

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

CRM-M-14867-2021

Date of Decision: 06.10.2021

Resham Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajiv Kataria, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Sr.D.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

This petition has been filed under the provisions of Section 482 of the Cr.P.C. for setting aside the orders dated 26.02.2021 and 03.03.2021 (copies Annexures P-4 and P-5, respectively), passed by the learned Chief Judicial Magistrate, Ferozepur, and the Judicial Magistrate First Class, Ferozepur, respectively, and to allow the application dated 24.02.2021 (copy Annexure P-2) filed by the petitioner to become an approver under the provisions of Section 306 of the Cr.P.C. (though inadvertently mentioned as Section 206 of the Cr.P.C. in the prayer clause of the petition).

A reply by way of an affidavit of Sh. Satnam Singh, Deputy Superintendent of Police, Ferozepur, dated 02.06.2021, has been filed on behalf of the respondent-State in court today, which is ordered to be taken on record.

On 05.04.2021, the following order had been passed by this court:-

“Learned counsel for the petitioner points to Section 306 of the Cr.P.C., which reads as follows:-

“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 a 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 principal 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 subsection (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.”

He further submits that in view of the above provision, since the learned JMIC, Ferozepur, was neither seized of any inquiry, nor any trial in the matter, she, vide the order dated 26.02.2021 (Annexure P-3) had rightly referred the matter to the learned Chief Judicial Magistrate, Ferozepur, who however, thereafter, vide the impugned order dated 26.02.2021, had again referred the matter to the JMIC, which he could not have done and in fact should have decided the application on merits himself.

Notice of motion.

Mr. Ramdeep Partap Singh, learned DAG, Punjab, accepts notice on behalf of the respondent at the asking of the Court.

Adjourned to 20.04.2021.

To be shown in the urgent motion list.

In the meanwhile, in the aforesaid circumstances, if the report under Section 173(2) of the Cr.P.C. has not been submitted so far qua the petitioner, till the next date of hearing only and specifically, the same shall not be submitted.”

Today, learned counsel for the petitioner, other than again referring to the bare provision (Section 306 of the Cr.P.C.), also refers to the judgment of the Supreme Court cited by the learned Magistrate in the order passed by him on 03.03.2021 (copy Annexure P-5), i.e. **State of Maharashtra vs. Abu Salem Abdul Kayyum Ansari and others** (Criminal Appeal No.

1925 of 2008), decided on 05.10.2010, to submit that even as per paragraph 13 of the said judgment, a Magistrate of the Ist Class would be empowered to tender a pardon to an accomplice at any stage of enquiry or trial but not at the stage of investigation.

That being so, obviously, even in terms of the bare provision, at the stage of investigation, it is only a Chief Judicial Magistrate or a Metropolitan Magistrate who, at any stage of the investigation, can tender a pardon to a 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 principal or abettor, in the commission thereof.”

Consequently, the petition is allowed to the extent that the order passed by the learned Chief Judicial Magistrate, Ferozepur, dated 26.02.2021, referring the application of the petitioner under the provisions of Section 306 of the Cr.P.C. to the court of Ilacqua Magistrate is set aside, with the order passed by the learned Judicial Magistrate Ist Class, Ferozepur, dated 26.02.2021 (copy Annexure P-3) also modified, to the extent as follows immediately hereinafter.

The relevant part of that order reads as follows:-

“.....As such, going by the provisions of Section 306 of the IPC, reference of the application in hand is made to the learned Chief Judicial Magistrate, Ferozepur for sending the application to any court of competent jurisdiction.....”

Thus, while upholding the rest of the order, the words “sending the application to any court of competent jurisdiction” shall be ignored by

the Chief Judicial Magistrate, who would now proceed to decide the application of the petitioner under the provision of Section 306 of the Cr.P.C. himself, in terms of the provision, as also on the touchstone of the ratio of the judgment of the Supreme Court in Abu Salem Abdul Kayyum Ansaris' case (*supra*).

Consequently, the order passed by the learned Judicial Magistrate Ist Class, dated 03.03.2021, upon the matter having been “re-referred to her” by the learned Chief Judicial Magistrate, is rendered and held to be non-est, with the application under the provisions of Section 306 of the Cr.P.C. as was referred to the learned Chief Judicial Magistrate in the first place, to be decided by that court itself (the CJM).

It is made absolutely clear that this court has made no comment whatsoever on the merits of the application made by the petitioner, with the Chief Judicial Magistrate to go into the merits thereof and to take a decision as per law, naturally, wholly on its own merits.

October 06, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes