

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE,
(SPE/CBI)-III, ERNAKULAM**

Present :-

SRI.SHIBU THOMAS, SPECIAL JUDGE.

Monday the 8th day of January, 2024/ 18th Pousha, 1945.

Crl. M.P. No. 1127/2023

in

SC PMLA 04/2023

Petitioner/Complainant :

1. Directorate of Enforcement,
Represented by S.G. Kavitar,
Assistant Director, Kochi Zonal
Office, Kanoos Castle, A.K. Seshadri
Road, (Mullassery Canal Road West,
Cochin -682011.

Represented by : *Adv.M.J. Santhosh*
Spl. Public Prosecutor,
Directorate of Enforcement

Respondents/Accused Nos. 33 & 34:

1. Shri. Sunil Kumar.T.R,
aged 60 years, S/o.Ramakrishnan,
Thaivalappil House,
Thaliyokkonam Desom,
Madayikkonam.P.O, Irinjalakuda,
Thrissur -680712.
2. Shri. Biju.M.K, aged 48 years,
S/o.M.C.Kareem,
Muthrathilparambil House,

Mapranam, Kattungachira,
Irinjalakuda North.P.O, Thrissur
– 680125.

A33-Represented by: Adv. Mithun.P

A34-Represented by: Adv. Athul.P and Justin.K.K

This petition coming on for hearing on 8th day of January, 2024 in the presence of Counsels on both sides having stood over for consideration on the same day the Court passed the following:-

ORDER

Petition filed by the complainant through Special Prosecutor u/s.306 Cr.P.C seeking tender of pardon to accused No. 33, Sunilkumar T.R and accused No. 34, Biju.M.K in the above crime.

2. The prosecution case is that petitioner, along with other accused in the above case, committed offences defined u/s 3 and punishable u/s 4 of PMLA. The predicate offences as stated in the FIR No.650/2021 registered on 14.07.2021 by Irinjalakkuda Police Station against the petitioners and others u/s 406, 420, 409, 465 r/w 34 of IPC. Since the offences u/s 420 of IPC in the predicate offence is a scheduled offence under PML Act 2002 and ECIR has been recorded on 02.08.2021 with ECIR No.ECIR/KCZO/45/2021. The said crime registered by Irinjalakkuda Police Station has been subsequently transferred to Crime Branch dated

21.07.2021 and the Crime Branch re-registered the case as crime No.165/ CB/TCR/R/ 2021 by SPCB, Thrissur.

3. The crux of the prosecution case is that, petitioner, in collusion with high profile persons including politicians, conspired to misappropriate the funds of the Karuvannur Service Co-operative Bank and to defraud the depositors of their hard earned money, they created fictitious borrowers, manipulated the officials, violated the bye-laws of Co-operative Bank, contravened the provisions and rules under the Co-operative Societies Act and disregarded the circulars of Registrar of Societies, to obtain illegal loans and to acquire property involved in money laundering and their act constitute the offence of money laundering u/s. 3 of PML Act.

4. In this case, accused No. 33, Sunilkumar T.R and accused No. 34, Biju.M.K, have come forward voluntarily stating their willingness to depose the criminal acts committed by them as well as other accused persons before Court. Their statements u/s. 50 PMLA was recorded and their involvement in the case is revealed during investigation and they are arrayed as accused No. 33 and 34. During interrogation, they had given statements regarding entire truth and had fully co-operated with the

investigation. They had also expressed their willingness to become approvers in this case.

5. The statements of accused No.33 and 34 recorded u/s. 164 (1) Cr.PC clearly reveal the offences committed by themselves and other accused persons. To prove the entire offence in this case, the evidence of A33 and A34 is necessary and helpful and it will also strengthen the prosecution case against the other accused persons. Hence this petition seeking tender of pardon to A33 and A34 on condition that they will disclose all relevant facts including evidence against them and other accused persons during trial.

6. Heard the learned Special Prosecutor.

7. The point arises for consideration is, whether pardon can be tendered to accused No. 33, Sunilkumar T.R and accused No. 34, Biju.M.K in this case?

8. **The Point:-** The application is filed on the ground that the accused No. 33 and 34 are directly or indirectly involved in or privy to the offence and that their evidence are material and necessary for the conviction of the other co-accused. The petition is supported by an affidavit of the accused No. 33 and 34 wherein they have expressed their

willingness to accept the tender of pardon and to make a full and true disclosure of the whole circumstances relating to the offence and to every other person relating to the commission of the offence. In the above case, after investigation a complaint was filed arraying 55 accused persons including the petitioners as accused No. 33 and 34 and this Court take cognizance against 55 accused persons including the petitioners.

9. On receiving petition, notices were issued to accused No. 33 and 34 for their appearance before this Court. They appeared before this Court. I have enquired with them whether they are willing to accept tender of pardon, on condition of making full and true disclosure of whole circumstances within their knowledge relating to the offences and every person involved in the above crime. Their statements were recorded after explained to them that they are not bound to make such a statement. However, they expressed their willingness to accept the tender of pardon and to make a full and true disclosure of the whole circumstances relating to the offence and to every other person concerned in the commission thereof.

10. I have perused the application and documents annexed thereto and heard the arguments of the learned Special Prosecutor. In this case,

ECIR and complaint are filed before this Court, which is a Special Court for trying Money Laundering Cases under PMLA, 2002. This Court has taken cognizance against 55 accused persons, including the petitioners. As a Special Court, this court has the authority to grant pardon to any accused at any stage of the case, even after taking cognizance. Hence, this Court, can grant pardon to the accused No.33 and 34 u/s.307 of the Cr.P.C. The Hon'ble Apex Court has laid down certain principles and guidelines for the exercise of the power of tendering pardon by the Court in several cases. It is held that the power to tender pardon is discretionary and should be exercised judiciously and not arbitrarily or capriciously and the power should be exercised only when the prosecution supports the application of accused for tender of pardon. It should be exercised only when the accused is willing to accept the pardon and co-operate with the prosecution as a witness. It is further held that the power to tender pardon should be exercised only when the evidence of accused is material and necessary for the conviction of the other accused and when the accused is ready to make a full and true disclosure of the facts and circumstances of the offence and the provisions involved in it.

11. In the present case, I find that all the above conditions are satisfied. The Prosecutor is the applicant in this case. The accused No.33 and 34 have expressed their willingness to accept the pardon and co-operate with the prosecution as a witness. The evidence of accused No. 33 and 34 is material and necessary for the conviction of the other co-accused. Accused No. 33 and 34 are ready to make a full and true disclosure of the facts and circumstances of the offence and the persons involved in it. In relation to my enquiry, and from the statements of the accused person, I feel that they voluntarily came forward to disclose all the matters within their knowledge about the above crime. Nobody has compelled them to be an approver. Therefore, it appears to me that it would be desirable in the interest of justice and for successful conduct of prosecution of other accused, to tender pardon to accused No. 33 and 34 on condition that they would make full and true disclosure of the whole of the circumstances and facts within their knowledge, relating to the offences and persons concerned.

12. In view of the above, I, Shibu Thomas, Special Judge (SPE/CBI) – III, Ernakulam hereby order to tender pardon to accused No.33, Sunilkumar T.R and accused No. 34, Biju.M.K on condition of

making full and true disclosure of the whole circumstances and facts within their knowledge relating to the offences and to every other persons concerned in the commission of the offence. Accused No.33, Sunilkumar T.R and accused No.34, Biju.M.K shall be examined as prosecution witnesses.

13. This order is read over and explained to Accused No.33, Sunilkumar T.R and accused No. 34, Biju.M.K in open Court and copy of the order is given to them on free of cost and they accept this tender of pardon on the above conditions.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 8th day of January, 2024.

Sd/-

Shibu Thomas
Special Judge, (SPE/CBI) – III
Ernakulam

Appendix: Nil.

Id/-

Shibu Thomas
Special Judge (SPE/CBI) – III

Typed by:-

Com by:-

