

Order Below Exk 48 in R.C.C.No. 2/2016
(Rajak Mulani Vs. Rehana Dilawar Shaikh and Ors.)

Perused application filed by accused No.5 for a tender of pardon. Perused say filed by the complainant and accused No. 1 to 4

2. Heard both sides.

3. According to accused No.5 the accused No.1 is her sister, the accused No. 2 to 4 are children of accused No.1, the accused No.6 is a purchaser of disputed property. The accused No. 7 also purchaser and he is the main culprit. The Ld. Advocate for the accused No.5 submitted that, the accused No.5 is the witness of all the incidence. The accused with criminal conspiracy shows that the accused No.5 is a mother of complainant. The accused No. 5 is ready for tender of pardon.

4. On the contrary the complainant has no objection if accused No.5 is ready for tender of pardon.

5. Accused No. 1 to 4 have objection regarding tender of pardon on behalf of accused No.5. The accused No.5 is involved in the crime. The accused No.5 with complainant prepared plan and thereafter she is ready for tender of pardon.

6. First of all I would like to mention that this is a private case. The section 306 to 308 relates to tender of pardon to accomplice and the procedure of tender of pardon. As per section 306 of Cr.P.C. any person suppose to have been directly or indirectly in concern or privy to an offence to which this section applies. The magistrate of the first class inquiring into or trying the offence at any stage of the inquiry of trial may tender a pardon to such a 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 every other person concern, whether as a principle of abater in the commission thereof . This section applies any offence punishable with imprisonment which may extend to 7 years or with more

sever sentence. In the present case process was issued under section 420, 463, 464, 466, 467, 471, 474 and 120A r/w 34 of I.P.C. the punishment is more than 7 years.

7. As per section 308 it is specifically mentioned that the public prosecutor certifies that in his opinion it shows that the tender of pardon applicable to the state case. At the time of granting tender of pardon it is necessary to see whether accused make a valid and full discloser of the whole of the circumstances within his knowledge related to the offence and to give information regarding the person whether as the abater or the principle who is related to the offence.

8. At the time of grant of pardon the trial must be initiated, guilty shall not be proved and accomplice shall agree to be approved there must be an agreement to be an approver, the approver becomes the witness if the pardon is granted by the court. If he violate these terms no pardon shall be granted. In the present matter there is no agreement to be an approver in such a circumstances court can not grant pardon to the accused. In the present matter the accused No.5 is ready for tender of pardon but there is no agreement as of approver therefore, in such a circumstances it would not be proper to grant pardon to accused No.5. Hence considering above reason I I proceed to pass the following order.

ORDER

Application at Exh 48 is rejected.

Khandala.
Date : 18-01-2020.

(A.B.Chavan)
Judicial Magistrate F. C.,
Khandala