

AFR

ORISSA HIGH COURT, CUTTACK.

CRLREV No. 290 of 2012

An application under Section 397 read with Section 401, Cr.P.C.

Nirakar Bhoi and two Others

...

Petitioners

Mr. H.S. Mishra, Sr. Advocate

-versus-

State of Odisha and another

...

Opposite Parties

Mr. M.K. Mohanty, A.S.C.
Mr. A.K. Acharya, Adv. for O.P.2

CORAM :

JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 28.07.2023

Chittaranjan Dash, J.

1. Challenge in this Revision has been to the legality, propriety and correctness of the order dated 30.04.2012 passed by the learned Additional Sessions Judge-cum-Special Judge (Vigilance), Bolangir in S.T. Case No.89/10 of 2010-12, wherein the learned court allowed the prayer of the accused Balaram Pradhan moved under Section 307, Cr.P.C. and pardoned him to be examined as a witness for the prosecution in line with the stipulation under Section 308, Cr.P.C.

Pursuant to such pardon, the accused filed a memo accepting the conditions.

2. The background facts of the case are that, one Sudam Sahu, son of Bhojaraj Sahu of village Budhipadar under Loisingha P.S. in the district of Bolangir lodged a written report informing that on 29.05.2009 at about 10.30 A.M. the owner of the Rugudikhal Sahoo Dhaba stopped him and told that his (informant's) brother Anand Sahu @ Jhara has been severely assaulted to death. The informant thereafter arrived at the Loisingha Hospital and again at Bolangir Government Hospital and found the dead body of his elder brother Anand Sahu @ Jhara kept in the premises of the Government Hospital, Bolangir. He found injuries appearing on his head, face, legs and there was bleeding. He also found the right hand of his deceased brother to have broken. According to the informant, seeing the dead body, it appeared that somebody attacked him severely by means of sharp cutting weapon and committed his murder. It is also alleged in the F.I.R. that in the District Headquarter Hospital at Bolangir he came to know that his brother Anand Sahu was attacked near Loisingha station and was left abandoned after a brutal assault in a serious condition.

3. On the basis of the report lodged, the law was set in motion and investigation commenced. In course of the investigation, police visited the spot, seized the incriminating articles, held the inquest over the dead body, sent the dead body for Post-Mortem Examination, examined the witnesses, arrested the accused Balaram Pradhan, Prashant Kumar Rath @ Suru Babu @ Hapi, recorded the statement of the accused Balaram

Pradhan under Section 164, Cr.P.C. and other witnesses under Section 161, Cr.P.C. and upon completion of the investigation, having found prima facie evidence against the accused persons including accused Balaram Pradhan, submitted charge-sheet under Sections 147/148/302/120/149, I.P.C. The case having been committed to the court of sessions was transferred to the court of the learned Addl. Sessions Judge-cum-Special Judge (Vigilance), Bolangir, who framed the charge against the accused persons on 14.03.2012.

4. While the matter stood thus, soon after framing of the charge, before commencement of recording evidence on 20.04.2012 one of the accused persons namely Balaram Pradhan filed a petition under Section 307, Cr.P.C. directly before the learned trial court with the prayer to act upon it and to tender pardon to him within the sweep of Section 307, Cr.P.C. A copy of the petition so filed on behalf of the accused Balaram Pradhan was served on the Associate Public Prosecutor whereas no copy was served on the co-accused persons despite objections raised from the side of the co-accused persons that they are entitled to file objection. Learned court having taken cognizance of the petition filed under Section 307, Cr.P.C., sought for a statement from the prosecution side before consideration of the said petition fixing the case to the very next date. On the next date, i.e. 21.04.2012 the learned Associate PP filed a petition for time to file objection, which the learned court declined and affording no further opportunity proceeded without reference to the co-accused persons or the prosecution.

5. In its further proceeding the learned court got the statement of the accused Balam Pradhan recorded, wherein the accused stated to have given a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to other persons concerned whether the principal or the abettor in the commission thereof. In its order learned court observed that the Associate PP did not have any objection to the statement of the accused so recorded. On 23.04.2012 before the learned court acted upon the prayer of the accused Balam Pradhan in his petition filed under Section 307, Cr.P.C., it was pointed out by the Associate PP that there is slight variation in the statement of the accused recorded under Section 164, Cr.P.C. and the statement recorded in consonance with the provision under Section 306(1), Cr.P.C. However, the learned court vide its order dated 30.04.2012 passed a speaking order and allowed the petition filed by accused Balam Pradhan under Section 307, Cr.P.C., as required under the statute and pardoned him to be a witness for the prosecution following the consequence of the provision of Section 308, Cr.P.C. which is impugned herein.

6. In order to appreciate the argument advanced by the learned counsel for the Petitioner, it is apt to refer to the provisions under Sections 306 and 307, Cr.P.C.

Section 306, Cr.P.C. provides :-

“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 of thereof.”

Section 307, Cr.P.C. provides :-

“307. *Power to direct tender of pardon.* – At any time after commitment of a case but before judgment is passed, the court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.”

7. A meticulous examination of both the provisions indicates that Section 306, Cr.P.C. is applicable in a case where the order of commitment has not been passed, whereas Section 307, Cr.P.C. is applicable after the commitment of the case is done but before the judgment is pronounced. As mandated in the provision, after commitment of the case, pardon is to be granted by the trial court subject to the condition specified in Sub-Section (1) of Section 306, Cr.P.C., i.e. after making a full and true disclosure of the whole of the circumstances within his knowledge related to the offence and to every other person concerned whether he/she is principal or abettor in the commission thereof.

8. It is submitted by the learned counsel for the Petitioner that the court below erred in law and passed the impugned order illegally with material irregularity, which is perverse for non-application of judicial mind, tainted with arbitrariness and contrary to the settled principles of law. He further argued that the learned trial court committed gross illegality by not referring the petition filed under Section 307, Cr.P.C. to the prosecution, instead it entered into the ring as a veritable director of prosecution in as much as the trial court exercised the power to pardon on behalf of the prosecution agency whereas, such power is to be exercised only when the prosecution joins in the request. It is further argued that, the order impugned is illegal for the reason that the prayer for time to file objection by the prosecution was rejected by the court when it is incumbent for the court before granting of pardon to an accused to call for a statement of the prosecution which the learned court did not adhere to and as such the learned court has transgressed its jurisdiction. According to learned counsel, the learned court below even did not allow the petitioner to get the certified copy of the statement and thereby the order impugned suffers a gross illegality and prays to set aside the same.

9. The learned counsel for the State Mr. Mohanty submitted that the order impugned is in consonance with fact and law and requires no interference. Subscribing the versions of the learned Addl. Standing Counsel, Mr. A.K. Acharya, learned counsel appearing on behalf of the Opposite Party No.2, i.e. accused Balaram Pradhan, contended the impugned order as legal and justified and akin to the relevant provision.

He further submitted that the impugned order receives assurance from various pronouncements and canvassed for no interference thereupon relying upon the decisions reported in (2013) 13 SCC in the matter of *Yakub Abdul Menon Vs. State of Maharashtra and Suresh Chandra Bihari Vs. State of Bihar* reported in (1995) Supp.(1) SCC 80.

10. As held in the matter of *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another*, the power under Section 307 Cr.P.C is exercised with an object to allow pardon to be tendered in a grave offence allegedly to have committed by several persons so that with the aid of evidence of the person so pardoned the offence could be brought home to the rest.

11. The moot question requires answer herein is whether the impugned order passed by the learned court would sustain in the eye of law in terms of section 307 Cr.P.C. ? As stated, the provision U/s 307 Cr.P.C. empowers the trial court to act upon the prayer of the accused for grant of pardon. The only condition for granting pardon is “with a view to obtaining the evidence of any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence”. This makes it clear that the person seeking pardon need not be a culprit himself as held by several High Courts including this Court in the matter of *Giria Vs. State of Orissa, 91(2001) CLT 639(Ori)*.

12. The provision also does not make it mandatory to record the statement of the accused seeking pardon to get his statement recorded U/s. 164 Cr.P.C nor does the statement so recorded belie the object.

There is also no illegality in recoding the statement of the accused before the grant of pardon inasmuch as the aim of the court granting pardon to an accused is only to obtain evidence as a witness. The fact that there is already a recoded confession under Section 164 Cr.P.C cannot be a factor weighing against the tender of pardon.

13. The submission that ordinarily it is for the prosecution to ask that a particular accused out of several may be tendered pardon does not preclude the accused from directly applying to the court. Further, the very object of the provision does not in any manner make the proceeding illegal merely for the reason that the court requesting the prosecution to give statement files no statement. This is because once the accused volunteers to become a witness within the ambit of the provision leaves no discretion to the prosecution, save and except a caution to be maintained by the court exercising the power to pardon. In the instant case, the order impugned clearly indicates that the Prosecution did not object to the recording of statement of the accused before grant of Pardon. The discrepancy pointed out in the statement of the accused in his statement recorded U/s. 164 Cr.P.C. and the statement recorded before grant of pardon does not affect the object of the proceeding. Further, the exculpatory or inculpatory statement of the accused is matters of appreciation of the court during trial and nothing to do with the discretion applied by the court in granting the pardon. As rightly held by the learned court in the impugned order, the grant of pardon to the seeker is primarily a proceeding between the courts and the Petitioner and the co-accused have nothing to object. The absence of statement

from the prosecution too in the circumstance does not make the order impugned *per se* illegal that requires interference. This Court, therefore, finds no substance in the Revision. Accordingly, the Criminal Revision fails. The order of the learned Addl. Sessions Judge-cum-Special Judge (Vigilance), Balangir passed on 21.04.2012 in Sessions Case No.89/10 of 2010-12 is confirmed. Having regard to the age of the case, it is however directed that the court concerned shall take up the trial in promptitude.

14. The CRLREV is dismissed.

(Chittaranjan Dash)
Judge



S.K. Parida