the PC Act was with the intent to wider definition of public servant. Section 161 to 165-A contained in Chapter IX of

Indian Penal Code have been repealed by Section 31 of PC Act 1988. Sections 166, 167, 168, 169, 170 and 171 continued to resume in Chapter IX of the Penal Code even after enactment of PC Act, 1988.

The statement of object and reasons of PC Act is as follows ;

1. The bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.
2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.
3. The bill, *inter alia*, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.
4. Since the provisions of section 161A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.
5. The notes on clauses explain in detail the provisions of the Bill.

21. Section 2-b of P.C. Act 1988 defines public duty as follows :

“public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.

Explanation – In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

22. In the light of the controversy, it is relevant to analyze Section 2(c) of PC Act, 1988 which defines public servant as under :

(c). “Public servant” means, -

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such courts;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer

of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or any member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1 – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 – Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

23. The SPF Act has been passed by the Parliament for this purpose of establishing a provident fund for Seamen's Governed under Merchant Shipping Act 1958. Section 4 (3) of the said Act provides that all monies in the fund shall be deposited in the State Bank of India or shall be invested in such securities as may be

approved by Central Government. The Ministry of Finance Government of India had by its Notification dated 27<sup>th</sup> March 1997 provided that, amounts lying in non-government Provident Funds, Superannuation Fund and Gratuity Funds to be invested as follows :

- i. 25% in the Central Government Securities.
- ii. 15% in Government Securities as defined in Section 2 of Public Debt Act 1944 created and issued by any State Government and or any other negotiable securities, the Principal where of and interest thereon is guaranteed by the Central Government or by any State Government.
- iii. 40% in Bonds/Securities of Public Financial institutions and or Certificate of deposits or issued by Public Sector Banks.
- iv. 20% in any of the above three categories as decided by the trustees.

Till 31<sup>st</sup> November 1996, the fund was managed by Reserve Bank of India (RBI) on behalf of Seamen's Provident Fund. RBI had indicated that the Fund should be transferred and be managed by Nationalized Banks of Public Companies like ICICI etc. By Resolution dated 28<sup>th</sup> November 1996, the board decided that, the work of investment i.e. to sell, purchase, transfer, endorse, negotiate, sign letter of indemnity and receive interest and principle of the fund to be done by Commissioner of the Fund. It was also decided by the Board to transfer and keep special deposit scheme in any nationalized bank, Central/State Government Securities in Physical and or in SGL form, and Bonds in Physical Form, for collection of the interest or and when it becomes due.

Pursuant to the said resolution and the

notification of 17<sup>th</sup> March 1997, the Seamen's Provided Fund Commissioner had allegedly began transacting business in securities.

24. The accused No.4 was Senior Assistant with SPF, he was responsible for accounting securities and sale proceeds. It was alleged that in connivance with accused No.3 he manipulated books of accounts of SPF giving credit to the security amount merely on the basis of contract notice without actually receiving any security for this illegal acts he had received illegal gratification. He was charge-sheeted in Special Case No.83 of 2003 for the offences under Section 120-B, 409, 420, 465, 467, 468 and 477-A of IPC and Section 13(c) read with 13(1) (d) of PC Act. His contention before the trial Court was that he cannot be charged for the offence under PC Act. He was class-3 service of SPF under condition of service regulation 1972. He is not a public servant salary is paid to him from the administration fund. He was not an inspector under Section 15 of the SPF. CBI resisted the application and alleged that the contention that he is not a public servant is misplaced. SPF was passed by the parliament, he was working as a Senior Assistant in the SPF and organization. In accordance with Section 2(c) of the PC Act, he was in service of corporation established by or under an act and therefore public servant. He was appointed by Government of India. He could not have been removed from service by any other authority, it is sufficient at present to show that there is material to believe that the accused was involved in the crime to frame the charges. The trial Court however relying upon the same decisions which were referred to in the order passed in the application preferred by accused No.3 discharged him for an offence punishable under Section 13(2) read with 13(1) (c) (d) of PC Act. The Court has also observed that SPF

Act provides that only inspector is public servant. The SPF organization cannot be called a state instrumentality discharging function of state. It was a private provident fund. It is not funded by Central Government and hence it is not covered by Section 2 (c) (III) of the PC Act.

25. Public duty means a duty in the discharge of which the State, the public or the community at large has an interest. State includes corporation established by or under a central provision or state act or an authority or a body owned or controlled or aided by the Government or Government company as defined under Section 617 of the Companies Act. Public servant as defined under Section 2 (c) covers various persons enumerated in clause III of the definition of public servant viz any person in the service or pay of a corporation established by or under a central, provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company defined in Section 671 of the Companies Act. Clause VIII states that any person who holds an office by virtue of which he is authorized or required to perform any public duty. The trial Court has opined in the impugned orders discharging accused No.3 and 4 in Special Case No.83 of 2003 that the accused are not public servants. The reasons assigned by the trial Court are misconceived. The decision in the case of *S.S. Dhanoa* (supra) or *Dalco Engineering* (supra) and the other decisions relied by the petitioner are not applicable in the present case.

26. The SPF Act is enacted to provide for the institution of a Provident Fund for Seamen. The provisions are applicable to every Seamen and to the employer of such Seamen. Section 5 refers to constitution of board of trustees which reads as under :

1. The Government shall, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board to be known as the Board of Trustees of the Seamen's Provident Fund which shall be a body corporate having perpetual succession and a common seal and may, by that name, sue and be sued.
2. The head office of the Board shall be in Bombay or at such other place as the the Government may, by notification in the official Gazette, specify.
3. The Board shall consist of -
  - (a) a Chairman to be appointed by the Government;
  - (b) not more than three persons appointed by the Government from amongst its officials;
  - (c) three persons representing employers, to be appointed by the Government after consultation with such organisation or organisations of employers as may be recognized by the Government in this behalf;
  - (d) three persons representing seamen, to be appointed by the Government after consultation with such organisation or organisations of seamen as may be recognised by the Government in this behalf.
- (4) The terms and conditions subject to which a member of the Board may be appointed and the time, place and procedure of the meetings of the Board, including the quorum, shall be such as may be provided for in the Scheme.
- (5) The Board shall administer the Fund vested in it in such manner as may be specified in the Scheme.
- (6) The Board shall perform such other functions as it may be required to perform by or under any provision of the Scheme.

27. Thus, it is evident that the Board of trustees of the SPF is constituted by the Government by notification under the official gazette. The board shall consists of chairman to be appointed by the Government, not more than three persons appointed by the Government from amongst its officials and the other persons referred to therein to be appointed by the Government. It is therefore apparent that it is the Government who constitutes, the Board of

trustees consisting several persons including the chairman. As per Section 7, the Government appoints SPF Commissioner who shall be the Chief Executive Officer of the Board and shall be subject to the General Control and Superintendence of the Board. The submission of learned Counsel for the petitioner that the board of trustees is an autonomous body having no control of the Government is devoid of merits. It would be relevant to quote Section 7 of the SPF Act which reads as under :

Section 7. Appointment of employees of Board :

- (1) The Government shall appoint a Seamen's Provident Fund Commissioner who shall be the chief executive officer of the Board and shall be subject to the general control and superintendence of the Board.
- (2) The Government may also appoint as many Deputy Seamen's Provident Fund Commissioners and other officers whose maximum monthly salary is not less than six hundred rupees, as it may consider necessary, to assist the Seamen's Provident Fund Commissioner in the discharge of his duties.
- (3) The Board may appoint such other officers and employees as it may consider necessary for the efficient administration of the Scheme.
- (4) No appointment to the post of the Seamen's Provident Fund Commissioner or Deputy Seamen's Provident Fund Commissioner or to any other post carrying a maximum monthly salary of not less than six hundred rupees shall be made except after consultation with the Union Public Service Commission :  
 Provided that no such consultation shall be necessary in regard to any such appointment -
  - (a) for a period not exceeding one year; or
  - (b) if the person to be appointed is at the time of his appointment -
    - (i) a member of the Indian Administrative Service; or
    - (ii) in the service of the Government in a Class I or Class II post or in the service of the
- (5) The method of recruitment, salary and allowances, discipline and other conditions of service of the Seamen's Provident Fund Commissioner and of the officers referred

to in sub-section (2) shall be such as may be specified by the Government.

- (6) The method of recruitment, salary and allowances, discipline and other conditions of service of other officers and employees of the Board shall be such as may be specified by the Board with the approval of the Government.
- (7) All persons appointed under this section shall be the employees of the Board.

28. On reading the aforesaid provision, it is crystal clear that the commissioner is appointed by the Government. The other officers and the deputy SPF commissioner to assists SPF commissioner in discharge of his duties are also appointed by the Government. The respondent in criminal revision application No. 333 of 2013 claims that he was Senior Assistant with SPF and is not under the control of the Government and that he is merely an employee of the fund is therefore devoid of substance. The SPF is clearly covered by Explanation to Section 2(b) of PC Act, since State included a corporation established by or under a Central Provincial or an authority or a body owned or controlled or aided by government or a government company. Subsection 4 of Section 7 stipulates that the appointments mentioned therein shall be made in consolidation with UPSC subject to certain exception. Sub-section 5 mentions that method of recruitment, salary and allowances, discipline etc. shall be specified by the Government. Sub-section 6 refers to method of recruitment, salary and allowances, discipline and other conditions of service of other persons and employees of the board shall be specified by the board with the approval of the Government. Sub-section 7 states that all persons appointed under Section shall be employees of the Board. Merely on the ground at Section 15 refers to the Inspectors shall be deemed to be public servant within the meaning of Section 21 of IPC, it cannot be said

that the other officers including the Commissioner is and assistant are excluded being public servant. Apart from that for prosecution under the PC Act, the definition of public servant as envisaged under Section 2(c) of the PC Act, 1988 is required to be considered. In the scheme viz. SPF scheme 1966 framed by the Central Government Section 17 refers to powers of Commissioner and others staff of board of trustees. It is stated therein that the commissioner shall not undertake any work unconnected with his office without previous sanction of the Government. The Commissioner at any time for reasons to be recorded in writing and after he is given opportunity of being heard be removed by the Government. The Commissioner shall receive such salary and allowances and shall be subject to condition of service as may be specified in this behalf from time to time by the Government. Chapter VII of the scheme and Section 44 refers to investment of moneys belonging to SPF. It is stipulated that all moneys to the fund shall be deposited in the state Bank of India or shall be invested subject to such direction as the Government may give from time to time. It also stipulates that the Commissioner shall prepare form III classified summary of assets of the fund as on 31<sup>st</sup> March in each year or on such other date as the Government may specify and shall append it to the annual report submitted under paragraph 64 to the Government. Section 48 refers to account of the fund including administration account to be audited in accordance with the instruction by the Government in consultation with the Comptroller and Auditor General of India. Similarly, the provision with regards to budget, interest etc. are under the control of the Government. Thus, it cannot be said that the Government has no control over the SPF and that the duty performed by the respondents herein is not a public duty.

29. From the statement of objects and reasons of the PC Bill it is clear that the Act was intended to mark the anti-corruption law more effective by widening its coverage. It is also clear that the Bill was introduced to widen the Scope of definition of Public Servant. Before the PC Act 1988, it was the Prevention of Corruption Act 1947 and Section 161 to 105-A in Chapter IX IPC which were governing the field of law relating to Prevention of Corruption. Parliament repealed P.C. Act 1947 and omitted Section 161 to 165-A IPC as provided under Section 30 & 31 of IPC Act 1988. In the decision of Apex Court in State of A.P. Vs. Venku Reddy 2 (2002) 7 SCC 631, while interpreting words Public Servant, following observation were made in paragraph 12.

*“12. In construing the definition of “public servant” in clause(c) of Section 2 of the 1988 Act the court is required to adopt a purposive approach as would give effect to the intention of the legislature. In that view the Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of “public servant”, was brought in force to purify public administration. When the legislature has used such a comprehensive definition of “public servant” to achieve the purpose of punishing and curbing growing corruption in Government and semi-government departments, it would be appropriate not to limit the contents of the definition clause by construction which would be against the spirit of the statute. The definition of “public servant”, therefore, deserves a wide construction.”*

30. Considering the aforesaid aspects particularly the provisions of SPF act, the provisions under the provident fund scheme, the provisions of PC Act, 1988, the scope of SPF Act, SPF

scheme, it is evident that the accused herein are public servants within the meaning of Section 2(c) of the PC Act, 1988. *S.S. Dhanoa* case and the other judgments placed into service by the counsel for the petitioner and considered by the trial Court are not applicable. It is pertinent to note that said decisions were delivered in different context. *S.S. Dhanoa* case was with reference to applicability of Section 197 of Cr. P.C. The appellant therein was member of Indian Administrative Service whose services were placed at the disposal of the Cooperative Store Ltd, a society registered under Bombay Cooperative Societies Act. He was placed at the disposal of the department of corporation for his appointment as the General Manager, Super Bazaar, Connought Place, New Delhi. While he was General Manager of Super Bazaar prosecution was initiated by the Food Inspector under Food Adulteration Act on the basis of the public analyst report showing adulteration in the sealed bottle of honey purchased from the Super Bazaar. The question for consideration is whether the member of Indian Administrative Service, whose services were placed at the disposal of an organization which is neither local authority nor a corporation establishment by or under Central, provincial or State Act nor a Government Company by the Central Government or the Government of State can be treated as a public servant within the meaning of clause Twelvth of Section 21 of IPC for purposes of Section 197 of Cr. P.C. During the deputation, the appellant was not an officer in the service nor was in the service of a local authority in a corporation. It was observed that Super Bazaar at Connought Place together with its branches is not an instrumentality of the State. Thus the question which had arisen for consideration in the said decision is completely distinct. The accused in *S.S. Dhanoa* case

was prosecuted under Food Adulteration Act and he contended that being public Servant, he cannot be protected without Sanction under Section 197 of Cr.P.C. Thus the said decision was wholly inapplicable in the present case. The other decision in the case for *Dalco Engineering* is also not applicable in this case. Hence, the impugned orders passed by the trial Court discharging the respondent in criminal revision application No.332 of 2013 and No.333 of 2013 are contrary to the provisions of law and deserves to be quashed and set aside. The trial Court had proceeded with Special Case No. 12 of 2006. The evidence of the witness was being recorded. Since the order dated 02.07.2012 is set aside. The question of issuing directions as prayed by the petitioner in criminal writ petition No.4306 of 2014 do not arise. It is appropriate to decide generally the issue whether the accused is a Public Servant during the trial. However, in the Present Case, the accused No.3 had preferred an application for discharge on the ground that he is not a public servant in Special Case No. 83 of 2003 which was rejected vide order dated 07/07/2010. He preferred Writ Petition No. 675 of 2011 before this Court and vide order dated 03/08/2011, the order passed by Trial Court was set aside and the matter was remanded back to Trial Court to consider the issue whether the petitioner is Public Servant or not. In the light of observations in the Case of *S.S. Dhanoa* (supra), the accused No.4 also preferred applications for discharge on the same ground and both applications were allowed vide separate orders dated 02/07/2012 on ground that the said accused are not Public Servants. The said orders were challenged by CBI by preferring aforesaid Criminal Revision Applications before this Court. The petitioners in the aforesaid petition sought directions to the Trial Court in Special Case No. 12 of 2006 to pass appropriate

orders following orders passed by this Court in Writ Petition No. 675 of 2011 dated 03-08-2011 and order dated 02-07-2012 passed by Trial Court in Special Case No. 83 of 2003. In these circumstances this Court was required to determine at this stage the fact whether the accused herein were Public Servants. The trial Court shall proceed with the said case in accordance with law. The trial Court shall also proceed with Special Case No. 83 of 2003 in accordance with law and shall conclude both the cases expeditiously. Hence I pass the following order.

**:: ORDER ::**

1. Criminal Writ Petition No.4306 of 2014 is dismissed ;
2. The Criminal Revision Application No.332 of 2013 and No.333 of 2013 are allowed and the impugned orders dated 02.07.2012 passed in Miscellaneous Application Exhibit – 135 and Miscellaneous Application Exhibit – 139 by Special Judge, CBI Bombay in Special Case No. 83 of 2003 discharging accused No.3 and 4 are quashed and set aside.
3. The trial Court is directed to proceed with the case in accordance with law.
4. Hearing of both the Cases is expedited.

**(PRAKASH D. NAIK, J.)**

31. At this stage Mr. Pradhan learned counsel for petitioner submits that the petitioner and the concerned respondents intend to challenge this order before the Apex Court. It is also submitted that this Court had granted interim protection granting stay to the proceedings pending before the Trial Court which was subject matter of Writ Petition No.4306 of 2014. It is further submitted that since the order of discharge which is subject matter of Criminal Revision Application Nos.332 of 2013 and 333 of 2013 is set aside, the order of this Court be stayed for a period of eight weeks to enable the parties to move the Apex Court. Considering these submissions, the interim order granted by this Court shall continue for a period of eight weeks as well as this order shall remain stayed for a period of eight weeks.

**(PRAKASH D. NAIK, J.)**