

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-4037 of 2018

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Date of decision:20.9.2018

Sushil Kumar

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Present: Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab
for the respondent-State.

Mr. Preetinder Singh Ahluwalia, Advocate for respondent No.3.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of impugned order dated 28.11.2017 (Annexure-P.7) passed by learned Chief Judicial Magistrate, Mohali as well as all the subsequent and consequential proceedings arising therefrom qua the petitioner keeping in view the peculiar facts and circumstances of the case as it is nothing but abuse and misuse of the process of law/Court.

Notice of motion was issued in this case.

Mr. Pawan Sharda, learned Senior Deputy Advocate General, Punjab has appeared on behalf of the respondent-State and Mr. Preetinder Singh Ahluwalia, learned Advocate has appeared for respondent No.3 and contested this petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

A perusal of the record shows that an application under Section 306 Cr.P.C. had been filed by Sukhpreet Singh alias Harry son of Gurmail Singh (respondent No.3 herein) before the Court of learned Additional Sessions Judge, Mohali, who passed an order as per the provisions of Section 306(1) Cr.P.C., and the learned Chief Judicial Magistrate, Mohali, was directed to do the needful. The accused appeared before the learned C.J.M., and he was given sufficient time to rethink over the matter before making any statement in the Court to which he stated that he has already thought over the matter. Nobody was allowed to meet him and the Court was satisfied that after this any statement made by him is a true and voluntary statement and statement of Sukhpreet Singh was recorded. It is in the order that after complying with the provisions of Section 306 Cr.P.C., the accused was tendered the pardon, who has already complied with the conditions and has made a full and true disclosure of the whole circumstances within his knowledge. The accused has accepted the tender vide separate statement. The impugned order dated 28.11.2017 was passed.

At the time of arguments, learned counsel for the petitioner argued that the accused cannot approach the Court directly for getting pardon under Section 306 Cr.P.C. and the learned Chief Judicial Magistrate has not complied with the procedure. He also submitted that even the application was not filed by the Public Prosecutor nor any notice was given to the Public Prosecutor. This position has been admitted even by the learned State counsel as well as learned counsel for respondent No.3. The

law on the point has been laid down by the Hon'ble Supreme Court in Jasbir Singh v. Vipin Kumar Jaggi, 2001 (3) R.C.R. (Criminal) 818. In paras 18 and 19 of the judgment it has been held as under:-

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

“.....Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special

Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case." (emphasis supplied)

19. Judged by this standard, the first order of the Sessions Judge refusing pardon to the respondent No. 1 even though it was actively conversed 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. [See Suresh Chandra Bahri v. State of Bihar (supra)]. The Sessions Judge could not and indeed should not have assessed the probable value of the possible evidence of the respondent No. 1 in anticipation and wholly in the abstract."

I have gone through the law laid down by the Hon'ble Supreme Court

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which is fully applicable to the facts of this case.

Keeping in view the above facts, I find merit in the present petition and the same is allowed. The impugned order dated 28.11.2017 passed by the learned Chief Judicial Magistrate, Mohali, is set aside/quashed. However, it is made clear that if any fresh application is filed, then the Court will decide the same as per law.

September 20, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	Yes