

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.86 OF 2022

Rajesh Baliram Khachane,
Age:56 years, Occ. Service,
r/o. Plot No.15, Suraj Vallabh Nagar,
Near Datta Mandir, Behind Church,
Jalgaon and six others

..Petitioners

Vs.

The State of Maharashtra
and others

..Respondents

Mr.B.R.Kedar, Advocate for petitioners
Mr.S.P.Sonpavale, APP for respondent no.1

**CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 23, 2022**

ORDER :-

The challenge in this Writ Petition is to the order dated 25.01.2019 passed by learned Judicial Magistrate, First Class, Dharangaon, on application (Exh.338) in Regular R.C.C. No.26 of 2008 and confirmed by the order dated 14.12.2021 passed by learned Addl. Sessions Judge, Jalgaon in Criminal Revision Application No.171 of 2019. In short, the challenge in this petition is to the order of tender of pardon under Section 306 of the Code of Criminal Procedure (Cr.P.C.).

2. The petitioners, respondent no.2 and some other accused were serving with Jain Irrigation Systems Ltd., Dharangaon. All of them had quit the said job for betterment and joined the service with M/s.Ajay Industrial Corporation, Delhi. The Labour Manager, Jain Irrigation Systems, lodged FIR alleging them to have committed offences under Sections 381, 406, 411, 420 and 424 read with Sections 120 and 34 of Indian Penal Code. It was alleged that theft of valuable documents, drawings and templates of important parts and other confidential information, literature, manual and cavity, etc., was committed by the petitioners, respondent no.2 and the co-accused. On completion of investigation of the said crime, charge-sheet came to be filed. It is R.C.C. No.164 of 1993 pending before the Court of Judicial Magistrate, First Class, Dharangaon.

3. Way back in 1994, the Police Inspector, L.C.B., Jalgaon, had preferred an application (Exh.116), asking for tender of pardon to respondent no.2 herein. A copy of the order dated 10.03.1995 passed on the said application, is on record. The then learned Judicial Magistrate, First Class, had rejected said application for the reason that on enquiry with respondent no.2, he told that he could not tolerate. Learned Magistrate observed that except the letter

dated 16.05.1994, no material was placed on record that respondent no.2 really knew about the offence. Learned Magistrate did not think it necessary to tender pardon. Thus, he rejected the application.

4. Of late, respondent no.2 again moved the application (Exh.338), asking for tender of pardon. Learned Magistrate in-charge of the case allowed the application. The Revision Application preferred by the petitioners herein against the said order, has been dismissed.

5. Learned counsel for the petitioners would submit that a criminal court has no power/jurisdiction to review its own order. Learned Magistrate had already refused tender of pardon to respondent no.2 way back in March, 1995. It, therefore, cannot review said order by granting application under Exh.338. According to learned counsel, over twenty five years have passed. There is no progress in the case. FIR was lodged just to pressurise the petitioners and others, who quit the job. The management might have won over respondent no.2. He, therefore, urged for issuance of notice in the matter.

6. The reasons for refusal of tender of pardon to respondent no.2 way back in March, 1995, have been reproduced herein above (paragraph 3).

7. Section 306 of Cr.P.C. reads thus:-

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)

(3)

(4)

(5)

Phraseology of Section 306(1) of Cr.P.C. would indicate that it is within the judicial discretion of the Magistrate to grant or refuse tender of pardon. When learned Magistrate passed the impugned order, it was necessarily with a view to obtaining evidence of respondent no.2 who is supposed to have directly or indirectly concerned in or privy to the offence in question. While the then learned Magistrate rejected the application (Exh.116), it had,

without examining respondent no.2, concluded that there is no material placed on record that respondent no.2 really was in the know of the offence in question. Learned Magistrate ought to have made some enquiry with respondent no.2 to ascertain the knowledge about the offence in question. Learned Magistrate also could have gone through the charge-sheet/police papers. It is not that respondent no.2 had backtrack from his request for tender of pardon. Be that as it may.

8. Respondent no.2 again approached learned Magistrate and urged for tender of pardon. The terminology of Section 306(1) of Cr.P.C. would indicate that it is a business between the Magistrate concerned and the accused who came with the request for tender of pardon. The petitioners and the co-accused did not have any *locus standi* to interfere with such proceedings. It is only after tender of pardon, the statement of respondent no.2 may be recorded or he may directly be examined as witness in the case. The petitioners would have every opportunity to cross-examine him. By passing the impugned order on application (Exh.338), learned Magistrate cannot be said to have reviewed the order dated 10.03.1995 turning down the same request for tender of pardon.

9. It is reiterated that the petitioners have no *locus* to challenge the order of tender of pardon to respondent no.2. The petition is, thus, sans merit. The same is, therefore, dismissed.

[R.G. AVACHAT, J.]

KBP