

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-41512-2014 (O & M)

Date of decision:20.05.2015

T.K. Bhattacharya

...Petitioner(s)

Versus

C.B.I. And anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashok Singla, Advocate, for the petitioner.

Mr. S.S. Sandhu, Advocate,
for respondent No.1-C.B.I.

Mr. P.S. Ahluwalia, Advocate,
for respondent No.2.

Rajan Gupta, J. (oral)

Present petition has been preferred by accused in case registered vide FIR RCCHG2013A0008 dated 02.04.2013 under Section 7 of Prevention of Corruption Act, 1988 by CBI, Anti Corruption Bureau, Chandigarh.

A complaint dated March 31st, 2013, was made by Satish Sood one of the directors of M/s Oasis Group of Companies alleging that accused-T.K. Bhattacharya was demanding a bribe of ₹10 lacs in matters relating to assessment of his and his family's income tax returns. It was further stated that Deputy Commissioner, Income Tax (Central), Ludhiana, had imposed tax/penalty of ₹35 lacs on the complainant and his family members. The complainant met T.K. Bhattacharya in his office on March 30th, 2013 when he promised that he will help the complainant in reduction of penalty. He, however, demanded a bribe of ₹10 lacs. On request of complainant, bribe amount was settled at ₹ 6 lacs. Complainant approached the

CBI and narrated the sequence of events. FIR was registered and a trap was planned. On intervening night of April 2/3, 2013, trap was laid by Inspector K.S. Rana. In the trap, Ashwani Kumar Gupta, Chartered Accountant, T.K. Bhattacharya, both were apprehended.

Pursuant to investigation, challan was put up before the Special Court, CBI, Patiala. However, Ashwani Kumar Gupta-respondent No.2, expressed his willingness to turn approver and on February 11, 2014 gave his statement under Section 161 Cr.P.C. Pursuant to same, he was declared approver vide order dated February 21, 2014 and granted pardon in terms of Section 306 Cr.P.C. Thereafter charge-sheet was presented on February 25, 2014.

In the instant petition, petitioner has challenged the order whereby petitioner was declared approver and was granted pardon by the court. Learned counsel for the petitioner submits that order passed by the Special Judge, CBI, is cryptic and it does not contain any reasons for invoking powers under Section 306 Cr.P.C. Referring to said provision, he submits that some cogent reasons have to be assigned by the Special Judge before exercising the special power.

Prayer has been opposed by Public Prosecutor for CBI as well as counsel appearing for approver-Ashwani Kumar Gupta. According to them in view of Section 306 Cr.P.C. primarily it is the satisfaction of the prosecution which is important. Once an accused shows his willingness to turn approver and prosecution is satisfied with his credentials, it can move the competent court for granting him

pardon. In support of his contention, Mr. S.S. Sandhu, Public Prosecutor for CBI, placed reliance upon a judgment reported as *Jasbir Singh versus Vipin Kumar Jaggi, 2001(3) R.C.R. (Criminal) 818*.

Mr. Ahluwalia, learned counsel for approver-Ashwani Kumar Gupta, has also questioned the locus standi of a co-accused to challenge the order passed under Section 306 Cr.P.C. He has relied upon judgment reported as *Senthamarai versus S. Krishnaraj, 2002(1) R.C.R. (Criminal) 674*.

I have heard learned counsel for the parties and given careful thought to the facts of the case. In judgment in Jasbir Singh's case (supra), the Apex court has held as under:-

*"18. Although the power to actually grant the pardon is vested in the Court, obviously the Court can have no interest whatsoever in the outcome nor can it decide for the prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job. This was the view expressed in **Ltd. Commander Pascal Fernandes v. State of Maharashtra, AIR 1968 Supreme Court 594, 599** where it was said:*

".....Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution

joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case." (emphasis supplied).

*Judged by this stand, the first order of the Sessions Judge refusing pardon to the respondent no. 1 even though it was actively canvassed for by the Special Public Prosecutor, was wrong. It was not for the Sessions Judge to have considered the possible weight of the approver's evidence, even before it was given. In any case, the evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. But the suspicion may be removed and if the evidence of an approver is found to be trustworthy and acceptable then that evidence might well be decisive in securing a conviction. [See Suresh Chandra Bahri v. State of Bihar **Suresh Chandra Bahri and others v. State of Bihar, 1994(3) RCR (Crl.) 1 (SC): AIR 1994 Supreme Court 2420.** The Sessions Judge could not and indeed should not have assessed the probable value of the possible evidence of the respondent No. 1 in anticipation and wholly in the abstract."*

It is evident that it is up to the prosecution to lead cogent evidence before the court. If it finds during proceedings that a particular witness can be of help as an approver, it is always at liberty to invoke relevant provisions of Cr.P.C. Under such circumstances, the court is entitled to grant pardon to such accused as held in aforesaid judgment. Special Judge exercising the power does not act on his own behalf but on behalf of the prosecuting agency. In the instant case, application was moved by the prosecution before the Special Judge seeking to invoke section 306 Cr.P.C. On perusal of contents thereof, he decided to grant pardon subject to the condition that approver would make full and true disclosure of the entire circumstances within his knowledge relating to the crime and every other person concerned therewith as accused or abettor. Thus, plea of the petitioner that no reason has been assigned in the impugned order passed by the Special Court deserves to be rejected. The approver also made a statement under section 164 Cr.P.C. before the Special Judicial Magistrate, CBI, Patiala on 11.02.2014 making a disclosure of the facts to his knowledge. Needless to observe that petitioner is at liberty to cross-examine said witness during the course of trial. Petition is, thus, without any merit deserves dismissal.

Besides, in view of judgment in *Senthamarai's* case (supra), it appears that co-accused has no locus-standi to question grant of pardon to an approver. Truth or falsity of statement of the accused seeking pardon is to be decided by the court alone. It has been held that issue regarding pardon is a matter entirely between court and

the person to whom it is granted. Only obligation on the prosecution is to examine such a person as a witness during trial. Pardon proceedings being neither an inquiry nor a trial, no opportunity of hearing needs to be afforded to co-accused at this stage. As trial proceeds, co-accused would get ample opportunity to cross-examine the approver and to show that his evidence was untrustworthy. Even the stage at which power under section 306 Cr.P.C. is exercised by the court, cannot be questioned by co-accused (para 17 of the judgment in *Senthamarai's* case (supra)).

Under the circumstances, there is no merit in this petition.

Dismissed.

20.05.2015

sukhpreet/Ajay

(RAJAN GUPTA)
JUDGE

Referred to Reporter : (YES)