HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.11934 AND 12603 OF 2017

COMMON ORDER:

Former Criminal Petition is filed by the petitioner, who is arraigned as accused No.3 in Crime No.RC 4(A)/2006 (which was subsequently numbered as C.C. No.14 of 2010) under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), requesting to quash the order, dated 03.05.2008, passed in Crl.M.P. No.258 of 2008 in R.C. 4(A)/2006 of C.B.I., Visakhapatnam, whereby and where-under, the request made by respondent No.2 herein, who was arraigned as accused No.2 in the Crime was allowed by the learned Special Judge for CBI Cases, Visakhapatnam, tendering pardon to respondent No.2.

2. Latter Criminal Petition is filed on the same lines by the very same petitioner for tendering pardon to respondent No.2, who, of course, did not figure as accused at all, by the learned Special Judge in Crl.M.P. No.256 of 2008 filed in the very same crime.

3. Heard Sri G. Narender Raj, learned counsel for the petitioner in both the Criminal Petitions, and Sri K. Surender, learned Standing Counsel - cum - Special Public Prosecutor for CBI Cases.

4. In the grounds, the petitioner got mentioned that the Special Judge did not properly understand that granting pardon to respondent

No.2 herein in the Criminal petitions is nothing but discrimination and violation of Article 14 of the Constitution of India. The petitioner states that the entire case rests purely on documentary evidence and respondent No.2, in the former Criminal Petition is prime accused even as per First Information Report. It is also according to him that Central Bureau of Investigation (CBI) nowhere stated in the counter that they were handicapped in collecting the evidence. He would further state that the impugned orders would not show even a single point of basic principles of granting pardon that the Investigating Agency is unable to collect the evidence, and the learned Special Judge without appreciating the basic principles of granting pardon, strangely granted pardon to number of accused persons. Therefore, he sought for interim stay and to quash the orders and, consequently, direct the learned Special Judge to conduct re-trial by ignoring the evidence of respondent No.2 herein.

5. Even the grounds in the latter Criminal Petition are identical with the grounds mentioned in the former Criminal Petition and, therefore, there is no need to advert to them.

6. The learned counsel for the petitioner while insisting on the absence of the plea or the opinion of the CBI that the Investigating Agency is not in a position to collect the evidence, but the learned Special Judge tendered pardon giving a go-by to the basic principles of granting pardon, which are absolutely indispensable, seeks to set

aside the orders under challenge and to conduct re-trial excluding the evidence of respondent No.2 in both the Criminal Petitions.

i) The learned counsel would place reliance on the ruling of the Hon'ble Supreme Court in **Ratanlal v. Prahlad Jat**[1],to meet the arguments advanced by the learned Special Public Prosecutor as to '*locus-standi'* of the petitioner to move the instant Criminal Petitions to quash the order, the learned counsel relies on the dictionary meaning of the term *'locus-standi'* as explained by the Hon'ble Apex Court in paragraph No.8 thus:

> "8. In Black's Law Dictionary, the meaning assigned to the term '*locus standi*' is 'the right to bring an action or to be heard in a given forum'. One of the meanings assigned to the term '*locus standi*' in Law Lexicon of Sri P.Ramanatha Aiyar, is 'a right of appearance in a Court of justice'. The traditional view of *locus standi* has been that the person who is aggrieved or affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the *locus standi* of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the Constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having *locus standi*."

[1]. 2017 (3) ALT (Crl.) 356 (SC)

ii) Yet another ruling relied on by him is in **State of Maharashtra v. Abu Salem Abdul Kayyum Ansari**[2], in the context of salutary principle of tendering pardon to an accomplice in relation to the object of Section 306 of the Code emphasized by the Hon'ble Apex Court in paragraph No.15 thus:

> "15. The salutary 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

[2]. (2010) 10 SCC 179

> 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 learned counsel mainly insists that tendering of pardon, therefore, arises only where heinous offence is alleged to have committed by several persons, so that with the aid of evidence of the person granted pardon, the offence may be brought home to the rest, and in the present case, the CBI or the prosecution has not come out with the plea that evidence could not be collected and, therefore, on that basis sought to tender pardon.

iii) The learned counsel also placed reliance in **Suresh Chandra Bahri v. State of Bihar with Gurbachan Singh v. State of Bihar and Rajpal Sharma v. State of Bihar**[3], where the salutary principle for according 'pardon' embedded in Section 306 of the Code

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[3]. 1995 Supp (1) SCC 80

is re-stated. The expression of the Hon'ble Apex Court in paragraph No.42 relied on by the learned counsel is thus:

> "42. 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."

iv) Even the order passed by a learned Single Judge of this Court in Criminal Petition No.8775 of 2017, dated 18.09.2017, whereby and where-under, the request to quash the order of granting pardon in Crl.M.P. No.255 of 2008 in the very same crime, which was later registered as very same C.C., was granted, was not allowed by a learned Single Judge of this Court, dismissing the Criminal Petition. The learned counsel placed reliance only for the limited purpose of the observation of this Court, where this Court expressed that power to pardon can be exercised sparingly in exceptional circumstances, where the Courts found that no other evidence is available to prove the guilt of the prime accused except the evidence of approval, and the Court is not required to grant pardon to the accused, whoever approaches the Court as a matter of routine and certain other observations in the context of Section 5 (2) of the Prevention of Corruption Act, 1988 (for short 'Act, 1988) and Section 306 of the Code.

7. The learned Special Public Prosecutor would submit that the petitioner has no *'locus-standi'* to question the pardon granted to respondent No.2 herein in the former Criminal Petition who is arraigned as accused No.2 in FIR and respondent No.2 in the latter Criminal petition who is not arraigned as an accused at all, at the stage of investigation, and if at all any objection has to be raised, it is the

CBI, which has to come up with the resistance, and in the instant case, the CBI has no objection as it intended to collect the evidence by treating both the respondents as witnesses and, therefore, being an accused, the petitioner cannot now question the orders under challenge.

i) His next submission is that the learned Special judge having satisfied with the salutary principles, opined to tender pardon and, accordingly, tendered pardon, and unless it is shown that the learned Special Judge has given a complete go-by to the object inlaid by the provisions of Section 5 (2) of the Act, 1988 and Section 306 of the Code, these petitions are not maintainable.

8. Though, the *locus-standi* is also questioned, but it is unnecessary to answer the point as even *ex facie* there appears to be no merit in both the petitions for the reasons to be dealt with hereinafter.

9. A few relevant facts require advertence.

i) Originally, when the FIR was registered, the Deputy General Manager, Zonal Office, Central Bank of India, Hyderabad and the Assistant Manager of the said bank at Kakinada Branch, who was functioning as In-charge Branch Manager in the absence of regular Manager, were arraigned as accused Nos.1 and 2, whereas the other accused are Directors or Employees of certain private limited companies or concerns.

ii) The petitioner herein, Sri Ch. Raghuram, who was originally arraigned as accused No.3 in the FIR, later when charge sheet was filed since accused No.2, Sri R.V. Raghavulu, was tendered pardon, was shown as accused No.2. Thus, each accused after him slidded-up in the order.

iii) The gravamen of the charge against the petitioner, Sri Ch. Raghuram, is that, himself being Managing Director, one Smt. Sapna, Director and another Director, Sri B.P. Sridhar, by submitting their personal guarantee, intended to secure Term Loan of Rs.176.25 lakhs and Working Capital Limit of Rs.62.00 lakhs. As requested by them, demand drafts were prepared in favour of the Suppliers whose description have been given in a table 12 in number, and the request was to hand over the demand drafts to Sri K.S. Venkatesan, who is accused No.4. Thus, the amounts were also tendered to certain firms, the names, which have been shown in yet another table in the charge sheet, which are five in number. Various other allegations have been levelled in the charge sheet distinctly which are all unnecessary to refer to in detail in resolving the controversy in the present Criminal Petitions is concerned. But, one-thing is certain, that the statement of respondent No.1 in the former Criminal Petition under Section 164 of the Code was recorded during the course of investigation and pardoning tendered was also based on the said statement besides other relevant principles for according such pardon.

10. The learned Special Judge having referred to the case in brief in paragraph Nos.1 and 2, dealt with the procedure resorted to by him in paragraph No.3. The learned Special Judge would record that respondent No.2 was primarily questioned on 17.03.2008 and his answers were recorded by observing the procedure under Rule 32 (2) of the Criminal Rules of Practice and Circular Orders, 1990 and, thereafter, he recorded the statement under Section 164 of the Code on 19.04.2008. The learned Special Judge also expressly mentions that during the preliminary questioning as well as at the time of his recording statement under Section 164 of the Code, respondent No.2 was sufficiently cautioned that he was not bound to make a confession and that if he does so any confession he may make may be used as evidence against him, and by looking at the answers provided by the petitioners, he expressed that he was thoroughly satisfied and believed that he made the confessional statement voluntarily. Thereafter, the learned Special Judge would record that he has gone through the statement of respondent No.2 and decided to tender pardon on condition of his making full and true disclosure of the facts within his knowledge relating to the offence concerned in R.C. 4(A)/2006 of CBI, Visakhapatnam and of any other person connected and on condition of his giving evidence as a witness during the trial of the case.

i) It is clear from the order under challenge that the CBI, which is the respondent in Crl.M.P. Nos.258 of 2008 and 256 of 2008, filed a memo stating to allow the petitions subject to the conditions mentioned under Section 306 of the Code. So, virtually, it was the discretion that was exercised by the learned Special Judge but not just basing on the memo filed by the CBI.

11. Now, turning to the submissions made by the learned counsel for the petitioner that the offence involved in the present case is not a heinous crime and, therefore, the learned Special Judge went wrong in tendering pardon, it is relevant to refer to Section 306 of the Code. It reads thus:

> "**306. Tender of pardon to accomplice._**
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> (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 dis- closure 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.
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> (2) This section applies to-
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> (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."

Simultaneously, Section 5 of the Act, 1988 dealing with procedure and powers of the Special Judge since relevant, is extracted. It reads thus:

"**5. Procedure and powers of special Judge**.-

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

> (5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.
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> (6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944)."

Sub-Section 2 of Section 5 of the Act, 1988, thus, deals with power to tender a pardon, where reference to sub-sections 1 to 5 of Section 306 of the Code is made stating that the pardon tendered under Section 5 (2) of the Act, 1988 for the purpose of sub sections 1 to 5 of Section 308 of the Code be deemed to have been tendered under Section 307 of the Code. Thus, the commission of a heinous crime alone is not '*sine qua non*' to tender pardon by a Court since both Sections 306 of the Code and 5 (2) of the Act, 1988 employed almost identical language and it need not be emphasized that the offences under the provisions of Act, 1988 do not, of course, deal with the heinous crime, such as sexual abuse or a case of murder, but deals with graft cases even.

12. The offences alleged against the petitioner herein in both the Criminal Petitions and other accused persons are punishable under Section 120-B read with 420, 468 and 471 of the Indian Penal Code, 1860, and under Section 13 (2) read with 13 (1) (d) of the Act, 1988. Therefore, the submission of the learned counsel that it should be a heinous crime to tender pardon is without any merit and the ruling

relied on by him in **Suresh Chandra Bahri**[3], would not render assistance. The Hon'ble Supreme Court expressed that 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, and 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 comprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable, and 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.

13. In the present case, the order clearly reflects ruling out of any inducement and, on the other hand, projects that all precautions or the safeguards as mandated have been taken by the learned Special judge. Though, the learned counsel for the petitioner would submit that number of documents have been relied on and number of witnesses have been cited as many as 40 and, therefore, it cannot be said that there was no clue or material on record to prove the complicity of the offenders originally arraigned when the complaint was registered and FIR was issued, but, however, to prove the documents filed, it appears that the material witness is accused No.2

working as In-charge Branch Manager as the regular Branch Manager was on leave and he would be the competent witness to prove the demand drafts prepared and handed over to accused No.4 pursuant to the instructions given by the petitioner herein. So, when the best evidence principle is reckoned, respondent No.2 herein in the former Criminal Petition assumes the position of the principal witness. Therefore, it is to be held that there is no merit in the former Criminal Petition filed by one of the accused persons, and even the rulings relied on by him would not render assistance.

14. Turning to the latter Criminal Petition, respondent No.2 was not at all arraigned as accused in the FIR, now, was there any chance to arraign him as an accused. During the course of investigation itself his request to grant pardon was acceded to, by the learned Special Judge. The part played by the petitioner was vividly focused in paragraph No.2 (c) of the impugned order stating that his role was to obtain technical feasibility report and detailed cost estimate and send it along with the loan proposal, and one Sri M.P. Raju, instructed him to send the proposal and the rest will be taken care of by him in Zonal Office and that on receipt of sanction, the Managing Director of the Company requested him to release the second term loan, but the Managing Director informed him that the loan cannot be released until the molasses is received, on which, immediately the Managing Director of the Company contacted Sri M.P. Raju over his mobile and Sri Raju instructed him to release the

loan pending receipt of molasses and compliance of other terms. The said Sri M.P. Raju is no other than accused No.1 in the aforesaid Calendar Case. Even in the present Criminal Petition also, the order under challenge would reflect that pre-cautions required to be taken were followed by the learned Special Judge in accordance with the procedure prescribed therefor. There is no need to refer to every detail of the order under challenge.

15. Further, as rightly pointed out by the learned Special Public Prosecutor that though, the orders under challenge were passed on 03.05.2008, the present Criminal Petitions are filed in the month of December, 2017. The very fact that, the petitioner kept quiet for more than nine years and just came at this juncture, would itself indicate that unless he is actuated with some motive, he would not have come forward with the present petitions. However, there is absolutely no merit in the present Criminal Petitions.

16. Accordingly, both the Criminal Petitions are dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in both the Criminal Petitions, stand closed.

A. SHANKAR NARAYANA, J

January 29, 2018.
Mgr