

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.5474 of 2009 (O&M)
Date of decision: 2nd September, 2015

Sushil Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.K. Handa, Advocate for the petitioner.

Mr. J.S. Brar, Asstt. Advocate General, Punjab
for respondent No.1.

None for respondent No.2.

FATEH DEEP SINGH, J.

Three accused namely Sushil Kumar, Parmod Kumar and Shilpa @ Shalu are facing trial before the learned Additional Sessions Judge, Pathankot in case registered by way of FIR No.5 dated 21.03.2001 under Sections 302/397/201/411/34 IPC with Police Station Dhar Kalan, District Pathankot (then Gurdaspur) pertaining to murder of Balwant Singh (also referred to as 'Balwant Kumar') father of the complainant Ankur Dhiman and other allied allegations for having kidnapped and then murdered the deceased whose dead-body was found lying in Zen car bearing registration No.PB-10-AR-4432.

During the course of investigations, one of the accused Shilpa @ Shalu moved an application dated 07.07.2001 for initiation of proceedings for “tender of pardon” to her in terms of Section 306 Cr.P.C. Upon due process, the learned Additional Chief Judicial Magistrate, Gurdaspur vide orders dated 11.07.2001 allowed the prayer and on the same day statement of Shilpa @ Shalu was recorded in vernacular on oath which is Ex.P15/A on the lower Court records. Thereafter, the case was committed to the Court of Sessions. During the course of trial before the learned Additional Sessions Judge two applications were moved by the complainant, one for examining Shilpa @ Shalu as a prosecution witness and second to send the case back to the Illaqa Magistrate. Both of the applications stood dismissed by the learned Additional Sessions Judge holding that Shilpa @ Shalu was not declared as an approver by the concerned Court by following the prescribed procedure.

It is against this very order, the complainant filed CRR No.1616 of 2004 challenging these orders and this Court vide its orders dated 13.09.2005 allowed the revision petition and the order dismissing application dated 13.07.2004 was set aside and the application dated 05.03.2004 was allowed and which relevant part of the order is reproduced as below to lay emphasis:

“XXXX XXXX XXXX
XXXX XXXX XXXX

24. that learned Additional Sessions Judge, Fast Track Court, Gurdaspur is

directed to record statement of Shilpa as a 'prosecution witness' by treating her to be 'an approver' and thereafter to take necessary follow up action in accordance with law and to conclude the trial proceedings on or before 31st December, 2005. The original records be sent back to the Court concerned."

From the bare perusal of this order which is conceded to by both the sides to have attained finality, it was directed that statement of Shilpa @ Shalu be recorded as a prosecution witness by treating her to be an approver. As has been brought to the notice of this Court, statement of this witness as PW22 was recorded before the trial Court on 10.02.2009. It is during the course of trial, the accused had managed to secure stay orders as a consequence of which complete statement of this witness could not be recorded and it is subsequent thereto on the orders of this Court evidence of the prosecution witness was concluded on 16.04.2015 and thereafter the matter had been adjourned for defence evidence.

The sole argument that is sought to be raised on behalf of the petitioner by Mr.R.K. Handa, Advocate in this petition under Section 482 Cr.P.C. is that since provisions of Section 306(4)(a) Cr.P.C. have not been complied with, the same be complied with and directions be issued for compliance of the same by the committal Magistrate and which argument has been sought to be refuted on behalf of the State by Mr. J.S. Brar, Asstt. Advocate General, Punjab submitting that there have been concerted efforts at each stage of the

proceedings by the accused to stall the same and that in the light of the orders passed in CRR No.1616 of 2004 there is no merit in the present petition which needs to be outrightly rejected. Learned counsel for the petitioner has placed reliance upon '**A. Devendran v. State of Tamil Nadu**' 1998 AIR (SC) 2821 in support of his contentions.

Appreciating these submissions, the very history of this litigation amply demonstrates that on one pretext or the other, efforts are being made to unduly linger the same to obviate recourse to due process of law. This Court in the criminal revision has issued directions in consequence of which Shilpa @ Shalu has been considered as an approver for tender of pardon and her statement recorded. Thus, to the mind of this Court irregularity, if any, stands erased by the order of this Court. Moreover, in terms of Section 307 Cr.P.C. empowers even the Court, which is holding a trial to which a commitment has been made, before pronouncement of judgment can grant 'tender of pardon' on the same conditions as Section 306(4) Cr.P.C. There is no impediment as to conferment of this power on the trial Court of Sessions Judge as vests in the Magistrate. In the present case, a very fine distinction needs to be made as it is after the commitment Shilpa has been termed as an approver entitling her to pardon on the basis of this Court's order. As has been held in **Devendran's case** (ibid) then the implication of Section 306(4)

Cr.P.C. does not comes into play in view of the interpretation of provisions of Section 307 Cr.P.C.

Learned counsel for the petitioner could not convince this Court what material prejudice has been caused to him by this irregularity which stands cured by the orders of this Court and in compliance of which the approver has been duly examined, thus setting to knots the arguments that have been sough to be the main plank of the petitioner's side. The contention that the fact that the approver's statement cannot be tested as a legitimate evidence in view of lack of opportunity to test with any previous statement does not becomes material or prejudicial and thus, there can be no violation of Article 14 of the Constitution of India as well and can be reasonably tested on the touchstone of being an approver's statement.

With these observations, the instant petition stands disposed off in those terms as dismissed. Trial Court to speedily conclude the trial. Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

September 2, 2015

rps