

**In Re: Chinnappa and anr.**

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**Court :** Chennai

**Decided On :** Aug-16-1966

**Reported in :** 1967CriLJ1341

**Judge :** Venkataraman, J.

**Appellant :** In Re: Chinnappa and anr.

**Advocate for Pet/Ap. :** Sri. R. Natarajan

**Judgement :**

ORDER

**Venkataraman, J.**

1. In Crime No. 101 of 1966 of Tiruttani police station three persons, Chinnappa, Aruldoss and Krishnan, were charged for the murder of one Gopal. The confessional statement of Krishnan was recorded by the Sub-Magistrate, Kancheepuram, on 9-3-1966. Subsequently, on 17-6-1966, when the matter was still under investigation, pardon was tendered to Krishnan by the Executive First Class Magistrate, Trivellore, acting under the proviso to Section 337 (1) of the CrI. P. C. Krishnan was sought to be examined as P. W. 1 in the preliminary enquiry conducted under Chapter XVIII. CrI P. C. by the judicial Second Class Magistrate, Tiruttani. Objection was taken to this by the other two accused, Chinnappa and Arul-doss, on the ground that the tender of pardon was invalid, because the Executive First Class Magistrate, Trivellore, who tendered the pardon had himself

not examined Krishnan and recorded his statement but had merely relied on his prior confessional statement made on 9-3-1966 before the Sub-Magistrate, Kancheepuram. This objection was overruled by the learned Judicial Second Class Magistrate, Tiruttani. This revision case has been filed against that order.

2. Section 337 (1) of the Code, so far as it is relevant, says that any Magistrate of the First Class may, at any stage of the investigation, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned or privy to the offence, tender 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. Sub-section (1A) states that every Magistrate who tenders a pardon under Sub-section (1) shall record the reasons for so doing.

3. In this case, the learned Executive First Class Magistrate Trivellore, after stating the facts says;

I believe the statement made by him (Krishnan) before the Sub-Magistrate, Kancheepuram, on 9-3-1966 under Section 164 Cr. P.C. contains a true and full disclosure of the whole circumstances within the Knowledge of the (approver?) relative to the offence and the offender. I consider that the evidence of an approver is necessary to prevent the escape of the offenders from punishment and that it is necessary to tender pardon to the accomplice Krishnan for the purpose of obtaining evidence in this case to bring the offender to justice.

4. In my opinion, this order of the learned Magistrate complies with the statutory requirements which I have quoted already. There is nothing in the Code to compel the Magistrate tendering pardon to examine the person proposed to 'be pardoned in full and to record his whole confessional statement again. The Executive First Class Magistrate was satisfied that he (Krishnan) had made a true and full disclosure of the circumstances. He probably put some questions to Krishnan and satisfied himself. Sri R. Natarajan, learned Counsel for the petitioners, has not been able to cite any decision in support of his contention, that the Executive First Class Magistrate should once again have recorded the statement of Krishnan in

full. The two decisions cited by him, namely *A. J. Peiris v. State of Madras* AIR 1964 SC 616 and *State of Andhra Pradesh v. Ganeswara Rao* : [1964]3SCR297 do not touch this point.

5. The other decision cited by him *Kashinath Krishna v. State of Mysore* , lays down the criterion that the Magistrate tendering pardon should not lightly grant the pardon in a case where the remaining evidence is itself sufficient to sustain the conviction against the other accused. I may observe that normally this Court will not interfere with the exercise of the power of tendering pardon. However, I have ascertained from Shri S. R. Srinivasan, appearing for the learned Public Prosecutor, what the remaining evidence against the accused Chinnappa and Aruldoss is. So far as Chinnappa is concerned, there is no doubt his confessional statement and so far as Aruldoss is concerned, there is no such confessional statement. It is undesirable to pronounce even a tentative opinion on the adequacy or otherwise of the remaining evidence. It is sufficient to say that I am not satisfied that this is a case where I should interfere with the tender of pardon. The petition is accordingly dismissed.

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