

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (APL) No. 7 of 2021

Mohd. Javed S/o Abdul Waheb and Another
Vs.
State of Maharashtra, Through DGP Buldhana and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.O. Ahmed, Advocate for the applicants
Ms. Shamsi Haider, APP for the respondent No.1
Respondent No.2 in person

CORAM : MANISH PITALE, J.

DATED : AUGUST 04, 2021

The present Application is filed by the original accused No.1 to 3, being aggrieved by concurrent orders passed by the Court of Judicial Magistrate First Class, Buldhana and Court of Sessions Judge at Buldhana, whereby an application filed by the respondent No.2 (original accused No.4) for grant of tender of pardon under Section 306 of the Code of Criminal Procedure (Cr.P.C.), stood allowed.

2. Mr. S.O. Ahmad, learned counsel appearing for the applicant strenuously urged that this Court needs to appreciate the background facts of the present case, before considering the correctness or otherwise of

the orders impugned in this Application. It was brought to the notice of this Court that the applicant No.1 and the respondent No.2 got married on 18th June, 2014. Matrimonial discord occurred between the two, as a consequence of which, the respondent No.2 caused as many as four First Information Reports (FIRs), to be registered against the applicant and his family members. Details of the four FIRs dated 29th July 2015, 1st August 2016, 2nd December 2019 and 17th July 2020, were brought to the notice of this Court. It was further informed that in so far as the first two FIRs are concerned, the parties have entered into settlement, as a consequence of which on 5th May 2018, the applicant No.1 was even acquitted by an order of the Sessions Court.

3. It is submitted that due to the aforesaid matrimonial discord between the applicant No.1 and the respondent No.2, when an FIR dated 18th July 2018 was registered for offences under Sections 468, 471 and 420 of the Indian Penal Code, which culminated in filing of chargesheet on 12th October 2018, against the applicants No.1 and 2 and the respondents No.2 and 3 for offences under Sections 420, 467, 468, 471, 170 and 171 read with 34 of the Indian Penal Code, the respondent No.2 herein (original accused No.4) in the said proceeding filed an application dated 13th August 2019 under Section 306 of the Cr.P.C. for grant of tender of pardon. It is submitted that due to the

animosity that the respondent No.2 developed against the applicant No.1 and his family members, she filed the said application only in order to wreak vengeance on them. In the first instance on 27th August 2019, the Court of Judicial Magistrate First Class, Buldhana, allowed the application filed by the respondent No.2. The applicants filed a Revision Application before the Sessions Court at Buldhana, which was partly allowed by judgment and order dated 7th November 2019. The Sessions Court held that since there was non-compliance of sub-Section 3(b) and 4(1)(a) of Section 306 of Cr.P.C., the order of the Magistrate deserved to be set aside. Accordingly, the said order was set aside and the matter was remanded to the Magistrate. On 19th December 2019, the Magistrate again allowed the application under Section 306 of Cr.P.C. Aggrieved by the same, the applicants again approached the Sessions Court. By impugned judgment and order dated 6th October 2020, the Sessions Court dismissed the Revision Application and confirmed the order passed by the Magistrate. While passing the impugned order, the Sessions Court specifically recorded in paragraph 13, that the requirements of Sub-section 3(b) and sub-Section 4(1)(a) of Section 306 of Cr.P.C. were duly complied with, in the present case.

4. The learned counsel appearing for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Central Bureau**

of Investigation Vs. Ashok Kumar Aggarwal and Another (2013) 15 SCC 222, to contend that the impugned orders were liable to be set aside.

5. Ms. Shamsi Haider, learned A.P.P. appeared on behalf of the respondent – State. The respondent No.2 has appeared in person. They supported the impugned orders passed by the Magistrate and Sessions Court.

6. A perusal of the aforesaid judgment passed by the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Ashok Kumar Aggarwal** (supra) would show that the said judgment does not concern the question regarding compliance of Section 306 of Cr.P.C. The emphasis in the said judgment is on the quality of evidence of an accomplice, who has been granted tender of pardon under Section 306 of Cr.P.C. The Hon'ble Supreme Court has made reference to Sections 114 and 133 of the Cr.P.C. to observe that although an accomplice is a competent witness, under illustration (b) of Section 114 of the Evidence Act, the testimony of an accomplice is unworthy of credit unless it is corroborated in material particulars. But, the ratio of the said judgment would not enure to the benefit of the applicants herein.

7. The principal contention raised on behalf of the applicants before this Court is that due to

matrimonial discord and consequent bad blood between the respondent No.2 on one hand and applicant No.1 and his family members on other, the said respondent moved application under Section 306 of Cr.P.C. and the same is actuated with malice. Secondly, it is submitted that the requirements of Section 306 of Cr.P.C. have not been satisfied.

8. Insofar as the principal contention is concerned, the application moved by the respondent No.2 under Section 306 of the Cr.P.C. cannot be rejected only on the ground that she has initiated criminal proceedings against the applicant No.1 and his family members due to matrimonial discord between the two. Merely because there are criminal proceedings pending against the applicant No.1 and his family members at the behest of respondent, it cannot be said that the application filed under Section 306 of Cr.P.C. for grant of tender of pardon in the present case could not have been considered on its own merits.

9. Insofar as non-compliance of requirements of Section 306 of Cr.P.C. is concerned, the Sessions Court in the impugned order has specifically recorded in paragraph 13 as follows :

“13. The trial Court again considered the application (Exh.70). The learned Magistrate has taken into consideration the say of prosecution/A.P.P. After grant of

pardon as per sub-section 3(b), in his handwriting made the endorsement that the applicant accepted tender of pardon and ready to disclose true facts. So, there is a compliance under sub-section 3(b). After grant of tender of pardon, the accused was examined as a witness in the Court of Magistrate taking cognizance of the offence on 14-01-2020. In that statement, the applicant/accused has deposed on oath true facts which were within her knowledge. Beside the facts relating to the offence, the accused stated some personal facts about her marriage with accused Jawed; but that itself is no ground to hold that the applicant/accused is having grudge; and to falsely implicate the accused Jawed she accepted tender of pardon. As per the provisions under Section 306 of Cr.P.C., all the procedural aspects have been complied by the trial Court. There is no perversity in the impugned order dated 19 December, 2019; there is no any merit in respect of statement dated 14-01-2020 is not a true and voluntary disclosure of the facts and circumstances within the knowledge of witness relating to the offence. What would be the evidential value of the facts and circumstances stated by applicant in that statement, is not a matter of consideration at this stage; it is a matter of trial. Therefore, I am of the view that there is no substance in the revision. My finding to the point is in negative. Thus, the revision is liable to be dismissed. Hence, the order.”

10. The learned counsel appearing for the applicants could not demonstrate before this Court that the said findings rendered on facts could be said to be

erroneous. Thus, the requirements of Section 306 of Cr.P.C. having been satisfied. This Court sees no reason to interfere in the concurrent orders passed by the Magistrate and Sessions Court. Therefore, the present application deserves to be dismissed.

11. Insofar as the quality of evidence and reliability thereof, that could be presented by the respondent No.2 during the course of trial, the provisions of the Evidence Act would certainly be taken into consideration by the concerned Court, as also the position of law as clarified in the aforementioned judgment of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Ashok Kumar Aggarwal** (supra).

12. At this stage, the learned counsel appearing for the applicants vehemently submitted that the application of the respondent No.2 under Section 306 of Cr.P.C. being allowed is a factor that has become an impediment for the applicants to seek bail from the competent Court.

13. Needless to say, the concerned Courts considering the bail applications moved by the applicants herein, would decide the same on their own merits.

14. In view of the above, the present application is dismissed.

JUDGE

MP Deshpande