

Before J. M. Tandon, J.

INDU ANAND,—Petitioner.

versus

THE STATE (UNION TERRITORY, CHANDIGARH),—
Respondent.

Criminal Revision No. 710 of 1984

September 28, 1984.

Code of Criminal Procedure (II of 1974)—Sections 306, 397 and 482—Indian Penal Code (XLV of 1860)—Sections 201 and 302— Person accused of offences under Sections 201 and 302 tendered pardon on turning approver—Defence plea that no offence under the aforesaid sections made out against accused persons—Tender of pardon to such accused—Whether valid.

Held, that the validity of pardon to be tendered under Section 306 of the Code of Criminal Procedure, 1973 is to be determined with reference to the offence alleged against the approver alone and not with reference to the offence or offences of which the associates of the approver are ultimately convicted. Where the allegations against the approver are that offence under section 201 read with Section 302 of the Indian Penal Code have been committed, the pardon tendered to the approver in terms of section 306(2), Criminal Procedure Code, shall be taken as valid because such an approver is alleged to have committed an offence under Section 201 read with Section 302 of the Indian Penal Code, 1860.

(Para 6)

PETITION for revision under Section 401 read with Section 482 Cr. P. C. for the revision of the order of the Court of Shri K. K. Chopra, HCS, Chief Judicial Magistrate, Chandigarh, dated 28th April, 1984, dismissing the application.

Kapil Sibal, Sr. Advocate with R. C. Setia, and Atul Jain, Advocates, for the Petitioner.

S. C. Angirish and S. K. Saxena, Special Public Prosecutor, CBI, for the Respondent.

JUDGMENT

J. M. Tandon, J.—

(1) Shri J. S. Anand, D.I.G. Police (now deceased), his wife Smt. Indu Anand, petitioner accompanied by their son Sumanjit and Sandy (Sandip Singh—nephew of the deceased) attended a drink party in house No. 541, Sector 10, Chandigarh on July 12, 1983, and returned to their house No. 17, Sector 3, Chandigarh, at about 11 P.M. Yuvika, daughter of the deceased, did not attend the party and stayed at home. On return from the drink party, the petitioner went into the kitchen whereas the deceased, his son and Sandy went to their own rooms up-stairs. Darshan Lal, who worked at the house of the deceased, was busy in the kitchen at that time. As directed by the petitioner, Darshan Lal placed eatables on the dining table. The petitioner went up-stairs to call the deceased and the children for dinner. The petitioner and the deceased quarrelled up-stairs and shouted at each other in English. The petitioner was in great anger. She came down and left the house in the car at about 11.15 P.M. A few minutes thereafter Sumanjit approached Darshan Lal and told him that he should not give the store key to the deceased if the latter asked for it on the pretext that it was with the petitioner. The petitioner returned after about 20 minutes. She met the deceased on way when she was going up-stairs. The petitioner shouted at the deceased in English. The deceased went out of the house. Yuvika called her father when the latter had reached the gate of the house. The deceased who was tipsy and could not walk straight did not look back. Yuvika then shouted to her brother that the deceased was going. Sumanjit came down running followed by Sandy. The two boys followed the deceased and in about 10 minutes brought him back holding his arms. The deceased was taken inside the house. The petitioner caught the neck of the deceased with her hands when he reached near the Sofa and pressed it hard. She was in great anger and shouted "Kill Kill". The two boys held the hands of the deceased to prevent his fall. The deceased fell down on the carpet after the petitioner had pressed his neck with her hands. Darshan Lal brought a glass of water and with the help of a spoon put some water into the mouth of the deceased. The water did not go down the throat of the deceased. The boys removed the shoes of the deceased and rubbed his feet. The petitioner loosened his trousers. She felt his pulse and tested if he was breathing. Sensing that

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something serious had happened, all got perplexed. Yuvika started crying. The petitioner directed her to go up-stairs. The petitioner suggested to Darshan Lal to help in throwing the dead body in the lake which would avoid the involvement of all in the crime. Sumanjit brought the car and opened its dickey. The dead body was lifted and placed in the dickey of the car. The dead body was brought to the lake by the petitioner, two boys and Darshan Lal. The dead body was thrown in the lake.

(2) This is the version of the occurrence relating to the death of Shri J. S. Anand during the night intervening July 12, and 13, 1983, given by Darshan Lal in his statement recorded by Shri K. C. Lohia, Magistrate, under section 164, Criminal Procedure Code, on September 1, 1983. Darshan Lal was tendered pardon under section 306, Criminal Procedure Code, by Chief Judicial Magistrate, Chandigarh,—vide order dated September 19, 1983. (P. 1). The relevant part of the order reads:

“Whereas the C.B.I. has requested that accused Darshan Lal, son of Krishan Ram, r/o village Barnala Kalan, Nawanshahr, district Jullundur, in case No. RC 4/83 U, II, CBI, SPE, New Delhi, may be tendered pardon under section 306, Criminal Procedure Code.

Whereas I have heard the facts of the case in which besides accused Darshan Lal, some more persons are involved in a case of murder of Shri J. S. Anand, D.I.G., B.S.F., Jodhpur, committed within the jurisdiction of Union Territory, Chandigarh.

* * * * *
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And whereas it is considered that direct evidence in the case may not be forthcoming because the alleged murder took place at the dead hour of the night in a closed door house and the interests of justice require that one of the accused may be made an approver in the case.

And whereas in my opinion, accused Darshan Lal as above mentioned seems to be a suitable person for that purpose and willingly offers himself to accept the pardon.

“*And whereas the application under section 306, Criminal Procedure Code, having been filed on September 16, 1983, notice of which was given to the accused for September 17, 1983, when he put in appearance and was given time to file his reply to the request made by C.B.I.

And whereas the accused filed his reply that very day to become an approver.

And whereas the case was adjourned to September 19, 1983, and was taken up at 10.10 A.M. and the accused was made to sit in the chamber of the Court upto 1.45 P.M. and from the questions put by me to the accused and his replies and the statement under section 164, Criminal Procedure Code, recorded by Shri K. C. Lohia, I am satisfied that the accused Darshan Lal was concerned with the commission of the offence and his evidence is material and whereas the evidence of Darshan Lal would be very material for unfolding the links and truth of the case; and

Whereas I am satisfied that no pressure or influence of any sort is weighing on his mind.

Therefore, I Babu Ram Gupta, H.C.S., Chief Judicial Magistrate, Chandigarh, in exercise of the powers conferred upon me under section 306; Criminal Procedure Code, hereby tender pardon to the said accused Darshan Lal, for offences punishable under section 302/201, Indian Penal Code on the condition of his making a full and true disclosure of all the circumstances and other offences connected therewith whether as principal or as an abettor in the commission thereof.

* * * * *

(3) The petitioner and her two co-accused Sumanjit and Sandy filed a petition before Chief Judicial Magistrate praying that the order dated September 19, 1983 (P. 1) tendering pardon to Darshan Lal as approver under section 306, Criminal Procedure Code, may be set aside. The Chief Judicial Magistrate, Chandigarh,—vide order dated April 28, 1984, (P. 2), dismissed the application being not maintainable primarily on the ground that the order already passed

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could not be reviewed. The petitioner has assailed the orders P. 1 and P. 2 in the present petition filed under section 482, Criminal Procedure Code.

(4) The learned counsel for the petitioner has argued that no case for tendering pardon to Darshan Lal as approver in terms of section 306, Criminal Procedure Code is made out with the result that the impugned order P. 1 is liable to be set aside.

The relevant part of section 306, Criminal Procedure Code reads :

“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 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 in the subsequent trial, if any;

(b)

(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 that offence shall, without making any further inquiry in the case,—

(a) commit it for trial—

(i) to the Court of Sessions if the offence is triable exclusively by that Court, or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

* * * * *

(5) The learned counsel for the State has argued that Darshan Lal is alleged to be guilty of an offence under Section 201, Indian Penal Code read with section 302, Indian Penal Code. He is liable to be sentenced to seven years rigorous imprisonment. His case is covered by sub-section (2) of section 306, Criminal Procedure Code and he has rightly been tendered pardon as approver. The contention of the learned counsel for the petitioner is that the circumstances do not warrant a conclusion that an offence under section 302, Indian Penal Code, has been committed as a result of the death of the deceased and as such assuming that Darshan Lal is guilty of an offence under section 201, Indian Penal Code, he cannot be awarded a sentence of seven years rigorous imprisonment. The contention of the learned counsel for the petitioner without merit.

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Section 201, Indian Penal Code reads:

“201. Causing disappearance of evidence of offence, or giving false information to screen offender, Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of the offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, if a capital offence — shall, if the offence which he knows or believes to have been committed is punishable with death, he punished with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine;”

(6) The deceased is alleged to have met a violent death during the night intervening July 12 and 13, 1983. It is neither feasible nor proper to minutely examine and determine at the stage of tendering pardon under section 306, Cr. P.C. that the case is covered by section 304 or section 304-A, Indian Penal Code and not by section 302, Indian Penal Code. It has been held in *The State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another* (1), that the validity of a pardon is to be determined with reference to the offence alleged against the approver alone and not with reference to the offence or offences of which his associates were ultimately convicted. The observations of their Lordships are squarely applicable in the instant case. The allegation against Darshan Lal is that he committed an offence under section 201, Indian Penal Code read with section 302, Indian Penal Code in relation to the murder of the deceased. Irrespective of the fact that the petitioner and/or her co-accused are ultimately convicted under section 304 or 304-A Indian Penal Code (or even acquitted), the pardon tendered to Darshan Lal in terms of section 306(2), Criminal Procedure Code, shall be taken as valid because he is alleged to have committed an offence under section 201, read with section 302, Indian Penal Code.

(7) The learned counsel for the petitioner has argued that as provided under section 306 (3), Criminal Procedure Code, it was

(1) A.I.R. 1963 S.C. 1850.

obligatory for the Chief Judicial Magistrate to record reasons for tendering pardon to Darshan Lal. The Chief Judicial Magistrate did not record any reason in terms of section 306 (3), Criminal Procedure Code, in the impugned order P. 1 and the same is, therefore, liable to be set aside. This contention is also without force. The Chief Judicial Magistrate has given reasons in terms of section 306(3), Criminal Procedure Code, in the impugned order P. 1, and the same, therefore, cannot be held bad on this ground.

(8) The learned counsel for the State has urged that the present petition is not maintainable for the reason that the impugned order P. 1 being interlocutory in nature cannot be interfered with by the High Court in revision as provided in section 397, Criminal Procedure Code. The contention of the learned counsel for the petitioner is that irrespective that the impugned order P. 1 may be interlocutory and not revisable under section 397(2), Criminal Procedure Code, it can be interfered with by this Court in exercise of power under Section 482, thereof to prevent abuse of the process of the Court and to secure the ends of justice.

(9) As discussed above the impugned order P. 1 has been held to be valid. It is difficult to hold that the tender of pardon to Darshan Lal under Section 306, Criminal Procedure Code, is an abuse of the process of the Court. It can, therefore, be not quashed in exercise of the powers under section 482, Criminal Procedure Code.

In the result, the petition fails and is dismissed.

H.S.B.

Before P. C. Jain, A.C.J., & J. M. Tandon, J.

BANWARI LAL,—Appellant.

versus

FINANCIAL COMMISSIONER (TAXATION), PUNJAB AND

October 23, 1984.

Letters Patent Appeal No. 899 of 1980.

October 23, 1984.

Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 117—Notice under Rule 117(1) issued to auction purchaser on specified address—Said notice received back undelivered as the whereabouts of auction purchaser not known—No notice under Rule