

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 705 of 2015

- Central Bureau Of Investigation Through : A. C. B. Branch, Bhilai, District Durg Chhattisgarh

---- Applicant

Versus

- O.P. Singhania S/o Late Jai Dayal Singhania Aged About 56 Years R/o 6 Central Avenue Choubey Colony, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Ejaz Khan, Special Public Prosecutor
For Respondent	:	Shri Maheen Pradhan & Shri Ankit Singhal, Advocates.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

14/01/2016

Challenge in this revision is to the order dated 19.5.2015 passed by the Special Judge, CBI, Raipur in Criminal Case No. RC-1242012A0002 rejecting the application filed by the applicant – CBI, for grant of pardon to respondent O.P. Singhania under Section 306 of the Code of Criminal Procedure (for short the “Code”).

2. Facts of the case in brief are that on the basis of source information FIR was registered by the applicant vide RC-1242012A0002 against 08 accused persons alleging commission of offence under Sections 7, 8 and 12 of the Prevention of Corruption Act (for short “the Act”) read with Section 120-B of the Indian Penal Code (for short “IPC”). According to CBI, the Income Tax Department conducted survey in Khaitan Group and found one Rajesh Agrawal to be the Chartered Accountant of the said Group. The respondent herein is also a Chartered Accountant who according to CBI is

close to Rajesh Agrawal. Certain illegal gratifications were said to be demanded by the Income Tax Officers for reducing the surrender amount and it is alleged that respondent O.P. Singhanian managed all the affairs and convinced Khetan Group that he would manage the Income Tax Officers. It is said that on 26.4.2012 the respondent went to the house of Joint Commissioner, Income Tax (for short "JCIT") who demanded Rs. 15 Lakhs immediately from Khaitan Group. Accordingly, information was passed on by the respondent to one Arun Khaitan to arrange the bribe amount and to reach the residence of JCIT immediately. Thereafter, Arun Khaitan and Sapan Khaitan came out of the house and while sitting in the car the bribe amount was handed over by Arun Khaitan and Sapan Khaitan to JCIT at his residence. Both Arun Khaitan and Sapan Khaitan after handing over the bribe amount to JCIT came out of the house and on the way they were apprehended by the CBI and brought back to the house of JCIT. Thereafter, the bribe amount was recovered and trap proceedings were conducted. Immediately thereafter the CBI apprehended the respondent herein namely O.P. Singhanian from Pandri Market and he too was brought back to the residence of JCIT. After completing all the formalities, the accused persons were arrested.

3. On 13.5.2014 CBI recorded the statement of the respondent under Section 161 of the Code whereas the statement under Section 164 of the Code was recorded on 25.6.2014 by the Chief Judicial Magistrate, Raipur. On 5.12.2014 CBI filed an application before the Special Judge, CBI Raipur for tender of pardon to respondent and to examine him as approver under Section 306 of the Code vide Ex. D-1. On 8.4.2015 the Court of Special Judge, CBI, Raipur issued notice to the respondent on the application filed by CBI and on 12.5.2015 the respondent gave his written consent by filing affidavit on solemn affirmation.

4. Vide impugned order dated 19.5.2015 learned Special Judge

rejected the application filed by CBI under Section 306 of the Code and observed that version of respondent in his statement recorded under Section 164 of the Code differs from the version of disclosure/recovery memo inasmuch as the statement u/s 164 states that “the respondent left the place by his car and thereafter Aarun Khaitan and Sapan Khaitan went inside the residence of Shri Athaley (JCTI)”. It is further observed by the Special Judge that approver is not giving the correct details of bribe transaction and therefore it is difficult to understand as to why the prosecution wants respondents to be approver under Section 306 of the Code and how the prosecution believes that he will disclose the correct facts before the Court. Special Judge also felt that in case respondent is made approver, he may not disclose the true and correct facts and cannot be a truthful witness, and by observing this application of CBI has been rejected. It is this order which is under challenge in this revision.

5. Counsel for the applicant submits that the Court below has unnecessarily weighed the evidence still to be adduced by the prosecution. He submits that the Special Judge has prejudged the entire prosecution case at this stage while considering the application for grant of pardon and was not supposed to record any finding solely on the basis of the statement of the respondent recorded under Section 164 of the Code. Counsel for the applicant further submits that the Court below has erroneously recorded the finding that the statement of the respondent recorded under Section 164 of the Code was not completely true as he was admittedly exonerating himself from the prosecution case. It is submitted that the Special Judge has further erred in law in holding that in such circumstances, the respondent, on grant of pardon would not prove true and will be of no aid to the case of the prosecution. It is further submitted that the trial Court has exceeded its jurisdiction by appreciating the evidence before the charge-sheet is filed and has committed an error by reaching a conclusion that he is not telling the truth and there was no

occasion to analyze the evidence. In support of his submissions, counsel for the applicant placed reliance on the decisions of the Apex Court in the matter of **Jasbir Singh v. Vipin Kumar Jaggi and others** reported in **(2001) 8 SCC 289**, in the matter of **Central Bureau of Investigation v. Ashok Kumar Aggarwal and another** reported in **(2013) (15) SCC 222**, in the matter of **Suresh Chandra Bahri v. State of Bihar** with **Gurbachan Singh v. State of Bihar and Rajpal Sharma v. State of Bihar** reported in **1995 Supp. (1) SCC 80** and on the decision of Delhi High Court in the matter of **Jayalakshmi Jaitly v. CBI** passed in **CrI. MC No. 1036/2013**.

6. Counsel for the respondent while supporting the contention of the CBI submits that before the Special Judge the respondent has given his consent to become approver and reiterated the said contention before this Court as well. He has further argued that the application filed by the CBI has wrongly been rejected by the Special Judge without considering his legal submissions.

7. Heard counsel for the parties and perused the documents on record.

8. Before proceeding with the question involved in the case, it appears necessary to take note of the relevant provisions of law which are reproduced as hereunder:

“Section 306 (1) : With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

- (2) This section applies to-
- (a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).
 - (b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.
- (3) Every Magistrate who tenders a pardon under Sub-Section (1) shall record-
- (a) his reasons for so doing;
 - (b) whether the tender was or was not accepted by the person to whom it was made,
- and shall, on application made by the accused, furnish him with a copy of such record free of cost.
- (4) Every person accepting a tender of pardon made under Sub-Section (1)-
- (a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;
 - (b) shall, unless he is already on bail, be detained in custody until the termination of the trial.
- (5) Where a person has accepted a tender of pardon made under Sub-Section (1) and has been examined under Sub-Section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case.-
- (a) commit it for trial-
 - (i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;
 - (ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act 1952 (46 of 1952), if the offence is triable exclusively by that Court;
 - (b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

Section 307 : At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

Section 308 (1): Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by

wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused :

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under Sub-Section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial the Court shall-

- (a) if it is a Court of Session, before the charge is read out and explained to the accused;
- (b) if it is the Court of a Magistrate before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall notwithstanding anything contained in this Code, pass judgment of acquittal."

9. Bare reading of Section 306 of the Code makes it clear that object of this Section is to obtain true evidence of offences by the grant of pardon to accomplice/approver so as to prevent the escape of the offenders from punishment for lack of evidence in grave cases. It is further apparent that Section 306 is a condition precedent to the accomplice/approver who is giving full and true disclosure of the facts within his knowledge. It is only a promise which is required from the person who is ready to become

approver that he would give full and true disclosure of facts within his knowledge of the offences and every person concerned. The legal position is further clear that after recording the statement under Section 306 (4) of the Code and after the evidence is recorded in the trial, if the trial Court comes to the conclusion that the accomplice/approver has not given full and true disclosure of the facts within his knowledge then in that case Section 308 of the Code would come in play and his pardon can be revoked and he may be tried for the offences in respect of which the pardon was so granted. The basis of exercise of this power is not to judge the extent of culpability of the person to whom the pardon is tendered. The main purpose is to prevent failure of justice by allowing the offenders to escape from a lack of evidence in grave offences.

10. To summarize, section 306 of the Code provides that the Court has to look into (i) whether the respondent is directly or indirectly privy to the offence committed (ii) whether the prosecution needs his evidence to make their case strong against the main offenders (iii) promise from the respondent that he would make full and true disclosure of the facts relating to the offence and the offenders and (iv) consent of the respondent to turn approver.

11. In the case of **Jasbir Singh v. Vipin Kumar Jaggi and others (supra)** it has been held by the Apex Court as under:

“Judged by this standard, the first order of the Sessions Judge refusing pardon to respondent 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 approvers 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. The Sessions Judge could not and indeed should not have assessed the probable value of the possible evidence of respondent 1 in anticipation and wholly in the abstract.”

12. In the matter of **Central Bureau of Investigation v. Ashok Kumar Aggarwal and another (supra)**, it has been held by the Apex Court as under:

“In Jasbir Singh this Court dealt with the issue observing that the court while considering the application for tendering pardon is not to consider the possible weight of the approver’s evidence even before it was given. The evidence of an approver does not differ from the evidence of any other witness except that the evidence of the approver is looked upon with more caution. The suspicion of such evidence may be removed and if the evidence of an approver is found to be trustworthy and acceptable, then the evidence might will be decisive in securing a conviction. Thus, the court while exercising such power should not assess the probative value of the possible evidence of the person seeking permission to become an approver in anticipation and wholly in the abstract.”

13. In the matter of **Suresh Chandra Bahri v. State of Bihar** with **Gurbachan Singh v. State of Bihar** and **Rajpal Sharma v. State of Bihar (supra)** it has been held by the Apex Court as under:

“We have already reproduced above Section 306 of the Code the provisions of which apply to any offence triable exclusively by the Court of Special Judge to any offence punishable with imprisonment extending to seven years or with a more serious sentence. Section 306 of the Code lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure (sic). Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the

incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. There can therefore be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence.”

14. In the matter of **Jayalakshmi Jaitly v. CBI (supra)** the High Court of Delhi has held as under :

“The pardon proceeding which takes before the Magistrate is neither an enquiry nor a trial in which an opportunity must be given to the other accused to show to the Court that the statement of the accused seeking pardon is not true. Only during the course of trial, the opportunity will be given to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradiction or improvements made by him by allowing the accused to cross-examine. Petitioner's contention that the statement given by 2nd respondent is self-exculpatory and has been given implicating others in order to escape from the punishment has no merit at this juncture. For granting pardon under Section 306 Cr.P.C., it is not a pre-requisite condition that the statement of a person on whose behalf pardon is sought must be in the nature of confession or he must implicate himself fully in the offence. What the section requires is to obtain statement from the person who is

supposed to be directly or indirectly concerned in or privy to the offence and such a person can be granted pardon on the condition of his making a full and true disclosure of whole of the circumstance within his knowledge relative to the offence. (CBI vs. N.K. Amin & Ors., 2011 (3) RCR (Criminal) 834).”

15. Thus in view of the aforesaid factual and legal position, this Court finds sufficient force in the argument advanced on behalf of the CBI that the trial Court should not have weighed the evidence yet to be produced while deciding the application under Section 306 of the Code. The trial Court has further erred in law to hold that in case the pardon is granted to the respondent, he will not disclose the true facts and will not be a truthful witness. This finding recorded by the CBI Court is without any basis and there was no occasion for it to record the said finding. Special Judge has failed to appreciate that the respondent being the middleman between Khaitain Group, CCIT and JCIT is an important connecting link to prove the entire conspiracy of obtaining illegal gratification. The CBI was therefore fully justified in filing the application under Section 306 of the Code for grant of pardon to the respondent.

16. Order impugned is thus set aside. Application filed by the CBI under Section 306 of the Code for tender of pardon to respondent is allowed and the CBI is permitted to examine him as approver.

17. Revision allowed.

Sd/-

(Pritinker Diwaker)

Judge