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Crl.R.C.No.1233 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.No.1233 of 2024

S.S.Govindaraj

... Petitioner

Vs.

The State,
rep. by the Additional Superintendent of Police,
CBI/SCB, Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, 1973, to set aside the order dated 04.07.2024, passed by the learned Chief Judicial Magistrate, Coimbatore in Crl.M.P.No.28611 of 2021 in C.C.No.291 of 2012.

For Petitioner : Mr.S.Senthil Nathan
For Respondent : Mr.K.Srinivasan, Spl.PP for CBI

ORDER

Challenging the order passed by the learned Chief Judicial Magistrate, Coimbatore in Crl.M.P.No.28611 of 2021 in C.C.No.291 of 2012 dated 04.07.2024, the present revision has been preferred by the petitioner.



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2. The brief facts of the case is as follows:

There are three accused originally punishable under Sections 420, 468, 471, 120B IPC. It is alleged that the respondent abused his authority and processed for grant of pardon of A2/Rajasekar and filed an application in Crl.M.P.No.1091 of 2012 and the same was granted by the trial Court vide order dated 28.06.2012 without examination of A2. A2 who has played major role in the crime was granted pardon and at the time of filing the final report, he was not cited as witness in the list of witnesses. However, an application was filed to examine A2 as witness which was allowed through an order dated 14.11.2018. In this backdrop, an application was filed to recall the pardon order in Crl.M.P.No.28611 of 2021, as the pardoned accused has not made full disclosure of the offence alleged which amount to exculpatory in nature and he was also not subjected to cross examination. But the said application was dismissed by the Court below stating that the petitioner has filed it without any valid reasons.

3. Aggrieved over the same, the present revision has been filed by the petitioner.



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4. The learned counsel for the petitioner submitted that there are three accused in this case and one of the accused by name Rajasekaran, who was arrayed as A2 in the First Information Report was shown as approver since at the time of filing final report, he had been granted pardon after following due process. He further submitted that an application was filed by the petitioner herein for recall of the pardon order due to the failure of the accused to disclose the offence and for making false statements during examination under Section 306 of Cr.P.C., and the said application was dismissed by the Court without following the settled law despite the factual matrix. He contended that the accused was not subjected to cross examination as mandated under Section 306(4) of Cr.P.C., and also that the Court failed to understand the enabling section for pardon grants which applies as per Section 306(2)(a) only to cases triable by the Court of Sessions or Special Courts under the Criminal Law Amendment. He further submitted that whether it is mandatory or directory for the prosecutor to give a certificate for removal of the deed of the approver/A2. It is also to be noted that most of the judgment given by majority of the Courts held that the prosecutor has to



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produce the required certificate for grant of pardon and it is pertinent to note that the pardoned accused was a proclaimed offender. He also submitted that during trial, the said approver was examined as PW29 and during cross examination, he did not disclose the true facts and his statement recorded under Sec.164 of Cr.P.C., also does not provide any interlocutory statement and was only exculpatory in nature.

5. While continuing his submissions, the learned counsel submitted that the learned Chief Judicial Magistrate had grossly failed to consider the mandate that pardoning witness has to be examined as witness during the pardon procedure. The Court below failed to hold that non examination of pardoned accused as witness and subject him to cross examination and thereby denied the right to other accused. He further submitted that the learned Magistrate failed to hold that the examination of the pardoned accused as witness mean apart from chief subjecting him to cross examination as well as per Section 138 of the Indian Evidence Act. The Court below failed to appreciate the supporting decision as reported in ***Uravakonda Vijayaraj Paul V. State and others*** wherein the Andhra Pradesh Court, has categorically considered



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the powers, object and functions of magistrate in granting pardon with reference to the old code and the said decision is ruling the roost even today but failed to follow the same. Thus, he strenuously contended that the pardon granted to the accused has to be revoked under Sec.308 of Cr.P.C.

6. On the other hand, the learned Special Public Prosecutor appearing on behalf of the respondent/CBI submitted that there were three accused in the present case and the second accused/Rajasekar has only turned as approver while availing the loan. He submitted that the pardon granted to the approver/A2 under Sec.306 and Sec.308 was challenged before the trial Court and the trial Court on careful consideration dismissed the said application. Section 306 and 308(1) of Cr.P.C., are extracted hereunder for useful reference:

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 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 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



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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.

308.Trial of person not complying with conditions of pardon:-

(1) Where, in regard to a person who has accepted a tender of pardon made under Section 306 or Section 307, the Public Prosecutor certifies that in his opinion such person has either by willfully concealing anything essential or by giving false evidence, not complied with



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the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence in which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

7. The learned Special Public Prosecutor submitted that in the case on hand, the pardon has been granted to the second accused/Rajasekar by the trial Court as per the aforesaid provisions. He contended that the petitioner with an ulterior motive, has filed this petition to prolong the trial proceedings. The law contemplates that if the person willfully concealed the facts, the Public Prosecutor has to issue certificate and based on this, the Court may proceed in accordance with the provisions under Section 308 of Cr.P.C. But in the present case is concerned, the prosecution did not object any way in the evidence of PW2 and the statement of Rajasekhar has been recorded under Section 164(1) Cr.P.C. and there was no concealment of statement. The trial Court having satisfied that he has fully supported the prosecution, apart from disclosing his acts in the commission of offence and during cross examination, the approver's statement stand credible and



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trustworthy. Hence, he prayed that there is no necessity to cancel or revoke the pardon granted to A2. He also added that the trial Court after finding that the approver has complied with his promise in adducing the evidence, had turned him as witness/PW 29 and thus prayed this Court to dismiss the present revision as the order of the trial Court does not suffer from any illegality or infirmity.

8. In response to the submissions of the learned Special Public Prosecutor, the learned counsel for the petitioner submitted that under Section 306 Cr.P.C., for grant of pardon, a person who has been given a pardon has to be examined twice. One at the time of grant of pardon and secondly, at the time of examining him as a witness. He submitted that the petitioner before the trial Court has cross examined the witness but the same was false. In furtherance, he contended that as per Section 308 of Cr.P.C., person shall not be tried for the offence of giving false evidence in the trial Court except with the sanction of the High Court and giving of such falsified evidence would be incorrect in the eye of law and pleaded this Court to allow the revision filed by the petitioner. Furthermore, he submitted that the trial Court failed to understand the purpose of granting a pardon to the deserving



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accused where under Section 306(3) Cr.P.C., which requires the learned Magistrate to provide reasons for accepting the pardon and ensure full disclosure and the Chief Judicial Magistrate failed to consider the mandate of the Code under Section 306(4), which requires the pardoning witness to be examined as a witness during the pardon procedure. He urged that the order impugned is liable to be set aside due to failure to follow the step-by-step procedure under Sections 306, 307, and 308.

9. Considered the rival submissions made by the respective counsels and also perused the materials available on record.

10. At this juncture, it is relevant to note that Section 306 Cr. P.C., is a special provision which empowers the Court to tender a pardon to an accused with a view to obtain the evidence of such accused person supposed to have been directly or indirectly concerned in or privy to an offence. The pardon so tendered is also on condition of the accused making a full and true disclosure of the whole circumstances within his/her knowledge relating to the offence and to every other person concerned, whether as principal or abettor. The disclosure must be complete as to himself/herself



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and as to any other person concerned as principal or abettor. For the purpose of recall of the pardon granted, under Section 308 Cr.P.C., certificate by the public prosecutor has to be filed, such certificate is not mandatory and the trial Court can infer the conduct of the pardoned witness in lieu of the certificate by the public prosecutor. The learned Special Public Prosecutor drew the attention of this Court to the paragraph Nos.4 & 5 of the impugned order dated 04.07.2024 in which the Court below after going through the evidence on the approver, found satisfied that he has complied with the promise and had rightly dismissed the petition filed by the petitioner herein for recalling the pardon order of the accused. It is obvious to note that the trial Court had rightly gone through the evidences and observing the provisions of law, had passed the order impugned. In view of the above facts, this Court is of the considered view that the revision is liable to be dismissed. Accordingly, the Criminal Revision Petition stand dismissed. Consequently, the connected Miscellaneous Petition(s) is/are closed if any.

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NCC : Yes/No
Index : Yes/No

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Order : Speaking/Non Speaking

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VIVEK KUMAR SINGH, J.

DP

To

- 1.The Chief Judicial Magistrate,
Coimbatore.
- 2.The the Additional Superintendent of Police,
CBI/SCB, Chennai.
- 3.The Public Prosecutor,
Madras High Court, Chennai.

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and
Crl.M.P.Nos.10558 & 10559 of 2024

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