

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-9998 of 2017 (O&M)
Date of decision: 18.09.2018**

Mandeep Singh @ Manna

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. M.S. Bedi, Sr. Advocate with
Mr. Ashutosh Kumar, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab
for the respondent-State.

Mr. J.S. Bedi, Sr. Advocate with
Mr. S.S. Brar, Advocate
for the complainant.

Daya Chaudhary, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of impugned order dated 06.06.2016 passed by the Judicial Magistrate Ist Class, Gurdaspur (Annexure P-1) granting pardon to Surjit Singh @ Sita in case FIR No.12 dated 15.02.2016 registered under Sections 302, 201, 365, 364 read with Section 34 of Indian Penal Code at Police Station Bhaini Mian Khan, District Gurdaspur.

As per case of the petitioner, he is facing trial in the abovesaid case/FIR, which was registered on the basis of statement made by complainant-Manjit Kaur stating therein that her son-Ranjit Singh was kidnapped by some unknown persons for some gain. It was also alleged that

on 13.02.2016 at about 9.00 pm, her son told her that he was going out for some urgent work and would come back within one hour. The outer gate of the house was not locked. He left the house on his vehicle XUV bearing No. PB-06-AC-6001. At about 10.00 pm, he talked to his nephew Lovepreet Singh from his mobile and told that he was present in Mukerian town and would come back home soon. After some time, both the mobile numbers were found switched off. They searched Ranjit Singh with relatives but he could not be traced out. After lodging of aforesaid FIR, the challan was presented and charges were framed on 20.02.2017 against petitioner-Mandeep Singh @ Manna under Sections 364, 302 and 201 IPC. When the charge was read over to him, he came to know that no charge was framed against Surjit Singh @ Sita. On inquiry, the petitioner came to know that pardon had been granted to Surjit Singh @ Sita by the JMIC vide order dated 06.06.2016. In pursuance of said order dated 06.06.2016, Surjit Singh @ Sita had suffered statement before the JMIC on 06.06.2016 and pardon was granted by order dated 06.06.2016 passed by the JMIC, which has been challenged by petitioner-Mandeep Singh @ Manna by raising various grounds.

Learned senior counsel for the petitioner submits that as per Section 306 Cr.P.C., a pardon can be tendered to a person, who is directly or indirectly concerned or has privy to an offence. On perusal of statement suffered by Surjit Singh @ Sita, it appears that it was not disclosed in the statement that he was an accomplice of the petitioner or was privy to the offence in question. Learned senior counsel further submits that nothing has come in the statement made by Surjit Singh @ Sita that he was an

accomplice of the petitioner or he was concerned with the offence in any manner. No injury was found on the dead body of deceased-Ranjit Singh. Even the cause of death could not be given by the doctor at the time of post mortem examination. The dead body of the deceased was found from the canal and it was a case of blind murder. A false witness has been set-up by the Investigating Officer against the petitioner as a person before whom the petitioner has been shown to have made an extra-judicial confession whereas no such confession was ever made by him before any person. Learned senior counsel also submits that the impugned order is totally non-speaking and has been passed without any application of mind. At the end, learned senior counsel for the petitioner submits that the trial of the petitioner is being proceeded on the basis of statement made by Surjit Singh @ Sita on the basis of which, he has been tendered pardon and as such, the impugned order is liable to be set-aside. Learned senior counsel has relied upon judgment rendered by Hon'ble the Apex Court in ***State of Rajasthan vs. Balveer @ Balli and another, 2013(6) Recent Apex Judgments (R.A.J.) 368*** as well as judgment rendered by the Madhya Pradesh High Court Bench at Indore in ***Ravindra Nath Jain vs. Additional Commissioner, Central Excise, HQR Indore and another, M.Cr.C. No.2142/2017*** decided on ***04.09.2017*** in support of his arguments.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner by raising a preliminary objection that the petitioner has concealed the material facts from this Court and has misled the averments made in the petition by twisting the facts. During investigation and statement of Sucha Singh, Mandeep Singh and Surjit

Singh were nominated as accused of the case. The dead body of the deceased was recovered from Hydal Canal near Village Tarkian, Police Station Dasuya, District Hoshiarpur and proceedings under Section 174 Cr.P.C. were initiated. Accused-Mandeep Singh surrendered before Incharge, CIA Staff, Gurdaspur through respected person, namely, Sukhwinder Singh, Ex. Member Panchayat, Village Jhanda Lubana on 27.02.2016 and thereafter, accused-Surjit Singh was arrested on 01.03.2016. Learned State counsel also submits that on 30.05.2016, SHO, Police Station Bhaini Mian Khan filed an application under Section 306 Cr.P.C. regarding accused-Surjit Singh @ Sita for becoming an approver on the condition being granted pardon and vide order dated 30.05.2016, notice was issued to accused-Mandeep Singh for filing reply. The Board of Doctors opined that the cause of death could not be ascertained. However, it was observed that possibility of drowning could not be ruled out. The supplementary challan was submitted after having medical opinion.

Learned senior counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner and submits that petitioner-Mandeep Singh @ Manna and Surjit Singh @ Sita were made accused for commission of murder of deceased-Ranjit Singh. The case was based on circumstantial evidence as no direct evidence was available. By considering this fact that in absence of any direct evidence, one of the accused was made approver in view of provisions of Section 306(1) Cr.P.C., by allowing pardon as grave and serious offence was committed, so that the accused may not go unpunished. The Magistrate by exercising powers and by attracting provisions of Section 306 Cr.P.C.,

tendered pardon to Surjit Singh on the condition that he would disclose all the circumstances, which were in his knowledge relating to commission of offence. The impugned order is based on reasoning and it cannot be said to be non-speaking order as it has been stated in the order that there is no direct evidence of murder of deceased-Ranjit Singh by accused-Surjit Singh and in absence of any direct evidence, it was thought necessary in the interest of justice that one of the accused be made approver in the case. Learned senior counsel has relied upon judgments rendered by Hon'ble the Apex Court in ***Suresh Chandra Bahri vs. State of Bihar, 1994(3) RCR (Criminal) 1, State of Rajasthan vs. Balveer @ Balli and another, 2013(6) Recent Apex Judgments (R.A.J.) 368***, judgment rendered by the Kerala High Court in ***Asokan L.S. vs. State of Kerala, 2005(4) RCR (Criminal) 535*** and judgment rendered by the Bombay High Court in ***Makbool S/o Abdul Razzak and another vs. State of Maharashtra, 2005(1) Bom. C.R (Cri.) 772*** in support of his arguments.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Section 306 Cr.P.C. is relevant in the present controversy, which deals with tender of pardon to accomplice and the same is reproduced as under: -

306. Tender of pardon to accomplice :- (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 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 principle 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."

The object of Section 306 Cr.P.C. is to allow pardon in the cases where a grave offence is alleged to have been committed by several persons, so that with the aid of the evidence of the person pardoned, the offence could be brought to home as against the rest. The basis of tender of pardon is not the extent of the culpability of the person to whom the pardon is granted. The principle is to prevent the scape of the offender from punishment in the heinous offences for lack of evidence. The principles, which govern the cases granting pardon by the Court are well settled. There is no bar in granting pardon before the stage of charge-sheet. At the stage of investigation, if the accused applies for pardon and the prosecution also supports him, normally the matter is between the Court and the accused and other co-accused have no right whatsoever to intervene or ask for hearing. The right of a co-accused in respect of an approver arises only at the stage of trial. It is also well settled that once prosecution agrees to tender of pardon, the Court would not take upon himself the task of considering the possible weight of the approver's evidence or to determine the propriety of tendering pardon.

There is no doubt that the section is enabling and its terms are wide enough to enable the Court to tender a pardon to any person who is

supposed to have been directly or indirectly concerned in, or privy to, an offence. It 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 Court must be moved by the prosecution. He may consider an offence by an accused as in this case. The offer by an accused as in this case cannot be said to be outside the jurisdiction of the Court.

It has been held by Hon'ble the Apex Court in *Sarwan Singh Rattan Singh vs. State of Punjab, (AIR 1957 SC 637)* that for acceptance of an approver's evidence, two tests are necessary to be seen. The first test to be applied is that his evidence must show that he is a reliable witness. It means that the Court should find that there is nothing inherent or improbable in the evidence given by the approver and that there is no finding that the approver has given false evidence. The second test to be applied in the case of an approver and which is not always necessary when judging the evidence of the other witnesses is that his evidence must receive sufficient corroboration.

In *Ramprasad Vs. State of Maharashtra, ((1999)5 SCC 30)*, the law relating to the test of approver's evidence was again considered. In that case, PW2-Anil Chaudhari was the approver and his evidence was corroborated by the testimony of PW-3 regarding involvement of accused Ramprasad and, therefore, it was found to be reliable.

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. Consequently in the event the suspicion which is attached to the evidence of an accomplice is not removed his evidence could not be acted upon unless the same is corroborated in material particulars. Where the suspicion is removed and the evidence of an approver is found to be trustworthy and acceptable, then that evidence may be acted upon even without corroboration.

Section 133 of the Evidence Act deals with the testimony of an accomplice. It contemplates that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The first part envisages that an accomplice, in other words, a guilty companion in crime, shall be a competent witness whereas the second part states that conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice.

In **Balveer @ Balli's case (supra)**, it has been held by Hon'ble the Apex Court that the extent of culpability of the accomplice in an offence is not material so long as the magistrate tendering pardon believes that the accomplice was involved directly or indirectly in or was privy to the offence. Once an accused is granted pardon under Section 306 Cr.P.C., he ceases to be an accused and becomes a witness for the prosecution. The order of pardon cannot be based mechanically and the Court is to apply its mind while exercising such powers. The Magistrate is bound to consider the consequences to grant pardon by taking into consideration the provisions of Section 306 Cr.P.C. to certain extent by comparing the culpability of the person seeking pardon qua the co-accused. No doubt the evidence of an

approver does not differ from the evidence of any other witness except that the evidence of approver is looked upon with more caution. In ***CBI vs. Ashok Kumar Aggarwal and another, (2013) 15 SCC 222***, Hon'ble the Apex Court has laid down the principles on which, the application for pardon can be allowed and upheld the action of the Delhi High Court by which the Delhi High Court set-aside the order passed by Special Judge granting pardon and case was remanded to decide the application afresh.

No doubt the exercise of the power to tender pardon rests on judicial discretion and the Magistrate or the Judge should proceed with great caution on sufficient grounds recognizing the risk which the grant of pardon involves of allowing an offender to escape just punishment at the expenses of the other accused. The power to grant pardon to an accomplice is required to be regulated by a Court or a Magistrate but it is to be exercised only in exceptional cases and one such case can be that, but for the evidence of the accomplice, it would otherwise be not possible to bring the guilt home to other accused.

It has been held by the Delhi High Court in ***Ashok Kumar Aggarwal vs. Central Bureau of Investigation and another, 2007 (16) RCR (Criminal) 171*** that the Court is not to be a mute spectator and keeping in mind the interest of co-accused persons, he should at least consider that the prosecution is not unduly favouring the person seeking pardon, at the cost of the co-accused. It has further been held by the Delhi High Court in ***M.M. Kochar v. The State, AIR 1969 Delhi 21*** that tender of pardon and its acceptance by the person concerned is a matter entirely between the Court and the person to whom the tender is rendered and it is a

purely executive or administrative action and not a judicial decision. This judgment has been approved by Hon'ble the Apex Court in *State of UP v. Kailash Nath Agarwal and others, (1973) 1 SCC 751*. Even in case of administrative action, it is supported by valid reasons and by taking into consideration all relevant material placed before the authority.

By considering the provisions of Section 306 Cr.P.C. and ratio of judgments and also the impugned order, I am of the view that the Magistrate has granted pardon mechanically without any application of mind. Accordingly, impugned order dated 06.06.2016 passed by Judicial Magistrate Ist Class, Gurdaspur (Annexure P-1) is set-aside and the case is remanded back to the Magistrate to decide the application afresh in accordance with law.

18.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes