"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

CRL.M.C.NO. 378 OF 2022

PETITIONER/COMPLAINANT:

STATE OF KERALA REP., BY DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM UNIT, PIN – 695001.

SMT REKHA S, SR PUBLIC PROSECUTOR
SRI A RAJESH, SPL PUBLIC PROSECUTOR (VIG)

RESPONDENT/ACCUSED NO.2:

REJI.S
AGED 41 YEARS
S/O.SATHYANATH,WEAVERS COLONY,ELLUVILA P.O,THIRUVANANTHAPURAM, PIN - 695504

BY ADVS.
G.SUDHEER
R.HARIKRISHNAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL HEARING ON 03.04.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

P.G. AJITHKUMAR, J.

Crl.M.C.No.378 of 2022

Dated this the 3rd day of April, 2025

O R D E R

The State is the petitioner. The petitioner seeks sanction to prosecute the respondent as provided in sub-section (1) of Section 308 of the Code of Criminal Procedure, 1973 (Code). The respondent was the 2nd accused turned approver in C.C.No.22 of 2014 on the files of the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram. He was examined as prosecution witness No.3. Alleging that he did not make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence involved in the case, the Additional Legal Advisor in charge of the prosecution submitted Annexure-F report before the Special Court certifying that the respondent was to be prosecuted both for the offence involved in the case as well as for giving false evidence.

2. The Special Court as per the order dated 12.02.2019, Annexure-G, found that it was expedient in the interest of administration of justice to proceed against the respondent as provided in Section 308(1) of the Code. In pursuance of the said order, the Special Court submitted a report dated 25.03.2019 before this Court along with necessary documents seeking sanction as provided under the second proviso to Section 308(1) of the Code. The matter was considered on the administrative side of this Court. As per Annexure-H office memorandum dated 25.05.2019, the Registry of this Court instructed the Special Court to inform the prosecution that an application seeking sanction should be submitted by it on the judicial side. Accordingly, the State has filed this petition under Section 482 read with Section 308(1) of the Code.

3. Heard the learned Special Public Prosecutor (Vigilance) and the learned counsel for the respondent.

4. The question whether sanction to prosecute an approver under Section 308(1) of the Code has to be decided

on the administrative side or the judicial side of the High Court has been a matter of discourse right from enacting the Code of Criminal Procedure, 1882 itself. As early as in 1897, this question was posed before the High Court of Calcutta. In **Queen-Empress v. Manick Chandra Sarkar [(1897) ILR 24 Cal.492]**, it was held that an application for sanction to prosecute an approver for giving false evidence should be made by a motion on behalf of the Crown in open Court, and not by a letter of reference by the trial court. That view was reiterated in a catena of decisions which followed. See: **Crown v. Bulaka Singh [1904 (1) Crl.J 793]; Emperor v. Madiga Nallavadu [ILR (1909) 32 Mad.47]**, and **Emperor v. Raja, S/o Ilm Din [1912 Cri.L.J 451]**. The High Court of Delhi in **State (CBI) v. Ranjeet Singh [2006 (87) DRJ 679]** considered the said question in more detail. It was held that:

> "3. ..... the sanction envisaged by the second proviso of Section 308(1) Cr.P.C. has to be necessarily on judicial side and not on administrative. Although the said judgment does not address this question, but having regard to the scheme of the Code of Criminal Procedure and that the entire investigation, prosecution and trial of the accused persons in

> this case is governed by the provisions of the Code of Criminal Procedure and that the pardon to the approver was granted under the provisions of Code of Criminal Procedure and it is proposed to try the said approver for the offence of perjury in terms of the provisions of Section 308(1), this Court has no hesitation in holding that the jurisdiction which the High Court exercises under the second proviso of Section 308(1) Cr.P.C. is necessarily a jurisdiction on judicial side. Therefore, I see no force in the objection of the learned counsel for the respondent."

The preponderance of the judicial opinion therefore has been to the effect that sanction for prosecuting an approver for giving false evidence as contemplated in the second proviso to Section 308(1) of the Code shall be applied by submitting an application by the prosecution on the judicial side of the High Court.

5. The question next arises for consideration is whether the Special Court established under the Prevention of Corruption Act, 1988 (PC Act) has power to grant pardon to an approver. Going by the provisions of Section 5 of the PC Act, a Special Judge while trying an offence under the Act has to follow the procedure prescribed by the Code for the trial of

warrant cases by the Magistrates. This aspect was dilated by a Constitution Bench of the Apex Court in **A.R. Antulay v. Ramdas Sriniwas Nayak & another [(1984) 2 SCC 500]** and held that a Special Court under the PC Act has wielding powers of a Judicial Magistrate and the procedure being followed is what provided for a trial of a warrant case. However, in view of the provisions of sub-section (3) of Section 5 of the PC Act, all provisions in the Code, save as provided in sub-section (1) or sub-section (2), applicable to a Court of Sessions are applicable to the Special Court and the Special Court is deemed to be a Court of Session and the Special Judge, a Sessions Judge. Interpreting the said provisions, the Apex Court in **A.Srinivasulu v. State Rep. by the Inspector of Police [(2023) 13 SCC 705]** took the view that a Special Court under the PC Act has a dual power of the Sessions Judge as well as that of a Magistrate. Observing so, it was held that the Special Court has power to grant pardon during trial. It was further explained that the trial in the context of Section 307 of the Code has to be understood as the stages between taking cognizance of the offence and

pronouncing judgment. Paragraph Nos.67 and 69 of the judgment read as follows:

> "67. Coming to Section 5 of the PC Act, it is seen that sub-section (1) empowers the Special Judge to take cognizance of offences without the accused being committed to him for trial. It also says that while trying the accused persons, the Special Judge is obliged to follow the procedure prescribed by the Code for the trial of warrant cases by the Magistrates. This is why this Court held in Bangaru Laxman (in para 40 of the report) that the Special Judge under the PC Act, while trying offences, has a dual power of the Sessions Judge as well as that of the Magistrate and that such a Special Judge conducts the proceedings both prior to the filing of the charge sheet and for holding trial. In fact what was in question in Bangaru Laxman was whether the pardon tendered by the Special Judge, one day before the filing of the charge sheet, was correct or not. This court found the same to be in order.
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> xx xx xx
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> 69. In contrast, Section 5(2) of the PC Act does not speak about the stage at which pardon may be tendered by a Special Judge. This is perhaps in view of the express provisions of sub-section (1) of Section 5 which empowers the Special Judge himself to take cognizance without the accused being committed to him for trial. But the second part of sub-section (2) of Section 5 of the PC Act creates a deeming fiction that the pardon tendered by the Special Judge shall be deemed to be a pardon tendered under Section 307 of the Code. However, as rightly contended by the learned Senior Counsel for A - 7, this deeming fiction is limited for the purposes of sub-sections (1) to (5) of Section 308 of the Code."

6. Therefore, a Special Court has jurisdiction to entertain an application to grant pardon to an approver. The procedure to be followed by the Special Court while granting pardon has been explained by the Apex Court in **State (Delhi Administration) v. Jagjit Singh [AIR 1989 SC 598]**. Paragraph No.8 of the judgment reads as follows:

> "8. It has been next contended that the grant of pardon is in the nature of a contract between the State granting the pardon on the one hand and the person accepting the pardon on the other hand. As the State has the power to revoke the pardon at any time the approver has also got the reciprocal right to cast away the pardon granted to him. This submission is also not tenable. The power to grant pardon carries with it the right to impose a condition limiting the operation of such a pardon. Hence a pardoning power can attach any condition, precedent or subsequent so long as it is not illegal, immoral or impossible of performance. Section 306 clearly enjoins that the approver who was granted pardon had to comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other concerned whether as principal or abettor, in the commission thereof. It is because of this mandate, the State cannot withdraw the pardon from the approver nor the approver can cast away the pardon granted to him till he is examined as a witness by the prosecution both in the Committing Court as

well as in the trial court. The approver may have resiled from the statement made before the Magistrate in the Committing Court and may not have complied with the condition on which pardon was granted to him, still the prosecution has to examine him as a witness in the trial court. It is only when the Public Prosecutor certifies that the approver has not complied with the conditions on which the tender was made by wilfully concealing anything essential or by giving false evidence, he may be tried under Section 308 of the Code of Criminal Procedure not only for the offence in respect of which pardon was granted but also in respect of other offences. In these circumstances, the question of casting away the pardon granted to an approver and his claim not to be examined by the prosecution as a witness before the trial court is without any substance. It has been submitted in this connection by citing a decision In re, Arusami Goundan AIR 1959 (Madras) 274, that the accomplice who has been tendered a pardon if at any stage either wilfully conceals material particulars or gives false evidence and thereby fails to comply with the conditions on which pardon was tendered to him and thereby incurs its forfeiture he should not be compelled by the prosecution to be examined as a witness before the trial court. It has been observed even in the said case that the provisions of Section 337(2) of the old Code of Criminal Procedure, 1898 (5 of 1898) provide that the approver who has been tendered pardon must be examined both in the Committing Court and the Court of Sessions. xx xx xx”

7. Thus the obligation to make a full and true disclosure would arise whenever the approver is lawfully called upon to give evidence touching the matter; it may be in the Committing Court, or, it may be in the Sessions Court. The obligation to make a full and true disclosure rests on the approver at every stage at which he can be lawfully required to give evidence. If at any stage he either wilfully conceals material particulars or gives false evidence he would have failed to comply with the conditions on which the pardon was tendered to him and thereby incurred its forfeiture.

8. Neither as a matter of reason or logic, nor as a matter of statutory interpretation can it be said that Section 308(1) of the Code is dependent on or connected with Section 306(2) in the sense that the approver must be examined both in the Committing Court and the Sessions Court before it can be held that he has forfeited his pardon. It is sufficient if he fails to conform to the conditions on which the pardon has been granted to him at either stage.

9. In view of the proposition of law laid down in the aforesaid decisions, there need not be any doubt that the Special Court followed the proper procedure while granting pardon to the

respondent in C.C.No.22 of 2014. In the above context, the learned counsel for the respondent urged that Annexure-A report, which was submitted for offering pardon to the respondent and in Annexure-D final report, the opinion of the investigating officer was that the respondent did not commit any offence; whereas, what he did was only obeying the orders of the accused-Village Officer to take the tainted currency notes from the drawer of the table and keep it. It is accordingly submitted that the respondent not being an accused even according to the prosecution could not be prosecuted even if he violated the condition for pardon. I am unable to accept the said contention. He was arraigned as an accused in the F.I.R. At that stage pardon was offered and accepted by the respondent. Then, not only the rights, but also obligations flow from the grant of pardon should follow. The approver cannot resort to a plea that he was not to be an accused, and hence his prosecution for giving false evidence is bad in law.

10. Another submission by the learned counsel for the respondent is that what prompted the prosecution to seek

sanction to prosecute is giving of an additional statement by the respondent while giving evidence in court and not that he did not disclose before the court full and true aspects of the matters within his knowledge. It is explained that what he stated in Annexure-C statement, which was given before the Special Court at the time of granting pardon, were reiterated while giving evidence in C.C.No.22 of 2014 and as such there is no scope for a prosecution for giving false evidence.

11. The learned Special Public Prosecutor in this regard would submit that what is contemplated in Section 306(1) of the Code is that the approver should make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence, and giving any incorrect statement will come within the mischief of the said provision.

12. The reason why the respondent was proposed to be prosecuted for giving false evidence is that over and above what were stated by him in Annexure-C statement, he deposed before the court that the accused-Village Officer asked him to handover the tainted notes, which he took from the drawer of

the table, to the defacto complainant. Annexure-C does not contain such a statement. The question is, can on account of such an embellishment from what has been stated at the time of granting pardon, a prosecution for giving false evidence is expedient and legal.

13. Section 308(1) reads as follows:

> "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 wilfully concealing anything essential or by giving false evidence, not complied with 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 of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:
> Provided that such person shall not be tried jointly with any of the other accused:
> Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in Section 195 or Section 340 shall apply to that offence."

14. The said provision indicates that while applying for sanction before the High Court, the provisions of Section 195

or 340 of the Code do not have application, which are applicable in all other cases of prosecution for giving false evidence before a court of law. An enquiry and a positive finding mandated under Section 340 of the Code before filing a complaint under Section 195 of the Code are thus not insisted on while deciding a question of sanction under Section 308(1) of the Code. That does not mean that the High Court, while considering an application for sanction to prosecute, need not consider whether the case on hand is a fit one where the approver is liable to be prosecuted. The said view gets support from the decisions of the Apex Court in **Renuka Bai @ Rinku @ Ratan v. State of Maharashtra [AIR 2006 SC 3056]** as well as **State of Maharashtra v. Abu Salem Abdul Kayyum Ansari [(2010) 10 SCC 179]**.

15. In **Renuka Bai [AIR 2006 SC 3056]** the Apex Court held that in the light of the proviso to Section 308 of the Code an approver, who departed from the undertaking he had given while accepting pardon, shall not be tried for the offence for giving false evidence except with the sanction of the High

Court and the approver would be entitled to plead that he had complied with the condition upon which such tender of pardon was made and that he had not given any false evidence or wilfully suppressed anything. The Court further held that in case where the approver made startling revelations pointing to his giving false evidence in Court and the public prosecutor is not taking steps to proceed against the approver, the High Court has inherent powers to proceed against the approver for giving false evidence.

16. In **Renuka Bai [AIR 2006 SC 3056]** it was further held that in order to prosecute an approver, the Public Prosecutor has to give a certificate and he should express his opinion that the approver has either wilfully concealed anything essential or has given false evidence or has not complied with the conditions on which pardon has been granted. In regard to the restrictions imposed for prosecuting an approver as per the proviso to Section 308 of the Code, it was held that such a person shall not be tried for the offence of giving false evidence except with the sanction of the High Court. It was also held

that the approver would be entitled to plead that he had complied with the conditions upon which he was granted pardon and that he had not given any false evidence or wilfully suppressed anything. The law, thus explained, affords an opportunity to the approver to contest the prosecution's plea for sanction to prosecute him. The High Court, therefore, cannot decide the question mechanically but to apply mind to the facts and take a judicious decision.

17. In **Abu Salem [(2010) 10 SCC 179],** the Apex Court explained that an accomplice who has been granted pardon under Section 306 or 307 of the Code gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission of the crime and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which

the tender was made and the Public Prosecutor gives his certificate under Section 308 to that effect, the protection given to him is lifted. As noted above, the High Court in the exercise of its inherent powers, can also order to prosecute such an approver for giving false evidence. When the above is the position of law, the prosecution is obliged to set out the reasons necessitating prosecution of the approver for, he shall be put to notice about the grounds on which he is proposed to be prosecuted. The particulars stated in the petition shall be sufficient to convince that there is such an expediency. The provisions of Section 308(1) of the Code and Section 345 (1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which is the corresponding provision, require such compliance.

18. As stated, the respondent did not fail to state during the trial before the Special Court all that he had stated while giving Annexure-C statement at the time of granting pardon. He, however, added that the accused asked him to hand over the tainted money to the complainant. In a prosecution for the offence of receiving illegal gratification, which was initiated

following the seizure of the tainted money from the possession of the accused, aforementioned statement of the approver may amount to giving false evidence. But, a few other facts also assume importance before deciding whether or not permission to prosecute the respondent should be granted.

19. Annexure-A is the report submitted by the investigating officer to offer pardon to the respondent. It was stated in it that the evidence collected would prove that the respondent who was the 2nd accused in the FIR did not have any criminal intention in taking the trap money and retaining the same. In the final report, a copy of which is Annexure-D also, it is stated that on verification, it was revealed that the respondent collected the trap money from the drawer without any criminal intent but only in obedience to the direction of the accused-Village Officer.

20. After trial, the Special Court convicted the accused. Respondent was examined as PW3. There is no finding in the judgment of the Special Court that the respondent gave false evidence. The statement of the respondent that the accused

instructed him to hand over the money to the complainant did not impel the learned Special Judge to disbelieve him on other respects. The accused was convicted. The appeal he filed before this Court ended in dismissal. In the judgment in the appeal, Crl.Appeal No.376 of 2019; also, there is no observation that PW3 gave false evidence. Of course, such a finding is not necessary for prosecuting the approver for the offence of giving false evidence. But, when the accused was convicted, and there is no finding or even observation by the trial court or the appellate court that PW3 gave false evidence, it is difficult to find the aspect of expediency of prosecution of the respondent in favour of.

21. In view of what is stated above, prosecution of the respondent for the offence of giving false evidence in C.C.No.22 of 2014 on the files of the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram is uncalled for. Therefore, this Crl.M.C. is disposed of by declining permission.

Sd/-

P.G. AJITHKUMAR, JUDGE

SMF/dkr

APPENDIX OF CRL.MC 378/2022

PETITIONER ANNEXURES

ANNEXURE A	**COPY OF THE REPORT FILED BY DYSP,VACB DATED 15-12-2012**
ANNEXURE B	**COPY OF THE ORDER OF THE COURT BELOW DATED 20.12.2012**
ANNEXURE C	**COPY OF THE STATEMENT OF THE RESPONDENT DATED 20.12.2012**
ANNEXURE D	**COPY OF THE FINAL REPORT FILED BY THE VACB**
ANNEXURE E	**COPY OF THE DEPOSITION OF THE RESPONDENT DATED 19.01.2019**
ANNEXURE F	**COPY OF THE REPORT SUBMITTED BY ALA DATED 12.02.2019**
ANNEXURE G	**COPY OF THE ORDER OF THE COURT BELOW DATED 12.02.2019**
ANNEXURE H	**COPY OF THE OFFICIAL MEMORANDUM DATED 25.05.2019 ISSUED BY THE ASSISTANT REGISTRAR**