

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Criminal Revision Case No.2746 of 2016

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., challenging the order dated 19.10.2016 passed in CrI.M.P.No.452 of 2016 in SC No.291 of 2014 on the file of the VI Additional District and Sessions Judge, Markapur, Prakasam District.

2. The contention of the learned counsel for the petitioner is two fold. (1) The trial court without applying its mind dismissed the application. (2) The order of the trial court is not sustainable either in law or on facts.

3. Per contra, learned Additional Public Prosecutor submits that the trial court has rightly considered various aspects and dismissed the petition. He further submitted that there are no grounds much less valid grounds to interfere with the order of the trial court by exercising the revisional jurisdiction under Section 397 Cr.P.C.

4. A perusal of the record reveals that the petitioner, who is A.4, is facing the trial in SC No.291 of 2014, for the offences punishable under Sections 302, 307 read with 120-B IPC. The petitioner herein filed a petition under Section 306 Cr.P.C. seeking to grant pardon.

5. A perusal of Section 306 Cr.P.C. clearly demonstrates that a person, who is facing trial for any offence punishable with imprisonment which may extend to seven years or with a more severe

sentence, is entitled to file an application seeking pardon. In the instant case, the punishment for the offence under Section 302 of IPC is life imprisonment.

6. Learned counsel for the petitioner submitted that an accused person is entitled to file petition under Section 307 Cr.P.C., seeking pardon at any time, before pronouncement of judgment.

7. To substantiate his contention, learned counsel for the petitioner has drawn my attention the following decisions:

(1). In '**Thupakula Ramchandra Reddy Vs. The State of A.P.**¹, wherein this court held as follows:

"9. The only point to be considered is whether by tendering pardon the court will be able to get sufficient evidence regarding the crime. It is, no doubt, true that the learned Judge is not bound to accept the offer made by the accused and tender pardon, but the discretion has to be exercised judiciously having regard to the circumstances of the case. The entire case depends upon circumstantial evidence. Here A.1 is supposed to have killed the deceased and A.1 and A.3 helped A.1 in causing disappearance of evidence by burying the deadbody. It is not possible to get direct evidence at all in this case. Now, the accused (A.2) came forward with an application seeking tender of pardon on condition that he would make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence. On the facts, I think it is essentially a fit case where, the petitioner should have been tendered pardon on condition of his making a full and true disclosure of the whole facts. The other reason for refusing to grant pardon was that there is already a confessional statement on record. But the learned Public Prosecutor submitted that the said statement along with some other record was burnt away in a fire accident and hence the confessional statement is not available. In the circumstances, the impugned order is quashed and the learned Sessions Judge is directed to tender pardon under Section 307 Cr.P.C. and proceed with the trial thereafter in accordance with law. The petition is allowed."

(2). In '**Narayanan Chetanram Chaudhary vs. State of Maharashtra**², wherein the Apex court held as follows:

"A perusal of both the Sections (306 and 307 Cr.P.C.,) clearly indicates that Section 306 is applicable in a case where the order of commitment has not been passed and Section 307

¹ 1986(2) APLJ P.227

² 2000 Cr.L.J. 4640

would be applicable after commitment of the case but before the judgment is pronounced. The provisions of sub-section (4)(a) of Section 306 would be attracted only at a stage when the case is not committed to the court of Sessions. After the commitment, the pardon is to be granted by the Trial Court subject to the conditions specified in sub-section (1) of Section 306, i.e. approver 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. It may be noticed that under the old Code, only the District Magistrate had the power to tender pardon, at any stage of the investigation, enquiry or trial even though he himself might not be holding such enquiry or trial. Pardon could be granted by the District Magistrate even during the pendency of the trial in the Sessions Court. By Criminal Law Amendment Act, 1952, old sections 337 to 339 were substituted by sections 306 to 308 of the Code of Criminal Procedure conferring the power to tender pardon only to Judicial Magistrates and the Trial Court. Section 307 - in its present form - does not contemplate the recording of the statement of the approver twice as argued. Accepting the submissions made on behalf of the appellant would amount to legislate something in Section 307 which the Legislature appears to have intentionally omitted.”

8. The parliament in its wisdom incorporated Sections 306 and 307 Cr.P.C., with a laudable object to secure evidence by granting pardon to one of the accused, if the exigencies so warrant. It is needless to say that in some cases the prosecution may not be able to unearth the truth, without granting pardon to one of the accused. The court has to consider whether granting such pardon will help the prosecution in any manner to prove the guilt of the accused. If the court satisfies that under any circumstances no evidence will be gathered or procured without granting pardon to one of the accused, the court can tender pardon to one of the accused. While doing so, the court has to take into consideration the facts and circumstances of the case.

9. In the instant case, the trial was concluded and when the case is coming up for arguments, the petitioner filed the present petition. I have carefully scanned the affidavit filed by the petitioner. Nowhere, it is mentioned that if the pardon is granted, he will

support the case of the prosecution. Even assuming, but not conceding, that the petitioner will support the case of the prosecution, no purpose will be served by tendering pardon to the petitioner, as the case was posted for judgment. Suffice it to say, the court has to take into consideration the nature of the offences alleged to have been committed by the petitioner while granting pardon. As per the prosecution version, the petitioner along with other accused conspired and killed one Pullaiah, for the sake of property. If the court grants pardon in this type of cases, certainly it would amount to miscarriage of justice. In view of the facts and circumstances of the case, the decisions cited by the learned counsel for the petitioner are no way helpful to the petitioner.

10. It is settled principle of law that paramount consideration for granting of pardon is the interest of prosecution. By any stretch of imagination, it cannot be presumed that granting of pardon to the petitioner is in the interest of prosecution.

11. A perusal of Section 306 Cr.P.C., clearly demonstrates that the Court has discretionary power either to grant or refuse to grant pardon. It is a settled principle of law that the Court has to exercise the discretionary power judiciously basing on sound principles of law in order to secure the ends of justice. The trial Court has exercised its discretionary power keeping in mind the sound principles of law apart from the interest of the prosecution case.

12. Further, if really the petitioner has intended to support the prosecution version, nothing prevented him to file such an application before committing the case to the Court of Session as contemplated under section 306 Cr.P.C., or at least before

commencement of the trial. Non-filing of the application at the earliest point of time casts a cloud on the bona fides of the petitioner. The possibility of filing of this type of petitions, at the fag end, with an ulterior motive to protract the proceedings, cannot be ruled out completely.

13. The trial court has rightly considered all the relevant aspects and dismissed the petition. The trial court has assigned valid reasons while dismissing the petition. This court can set aside the orders of the lower court while exercising the jurisdiction under Section 397 Cr.P.C., if there is any illegality, irregularity or impropriety.

14. Having regard to the facts and circumstances of the case, I am of the considered view that the trial court has not committed any illegality or irregularity which warrants interference of this court.

15. The criminal revision case is, accordingly, dismissed. Miscellaneous petitions, if any pending in this case, shall stand closed.

Date: 08.11.2016
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T.SUNIL CHOWDARY, J

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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