

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2637 OF 2010**

Mr.E.S.Sanjeeva Rao	...Petitioner
Versus	
Central Bureau of Investigation (CBI), Mumbai & Ors.	...Respondents

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Mr.Mahesh Jethmalani, Sr.Counsel with Ms.Punita Lewis i/b Mrs.Neha Palshikar Bhide for Petitioner.

Mr.Sandeep K.Shinde with Mr.Kiran J.Kandpile for Respondent No.1.

Mr.Suresh Kumar for Respondents 3 to 6.

Dr.F.R.Shaikh, A.P.P. for State/Respondent No.7.

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**CORAM:- A.M.KHANWILKAR AND
A.P.BHANGALE, JJ.
DATED:- DECEMBER 3, 2010.**

P.C.

1. Heard. Arguable questions are raised.
2. Rule. Counsel waive notice for respective Respondents.
3. Insofar as prayer for interim relief is concerned, in our opinion, formidable question has been raised which will have to be addressed in the present Petition as to whether the decision, assuming it to be wrong and untenable, rendered by the Judge can be made the basis for initiating

criminal action for offence punishable under Section 420 r/w 120-B of the Indian Penal Code, inspite of the same falling under general exceptions under Section 77 of the I.P.C.? The fact that the Petitioner was discharging the functions of a Judge within the meaning of Section 19 of the IPC is indisputable. The F.I.R. makes the erroneous decision rendered by the Petitioner as the fulcrum for registering offence under Section 420 r/w 120-B of IPC against the Petitioner.

4. In the circumstances, interim relief in terms of prayer clause (c) as prayed for is granted insofar as the investigation in relation to the decision dated 20th March 2009 is concerned.

5. We make it clear that pendency of this Petition will not come in the way of initiating departmental action against the Petitioner if the Department so desires, considering the allegation that substantial loss of revenue has occurred on account of the act of commission and omission of the Petitioner. That action, however, will have to proceed in accordance with law.

(A.P.BHANGALE, J.)

(A.M.KHANWILKAR, J.)