

DIPESH CHANDAK

v.

UNION OF INDIA

SEPTEMBER 17, 2004

[S.N. VARIAVA AND A.K. MATHUR, JJ.]

Criminal Procedure Code, 1973—Sec. 306(2), 308—Grant of Pardon—Under Income Tax Act for offence of misappropriation of funds—Held, not applicable to offences under Income Tax Act for filing false return.

The Appellant an accused in a number of cases pertaining to the Fodder Scam in the Animal Husbandry Department of Bihar, was accused of misappropriation of the funds and of fraudulent withdrawals from the State Exchequer by issuing fake bills for supplies.

He was granted a pardon by the Special Judge, CBI, on condition that he makes a full and complete disclosure. On the basis of the statement made by him, the Deputy Commissioner of Income Tax, Central Circle-I, Patna issued a show-cause-notice as to why prosecution should not be initiated against him, under the Income Tax Act, for having filed false returns of income tax.

The Appellant replied stating that he has been granted a pardon under Sections 277 and 278 of the Income Tax Act. The Commissioner of Income Tax, who opined that the pardon was restricted only to offences under the Indian Penal Code and registered a Complaint Case under Sections 277 and 278 of the Income Tax Act. The Court of Economic Offences, Patna, took cognizance and issued summons.

Appellant's petition for quashing this complaint was dismissed, on the ground that as yet the terms of the pardon have been fulfilled. It was held that till full evidence is given by the Appellant and the trial of all cases is concluded he continues to be an accused and, therefore, cannot claim immunity from prosecution.

Before this Court the Appellant contended that he has been granted pardon under Section 306 of the Criminal Procedure Code, that under Section 306(2) Criminal Procedure Code the pardon is, amongst others,

A in respect of any offence punishable with imprisonment which may extend to seven years or more, that such a pardon would operate not just for offences under the Indian Penal Code but would also cover offences under other statutes, that for an offence under Sections 277 and 278 the sentence may extend to seven years, that by virtue of the pardon no prosecution could have been launched against the Appellant under these Sections, that the High Court was not right in stating that as yet the Appellant was accused, that the pardon would continue to operate unless and until it has been revoked under Section 308 of the Criminal Procedure Code, that the pardon must necessarily mean that no prosecution can be based in respect of the same offence, and that the offences for which the Appellant was being tried were the same in respect of which he was being sought to be prosecuted under Sections 277 and 278 of the Income Tax Act.

D Respondents contended that prosecutions in respect of which pardon was granted were for misappropriation of funds of the Animal Husbandry Department by raising fake bills in respect of supplies never made to the Animal Husbandry Department, and that the prosecution had nothing to do with the filing of false returns and making a false statement in the Income Tax Returns.

E Disposing of the Appeal, the Court

F HELD : 1. The pardon has been granted for the offence of misappropriation of funds. This offence has nothing to do with filing of false returns by the Appellant. The prosecution under Sections 277 and 278 of the Act of 1961 is in respect of filing false return and making of false declaration. The pardon which has been granted would not cover those offences. [499-G, H; 500-A]

G 2. To get benefit of the pardon the Appellant has to make a full and frank disclosure regarding the offences of misappropriation. If he does not make a full and complete disclosure, the pardon may be cancelled. If he makes a full and complete disclosure he faces the prospect of being convicted in the prosecution under Sections 277 and 278 of the Income Tax Act. Article 20(2) of the Constitution enjoins that no person can be compelled to be a witness against himself. To continue with the prosecution H would thus amount to forcing the Appellant to give evidence against

himself or to risk pardon being cancelled as he cannot make a full and complete disclosure for fear of being convicted in the other case. Thus, even though the pardon may not extend to these offences, this is a fit case where the Government should consider not prosecuting the Appellant under these Sections. To insist on so prosecuting may result in valuable evidence being lost in the fodder scam cases. [500-B, C, D]

[The Court directed that the prosecution under Sections 277 and 278 of the Income Tax Act will stand stayed till trial of the cases in which pardon granted is over. If the Appellant makes a full and complete disclosure, then, the prosecution under Sections 277 and 278 should not be allowed to proceed, and the appellant granted liberty to apply for quashing that prosecution at that stage.] [500-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1032 of 2004.

From the Judgment and Order dated 21.3.2002 of the Patna High Court in Crl. M. No. 6300 of 2001.

M.L. Lahoty, Paban K. Sharma and Himanshu Shekhar for the Appellant.

K.P. Pathak and B. Datta, Additional Solicitor Generals, Ms. Sandhya Goswami, B.V. Balaram Das, Ms. Revathy Raghavan and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

S. N. VARIAVA, J. : Leave granted.

This Appeal is against the Judgment of the High Court of Patna dated 21st March, 2002.

Briefly stated the facts are as follows:

The Appellant is an accused in a number of cases pertaining to the Fodder Scam in the Animal Husbandry Department of Bihar. He has, along with others, been accused of misappropriation of the funds of the Animal Husbandry Department and of fraudulent withdrawals from the State Exchequer by issuing fake bills for supplies never made to the Animal Husbandry

A Department. The Appellant has been, on 28th August, 1998, granted a pardon by the Special Judge, CBI, on the condition that he makes a full and complete disclosure.

B On the basis of the statement made by the Appellant, the Deputy
Commissioner of Income Tax, Central Circle-I, Patna, issued a show-cause-notice to the Appellant as to why prosecution should not be initiated against him, under Sections 277 and 278 of the Income Tax Act, for having filed false returns of income tax. The Appellant replied to the show-cause-notices, *inter alia*, stating that he has been granted a pardon under Section 306 of the Criminal Procedure Code and thus the show-cause-notice was not
C maintainable for an offence under Sections 277 and 278 of the Income Tax Act. This contention was not accepted by the Commissioner of Income Tax, who opined that the pardon was restricted only to offences under the Indian Penal Code. Accordingly, a Complaint Case No. 157(C)/2000 has been registered under Sections 277 and 278 of the Income Tax Act. The Court
D of Economic Offences, Patna, has taken cognizance and issued summons.

E The Appellant filed a Petition under Section 482 of the Criminal Procedure Code for quashing this complaint. By the impugned Judgment that Petition has been dismissed, *inter alia*, on the ground that as yet the terms of the pardon have not been fulfilled. It is held that till full evidence is given by the Appellant and the trial of all cases is concluded he continues to be an accused and, therefore, cannot claim immunity from prosecution.

F Mr. Lahoty, on behalf of the Appellant, submitted that the Appellant has been granted pardon under Section 306 of the Criminal Procedure Code. He submitted that under sub-section 2 of Section 306 the pardon is, amongst
G others, in respect of any offence punishable with imprisonment which may extend to seven years or more. He submitted that such a pardon would operate not just for offences under the Indian Penal Code but would also cover offences under other statutes. He submitted that for an offence under Sections 277 and 278 the sentence may extend to seven years. He submitted that by virtue of the pardon no prosecution could have been launched against the Appellant under these Sections.

H Mr. Lahoty relied upon the case of *Bipin Behari Sarkar v. The State of West Bengal* reported in [1959] SCR 1324, wherein it has been held as follows:

“Section 339(1) of the Code provides that “where a pardon has been
 tendered under s. 337 or s. 338, and the Public Prosecutor certifies
 that in his opinion any person who has accepted such tender has,
 either by willfully 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”.
 The proviso to this sub-section prohibits the trial of such person
 jointly with any of the other accused and that such person shall be
 entitled to plead at such trial that he had complied with the condition
 upon which such tender was made. The provisions of this section
 clearly pre-suppose that the pardon which had been tendered to a
 person had been accepted by him and that thereafter that person had
 willfully concealed anything essential or had given false evidence
 and therefore had not complied with the condition on which the
 tender was made to him. Section 337 of the Code, under which a
 pardon is tendered, shows that such tender is made on the condition
 that the person to whom it is tendered makes 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 a principal or an abettor to the commission thereof. Sub-section
 (2) of this section requires that every person who has accepted a
 tender shall be examined as a witness in the court of the Magistrate
 taking cognizance of the offence and in the subsequent trial, if any.
 It is clear, therefore, that a mere tender of pardon does not attract
 the provisions of s. 339. There must be an acceptance of it
 and the person who has accepted the pardon must be examined
 as a witness. It is only thereafter that the provisions of s. 339
 come into play and the person who accepted the pardon may be
 tried for the offence in respect of which the pardon was tendered,
 if the Public Prosecutor certifies that in his opinion he has, either
 willfully concealed anything essential or had given false evidence
 and had not complied with the condition on which the tender was
 made.”

Relying on this case, Mr. Lahoty submitted that the High Court was not
 right in stating that as yet the Appellant was an accused. He submitted that
 the pardon would continue to operate unless and until it has been revoked

A under Section 308 of the Criminal Procedure Code.

B Mr. Lahoty also relied upon the case of *State v. Hiralal G. Kothari and Others* reported in [1960] 2 SCR 355, wherein it has been held that the person to whom pardon is tendered is expected to state the whole truth including details of any other subsidiary offence which might have been committed in the course of the commission of the offence for which pardon is tendered. It has been held that the pardon tendered must include the subsidiary offence, even though if the subsidiary offence alone was committed no pardon could have been tendered for the same. He also relied upon the case of *Harumal Paramanand v. Emperor* reported in A.I.R. (1915) Sind 43, wherein it has been held that if there are more offences than one and if anyone of them is an offence exclusively triable by the Sessions Court, then pardon could be granted even though the other offences alleged or charged are not triable by the Sessions Court. He further relies upon the case of *Shiam Sunder v. Emperor* reported in AIR (1921) Allahabad 234, wherein an approver in a dacoity case also disclosed where arms possessed by the gang were kept. D After he was released from the dacoity case he was prosecuted under the Arms Act for possession of arms. It was held that the illegal possession of arms and ammunition was an offence in connection with the matter of dacoity. It was held that arms were the implements of his trade and crime and that it was impossible to separate the possession of the arms from guilt as a dacoit. E It was held that he could not make a full and true disclosure relating to the offence of dacoity without referring to the arms possessed by the gang. It was held that he could not be prosecuted as the pardon covered even this act. In this case, it has also been pointed out that if, however, he had made disclosure in respect of some other felony which was not connected F with the felony for which he has been prosecuted, even though that would not be covered by the pardon, the Court should recommend to the prosecution not to proceed against him in respect of that other offence.

G Mr. Lahoty also relied upon the case of *State (Govt. of NCT of Delhi) v. Prem Raj* reported in [2003] 7 SCC 121, wherein this Court has discussed the power of pardon and the power to commute sentence. This authority, in our view, is of no relevance to the question in issue.

H Mr. Lahoty submitted that the pardon must necessarily mean that no prosecution can be based in respect of the same offence. He submitted that the offences for which the Appellant was being tried were the same in respect

of which he was now being sought to be prosecuted under Sections 277 and 278 of the Income Tax Act. He submitted that the High Court was thus wrong in not quashing the prosecution.

On the other hand, Mr. Pathak, Additional Solicitor General and Mr. B. Datta, Additional Solicitor General, submitted that the prosecutions in respect of which pardon was granted were for misappropriation of funds of the Animal Husbandry Department by raising fake bills in respect of supplies never made to the Animal Husbandry Department. They submitted that that prosecution had nothing to do with the filing of false returns and making a false statement in the Income Tax Returns. Reliance was placed on the case of *Jasbir Singh v. Vipin Kumar Jaggi* reported in [2001] 8 SCC 289, wherein the question was whether a person to whom immunity has been granted under Section 64(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 could be examined as a witness even though he was an accused in the criminal case. The Trial Judge held that in the absence of any pardon having been granted under Section 307 or Section 321 of the Criminal Procedure Code an accused could not be examined as a witness for the prosecution. This Court held that there was no conflict between the powers exercised under Section 307 of the Criminal Procedure Code and by the Government under Section 64. This Court held that even if there was a conflict, the Narcotic Drugs and Psychotropic Substances Act, 1985 being a special and later enactment, Section 64 would prevail. It was held that evidence could be given by the accused on the basis of the immunity granted under Section 64.

In our view, the High Court was not correct in concluding that until evidence has been given by the Appellant the pardon could not operate. However, the fact remains that under Section 306 Cr.P.C. the pardon is granted in respect of the offence for which he had been charged as an accused. Of course, a pardon need not be only in respect of an offence under the Indian Penal Code. A person may be charged, in respect of the same transaction or act, under the Indian Penal Code and under some other Act, e.g. the Prevention of Corruption Act. The pardon would operate in respects of all offences pertaining to that transaction. However the pardon does not operate in respect of a transaction or act entirely unconnected with the offence in respect of which pardon has been granted. In this case, the pardon has been granted for the offence of misappropriation of funds. This offence has nothing to do with filing of false returns by the Appellant. The prosecution under Sections 277 and 278 is in respect of filing false return and making

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A of false declaration. The pardon which has been granted would not cover those offences.

B However, it is clear that to get benefit of the pardon the Appellant has to make a full and frank disclosure regarding the offences of misappropriation. If he does not make a full and complete disclosure, the pardon may be cancelled. If he makes a full and complete disclosure he faces the prospect of being convicted in the prosecution under Sections 277 and 278 of the Income Tax Act. Article 20(2) of the Constitution of India enjoins that no person can be compelled to be a witness against himself. To continue with the prosecution would thus amount to forcing the Appellant to give evidence against himself or to risk pardon being cancelled as he cannot make a full and complete disclosure for fear of being convicted in the other case. Thus, even though the pardon may not extend to these offences, in our view, this is a fit case where the Government should consider not prosecuting the Appellant under these Sections. To insist on so prosecuting may result in valuable evidence being lost in the fodder scam cases.

D We, therefore, direct that the prosecution under Sections 277 and 278 of the Income Tax Act will stand stayed till trial of the cases in which pardon is granted is over. If the Appellant makes a full and complete disclosure, then, in our view, the prosecution under Sections 277 and 278 should not be allowed to proceed. We, therefore, grant to the Appellant liberty to apply for quashing that prosecution at that stage.

E Accordingly, the Appeal is disposed off with above directions.

V.M.

Appeal disposed of.