

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

WRIT PETITION NO.744 OF 2026

Abhay Yashwant Lal Mehta

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

...

Mr. Subhash Jha a/w Mr. Siddharth Jha, Mr. Sumeet Upadhyay & Ms. Hetal Jain i/by Law Global Advocates, for the Petitioner.

Mr. Amit Munde, SPP a/w Mr. Jai Vohra & Mr. J. K. Sharma, SPP, CBI, Mumbai, for the Respondent No.2-CBI.

Mr. K. V. Saste, Addl. PP for the Respondent No.3-State.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
SUMAN SHYAM, J.**

DATE : 20th FEBRUARY 2026.

P.C. :

Mr. Amit Munde, the learned Special Public Prosecutor for the respondent No.2-CBI tendered affidavit-in-reply which is taken on record.

2. The petitioner is an accused in the First Information Report vide RC No.6/E/2010 registered by the Central Bureau of Investigation (Economic Offences Wing, Mumbai). There are 12 accused persons who have been charged with committing offences under sections 420, 465, 467, 468, 471 of the Indian Penal Code, 1860 r/w section 13(2) and (13)(1)(d) of the Prevention of Corruption Act, 1988. By an order dated 12th March 2021, charges on eight heads were framed by the Court of Special Judge for CBI, Greater Mumbai. The eighth charge pertains to the accused no.6, namely,

Manoj Kumar Mathur, who at the relevant time was serving as Senior Manager, Bank of India, Nariman Point Branch, Mumbai. The petitioner has been arraigned as accused no.4 in Special Case No.35 of 2012 in his capacity as Director of Infinite Transmission Pvt. Ltd. It is alleged that the said company was involved in the transactions forming the subject matter in the charge-sheet. The petitioner's son, namely, Abhay Mehta has also been arraigned as an accused in connection with the affairs of the said company.

3. At the time of filing of the charge-sheet, the CBI invoked the offences under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 in addition to the offences under the Indian Penal Code. It is the petitioner's specific case that all the offences under the Indian Penal Code are triable by a Magistrate and that it is only by virtue of the invocation of the provisions of the Prevention of Corruption Act that jurisdiction has been conferred upon the Court of Special Judge (CBI), which is a Sessions Court.

4. During the course of trial, reliance was placed by the prosecution on a communication dated 20th December 2011 addressed by the Chief Manager, Bank of India, Mumbai South Zone to the CBI, wherein it was stated that the accused no.6 has been dismissed from service and, therefore, no sanction for prosecution would be required. As many as 31 witnesses have been examined in the trial prior to filing of the present writ petition and that substantial evidence has already been recorded.

5. We have heard Mr. Subhash Jha, the learned counsel for the petitioner. The petitioner is not the person who is a public servant. The arguments made on behalf of the petitioner is that in absence of a valid sanction under the Prevention of Corruption Act for prosecuting the accused no.6 the Special Court could not have

taken cognizance of the offence under the Prevention of Corruption Act and, consequently, lacked jurisdiction to try the petitioner. No sanction for prosecution has been granted for prosecuting accused no.6 who is a public servant and while so, the trial conducted so far is *coram non judice* and a nullity. It is submitted that just by virtue of presence of accused no.6 who is a public servant a trial is being conducted by a Special Court whereas the trial against the petitioner should have been conducted by a Court of Judicial Magistrate First Class.

6. Mr. Subhash Jha, learned counsel for the petitioner submitted that the statutory regime and the legal position obtained as on the date of framing of the charge are that the CBI is required to take sanction for prosecuting the accused no.6 who was a public servant. Referring to the amendment in the Prevention of Corruption Act, 1988 with effect from 26th July 2018, the learned counsel for the petitioner submitted that the requirement of taking sanction for prosecuting Accused No.6 is mandatory. To support his submission, the learned counsel for the petitioner referred to the decision in "*Surinder Singh Deswal*"¹. The learned counsel for the petitioner further submitted that in the changed statutory regime, the prosecution is required to proceed in the matter as per the altered mode (refer "*Anant Gopal Sheorey*"²).

7. To begin with, we are inclined to observe that the petitioner assumes that the trial in Special Case No.35 of 2012 shall fail for want of sanction for prosecuting the accused no.6. Whether the accused no.6 laid a challenge ever to his prosecution in the case is not disclosed in this petition. The petitioner has also not disclosed

1 *Surinder Singh Deswal v. Virenra Gandhi*: (2019) 11 SCC 341.

2 *Anant Gopal Sheorey v. State of Bombay*: AIR 1958 SC 915.

the details of other cases, if any, filed by him in connection to RC No.6/E/2010. It is stated at the Bar that the accused persons have been examined under section 313 of the Code of Criminal Procedure and the matter is fixed for final arguments. In the order dated 16th February 2026, the Special Judge has taken note of the objection taken by the petitioner in the trial on the ground that he is not a public servant. The relevant portions of the order dated 16th February 2026 are reproduced as under: -

“He has submitted that the accused No.4 has filed the proceedings only to delay the trial before this court. He has pointed out that accused No.4 is not a public servant. Moreover, all throughout the trial accused No.4 has never challenged the jurisdiction of this court. Further, the SPP for CBI has pointed out the provisions of section 19(3) of the P.C. Act and argued that the court should not stop the proceedings only because of some error or omission in the sanction order. On being ask the grounds for filing the petition the counsel for the accused No.4 has submitted that they have challenged jurisdiction for want of sanction u/s.19 of the P.C. Act. At the outset it would be appropriate to place on record that the accused No.4 is not a public servant. Moreover, in the humble opinion of this court the issue of requirement of sanction and whether the sanction is valid or otherwise can be decided by this court during the final arguments. All throughout, the public servant has not challenged the jurisdiction. The accused No.4 seems to have made any attempt to stall the proceedings on the ground of sanction.”

8. The learned Judge has recorded that all through the trial the issue regarding public servant was not raised and jurisdiction of the Court was not challenged. The learned Judge further observed that the petitioner who is the accused no.4 in the trial attempted to stall the proceedings at the end on the ground of sanction. Mr. Subhash Jha, the learned counsel for the petitioner has, however, relied on "A. R. Antulay"³ and submitted that delay in approaching the Court shall not be a ground in a matter where it is demonstrated that the trial is *coram non judice* and the petitioner shall be deprived of a forum for appeal. Just to indicate, the trial against Mr. A. R. Antulay was transferred from Sessions Court to the High Court by an order

3 A. R. Antulay v. R. S. Nayak & Anr.: (1988) 2 SCC 602.

passed by the Hon'ble Supreme Court. It was held that the Supreme Court could not have exercised its jurisdiction to pick up Mr. A. R. Antulay and transfer his case from the Sessions Court to the High Court. The decision in "*A. R. Antulay*" is quite distinguishable and shall not apply in the present case. The petitioner does not provide any plausible reason for not approaching the Court at the initial stage. The learned counsel for the petitioner has endeavored to demonstrate from the indictment against the petitioner and the evidence of the PW-31 that the petitioner has been roped in on the allegation of entering into a conspiracy with the other accused persons.

9. This writ petition cannot be based on the evidence taken in the Special Case No.35 of 2012. We do not find any substance in the argument that the trial in Special Case No.35 of 2012 is a nullity for the reason that sanction is not obtained to prosecute the accused no.6. This is a matter on which no decision should be rendered at this stage by this Court. The arguments raised on behalf of the petitioner are the issues to be agitated at the stage of final hearing in Special Case No. 35 of 2012.

10. Writ Petition No.744 of 2026 is dismissed.

[SUMAN SHYAM, J.]

[CHIEF JUSTICE]