

Directorate Of Enforcement vs Rajiv Saxena on 18 May, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1477/2020 & CRL.M.As.6490-91/2020

DIRECTORATE OF ENFORCEMENT Petitioner
Through: Mr. Zoheb Hossain, Advocate

versus

RAJIV SAXENA Respondent
Through: Mr. R.K.Handoo and Rajat
Manchanda , Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 18.05.2020

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

1. This matter has been taken up for hearing by video conferencing, consequent to listing thereof having allowed by the Registrar.

2. This petition, under Section 482 of Code of Criminal Procedure, 1973, assails an order, dated 5th March, 2020, passed by the the learned Special Judge (PC Act)(CBI)-10, Rouse Avenue.

3. By the said order, the learned Special Judge has dismissed the application, preferred by the petitioner/Directorate of Enforcement, under Section 308, Cr.P.C., for revocation of the pardon, extended to the respondent under Section 306, Cr.P.C.

4. Paras 21 to 25 of the judgment of the learned trial court, which contain, essentially, the grounds on which the application has been rejected, may be reproduced thus:

"21. The respondent Rajiv Saxena has filed an application u/s 306 Cr.P.C. for tender of pardon and making him approver, subject to the condition that he will make a full disclosure to the extent, the facts are within his knowledge. The Enforcement

Directorate has filed reply to the said application stating that the respondent has fully co-operated in the investigation of the present case and has provided crucial documents/facts which are necessary to unravel truth of the present case and the co-operation extended by the respondent is highlighted from his statement recorded U/s 50 PMLA. It is further stated by the Enforcement Directorate in its reply that the respondent Rajiv Saxena may be tendered pardon subject to the condition of him deposing the true and correct facts pertaining to the crime as a prosecution witness. Further, during arguments on application for grant of pardon Ld. Counsel for ED submitted that the respondent has made full and true disclosure of whole facts known to him, in his confessional statement under Section 164 Cr.P.C. Vide order dated 25.03.2019, the respondent Rajiv Saxena was granted pardon and he was made approver subject to his making full and true disclosure of whole of the circumstances as are within his knowledge relating to the offence and to every other person concerned whether as abettor or principal in the commission of the offences.

22. Now the Enforcement Directorate is seeking revocation of tender of pardon to respondent Rajiv Saxena on the grounds, that the respondent Rajiv Saxena did not cooperate during investigation, did not provide documents/complete documents, concealed material facts and documents, contacted co-accused etc. and has thus violated the conditions as imposed on him vide order dated 25.03.2019.

23. From the perusal of Section 306 & 308 Cr.P.C and aforesaid judgment, it is clear that once the accused is granted pardon by the Court and is made approver, the status of the accused changes from accused to witness/approver. However, if the approver, fails to comply with the conditions of order granting him pardon, he makes him liable to be tried as accused subject to the conditions as laid down in Section 308 Cr.P.C. in the judgment "State vs. Jagjit Singh", it is observed that revocation of pardon can only be as per the procedure provided U/s 308 Cr.P.C which mandates that approver be examined in the Court before revoking the pardon. Thus, it is clear that breach of the conditions of the order granting pardon has to be looked into after the approver is examined by the Session Court/Trial Court and Ld. PP files Certificate that approver has committed breach of the conditions on basis of which he was granted pardon. Section 308 Cr.P.C also lays down that opportunity has to be granted to the accused to defend himself that he has complied with the conditions on which he was granted pardon. Therefore, until and unless the aforesaid procedure is followed the Court cannot revoke the pardon granted to the accused.

24. The contention of Ld. Counsel for ED, that this Court can revoke the pardon granted to any person, at any stage, even before the approver is examined before Session Court/Trial Court, is without any merit.

25. The application filed by ED is premature and is liable to be dismissed. The Enforcement Directorate may move appropriate application for revocation of pardon granted to respondent Rajiv Saxena, if so needed, at appropriate stage."

5. The application contains detailed allegations, on facts, to highlight that the respondent has misused the pardon, extended to him, and has not made a full and true disclosure of the information known to him, or the documents, over which he has control. Prima facie, it is not necessary to enter into the said details, as the learned trial court has dismissed the application of the petitioner on a preliminary ground, without examining it on merits.

6. Essentially, this case involves a pure question of law. The learned trial court has, on the basis of the judgment of Supreme Court in State v. Jagjit Singh¹, adopted a view that, before the respondent is examined in court, and, consequent thereupon, a certificate is granted by the Public Prosecutor, there can be no question of revocation of the pardon granted to the respondent. This finding, according to the present petition, is incorrect, as the judgment in Jagjit Singh (supra) stands clarified in a subsequent judgment in State of Maharashtra v. Abu Salem Abdul Kayyum Ansari².

7. Resultantly, a pure question of law, relating to the circumstances in which revocation of pardon, under Section 308 Cr.P.C can be granted, and the conditions precedent therefor, arises for consideration.

8. Issue notice.

9. Mr. R.K.Handoo, learned counsel, accepts notice on behalf of the respondent.

10. List this matter for final disposal on 3rd June, 2020.

(1989) Supp. 2 SCC 770 ` (2010) 10 SCC 179

11. As a pure question of law is involved, and the learned trial court has not proceeded on merits, there is no need to exchange pleadings in this matter.

12. Both sides are, however, at liberty to file brief notes of submissions, setting out their rival contention.

CRL.M.A. 6491/2020 (stay)

1. In view of the fact that the present petition is being set down for final disposal on 3rd June, 2020, no orders need be passed on this application for the present.

2. Renotify this application also on 3rd June, 2020.

3. Needless to say, the validity of the impugned order, dated 5th March, 2020 as well as the order dated 25th March, 2019, whereby pardon was extended to the respondent, shall abide by the outcome of these proceedings.

C. HARI SHANKAR, J.

MAY 18, 2020 dsn