

A.L. Mehra Vs. the State

A.L. Mehra Vs. the State

SooperKanoon Citation : sooperkanoon.com/611036

Court : Punjab and Haryana

Decided On : Jun-25-1957

Reported in : AIR1958P& H72; 1958CriLJ413

Judge : Bhandari, C.J. and; Tek Chand, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337, 337(1), 337(2), 337(3), 497, 498 and 561A; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B; Official Secrets Act - Sections 5

Appeal No. : Criminal Revn. No. 207-D of 1956

Appellant : A.L. Mehra

Respondent : The State

Advocate for Def. : Bipin Behari Lal, Special Public Prosecutor

Advocate for Pet/Ap. : J.G. Sethi and; P.N. Mehta, Advs.

Judgement :

Bhandari, C.J.

1. These several petitions arise out of the case which is known popularly as the Budget Leakage-Case.

2. On the 9th March, 1956 a report was received at the Police Station that certain Government Officers had made an unauthorised disclosure of Union Government's budget proposals for the year 1956-57 to some unauthorised persons. The Police registered a case under Sections 165A, 120B of the Penal Code, Section 5 of the Prevention of Corruption Act and Section 5 of the Official Secrets Act. and apprehended a number of persons including F. X. Jacobs, General Foreman of the Rashtrapati Bhawan Printing Press, D P. Chadha, a resident of Delhi, A. L. Mehra, Sales Manager of Mercury Paints and Varnishes, Bombay, N. L. More, a millowner of Bombay and H. G. L. Kothari, a resident of Bombay. On the 23rd March, 1956, Mr. D. D. Sharma, Additional District Magistrate, Delhi, tendered a pardon to Mehra under Section 337 of the Code of Criminal Procedure 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 person concerned. With the exception of the approver who was granted a pardon all the other prisoners were released on bail.

3. The prisoners appeared before the Special Judge appointed under the Prevention of Corruption Act on a number of hearings but were informed on each occasion that the Police had not completed the investigation and that no proceedings could be taken. On the 23rd June, 1956 the Public Prosecutor informed the Court that the investigation of the case was over and that he would file a complaint in the Court of the District Magistrate on or before the 7th July, 1956. In view of this statement the learned Special judge adjourned the matter before him sine die and ordered the prisoners to appear before the Court by which they may be thereafter summoned.

4. On the 7th July, Mr. M. L. Nanda, Senior Superintendent of Police, Delhi, filed a complaint in the Court of the District Magistrate, Delhi. This was not a complaint under Sections 165A and 120B of the Penal Code or Section 5 of the Prevention of Corruption Act in respect of which pardon was granted to Mehra but a complaint under Section 13(3) of the Official Secrets Act. He requested the District Magistrate to try the four prisoners mentioned above under Sections 5 of the Official Secrets Act and 120B of the Penal Code. The District Magistrate transferred the case to the Court of Mr. Shafiq Ahmad, Additional District

Magistrate Delhi.

5. The prisoners submitted a number of petitions when they appeared before the Additional District Magistrate on the 23rd July, 1956 Mehara stated that he was granted a pardon only in respect of the offences under Sections 165A and 120B of the Penal Code and Section 5 of the Prevention of Corruption Act, that he could not be regarded as an approver in the case under Section 5 of the Official Secrets Act and that he was entitled to be released on bail. More and Kothari objected to the jurisdiction of the Courts in Delhi to enquire into the charges brought against them as the overt acts constituting the charges were committed at Bombay and not at Delhi. All the prisoners claimed that they were entitled to copies of documents prepared under Section 173 of the Code of Criminal Procedure, for although technically and formally the Court had taken cognizance of the case on a complaint as required by Section 13(3) of the Official Secrets Act, the case was in substance and effect based on a police report. After a careful consideration of the arguments that were addressed to him the learned Additional District Magistrate held as follows :

(1) A. L. Mehra is an approver not only for the purposes of the case in respect of which pardon was tendered to him but also for the purposes of the case under Section 5 of the Official Secrets Act and cannot as such be set at liberty in view of the provisions of Sub-section (3) of Section 337 of the Code of Criminal Procedure.

(2) The proceedings in his Court are inquiry proceedings and not trial proceedings.

(3) The Courts of Delhi have prima facie jurisdiction to enquire into or to try the offences alleged to have been committed by More and Kothari.

(4) The prisoners are not entitled to copies of the documents referred to in Section 173 of the Code of Criminal Procedure.

6. The learned Sessions Judge was of the opinion that the findings of the learned Additional District Magistrate on points Nos. 1 and 2 should have been recorded in favour of the prisoners, that 111 new of the provisions of Section 182 of the Code

of Criminal Procedure and Section 109 of the Penal Code the Courts of Delhi have jurisdiction to deal with the cases of More and Kothari and that the stand taken up by the prisoners in regard to supply of copies is purely technical as the police had willingly agreed to supply the copies free of charge without admitting their liability to do so. He accordingly recommended that the decision of the learned Additional District Magistrate on the first two points be set aside and that the Magistrate be directed to proceed in accordance with law.

7. Mr. J. G. Sethi, who appears for Mehra, contends that it is a strange irony of fate that his client who was tendered a pardon on the 23rd March, 1956 and is no longer an accused person should continue to languish in prison while his accomplices who are actually standing their trial for the crimes committed by them were released on bail several months ago. If a murderer can be released on bail, it is argued, there is no reason why a person who had been granted a pardon should not be accorded a similar facility. This argument appears to me to be devoid of force, for the provisions of law cannot be extended by analogy. The provision of law with which we are concerned is embodied in Sub-section (3) of Section 337. It declares that an approver, unless he is already on bail, shall be detained in custody until the termination of the trial.

The object of requiring an approver to remain in custody until the termination of the trial is not to punish the approver for having agreed to give evidence for the State, but to protect him from the wrath of the confederates he has chosen to expose, to prevent him from the temptation of saving his erstwhile friends and companions and to secure his person to await the judgment of the law. The temptation on the part of an approver to flee from justice as a result of threat or coercion is supposed to outweigh all inducements to remain growing out of pecuniary obligation, no matter to what amount.

8. The decision of the several questions which have arisen in this case will depend upon the construction which is placed on Section 337 of the Code of Criminal Procedure. The relevant portions of this section are in the following terms :

'337 (1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to seven

years or any offence under any of the following sections of the Indian Penal Code, namely Ss. 161, 165, 165A 216A, 369, 401, 435 and 477A. the District Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, 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 thereof :

Provided that

(1A) ****

(2) Every person accepting a tender under this section shall be examined as a witness in that Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any. (2A) ***** (2B) *****

(3) Such person, unless he is already on bail, shall be detained in custody until the termination of the trial.'

9. The first point for decision in the present case is whether Sub-section (3) reproduced above imposes a statutory obligation on the Court to detain the approver in the present case in custody until the termination of the trial in the case under Section 5 of the Official Secrets Act. The answer to this question will turn upon the answer to two subsidiary questions, namely :

(1) Whether Mehra is an approver for the purposes of the case under Section 5 of the Official Secrets Act, and

(2) Whether 'the trial' referred to in Sub-section (3) is the trial of the cases in respect of which pardon has been granted or the trial of the case under Section 5 of the Official Secrets Act.

10. According to Section 337 pardon can be granted only in respect of three classes of offences, namely :

(1) offences triable exclusively by the High Court or Court of Session,

(2) an offence punishable with imprisonment which may extend to seven years, or

(3) any offence under Sections 161, 165, 165A, 216A, 369, 401, 435 and 477A of the Penal Code. Mehra was granted a pardon (a) in respect of an offence under Section 120B as the offence which is the subject of the conspiracy is triable exclusively by the Court of Session; (b) in respect of an offence under Section 5 (2) of the Prevention of Corruption Act which is punishable with imprisonment which may extend to seven years, and (c) in respect of an offence under Section 165A of the Penal Code which is specifically mentioned in the body of Sub-section (1). No pardon could, however, be granted in respect of an offence under Section 5 of the Official Secrets Act as this offence is punishable only with imprisonment which may extend to two years, or in respect of an offence under Section 120B of the Penal Code as this offence is not triable exclusively by the High Court or Court of Session. Neither of these two offences falls within the ambit of any of the three categories set out in Sub-section (1) of Section 337.

11. Now the State did not prosecute the prisoner for any of the offences in respect of which pardon could be lawfully granted to the approver. It proceeded instead to prosecute them under Section 5 of the Official Secrets Act and Section 120B of the Penal Code and to examine Mehra as an approver in regard to these offences. This procedure does not appear to be authorised by law, for Sub-section (2) of Section 337 provides clearly that every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

The expression 'the offence' must obviously refer to the offence in respect of which pardon has been granted under the provisions of Sub-section

(1). As the offences in respect of which the prisoners are being prosecuted are not offences in respect of which pardon has been given under Sub-section (1) no duty is imposed upon the State to examine Mehra, or upon Mehra to give evidence, in his capacity as an approver. He can give evidence only in his capacity as a witness.

It is true that it is the duty of an approver to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and that a person who fails to fulfil the condition on which tender was made to him may be tried not only for the particular offence in respect of which pardon was tendered but also for any other offence which he appears to have committed in connection with the same matter, *Harumal Paramanand v. Emperor*, AIR 1915 Sind 43 (A), but these facts would not lead necessarily to the conclusion that he is an approver in regard to offences in respect of which pardon has not been granted to him. I am clearly of the opinion that Mehra is an approver only for the purposes of the case in respect of which pardon was granted and that he can be detained in custody till the termination of the trial of the said case. He is not an approver for the purposes of the case under Section 5 of the Official Secrets Act and he cannot be kept in confinement till the termination of the trial of the said case.

12. Mr. Sethi has placed three submissions before us in support of the contention that notwithstanding the provisions of Sub-section (3) of Section 337 it is within the power of the Court to admit his client to bail. It is contended in the first place that as soon as an accused person is tendered a pardon under the provisions of Section 337 of the Code of Criminal Procedure he loses the status of an accused person and acquires that of a witness, *A.J. Peiris v. State of Madras*, AIR 1954 SC 616 (B); In the matter of *Khairati Ram*, ILR 12 Lah 635 at p. 639 : (AIR 1931 Lah 476 at p. 478) (C), and is entitled as such to be released from custody.

This contention cannot bear a moment's scrutiny, for, as pointed out by an American jurist, the grant of pardon carries an imputation of guilt and an acceptance thereof a confession of it, A pardon has been defined as an act of grace which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is in substance and effect a contract between the State on the one hand and the person whom it is granted on the other. As the greater includes the less, a general power to grant pardons carries with it the right to impose conditions limiting the operation of such pardon.

It follows as a consequence that it is open to the pardoning power to annex to a pardon any condition, precedent or subsequent, and of any nature so long as it is

not illegal, immoral or impossible of performance, When a pardon is granted on a condition precedent it does not become operative until and unless the prisoner performs the condition in question. If the condition is not performed, the prisoner stands precisely as though no pardon had been granted : *Pyare v. The State*, AIR 1955 NUC (MB) 5650 (D) ; *Kundan Lal v. Emperor*, ILR 12 Lah 604 at P. 613: (AIR 1931 Lah 353 at p. 356) (E). If the condition is satisfied the pardon and its connected promises take full effect, in the leading case of *Ex Parte Garland* (1871) 18 Law Ed 366 (F), the Supreme Court of United States explained with admirable clarity the effect of a pardon thus :

'A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity. There is only this limitation to its operation; it does not restore offices forfeited or property or interests vested in others, in consequence of the conviction and judgment.'

13. Section 337 empowers the appropriate authority to tender a pardon to a prisoner on condition of his making a full and true disclosure of the circumstances within his knowledge and the prisoner in the present, case was granted a pardon on the said condition. He has not complied with this condition, for the trial of the case in which he has agreed to give evidence has not commenced so far; and it seems to me therefore that in view of the provisions of Sub-section (3) of Section 337, he must continue to languish in prison until the termination of the case, irrespective of the fact whether the legal status acquired by him is that of a witness or of an accused person.

14. Now what are the legal consequences which flow from the provisions of Sections 497 and 498 of the Code of Criminal Procedure which empower the Courts to release an accused person on bail even if he is alleged to have taken

the life of another? Do the provisions of these two sections override the provisions of Sub-section (3) of Section 337 and is it within the competence of the Court to admit an approver to bail when the law declares in unambiguous language that an approver shall not be released until the decision of the case? The answer is clearly in the negative.

At common law all superior Courts in England had power to admit to bail apart from and independently of statute, but the Courts in India are not possessed of the jurisdiction of Courts of the Common law and have only such jurisdiction as is conferred upon them by the Legislature. Section 497 of the Code of Criminal Procedure empowers every judicial Officer having the power to hear and determine criminal cases to take bail in any non-bailable case other than a case punishable with death or imprisonment for life; and Section 498 empower; the High Court and the Court of Session to allow bail even in non-bailable cases.

If these two sections were the only provisions of law with which the Courts are concerned, there can be no manner of doubt that it would have been within the power of Criminal Courts to release an approver on bail; but the legislature has enacted Sub-section (3) of Section 337 which provides that an approver, unless he is already on bail, shall be detained in custody until the termination of the trial. The provisions contained in Sub-section (3) must be read as an exception to the general provisions contained in Sections 497 and 498 of the Code of Criminal Procedure, for it is an old and familiar principle that the special provision overrides the general: *Karuppa Servai v. Kundaru*, AIR 1952 Mad 833 (G); *Mahomed Abdul Majid V. Emperor*, AIR 1927 Sind 173 (H).

15. Nor is there any substance in the contention that, notwithstanding the provisions of Sub-section (3) of Section 337, this Court has inherent power to admit an approver to bail if he is able to produce facts at the hearing sufficient to entitle him to bail. A Court possesses inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, but it is impossible to hold that power to grant bail is reasonably necessary for the administration of justice or that in the absence of this power it is impossible for this Court to perform the functions which have been vested in it by

law. In any case the inherent power, if any, has been expressly taken away by the enactment of Sub-section (3).

16. The question now arises whether the provisions of Sub-section (3) of Section 337 are directory and confer a discretion on the Court to release an approver on bail even during the pendency of a case in which pardon has been granted. The use of the word 'shall' in Sub-section (3) appears to indicate that the Legislature has imposed a statutory and an imperative obligation on the Court to detain an approver in custody until the conclusion of the trial even when the prosecution of the case has been unreasonably delayed to the oppression of the prisoner: *Bhawani Singh v. The State*, (S) AIR 1956 Bhopal 4 (I); AIR 1952 Mad 833 (G), and even when the delay is occasioned by the failure to present the challan or to deal with the case expeditiously.

17. We endeavoured to ascertain from Mr. Lal whether Government propose prosecuting the prisoners for the offences in respect of which pardon has been granted to the approver and if so the probable period during which the challan is likely to be put in Court. He explained that the challan would have been presented long ago had it not been for the fact that the legal advisers of Government were confronted with a difficulty which appeared to them to be insurmountable. A case under Section 5 of the Prevention of Corruption Act can be heard only by a Special Judge, while a case under Section 5 of the Official Secrets Act can be heard only by a Magistrate of the first class specially empowered by the appropriate Government.

Sub-section (2) of section 13 of the Official Secrets Act declares that if any person under trial before a Magistrate for an offence under this section at any time before the charge is framed claims to be tried by a Court of Session, the Magistrate shall commit the accused for trial by that Court notwithstanding that it is not a case exclusively triable by that Court. It was felt that the prisoners were almost certain to take advantage of the choice offered to them by this provision of law and to claim a trial before the Sessions Judge. In view of these difficulties, it is contended, the legal advisers decided that the two cases should be separated and that they should be tried in two different Courts.

Mr. Lal was unable to indicate the date on which this decision is likely to be Implemented or the date on which the first case is likely to to be Put in Court, for he stated that the sanction of Government to the prosecution of the-prisoners under Section 5 (2) of the Prevention of Corruption Act has not been accorded so far. If the prisoners are not to be brought to trial under Section 5 of the Prevention of Corruption Act, or if there is no likelihood of such trial in the near future, or if their prosecution under that section is to be indefinitely postponed, it would in my opinion be a travesty of justice to keep the approver in confinement 'until the termination of the trial.'

It could not have been the intention of the Legislature that a person who has been granted a pardon in respect of a particular offence should be kept in confinement for an indefinite period particularly when Government have not been able to decide during the last 15 months whether the prisoners should be prosecuted at all. While there can be no doubt that the approver was apprehended under an originally valid and regular process duly and properly issued, his continued detention in custody when the prosecution of offenders is not being seriously contemplated appears to me to constitute an abuse of the process of Court.

Indeed the delay which is being occasioned in the decision of this important matter leaves one in reasonable doubt as to whether the detention of the approver is directed to achieve the object of law or merely to harass him for his part in the crime. It seems to me, therefore, that although the process of arrest was proper in its Inception, the complaint of the approver arises in consequence of subsequent proceedings. Subsection (3) of Section 337 implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial.

If there is no such trial and no likelihood of such a trial then cessante ratione lex ipsa cessat. In re Dagdoo Bapu ILR 46 Bom 120 at p. 123: (AIR 1922 Bom 177 (1) at p. 177 (1)) (J). This is an eminently fit case in which the inherent powers of this Court to prevent the abuse of the process of the Court be exercised in favour of a person who has been in confinement for several months and who was recently released on parole at the urgent request of the Solicitor-General. I direct that the approver shall be released on bail on furnishing security to the satisfaction of the

District Magistrate.

18. This disposes of Criminal Revision No. 207-D Of 1956.

19. I shall now deal with the petitions which have been presented by Kothari, Chadha and More. The first point for consideration in these cases is whether the approver can be examined only as a witness or whether he can be examined as an approver. If he is examined as a witness it will be open to the Magistrate to dispose of the case finally and for good for the offence for which the accused have been charged is punishable with an imprisonment for a period which may extend to two years. If, however, the approver is examined in his capacity as an approver it will be necessary for the Court to commit the prisoners for trial to the Sessions Court. The Public Prosecutor suggests that we should exercise the powers conferred upon us by J Section 439 and direct that the case be committed I to the Sessions.

In the alternative It is contended that we should transfer this case to the Court of Session under Section 526 (1) (e) (iv) of the Code of Criminal Procedure. I am extremely doubtful whether it is within the competence of this Court acting under the provisions of Section 439 of the Code of Criminal Procedure to direct the commitment of the cases to the Sessions Court. No formal application under Section 526 (1) (e) (iv) has been made to us and it is impossible for us to accede to the request of the State without affording the prisoners a reasonable opportunity of being heard. If Government are anxious that the case should be transferred to the Court of Session it will be open to them to make a formal application in this behalf.

20. The other petitions which have been presented to this Court can be passively disposed of. Mr. Ghaswala, who appears on behalf of Kothari, reiterates the objection taken by him in the Courts below that the Courts at Delhi have no jurisdiction to enquire into and try the offences which are alleged to have been committed by his client as mentioned in the complaint filed by Mr. Nanda on the 7th July 1956. The Courts below have given good reasons for holding that the Courts in Delhi have jurisdiction to hear and determine the case which has been brought against Kothari, and the view taken by them is completely supported by

the provisions of subsection (4) of section 13 of the Official Secrets Act which declares that for the purposes of the trial of a person for an offence under this Act the offence may be deemed to have been committed either at the place in which the same was actually committed or at any place in the provinces in which the offender may be found.

It is common ground that Kothari came to Delhi in response to the process issued to him and that he was actually found within the precincts of the Courts at Delhi. Mr. Ghaswala does not seriously challenge the correctness of the prosecution that a person may be said to be found in a particular place even though he has been brought there under the process of law.

21. The only other objection which merits consideration is whether the prisoners are entitled to copies of documents as provided in section 173 of the Code of Criminal Procedure. As the prosecution have already agreed to supply copies of documents as an act of grace, no useful purpose is likely to be served by going in to the question as to whether they are entitled to supply of these copies as a matter of right.

22. I am in general agreement with the view taken by the learned Sessions Judge and am of the opinion that A. L. Mehra is not an approver for the purposes of this Case, that the proceedings in the Court of the additional District Magistrate are not inquiry proceedings but trial proceedings, that the Delhi Courts have jurisdiction to hear and determine the case against the prisoners and that it is not necessary to determine whether the prisoners are entitled to supply of copies of documents as a matter of right. Mehra should be released on bail on furnishing security to the satisfaction of the District Magistrate, Delhi. I would order accordingly.

Tek Chand, J.

23. I agree.