

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.3671 OF 2009

Ravinder Kumar

: Applicant
(Orig.Accused No.2)

V/s.

The State of Maharashtra & Anr.

: Respondents
(Resp.No.2-Orig.Accd.No.7)

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Mr.A.P.Mundargi, Senior Advocate, with Mr.Niranjan Mundargi for the applicant.

Ms M.H. Mhatre, Addl. Public Prosecutor for respondent no.1.

Mr.J.C.Satpute with Mr.S.R.Shinde for respondent no.2.

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CORAM : S.A. BOBDE, J.

DATE : AUGUST 31, 2009.

ORAL ORDER:

1. The applicant-accused no.2 has challenged the order dated 16.7.2009 passed by the Special Judge for C.B.I. Cases, Greater Mumbai, tendering pardon to the respondent no.1-original accused no.7 under section 307 of the Cr.P.C.

2. The applicant is an accused along with the respondent no.2 and others in a prosecution initiated by the C.B.I. under sections 120-B read

with sections 420 and 471 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The accused have been charged for fraudulently claiming and obtaining customs duty drawback to the tune of Rs.3.19 crores from Mumbai Customs Authority without submitting any export documents to their declared Bank for collection of foreign remittances or without receiving any foreign remittances against such exports, and having caused a wrongful loss to the tune of Rs.3.19 cores to the Customs Department thereby.

3. The respondent no.2 i.e. accused no.7 was working with the accused no.1 who is the owner of M/s.Yash Freight Forwarders. The accused no.2 who has made the present application is a Preventive Officer of the Customs who is also charged for the same offence. During the course of trial, the accused no.2 made an application stating that he is fully acquainted with the offence committed by the other co-accused persons involved in this case and it is difficult for him to live with his conscience and, therefore, wants to make a full and true disclosure of the facts of this case. He categorically stated that he wishes to turn as an approver in the case and pray for pardon. The learned trial Court considered the relationship of the accused with the other accused and the offence and observed that the said respondent has played a role in the

crime since he was employed by the accused no.1 as an agent at the Port. The learned trial Court observed that the prosecution is unable to prove certain documents and entries made by the respondent no.2 on behalf of the accused no.1 and, therefore, was of view that his evidence would help the prosecution and would be of consequence. The learned trial Court also rejected the submission that the prosecution has deliberately induced the accused to make the application for pardon and allowed the application.

4. Mr.Mundargi, the learned counsel for the applicants, submitted that the Court ought not to have allowed the application of the respondent no.2 principally because the said accused is an accomplice to the crime and his application is motivated in his own interest and cannot be considered as reliable. Mr.Mundargi also contended that the Court allowed the application without knowing the facts which the respondent no.2 intended to disclose and, therefore, the order is vitiated.

5. It is not possible to accept the contention on behalf of the applicant. Section 307 of the Cr.P.C. confers a discretion on the Court to tender a pardon to an accused with a view to obtaining his evidence where the person is directly or indirectly concerned in, or privy to, any such offence. Thus, the Court is empowered with the discretion of obtaining

the evidence of such a person at the trial. Often, such a person who applies for pardon is an accomplice to the crime and his application cannot be rejected on that ground.

6. As regards the other submission, from the very nature of the application, it is not possible for the Court to know the details of the disclosure which the accused intends to make before the Court decides to tender a pardon. The provision does not contemplate that the application should itself contain full disclosure. It contemplates that the Court shall tender a pardon conditional upon a disclosure being made. Obviously, such a pardon would not operate if the disclosure is not made. In the circumstances, the impugned order cannot be said to suffer from any illegality. The Application is, therefore, dismissed.

S.A. BOBDE, J.