MHCC020101892024

IN THE DESIGNATED SPECIAL COURT UNDER SEBI ACT, 1992
FOR MAHARASHTRA STATE
AT COURT ROOM NO.22, SESSIONS COURT, GREATER MUMBAI
SPECIAL CASE (SEBI) NO. 1297 OF 2024
CNR No.MHCC02-010189-2024

Shivkumar Agarwal **... Applicant/Accused**

Vs.

Securities and Exchange Board of India **...Complainant**

Appearances :-
Ld. Adv. Mr. Sagar Sheth for the applicant/accused.
Ld. Adv Mr. Vijay Hiremath for complainant/SEBI.

CORAM : H. H. THE SEBI SPECIAL JUDGE,
R. M. Jadhav (C.R. NO.22)
DATED : 13th August, 2026

ORDER PASSED ON EXH. 11

Perused application and say of SEBI filed below Exh.15. Heard both sides. Gone through the record.

2. The present application is being filed for discharge of the accused Shivkumar Agarwal and eventually dismissal of complaint against him.

3. It is submitted on behalf of the applicant/accused that earlier SEBI case No. 233 of 2014 came to be filed by the SEBI against the applicant/accused for contravention of Section 24(1) of the SEBI Act in relation to the alleged fraudulent and manipulated trade in the scrip of Gujarat Arth Limited (GAL) and the applicant/accused has been convicted for the said offence. The applicant/accused has challenged the said order before Hon'ble High Court which is pending. The present prosecution is also arising out of the said manipulative trade practices in the scrip of GAL in which the adjudication officer was appointed and has imposed penalty for the said violation and for the non-compliance of the said adjudication order imposing penalty the present prosecution under Section 24(2) of the SEBI Act has been filed. Since, the applicant/accused has been convicted earlier for the offence punishable under Section 24(1) r/w 27 of the SEBI Act, the present proceeding under Section 24(2) of the SEBI Act was not required to be filed against the applicant/accused, considering the principle double jeopardy. It is further argued that the applicant/accused has challenged the adjudication order before the SAT but the said appeal came to be dismissed. The SEBI issued recovery certificate against the applicant/accused and his wife and pursuant to which the movable and immovable property standing in the name of the applicant/accused came to be attached. The bank and demat account also came to be attached. In the given set of fact and circumstances the SEBI could have recovered the penalty as it has got lien over the movable and immovable property of the applicant/accused. Hence, present prosecution under Section 24(2) of the SEBI Act treating the alleged shortfall or failure to pay penalty was unwarranted. Hence, it is prayed to discharge the applicant/accused. The Ld. Adv for the

applicant/accused has filed written notes of argument below Exh. 19. He placed on record following decisions :-

1. Kusheshwar Prasad Singh Vs. State of Bihar and Ors. reported in 2007 11 SCC 447.

2. Union of India Vs. Prafulla Kumar Samal reported in 1979 3 SCC 4.

4. As against this the Ld. SPP argued that the application is not maintainable either in law or on facts. The present prosecution has been filed by the SEBI for non-compliance of the adjudication order imposing penalty upon the accused. The adjudication officer upon passing of the order issued demand notice to the applicant/accused, but instead of depositing the penalty amount the applicant/accused preferred the SAT appeal No. 203 of 2019 before the SAT which came to be dismissed on 16.11.2022. The accused has also challenged the impugned order before the Hon'ble Apex Court but the said appeal also came to be dismissed vide order dated 28.08.2003. There was no stay either from the SAT or Hon'ble Apex Court in the appeal preferred by accused. It was incumbent on the part of the accused to deposit the penalty after the passing of the adjudication order at least after dismissal of the SAT appeal, but the applicant/accused chooses not deposit penalty amount. As a result non-compliance of the adjudication order is attributed to the applicant/accused. It is further submitted that the earlier SEBI Case No. 233 of 2014 was filed under Section 24(1) r/w 27 of the SEBI Act in relation to alleged fraudulent manipulated trade practices in the scrip of GAL. The said proceeding is different from present proceeding. The present prosecution filed under Section 24(2) of the SEBI Act for failure to pay the penalty imposed by the adjudication officer. The present prosecution being independent prosecution filed for non-compliance of

the adjudication order, the question of double jeopardy as argued by the Ld. Adv for the applicant/accused will not arise. The accused has not deposited penalty amount even after dismissal of the SAT appeal therefore, bank and demat accounts of the applicant/accused came to be attached. It is not the case that the applicant/accused has deposited penalty amount in compliance with the adjudication order. It is the SEBI who pursuant to recovery of penalty amount has taken the action of attachment of the movable as well as immovable property, therefore it can not be said that the accused has complied the adjudication order and therefore the prosecution was not required to be filed against him. It is submitted that there is enough material against the accused to go for trial. Hence this not a fit case for discharge the accused. Hence, the application may be rejected. He placed on record following decisions :-

1. Sajjan Kumar Vs. CBI reported in 2010 9 SCC 368.
2. Tarun Jit Tejpal Vs. State of Goa reported in 2020 17 SCC 556.
3. State of Orissa Vs. Debendra Nath Padhi reported in AIR 2005 SC 359.
4. State of Rajasthan Vs. Ashok Kumar Kashyap reported in 2021 11 SCC 191.
5. Kunnamkulam Paper Mills Ltd., and Others Vs. SEBI reported in 2022 SCC OnLine Mad 4755.
6. N. H. Securities Ltd. Vs. SEBI in Criminal Writ Petition No. 1894 of 2018, decided on 30th October, 2018.

5. Considered the rival submissions. Gone through the material on record and the decisions cited above.

6. At the out set, let me advert on record the legal position which

emerges from the legal position placed on record giving guidelines for deciding application for discharge or framing of charge. As held by the Hon'ble Apex Court in **Sajjan Kumar Vs. CBI** it is not for the Magistrate or Judge concern to analysis all the material including pros and cons, reliability or acceptability thereof at the time of framing of charge. Likewise, the Hon'ble Apex Court in **Tarun Jit Tejpal Vs. State of Goa** held that the submissions of accused on merits of the case in the nature of defences can not be considered at the time of framing of charge. Further, as held by the Hon'ble Apex Court in **State of Orissa Vs. Debendra Nath Padhi** the material placed on record alone by the prosecution is required to be considered at the time of framing or discharge of the accused. Further, as held by the Hon'ble Apex Court in **State of Rajasthan Vs. Ashok Kumar Kashyap** it is not necessary for a Judge to hold a mini trial at the stage of charge. In the backdrop of above legal position let me decide the application in hand on its factual matrix with the above legal position.

7. The Exh. 01 is the complaint filed by the SEBI through its authorized officer for violation of Section 24(2) of SEBI Act i.e. for failure of the accused to deposit the penalty amount as per the order of adjudication officer within the stipulated period.

8. Indisputably earlier the prosecution bearing No. 233 of 2014 was filed against the applicant/accused under Section 24(1) r/w 27 of the SEBI Act for alleged fraudulent and manipulated trade practices in the scrip of Gujarat Arth Limited (GAL) and the applicant/accused has been convicted for the said offence. Further, as can be gathered from the material on record the adjudication officer was appointed by SEBI who

conducted the inquiry in the above scrip and passed an order imposing penalty for the non-compliance of which the present prosecution under Section 24(2) of the SEBI Act is being filed.

9. It would be apposite to mention here that the Hon'ble Bombay High Court in **N. H. Securities Ltd. Vs. SEBI** has referred the decision in the case of Shilpa Stock Brokers Pvt. Ltd. Vs. SEBI wherein it has been observed that the SEBI Act provides for recovery proceedings and even in cases where penalty amount has been recovered the prosecution continues as the offence non-payment of penalty was committed irrespective of the same.

Likewise, the Hon'ble Madras High Court in **Kunnamkulam Paper Mills Ltd., and Others Vs. SEBI** has observed that "… therefore, this is a case where, whether the charge is complaining of both Section 24(1) and 24(2) and the only error of trial Court was not to mention Section 24(2) expressly. However Section 24(2) being an offence of the same genus, no prejudice was caused to the appellant and hold that the second acts committed by the appellants after coming into force in amendment would amount to an offence under Section 24(2) of the SEBI Act as amended.

10. I would like to mention here that the earlier prosecution bearing No.233 of 2014 was filed under Section 24(1) for the offence of violation of the SEBI Act and Rules and Regulations in respect of (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. As against this the present prosecution is in respect of the non-compliance of the adjudication order imposing penalty upon the accused which constitute an offence

under Section 24(2) of the SEBI Act. It being an independent offence not identical to the offence involved in the earlier prosecution, I found that the present prosecution is not barred by the principle of double jeopardy as argued by the Ld. Adv for the applicant/accused. Consequently, the applicant/accused has not made out the case for discharge on this ground.

11. As far as the second ground, that is the non realization of the penalty from the attached movable and immovable is concerned, I would like to mention here that the adjudication order is of 28.01.2019. It stipulated 45 days for compliance of the order. The applicant/accused instead of depositing the penalty amount chooses to file the SAT appeal. As such the compliance of the adjudication order was not made by him within 45 days. The SAT appeal challenging the adjudication order came to be dismissed on 16.11.2022. There was no stay to the adjudication order during the SAT proceeding. Further, with the dismissal of the SAT Appeal the order of adjudication order dated 28.01.2019 is being confirmed. As a result, at least the applicant/accused was required to comply the adjudication order within 45 days from the same. But, nothing like that was done by the applicant/accused. Relevant to mention here that even the petition filed before the Hon'ble Apex Court against the dismissal of the SAT Appeal also came to be rejected. Prima facie there is material on record to believe that the applicant/accused has not complied the adjudication order.

12. As can be gathered from the averments made in the application the recovery officer vide letter dated 10.07.2023 and 25.07.2023

attached the movable and immovable of the applicant/accused. The actions of attachment of the movable and immovable was taken against the applicant/accused during recovery proceeding when the applicant/accused has made default in complying the adjudication order as per the directions therein. It is not the case that the property movable and immovable of the applicant/accused was attached before the expiry of the stipulated period during which the applicant/accused was suppose to comply the adjudication order. In the given set of fact and circumstances, the decision of the Hon'ble Apex Court in **Kusheshwar Prasad Singh Vs. State of Bihar and Ors.** wherein it was observed that, "It is settled principle of law that man can not be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law." will not be useful to the applicant/accused in support of his submissions that SEBI has not realized the penalty amount despite of the attachment of the movable and immovable. In addition to this I would like to mention here that the above submissions of the applicant/accused is in the nature of defense which I found that, it could be appropriately dealt with at the time of trial. Therefore, the above said ground is not satisfactory ground for which the accused is entitled for discharge in the present case. Relevant to mention here that the recovery proceeding and the present prosecution can go on parallely in view of the observation of the Hon'ble High Court in **N. H. Securities Ltd. Vs. SEBI.**

13. There is enough material placed on record by the SEBI against the applicant/accused which does not disclosed any grave suspicion and has made out a prima facie case against the accused to go for trial for committing the offence under Section 24(2) of the SEBI Act for non-

compliance of the adjudication order imposing penalty against him. Therefore, I found that in the case in hand the considerations/principle which emerges as mentioned in para No. 10 of the decision of the Hon'ble Apex Court in **Union of India Vs. Prafulkumar Samal** (relied by advocate of accused) are attracted. Consequently, I hold that this is not the fit case to discharge the accused for the above ground discussed above. In sequel, I pass following order :-

ORDER

Discharge application of accused Shivkumar Agarwal is rejected and disposed of accordingly.

Digitally signed by RAVI MANOHARRAO JADHAV
Date: 2026.08.13 17:00:28 +0530

(R. M. Jadhav)
SEBI Special Judge
City Civil & Sessions Court
Gr. Bombay (C.R.No.22)

Date : 13.08.2026

Dictated on : 13.08.2026
Transcribed on : 13.08.2026
HHJ signed on : 13.08.2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
13.08.2026	5.00 pm	Mrs. Manasi Kadam

Name of the Judge (With Court Room No.)	HHJ R. M. JADHAV (Court Room No. 22)
Date of Pronouncement of JUDGMENT/ORDER	13.08.2026
JUDGMENT/ORDER signed by P.O. on	13.08.2026
JUDGMENT/ORDER uploaded on	13.08.2026