HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1851 of 2013

ORDER:-

The criminal revision case is filed by the petitioner/A1 questioning the correctness of the order dated 05.08.2013 in Crl.M.P.No.706/2013 in RC 7 (A)/2011-CBI/HYD on the file of the Principal Special Judge for CBI Cases, Hyderabad, by and under which, the Court below allowed the petition filed by the 3rd respondent/A3 under section 306 Cr.P.C granting him pardon, subject to condition of his making full and true disclosure of whole of the circumstances relating to the offence during trial, as an approver.

2 . The case of the prosecution is that on credible information that some irregularities are taking place in conducting departmental promotional examinations of Postal Department at Tirupathi by the petitioner/A1, in the capacity of Superintendent of Post Offices, Tirupathi Division, the CBI kept the cell phone of the petitioner/A1 under surveillance on 04.03.2011, and on 06.03.2011 the Inspector of CBI sent a message to the SP, CBI, Hyderabad through Fax, stating that the petitoner/A1 entered into a criminal conspiracy with other postal officials, lured several aspirants by promising them to help in the examination and to secure promotion as postmen if they pay him an amount of Rs.1 lakh each, and managing the examiners who had conducted the departmental promotional examinations and agreed to pay bribe to them for supplying answers at the time of examination, and thereby abused his official position. It is further stated in the said Fax message that the petitioner/A1 instructed the candidates who received help from him to deliver bribe at his residence in Madanapalli on 06.03.2011 evening. On the basis of said information, the FIR was registered. It is further stated that on 07.03.2011, when the 3rd respondent/A3, as one of the candidates, while returning from the house of the petitioner/A1 along with A2, who is a Postal Assistant, Renugunta, they were intercepted and on enquiry they stated that both of them went to the house of the petitioner/A1 and paid bribe of Rs.2 lakhs, and on that information,

the CBI team went to the house of the petitioner/A1 and recovered the said amount of Rs.2 lakhs from his bed room and arrested the petitioner/A1. A2 was arrested on 11.03.2011. A memo was filed on 03.04.2013 by the CBI requesting the Court to permit them to add the 3rd respondent-A.Bhaskar as Accused No.3. The 3rd respondent/A3 was on anticipatory bail.

3. While so, the respondent/A3 filed a petition before the Court below under Section 306 Cr.P.C seeking pardon, stating that he is an aspirant for the post of postman, wrote the departmental examination at Padmavathi Girls High School, Balajinagar, Tirupathi on 06.03.2011, that A1-K.Ramakrishna Reddy is the Superintendent of Post Offices, Tirupathi Division, Tirupathi, that A2-M.Murali Gopal, a Postal Assistant, Sub-Post Office, Renigunta, a close associate of A1 approached him and directed him to pay illegal gratification of Rs.2 lakhs to A1 for doing official favour of getting promotion as Postman, that himself and A2 went to the residence of A1 at Madanapalle on 07.03.2011 and paid Rs.2 lakhs to A1 through A2 for purpose of helping him in the departmental examination for the post of Postman, that the CBI team, led by Sri K.Praveen Kumar, Inspector, CBI, Hyderabad intercepted them and recovered the illegal gratification of Rs.2 lakhs from the possession of A1 in the presence of two independent witnesses, and that he gave statement before the Magistrate voluntarily under section 164 Cr.P.C, and hence he prays to grant pardon.

4. Accused 1 & 2 filed their respective counters, seriously opposing the petition filed by the 3rd respondent/A3 under Section 306 Cr.P.C. The CBI filed counter stating that it has no objection to grant pardon to the 3rd respondent/A3.

5. The Court below, having heard on either side, allowed the petition filed by the 3rd respondent/A3, granting pardon to the 3rd respondent/A3 on condition of his making full and true disclosure of whole of the circumstances within his knowledge relating to the offence during trial.

6. Aggrieved by the said order, the petitioner/A1 filed the present revision contending that the Court below erred in granting pardon to the 3rd respondent-A3, who is a prime accused in the present case. It is further contended that the Court below ought to have seen that A3 made contradictory versions in his two statements recorded under Section 164 Cr.P.C. It is further contended that the

Court below failed to appreciate that by granting pardon to the principal violator of law, who pursued the path of tempting public servants to be corrupt, A3 escapes punishment. The Court below failed to consider the partisan approach of CBI in not arresting and showing the 3rd respondent-A.Bhaskar as an accused till 03.04.2013 and not opposing his anticipatory bail application. It is further contended that unless the 3rd respondent-A3 stand along with other accused, the Court would not have the opportunity of dealing with a hard core element.

7. The learned Special Prosecutor appearing for the CBI submits that there is no procedural infirmity in the order passed by the Court below, as the 3rd respondent/A3 has revealed the conspiracy of A1 & A2 and their illegal acts of collecting bribe from the aspirants promising them to help in passing departmental examinations and getting them promotions. He further contends that the 3rd respondent/A3 has turned into as an approver and has fully cooperated with CBI in conducted investigation and further he wanted to reveal true facts before the Court, and hence the Court below has not committed any error in passing the impugned order.

8. The point for consideration is as to whether the 3rd respondent/A3 is entitled to tender pardon and whether there are any material irregularities warranting interference with the impugned order.

9. As observed by the Supreme Court in the decision reported in **CBI v. ASHOK KUMAR AGGARWAL,** the petitioner/A.1 may not have a legal right to raise any grievance, particularly in view of the law laid down by the Supreme Court in **RANADHIR BASU v. STATE OF WEST BENGAL.** The Supreme Court, however, observed that the revisional powers under Section 397 r/w 401 IPC., can be exercised by the Court *suo motu,* particularly to examine the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceeding of the inferior Court.

10. In view of the above, this Court can examine the material on record to find out as to whether the order granting pardon to A.3/respondent No.3 do not suffer from any illegality or impropriety.

11. Insofar as the facts of the case in hand are concerned, admittedly, the

petitioner/A.1 was working as Superintendent of Posts, Tirupathi Division, Tirupati. The 2nd respondent/A.2 was the Postal Assistant, whereas the respondent No.3/A.3 was also working as a Postman at Panugallu, Chittoor District. However, A.3 was working temporarily as Extra Departmental Branch Post Master (for short 'EDBPM'). As per rules, EDBPM is eligible to write departmental exams for becoming a permanent employee after having put in five years of temporary service. A.3 appeared for such examinations in 2007, 2009 & 2011 but could not qualify. For conducting the departmental exams, A.1 being the Superintendent of Post Offices, Tirupati, was overall incharge of the process of conducting the examination. The allegation is that A.1 used to help such of the candidates appearing the exams who used to pay illegal gratification to him. In that process, when A.3 was expressing his frustration of not being selected in the exams, A.2 being the Postal Assistant in the same Post Office advised A.3 to pay an amount of Rs.2,00,000/- to A.1, so that he will get through the exam and selection process. The exam was scheduled to be held on 06-03-2011. The CBI had reliable information about the activities of the petitioner/A.1. Surveillance was kept on his phone. The exam was held on 06-03-2011 in which A.3 appeared. A.2 informed A.1 about A.3 writing the exam. After the exam was over, A.2 asked A.3 to get the amount of Rs.2,00,000/- to be paid to A.1. A.3 promised to pay the amount on 07-03-2011 since 06-03-2011 was a holiday. A.3 withdrew the amounts from the accounts of himself, his wife and another and as directed, went to the house of A.1 on 07-03-2011. The CBI officials were watching the movements from outside. A.2 and A.3 entered the house and at that time, A.3 was carrying a bag. Subsequently, A.2 and A.3 came out of the house. The CBI Officials intercepted them and on enquiry, they told that a sum of Rs.2,00,000/- has been paid to A.1 for helping A.3 in passing the examination and being selected on permanent basis. The CBI Officials along with independent witnesses surprised the house and seized the cash of Rs.2,00,000/-, which A.2 and A.3 said that they paid to A.1.

12. The crime was registered and A.1 and A.2 were originally shown as accused and A.3 was shown as Listed Witness No.11. A.1 was placed under suspension. Subsequently, A.1 moved the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, for revoking his suspension by filing O.A.No.431

of 2012. By Order, dated 17-10-2012, the Central Administrative Tribunal, Hyderabad Bench, directed revocation of the suspension of the petitioner/A.1. While considering the said application, the Central Administrative Tribunal made an observation that A.Bhasker (A.3) would be an accomplice as he himself has voluntarily given illegal gratification assuming that he has paid the money, that it is not clear as to why no case is registered against the said Bhasker (A.3) and he is favoured with selection. The Central Administrative Tribunal further observed that if it is the case of CBI coming to know about Bhasker's/A.3's attempt to bribe the applicant (A.1), as to how (sic.. why) the said Bhasker/A.3 is not being prosecuted.

13. During investigation, the statement of A.3 under Section 164 Cr.P.C., was got recorded by the Magistrate on two occasions viz., firstly on 26-03-2011 and subsequently on 20-04-2013. On 03-04-2013, a memo has been filed by the investigating agency before the trial Court for adding A.3 as an accused in the case along with the petitioner/A.1 and the 2nd respondent/A.2. However, in May, 2013, A.3 filed Crl.M.P.No.706 of 2013 under Section 306 Cr.P.C., praying the Court to grant tendering of pardon to him on condition of his making a full and true disclosure of the whole circumstances within his knowledge insofar as the offence is concerned. The investigating agency expressed no objection thereof. However, the petitioner/A.1 resisted the application by filing a counter. After hearing the parties, the learned trial Judge by impugned order dated 05-08-2013, allowed the petition and A.3 was tendered pardon on condition of his making full and true disclosure of whole of the circumstances within his knowledge relating to the offence during trial and in case he fails to do so, the pardon granted to him will be cancelled and he will be tried as an accused.

14. Aggrieved by the said orders, the petitioner/A.1 preferred the present revision. Learned Counsel appearing for the petitioner/A.1 submits that the facts of the case are such that A.3 cannot be granted the relief of tendering pardon for the reason that it is A.3 who approached A.1 with the bribe amount, even though it was not demanded by A.1. There was no complaint from A.3. It is not a trap case. A.3 cannot be given the protection of Section 24 of the P.C.Act. It is A.3 who wanted to pay the money for the purpose of qualifying in

the departmental examination. By that date, A.3 himself was working as EDBPM but on a temporary basis. It is further submitted that even though the complicity of A.3 in the offence is as much as if not more as that of A.1 and A.2, the investigating agency has taken A.3 initially as only a witness but was not arraigned as an accused. It is submitted that only after the Central Administrative Tribunal made certain observations, the investigating agency has filed a memo adding A.3 as one of the accused along with A.1 and A.2. Learned Counsel further submits that during investigation, on two occasions, the statements of A.3 under Section 164 Cr.P.C., was recorded and in both the statements, A.3 gave self-contradictory and conflicting statement. Therefore, learned Counsel submits that granting pardon to A.3 will cause serious prejudice to the petitioner/A.1 and that the Court below has erred in granting the relief.

15. On the other hand, learned Standing Counsel for CBI submits that the learned Special Judge has considered the aspect in proper perspective and after relying upon the authorities of the High Court of Andhra Pradesh and the Supreme Court, and after carefully perusing the material on record, granted the pardon to A.3 by making it clear that such a relief is liable to be cancelled if A.3 fails to make a full and true disclosure of whole of the circumstances within his knowledge relating to the offence during the course of trial. It is further submitted that the investigating agency could not secure sufficient evidence to establish the guilt of all the accused and therefore A.3 is best witness who can speak about the acceptance of illegal gratification by A.1. The evidence of A.3 proposed to be let in during the course of trial will be having a direct bearing on the case of the prosecution. It is further submitted that but for the evidence of A.3 as a witness, the two other accused who have already been shown as accused are likely to get escaped from the penal consequences. Learned Counsel submits that since the discretion vested in the trial Court has been exercised by the learned trial Judge in the interest of justice and by taking into consideration all the surrounding facts and circumstances, the same cannot be said to suffer from any material irregularity or illegality warranting interference by this Court in exercise of the powers conferred under Section 397 and 401 Cr.P.C.

16. As already stated, from the facts stated above, there is no dispute that the

complicity of A.3 is as much as that of A.1 and A.2 if not more. He is a privy to the entire transaction. He is a person similar to a victim at the hands of A.1 though his intention was to derive benefit from the acts of omission and commissions by A.1 for which purpose, he was made to and he did pay Rs.2,00,000/- to A.1 on 07-03-2011 as instructed by A.2, who was also very much in the company of A.3 at the time when the illegal gratification of Rs.2,00,000/- was paid to A.1 for having helped A.3 in the examination and on the promise that A.1 will help A.3 in getting selected as a permanent employee of the Postal Department. What is the role played by A.1 *vis-à-vis* A.2 and A.3 is best known to A.3. When he was feeling disappointed for not having been selected in the examination on three or four occasions previously, it is A.2 who advised a way out A.3 for getting through the selection process. It is A.2, who informed A.3, that A.1 being the Superintendent of Post Offices and incharge of conducting the examination, will help the candidates who give him money and therefore at the instance of A.2, it is A.3 who agreed to pay the amount to A.1. The statements recorded so far revealed that A.3 agreed to the said proposal made by A.2 and in the morning of 06-03-2011, A.2 enquired from A.3 as to whether he is writing the examination and thereafter conveyed the same information to A.1 by giving the Hall Ticket Number of A.3. This information is found from the telephonic conversations which have been tapped by the authorities and the transcript thereof are the part of the record. After the examination was over, A.3 was to give the money to A.1, but it being a Sunday, the date and time for payment of the amount was fixed as 07-03-2011 at Madanapalli at the house of A.1. Accordingly, A.2 and A.3 went there and paid the amount to A.1 and when returning, they were intercepted by the CBI officials who were already keeping a surveillance at the house of A.1 in view of the information gathered by them with regard to the alleged acts of A.1.

17. In **Lt.COMMANDER PASCAL FERNANDES v. STATE OF MAHARASHTRA AND OTHERS,** a three Judge Bench of the Supreme Court made the following observations at paras 12 and 14:-

> "There can be no doubt that the section is enabling and its terms are wide enough to enable the Special Judge to tender a pardon to any person who is supposed to have been directly or indirectly concerned in, or privy to an offence. This must necessarily include a person arraigned before him. But it may be possible to tender pardon to a person not so arraigned. The power

so conferred can also be exercised at any time after the case is received for trial and before its conclusion. There is nothing in the language of the section to show that the Special Judge must be moved by the prosecution. He may consider an offer by an accused as in this case. The action, therefore, was not outside the jurisdiction of the Special Judge in this case.

The next question is whether the Special Judge acted with due propriety in his jurisdiction. Here the interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused. What is meant by public policy is illustrated by a case from Dublin Commission Court (Reg v. Robert Dunne, 5 Cox Cr. cases 507) in which Torrens, J. on behalf of himself and Perrin, J. observed as follows :-

> "From what I can see of this case, this witness Bryan, who has been admitted as an approver by the Crown is much the more criminal of the two on his own showing:
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> ..... I regret that this witness, Bryan, has been admitted as evidence for the Crown and thus escaped being placed upon his trial. It is the duty of magistrates to be very cautious as to whom they admit to give evidence as approvers, and they should carefully inquire to what extent the approver is mixed up with the transaction, and if he be an accomplice, into the extent of his guilt......".

18. In **SARAVANABHAVAN AND GOVINDASWAMY v. STATE OF MADRAS** Justice Hidayatullah, speaking for the majority of the Constitution Bench observed that the antecedents of the approver do not really make him “either a better or worse witness” but his evidence can only be accepted on its own merit and with sufficient corroboration.

19. After referring to various authorities on the subject, the Supreme Court in a decision in ***Lt.Commander Pascal Fernandes v. State of Maharashtra*** (**1 supra**), observed that grant of pardon by a Court under Section 306 Cr.P.C., on being asked by the accused and duly supported by the State is a judicial act and while performing the said act, the Magistrate is bound to consider the consequences of grant of pardon taking into consideration the policy of the State and to certain extent compare the culpability of the person seeking person qua the other co-accused.

20. Learned Counsel appearing for the petitioner also relied upon the decisions of the Delhi High Court reported in **BHARADEWAAJ MEDIA PVT.LTD. V. STATE and BHUPINDER SINGH PATEL ETC. v. CBI.** The authorities however have no relevance insofar as the facts in case are concerned.

21. On the other hand, learned Standing Counsel for CBI cited the decisions of the Supreme Court reported in **HARSHAD S.MEHTA v. STATE OF MAHARASHTRA; BANGARU LAXMAN v. STATE**, and the decision of this High Court in **KONAJETI RAJABABU v. STATE OF A.P. AND ANOTHER.** These authorities laid down the para meters and the aspects to be considered for granting pardon to the accused.

22. As has already been observed by the learned trial Judge, the *sine quo non* for exercising the power of granting pardon to any person who is supposed to have been directly or indirectly concerned in or privy to an offence and in the instant case, it is, undoubtedly, A.3 who is one of the culprits along with A.1 and A.2, but excepting for the evidence of A.3, the prosecution is not able to secure sufficient evidence to establish the nexus in between A.3 *vis-à-vis* A.1 and A.2. Learned Special Judge has exercised the discretion after following the various authorities on the subject which have been discussed in detail in the impugned order. The learned special Judge has taken all the precautions of directing that if A.3 does not make a full and candid disclosure of the facts which are in his knowledge and gives any false statement, which can be exposed by A.1 and A.2, A.3 will be liable to be proceeded in accordance with law by cancelling the grant of pardon.

23. It is no doubt true that in the two statements recorded by the Magistrate under Section 164 Cr.P.C., A.3 gave inconsistent statement which was quite at variance with one another. What is the evidentiary value of the statements recorded by the Magistrate under Section 164 Cr.P.C., of A.3 will be judged by the trial Court at the time when A.3 is being examined as a witness. The credibility or reliability of A.3 as a witness can always be impeached by the petitioner/A.1 and A.2 by confronting him with such of the material that is part of the record such as the two inconsistent 164 Cr.P.C., statements. Learned Special Judge has referred to the said authorities in detail and granted the

relief.

24. In that view of the matter and taking into consideration the totality of the facts and circumstances and the nature of the imputations made against all the three accused, it cannot be said that the learned trial Judge has exercised the discretion of granting pardon to A.3 improperly or that it suffers from any irregularity or illegality. For cogent and valid reasons, the discretion has been exercised judiciously and in the interest of justice, which do not warrant any interference.

25. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

M.S.K.Jaiswal, J

November, 2015

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