HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2416 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed by A3 in C.C.No.39 of 2005 on the file of the III Additional Special Judge for CBI Cases at Hyderabad, challenging the order in Crl.M.P.No.357 of 2017 in C.C.No.39 of 2005, dated 21-08-2017.

The petitioner, who is A-3 in C.C.No.39 of 2005, earlier filed Crl.M.P.No.989 of 2010 in C.C.No.39 of 2005 before the Special Court for grant of pardon under Section 5(2) of Prevention of Corruption Act, 1988 (for short, 'the Act'). The said application was dismissed by order, dated 24-10-2016. Aggrieved by the said order A-3 filed Crl.R.C.No.2720 of 2016 before this Court and this Court by order, dated 24-01-2017 permitted the petitioner to approach the trial Court once again. Accordingly, A-3 filed an application for grant of pardon under Section 5 (2) of the Act, disclosing all the facts and seeks indulgence of the Court to tender pardon to him under Section 306 of Cr.P.C., while undertaking to obey the mandate of Sections 307 and 308 of Cr.P.C., while affirming that this application is made by him voluntarily and he will not suffer loss or prejudice and no prejudice will be suffered by any other parties to the case.

In the earlier application filed by this petitioner he alleged that his only child met with unnatural death on 08-10-2004 and that incident shattered and devastated the petitioner and his wife completely. The petitioner had to undergo coronary bypass and the petitioner's health do not permit him to undergo the prosecution and requested to tender him pardon.

The CBI filed counter stating that the petitioner worked as Managing Director of M/s.Prime Pharmatech (India) Limited and submitted false or fabricated bills of non existing firm namely M/s.Sruthi Agencies to the State Bank of Hyderabad, Old Bowenpally branch, Secundrabad. The petitioner along with other accused has received money to a tune of Rs.55 lakhs and therefore, the petitioner is liable in his personal capacity as well as functionary of the company.

The role of petitioner is well established with the aid of documentary and oral evidence submitted along with police report. The petitioner did not come up with any revelation as to his role in the preparation of forged and fabricated bills, petition is devoid of merits and prayed to dismiss the petition.

Upon hearing both the counsel, the Court below dismissed the application by assigning its own reason, more particularly stating that the petitioner cannot insist the Court to grant pardon to him against the opinion of the prosecution and the Court below opined that the prosecution can be established even in absence of his evidence against the accused and dismissed the petition.

Aggrieved by the order passed by the Court below, the present revision is filed raising various contentions running into 25 pages. But during hearing learned counsel for the petitioner Sri Anil Kumar Tandale while drawing the attention of this Court to the orders passed, in the earlier round of litigation would contend that the prosecution has reported no objection in the counter filed in earlier petition in Crl.M.P. No.989 of 2010. Now, cannot object the present application and they are bound by the promise made and cannot plead executive necessity to make such promise. Therefore, the respondent is estopped from contending that the petitioner is not entitled to pardon under Section 5(2) of the Act. In support of his contention he placed reliance on the following judgments:

1. (1985) 4 Supreme Court Cases 369
2. (1993) 3 Supreme Court Cases 499
3. (1982) 2 Supreme Court Cases 463
4. (2013) 6 Supreme Court Cases 348

On the strength of these principles laid down by the Hon'ble Apex Court, it is contended that the respondents are precluded from raising any objection to grant pardon by exercising power under Section 5 (2) of the Act and Section 306 of Cr.P.C., having reported no objection in the earlier round of litigation in the counter in Crl.M.P.No.989 of 2010.

Whereas the Spl. Public Prosecutor for the CBI contended that tender of pardon to accomplice can be accorded only in special circumstances and relied on judgment of Hon'ble Apex Court in ***P.C. Mishra v. State (C.B.I) and another***.

Considering the rival contention and perusing the material available on record the point that arises for consideration is:

> *"Whether the prosecution/the respondent herein is entitled to contest the present petition to decline pardon to the petitioner, having reported no objection in the earlier round of litigation in their counter in Crl.M.P.No.989 of 2010, if not, whether the petitioner is entitled to claim pardon under Section 5 (2) of the Act and Section 306 of Cr.P.C."?*

POINT: Though the petitioner raised numerous grounds from A to Y running into 25 pages, which inclusive of narration of this petition both in present and earlier petition, he confined his argument during hearing only to the promise made by the respondent reporting no objection for granting pardon in the earlier petition in Crl.M.P.No.989 of 2010.

The petitioner, who is A-3, worked as Managing Director of M/s.Prime Pharmatech (India) Limited and submitted false or fabricated bills of non existing firm namely M/s.Sruthi Agencies to the State Bank of Hyderabad, Old Bowenpally branch, Secundrabad and committed offence punishable under Section 5 (2) of the Act. After due investigation the investigating agency filed charge sheet before the Special Court against the petitioner and others for various offences punishable under Sections 120-B read with Sections 420, 477-A of IPC and Sections 13(2) read with Section 13 (1)(d) of the Act.

The petitioner is not a public servant as defined under Section 21 of IPC, therefore, the charge sheet was filed only against the Manager of State Bank of Hyderabad, who allegedly exercised his official position but filed charge sheet against these persons both under the provisions of I.P.C. and Prevention of Corruption Act, 1988.

The bone contention of the petitioner is that the respondent having reported no objection in Crl.M.P.No.989 of 2010 in C.C.No.39 of 2005 in their counter are precluded from raising objection to tender pardon to the petitioner under Section 5 (2) of the Act and Section 306 of Cr.P.C.

Learned counsel for the petitioner would draw the attention of this Court to the counter filed in the earlier round of litigation in Crl.M.P.No.989 of 2010. In the last paragraph i.e., paragraph No.4 of the counter the respondent reported no objection subject to compliance of certain conditions laid down under Sections 307 and 308 of Cr.P.C., and the same is extracted hereunder for better appreciation:

"4. In view of the above, the prosecution has no objection to turn the petitioner as approver subject to condition; he has to comply with the conditions u/s.307 and 308 of Cr.P.C."

In Criminal Revision Case also the petitioner counsel reiterated the same but the CBI virtually reported no objection to accord pardon to the petitioner by exercising power under Section 306 of Cr.P.C., and Section 5 (2) of the Act. But, curiously, in the 2nd paragraph of the counter in Crl.M.P.No.989 of 2010 the CBI asserted that the respondent/CBI is not willing to file an application for tender of pardon to the petitioner. Though at one stage they expressed unwilling to file an application under Section 306 of Cr.P.C., and Section 5 (2) of the Act, virtually reported no objection to tender pardon to the petitioner by the Court below.

Taking advantage of this admissions in the earlier application in Crl.M.P.No.989 of 2010 learned counsel for the petitioner contended that when the respondent reported no objection, now, they cannot turn around and oppose the request made by the petitioner, based on the principle of "promissory estoppel" and it is an admission on the part of the respondent and the CBI cannot go back, withdrawing their admission.

Counter in Crl.M.P.No.989 of 2010 was signed by one Sri T.V. Ramana, Sr.PP/CBI/ACB, Hyderabad, whereas the counter in revision was signed by Sri N. Raghavendra Kumar, Inspector of Police and HIO, CBI/ACB, Hyderabad.

The concession or admission made by the counsel is a valid admission or not is a question to be decided. The Full Bench of Hon'ble Apex Court in ***Himalayan Coop. Group Housing Society v. Balwan Singh and others***[1], while considering the powers of the Advocate or Lawyers held as follows:

> *"Lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client – lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject matter of*

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[1] (2015) 7 Supreme Court Cases 373

the retainer. One of the most basic principles of the lawyer-client relationships is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/ settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyers conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

… … …

Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client.

We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.

We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

"an advocate, in the discharge of his duty knows but one person in the world and that person is his client."

In view of the law declared by the Hon'ble Apex Court, the concession or admission in the counter filed in Crl.M.P.No.989 of 2010 in C.C.No.39 of 2005 is not based on any written authorization issued by the client to his counsel i.e., Senior Public Prosecutor for CBI/ACB, Hyderabad, therefore, the concession, if any, made in paragraph No.4, which I extracted above is not binding on the client. On the strength of such admission in the counter Crl.M.P.No.989 of 2010 in C.C.No.39 of 2005 it is difficult to accept the concession of Public Prosecutor to grant pardon to this petitioner.

Learned counsel for the petitioner further drawn the attention of this Court to the counter in Criminal Revision Case No.2720 of 2016, which was signed by Sri N. Raghavendra Kumar, Inspector of Police and HIO, CBI/ACB, Hyderabad, wherein he made a concession reporting no objection to turn the petitioner as approver subject to condition that the petitioner/accused has to comply with the conditions under Sections 307 and 308 of IPC. But this concession by the Inspector of Police is binding, if Inspector filed the charge sheet before the Special Judge.

Here, the charge sheet was filed by the Inspector of Police, CBI, Hyderabad (Ravisuman Prasad) and the present respondent filed counter. Sri N. Raghavendra Kumar, Inspector of Police and HIO, CBI/ACB, Hyderabad was neither the person who filed charge sheet nor prosecuting the proceedings on behalf of the CBI/ACB, Hyderabad. In such case, it is doubtful whether such concession can be accepted as an admission to accord pardon to the petitioner by exercising power under Section 5 (2) of the Act and Section 306 of Cr.P.C.

Learned counsel for the petitioner relying on the concession of Sri N. Raghavendra Kumar, Inspector of Police and HIO, CBI/ACB, Hyderabad, who is neither witness nor a Investigating Officer, filed charge sheet contended that when the respondent gave concession or made an admission reporting no objection to grant pardon to this petitioner they cannot go back and contend that no pardon can be granted.

In a judgment reported in ***Union of India and others v. Godfrey Philips India Limited***[2], the Hon'ble Apex Court discussed about the promissory estoppel and doctrine of executive necessity and held that more importantly, it is necessary to point out that the decision in Motilal Sugar Mills case (supra) marks a significant development in the law

[2] (1985) 4 Supreme Court Cases 369

relating to the doctrine of promissory estoppel. The principal question debated in that case was as to whether and if so, to what extent, is the doctrine of promissory estoppel applicable against the Government. It was contended on behalf of the State of Uttar Pradesh that the plea of promissory estoppel is not available against the exercise of executive functions of the State, for the State cannot bind itself, so as to fetter its future executive action. There is contention was sought to be supported by relying on the observations of Rowlatt J. in an early decision in Roderiaktiebolaget Amphitrite v. The King (1921) 3 K.B. 500. But this Court observed in Motilal Sugar mills case (supra) that what Rowlatt J. said in that case did not represent the correct law on the subject and pointed out that the doctrine of executive necessity propounded by Rowlatt J. was disapproved by Denning, J. as he then was, in Roberston v. Minister of Pensions (1949) 1 K.B. 227. Denning, J. categorically expressed the view in Roberston's case (supra) that the crown cannot escape its obligation under the doctrine of promissory estoppel by praying in aid the doctrine of executive necessity. This Court also in Union of India v. Indo Afgan Agencies [1968] 2 S.C.R. 366, exploded the doctrine of executive necessity. Shah, J. speaking on behalf of the Court negative the argument urged on behalf of the Government that it is not competent for the Government to fetter its future executive action which may necessarily be determined by the needs of the community when the question arises and no promise or undertaking can be held to be binding on the Government so as to hamper its freedom of executive action and observed at page 376 of the Report: We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law; if a member of the Executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute- the Courts will be competent to and indeed would be bound to protect the rights of the aggrieved citizens. The learned judge also after examining the decisions cited before him summed up the position in the following words: Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex-parte appraisement of the circumstances in which the obligation has arisen. The defence of executive necessity was thus clearly negatived by this Court and it was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting in reliance on the promise, had altered his position. The doctrine of promissory estoppel was in such a case applicable against the Government and it could not be defeated by invoking the defence of executive necessity. This Court in Motilal Sugar Mills case (supra) also negatived the argument that if the Government were held bound by every representation made by it regarding its intention, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 of the Constitution was executed. It was held by this Court that a party who has, acting in reliance on a promise or representation mate by the Government, altered his position, is entitled to enforce the promise or the representation against the Government, even though the promise or representation is not in the form of a formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government."

Based on principle of promissory estoppel the defence of executive necessity is not acceptable and accordingly negatived since the respondent cannot say that it is under no obligation to act in a manner i.e., fair and just of them it is not by consideration of an anxiety and good faith etc.

Here, the alleged promise was made in the counter by Sri N. Raghavendra Kumar, Inspector of Police and HIO, CBI/ACB, Hyderabad, who is not concerned officer prosecuting the proceedings in C.C.No.39 of 2005 and not even a witness in the said proceedings, therefore, promise made by an Inspector of Police against the interest of CBI would not preclude the respondent to contest the petition and oppose the petition filed under Section 5 (2) of the Act to deny pardon to the petitioner.

Similarly, he also relied on another judgment of the Hon'ble Apex Court in ***Union of India and others v. Hindustan Development Corporation and others***[3], wherein the Hon'ble Apex Court held that coming to the notice inviting tender in the instant case, we have already noted that the price quoted is subject to price variation clause and the Railways reserved a right to accept the lowest price or accept the whole or any part of the tender of portion of the quantity offered. The notice however, mentioned that the tenderer is at liberty to tender for the whole or any portion or to state in the tender that the rate quoted shall apply only if the entire quantity is taken from him. From these provisions it becomes clear that the tenderer can not expect that his entire tender should be accepted in respect of the quantity and that the

[3] (1993) 3 SCC 499

Railways have a night to accept the tender as a whole or a part of it or portion of the quantity offered. It is not in dispute that in the past also there were many instances where the Railways as per the procedure followed, arrived at decisions in respect of both price and quantity for good and justifiable reasons. In the year 1991 the quantities of M/s H.D.C. and Bharatiya were in fact reduce from the allocations made by the Tender Committee which made its recommendations on the basis of certain data. It has to be noted that the Tender Committee is not a statutory authority and its proposals are recommendatory in nature and have to be considered in the distribution procedure culminating in the decision of the approving authority who as a matter of fact, also can take decisions in respect of price and allotment of quantities taking into consideration various other aspects from the point of view of public interest. Therefore it is evident that there is no legally fixed procedure regarding fixation of price and particularly regarding allotment giving scope to a legitimate expectation. However, with this facture background, we shall consider the contention regarding 'legitimate expectation'. In Halsbury's Laws of England, Fourth Edition, Volume 1(1) 151 a passage explaining the scope of "legitimate expectations" runs thus: Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past prac- tice. The existence of a legitimate expectation may have a number of different consequences'; it may give locus standi to seek leave to apply for `judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectations, it must afford him an opportunity to make representation on the matter. The courts also distinguish, for example in licensing cases, between original applications, to renew and revocations; a party who has been granted a licence may have legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

Basing on this principle it is contended that when the respondent gave concession to accord pardon to the petitioner the respondent cannot turn around and oppose the request made by the petitioner. In the earlier application the respondents gave concession to grant pardon to the petitioner but now opposed, therefore, the petitioner is entitled to renew his request after compliance of necessary formalities as directed by this Court in Crl.R.C.No.2720 of 2016. Accordingly, he renewed his request and now the request is opposed by the respondents.

Learned counsel for the petitioner contended that the concession made by counsel is binding and placed reliance of a judgment reported in ***State of Maharashtra v. Ramdas Shrinivas Nayak and another***[4], the judgment the Hon'ble Apex Court held that on the invitation of Mr. Sen, we have also perused the written submissions made by him before the High Court. We have two comments to make: First, oral submissions do not always conform to written submissions. In the course of argument, counsel, often, wisely and fairly, make concessions which may not find a place in the written submissions. Discussion draws out many a concession. (1) 28 C.W.N. 170. (2) 34 C.L.J. 302. Second, there are some significant sentences in the written submissions which probabilise the concession. They are: "If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the

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[4] (1982) 2 SCC 463

case. Such a discretion of the Governor must be implied as inherent in his constitutional powers. The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform his statutory duties because his Ministers had become involved personally. For the interest of democratic Government and its functioning, the Governor must act in such a case on his own. Otherwise, he will become an instrument for serving the personal and selfish interest of his Ministers." We wish to say no more. As we said, we cannot and we will not embark upon an enquiry. We will go by the judges' record.

This judgment is a Division Bench judgment and latter judgment, which I referred supra, which is biding president of this Court, therefore, based on recent judgment of Hon'ble Supreme Court in 2nd cited supra, this principle is not acceptable.

Even according to the principle with regard to lawyer-client relationship, referred above, the petitioner may be afforded an opportunity to make a representation when the respondent is not willing to accept the earlier promise since it is a legitimate expectation in the Administrative Law. However, none of the representations made either by the Senior Public Prosecutor nor an Officer of CBI, who is un-concerned with prosecution are not binding on the respondent and on the basis of such admission the respondent is not precluded from raising an objection in the present petition, therefore, those principles have no application to the present facts of the case.

He also relied on a judgment reported in ***Amitbhai Anilchandra Shan v. Central Bureau of Investigation and another***[5] to the same effect.

The petitioner filed this petition under Section 5(2) of the Act in pari materia with Section 306 of Cr.P.C. Section 5(2) of the Act and Section 306 of Cr.P.C., confers discretionary power on the Court to grant pardon to the accused only when no other evidence is available to prove him guilt of accused in serious offences and recording of satisfaction by the Court is mandatory.

A right to impose condition limiting the operation of such a pardon as held by the Hon'ble Apex Court in ***State of Maharashtra v. Abu Salem Abdul Kayyum Ansari and others***[6], the Hon'ble Apex Court held that the salutary

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[5] (2013) 6 SCC 348
[6] (2010) 10 SCC 179

principle of tendering a pardon to an accomplice is to unravel the truth in a grave offence so that guilt of the other accused persons concerned in commission of crime could be brought home. It has been repeatedly said by this Court that the object of Section 306 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. Section 306 Cr.P.C. empowers the Chief Judicial Magistrate or a Metropolitan Magistrate to tender a pardon to a person supposed to have been directly or indirectly concerned in or privy to an offence to which the section applies, at any stage of the investigation or inquiry or trial of the offence on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence. The Magistrate of the first class, under Section 306, is also empowered to tender pardon to an accomplice at any stage of inquiry or trial but not at the stage of investigation on condition of his making full and true disclosure of the entire circumstances within his knowledge relative to the crime. Section 307 vests the court to which the commitment is made, with power to tender a pardon to an accomplice. The expression, `on the same condition' occurring in Section 307, obviously refers to the condition indicated in sub-section (1) of Section 306, namely, on the accused 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. An accomplice who has been granted pardon under Section 306 or 307 Cr.P.C. gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 Cr.P.C. to that effect, the protection given to him is lifted. The power to grant pardon carries with it the right to impose a condition limiting the operation of such a pardon. Hence a pardoning power can attach any condition, precedent or subsequent so long as it is not illegal, immoral or impossible of performance. Section 306 clearly enjoins that the approver who was granted pardon had to comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other concerned whether as principal or abettor, in the commission thereof."

In similar lines, in ***P.C. Mishra v. State (C.B.I.) and another***[7], the Hon'ble Apex Court held that power to grant pardon enjoined under Section 306 Cr.P.C. is a substantial power and the reasons for tendering pardon must be recorded. It is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. This Court in State of U.P. v. Kailash Nath Agarwal and others (1973) 1 SCC 751 recognised the power of the District Magistrate to grant pardon at the investigation stage. This Court in Kanta Prashad v. Delhi Administration AIR 1958 SC 350 had the occasion to examine the scope of Section 337 and 338 of the old Code (Cr.P.C. 1898) vis- à-vis the powers of a Special Court constituted under the Criminal Law (Amendment) Act, 1952. This Court held that, reading the proviso to Section 337 and provisions of Section 338 together, the District Magistrate is empowered to tender a pardon even after a commitment, if the Court so directs. It was also held that under Section 8(2) of the Criminal Law (Amendment) Act, 1952, the Special Judge has also been granted power to tender pardon. The conferment of this power on the Special Judge in no way deprives the District

[7] (2014) 14 SCC 629

Magistrate of his power to grant a pardon under Section 337 of the Code. It was held if at the time when the District Magistrate tenders the pardon, the case was not before the Special Judge, then there is no illegality committed by the District Magistrate. The scope of above-mentioned provisions again came up for consideration before this Court in Kailash Nath Agarwal (supra), wherein this Court after referring to its earlier judgment in Kanta Prashad (supra) held that it will be noted from this decision that emphasis is laid on the fact that the proviso to Section 337 contemplates concurrent jurisdiction in the District Magistrate and in the Magistrate making an inquiry or holding the trial to tender pardon. It is also emphasised that the conferment of the power to grant pardon on the Special Judge does not deprive the District Magistrate of his power to grant pardon under Section 337. In Bangaru Laxman (supra), this Court has stated that the power of Special Judge to grant pardon is an unfettered power and held that, while trying the offences, the Special Judge has dual power of a Special Judge as well as that of a Magistrate. This Court, while interpreting Section 5, then went on to say that on a harmonious reading of Section 5(2) of the PC Act with the provisions of Section 306, specially Section 306(2)(a) of the Code and Section 26 of the PC Act, this Court is of the opinion that the Special Judge under the PC Act, while trying offences, has the dual power of the

Sessions Judge as well as that of a Magistrate. Such a Special Judge conducts the proceedings under the court both prior to the filing of charge-sheet as well as after the filing of charge-sheet, for holding the trial. Since this Court has already held that the Special Court is clothed with the magisterial power of remand, thus in the absence of a contrary provision, this Court cannot hold that power to grant pardon at the stage of investigation can be denied to the Special Court. In view of the discussion made above, this Court is of the opinion that the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of judicial discretion of the Special Judge before whom such a prayer is made, as in the instant case by the prosecution.

The same view is taken in a latter judgment of Hon'ble Apex Court in ***State of Rajasthan v. Balveer @ Balli and another***[8].

As per the decision in P.C. Misra's case it is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. But this question came up before Hon'ble Apex Court earlier in ***Lt. Commander Pascal Fernandes v. The State of***

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[8] AIR 2014 SC 1117

Maharastra and others[9]**,** wherein the Hon'ble Apex Court held that 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 Hon'ble Apex Court also held that there is nothing in the language of the section to show that the Special Judge must be moved by the prosecution. The Special Judge 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 Apex Court further held that 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

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[9] AIR 1968 SC 594

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.

Thus, from the long line of perspective pronouncements of Hon'ble Apex Court it is for the Court to decide whether the Court pardon the accused by exercising power conferred under Section 306 of Cr.P.C., or Section 5 (2) of the Act only when the Court came to the conclusion that the guilt of the accused in heinous crimes cannot be bring home unless the person who came forward to give evidence as approver. Therefore, it is for the Court to decide whether to grant pardon or not even the Public Prosecutor or the respondent opposed such application or the petitioner himself voluntarily approached this Court for grant of such pardon.

In the present case, the petitioner/A-3 is allegedly submitted false and fabricated bills issued in the name of the non existing firm namely M/s.Sruthi Agencies to the State Bank of Hyderabad, Old Bowenpally branch, Secundrabad and received money to a tune of Rs.55 lakhs from the bank, therefore, the petitioner is liable for prosecution on submission of false and fabricated bills of non-existing firm and the petitioner is responsible for such act. If the culpability of the petitioner is taken into consideration and when the Court concluded that there is some other material to bring home the guilt of other accused the Court can negate such request by exercising power under Section 306 of Cr.P.C. No absolute right is conferred on the accused to seek pardon either under Section 5 (2) of the Act and Section 306 of Cr.P.C., but it is for the Court to decide whether such pardon can be granted to the accused who approached the Court by filing an application taking into consideration of the entire material before the Court including the evidence to be let in by the prosecution and unless the Court concludes that the case against the other accused cannot be brought home the guilt, unless, the petitioner is granted pardon and examined as a witness, more particularly in heinous and serious offences.

Here, the alleged offences committed by the accused is serious offences punishable under Sections 120-B read with Sections 420, 477-A of IPC and Sections 13(2) read with Section 13 (1)(d) of the Act, therefore, the order under challenge declining to grant pardon to the petitioner is not erroneous warranting interference by this Court under Sections 397 and 401 of Cr.P.C.

Hence, I find no ground to interfere with the findings of the order passed by the Court below and to grant pardon to this petitioner since the trial Court recorded its reason that the prosecution cannot prove the complicity of other accused even without the aid of evidence of the petitioner.

In the result, the Criminal Revision Case is dismissed.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRITICAL REVISION CASE No.2416 of 2017

September 11, 2017

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