SUPREME COURT OF INDIA

C.B.I.

Vs.

Ashok Kumar Aggarwal

Crl.A.No.1837 of 2013

(B.S. Chauhan and S.A. Bobde, JJ.)

22.11.2013

JUDGMENT

B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and order dated 20.8.2007 passed by the High Court of Delhi at New Delhi in Crl. Misc. (Main) No. 3741 of 2001, by which it has set aside the order of the Special Judge dated 7.9.2001 granting pardon to respondent no. 2, Shri Abhishek Verma under Section 306 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') and making him an approver in the case wherein respondent no.1, Ashok Kumar Aggarwal is also an accused; and remanded the same to decide the application afresh.

2. Facts and circumstances giving rise to this appeal are that:

A. A case was registered by the appellant, CBI on 29.1.1999 on the written complaint of one Abhijit Chakraborty, Additional Director, Enforcement Directorate (hereinafter referred to as 'ED'), Ministry of Finance, Government of India. The complainant alleged that the Delhi Zonal office of the Enforcement Directorate conducted a search at the office i.e. three shops at Hotel Maurya Sheraton, New Delhi and residential premise i.e. G-51, Lajpat Nagar III, New Delhi of one Subhash Chandra Barjatya on 1.1.1998. Respondent no.1 was the Deputy Director in charge of Delhi Zone at the relevant time.

B. During the searches, the officers of the ED seized a fax message (debit advice) from one of the shops of said Shri S.C. Barjatya, purportedly sent from Swiss Bank Corporation, Zurich, Switzerland. This fax message reflected a debit of US $ 150,000/- from the account of Royalle Foundation, Zurich, Switzerland in favour of one S.K. Kapoor, holder of account no. 022-9-608080, Hong Kong & Shanghai Banking Corporation (HSBC), as per the advice of the customer i.e. Royalle Foundation.

C. Shri S.C. Barjatya filed a complaint dated 4.1.1998 with Director Enforcement alleging that the fax message from Swiss Bank Corporation was a forged document and had been planted in his premises during the course of the search undertaken on 1.1.1998 in order to frame him. The complainant and his employee had been illegally detained on the said night and were threatened and manhandled.

D. The ED conducted an enquiry and Shri S.C. Barjatya was arrested on 28.1.1998.. In March 1998, Shri Barjatya submitted a letter to ED allegedly procured by one Shri M. Kapoor, Chartered Accountant of Shri S.C. Barjatya from Eric Huggenberger, Attorney of Swiss Bank Corporation, Zurich, Switzerland, which was later on authenticated by the Bank and the Indian Embassy in Berne, confirming that the above said fax message was a forged document and was never issued by the Swiss Bank Corporation, Zurich, Switzerland.

E. In view of the above facts, a prima facie view was taken that a criminal conspiracy had been hatched by the officers of the Delhi Zonal office to create a forged document and to use it as a genuine document to create false evidence and to implicate S.C. Barjatya.

F. Respondent no.2 was arrested in November, 1999 and his statement was recorded under Section 161 Cr.P.C. before the CBI disclosing that he played an active role in forging the said fax on the instructions of respondent no.1. On 2.12.1999, confessional statement of the respondent no.2 was recorded in the court of Metropolitan Magistrate under Section 164 Cr.P.C., wherein he re-iterated his statement as made before the CBI. During this period, respondent no.1 remained absconding and could be apprehended only on 23.12.1999 from a hotel at Saharanpur wherein he was staying under a fictitious name.

G. Respondent no.2 filed an application under Section 306 Cr.P.C. for grant of pardon and becoming an approver on 18.7.2000. The Court entertained the said application and issued notices on 3.8.2000. When the said application came up for hearing on 1.9.2000, the Presiding Officer was on leave. Thus, the matter was adjourned for 21.9.2000.

H. The CBI filed a reply to the said application on 1.9.2000 stating that it had no objection if respondent no.2 was tendered pardon and made an approver. However, as the investigation was not complete, the application could not be decided. Respondent no.1 filed an application on 30.10.2000, praying that he should be given an opportunity to be heard before the respondent no.2 is tendered pardon and

made an approver.

I. When the matter came up on 3.11.2000 before the court, respondent no.2 himself made an application that the investigation was still pending and therefore, hearing of his application seeking pardon be deferred and which was accordingly ordered.

J. The learned Special Judge issued a Letter Rogatory dated 29.1.2001 to the competent judicial authority in Switzerland seeking certain information in respect of the transactions revealed by the said fax purported to be a forged and fabricated document.

K. Respondent no.2 filed an application dated 2.5.2001 for revival of the earlier application seeking pardon and making him an approver, though the reply to the Letter Rogatory was still awaited. However, the CBI filed its reply dated 3.5.2001 and submitted that the reply to the Letter Rogatory would be only corroborative in nature and would not have any effect in deciding the application filed by respondent no.2.

L. Respondent no.1 moved an application on 3.5.2001 claiming that he had a right to oppose the application filed by respondent no.2 seeking pardon. However, the said application was rejected by the learned Special Judge on the same day. The said order dated 3.5.2001 rejecting the application of respondent no.1 claiming the right to oppose the application filed by respondent no.2 was affirmed by the High Court vide order dated 10.7.2001 and by this Court vide order dated 8.10.2001.

M. The reply to the Letter Rogatory dated 18.7.2001 was received by the CBI on 30.7.2001 and the said reply was placed before the court. The CBI requested the court that it should be permitted to retain the same for further investigation which was allowed. The learned Special Judge allowed the application of respondent no.2 seeking pardon and made him an approver vide order dated 7.9.2001.

N. Aggrieved, respondent no.1 filed a writ petition challenging the said order dated 7.9.2001 which was subsequently converted into a petition under Section 482 Cr.P.C. i.e. Crl. Misc. (Main) No. 3741 of 2001. During the pendency thereof, charge sheet was filed on 28.6.2002 and the learned Special Judge took cognizance of the case vide order dated 8.7.2002. The Special Judge proceeded further and framed the charges vide order dated 17.12.2005. In the meanwhile, the prosecution obtained sanction for prosecution of respondent no.1, and the same was challenged by the respondent no.1 by preferring Writ Petition No. 1401/2005.

O. The High Court dealt with the petition under Section 482 Cr.P.C. vide impugned judgment and order dated 20.8.2007 and quashed the order dated 7.9.2001. The matter was remitted to the learned Special Judge to decide the application afresh in light of the charge sheet and the relevant material available with the CBI.

Hence, this appeal.

3. Shri K.V. Vishwanathan, learned ASG appearing for the appellant has submitted that the order passed by the Special Judge on 7.9.2001 was in consonance with the law laid down by this Court. The question of examining the culpability or comparing the same between the accused does not arise. Pardon can also be granted to an accused whose culpability is higher than that of the other accused in the crime. The Special Judge has passed the order strictly observing and following the ratio laid down by this court in this regard in *Lt. Commander Pascal Fernandes v. State of Maharashtra & Ors*[1]., and subsequent judgment in *Jasbir Singh v. Vipin Kumar Jaggi & Ors*[2]. The High Court erred in setting aside the order of the Special Judge and remanding the case to be decided afresh. The High Court failed to appreciate that respondent no.1 had earlier approached the High Court and this court moving various applications but did not succeed. Those orders had attained finality, however, were not taken note of by the High Court. The oral direction given by the Special Judge that the CBI should file the list of cases being investigated by different agencies involving respondent no.2 was not complied with. However, failure on part of the CBI to do so would not materially affect the decision of the Special Judge granting pardon and making respondent no.2 an approver. Granting pardon and making an accused approver is a matter between the court and the applicant accused. The co-accused has no right to be heard before any forum. Therefore, the impugned order is liable to be set aside.

4. Shri Maninder Singh, learned counsel appearing on behalf of respondent no.2, has supported the case of the appellant and adopted the submissions made by the learned ASG and further submitted that order granting pardon by the Special Judge did not require interference. The High Court erred in passing the impugned order.

5. Per contra, Shri Ram Jethmalani, learned senior counsel appearing for respondent no.1 has opposed the appeal contending that the reply to the Letter Rogatory itself revealed that the fax message recovered from the premises of Shri S.C. Barjatya was a genuine document and not a forged and fabricated one. In fact, there had been communication between Swiss Bank Corporation and Shri S.C. Barjatya and those letters had been annexed by the Judicial Authority in Switzerland alongwith the reply to the Letter Rogatory which clearly revealed that there indeed had been communication and the fax message recovered from the premises of Shri S.C. Barjatya was a genuine document. The Revenue Department itself has accepted that the fax was genuine and not a forged document in other proceedings initiated against the respondent no. 1. In view of the provisions of Section 166- A Cr.P.C., documents sent by the Swiss Authority in reply to the Letter Rogatory are in fact evidence collected during the course of investigation. Respondent no.2 is facing multiple criminal cases involving serious charges, including espionage etc. and currently is in jail. The version given by respondent no.2 in his statement under Section 161 Cr.P.C. before the CBI or in his confessional statement under Section 164 Cr.P.C. reveals that his wife Smt. Asmita Verma had indulged in Hawala

transactions with S.C. Barjatya and she had regularly been visiting the latter's commercial premises in relation thereto and respondent no.1 simply wanted to know more about the same. The culpability of respondent no.2 is much more. More so, the order passed by the Special Judge granting pardon suffers from non- application of mind as the letters written by the Bank Corporation of Switzerland were not examined by the court due to their retention by CBI. In fact, if those letters are taken into consideration, the criminal proceedings against respondent no.1 are liable to be quashed. The order granting or rejecting the prayer of pardon is revisable. If the rights of the co-accused are adversely affected, he has a right to be heard. Therefore, the appeal is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. In Lt. Commander Pascal Fernandes (supra), Hidayatullah J. (as His Lordship then was) speaking for a three-Judge Bench dealt with the issue involved herein in great detail and explained the scope of the provisions of Section 337 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'old Code') observing as under:

> "The next question is whether the Special Judge acted with due propriety in his jurisdiction. Here the interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused. What is meant by public policy is illustrated, by a case from Dublin Commission Court (*Reg vs. Robert Dunne*[3]) in which Torrens, J., on behalf of himself and Perrin, J., observed as follows:
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> "From what I can see of this case, this witness Bryan, who has been admitted as an approved by the Crown is much the more criminal of the two on his own showing... I regret that this witness, Bryan, has been admitted as evidence for the Crown and thus escaped being placed upon his trial. It is the duty of Magistrates to be very cautious as to whom they admit to give evidence as approvers, and they should carefully inquire to what extent the approver is mixed up with the transaction, and if he be an accomplice, into the extent of his guilt...." (Emphasis added) This Court further observed:
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> "The power which the Special Judge exercise is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is

> to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon."

8. In *Laxmipat Choraria & Ors. v. State of Maharashtra*[4], , this Court while dealing with a similar issue under the provisions of the old Code, after placing reliance on the judgment in *Charlotte Winsor v. Queen*[5], observed as under:

> "To keep the sword hanging over the head of an accomplice and to examine him as a witness is to encourage perjury. Perhaps it will be possible to enlarge Section 337 to take in certain special laws where accomplice testimony will always be useful and witness will come forward because of the conditional pardon offered to them….." (Emphasis added)

9. In *Saravanabhavan and Govindaswamy v. State of Madras*[6], Justice Hidayatullah, speaking for the majority of the Constitution Bench observed that the antecedents of the approver do not really make him "either a better or worse witness" but his evidence can only be accepted on its own merit and with sufficient corroboration.

10. In *Prithipal Singh & Ors. v. State of Punjab & Anr*[7], this Court considered a case where an accomplice who had not been put on trial was examined as a witness who deposed in the court after taking oath; and after considering earlier judgments particularly *Rameshwar v. State of Rajasthan*[8]. *Sarwan Singh Rattan Singh v. State of Punjab*[9], *Suresh Chandra Bahri v. State of Bihar*[11], *K. Hashim v. State of Tamil Nadu*[12], and *Chandran v. State of Kerala*[13], held that an accomplice is a competent witness and that conviction can rest upon his uncorroborated testimony, yet the court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless the evidence is corroborated in material particulars, which means that there has to be some independent witness tending to incriminate the particular accused in the commission of the crime. The deposition of an accomplice in a crime who had not been made an accused and put to trial can be relied upon; however, his evidence is required to be considered with care and caution. Such a person is a competent witness as he deposes in the court after taking oath and there is no prohibition in law not to act upon his deposition without corroboration.

11. Section 114 Illustration (b) and Section 133 of the Indian Evidence Act, 1872 provide for the same that an accomplice is a competent witness and that his testimony can be relied upon but depending upon the quality of the evidence. While Section 133 reads that "Accomplice is a competent witness and a conviction can be maintained on his evidence", illustration (b) of Section 114 provides for presumption that "an accomplice is unworthy of credit, unless is corroborated in material particulars". Thus, in practice conviction of a

person on such

evidence should not take place except under very rare and exceptional circumstances. Usually substantial corroboration is required. This provision incorporates a rule of caution to which the court must have regard. (Vide: *Sheikh Zakir v. State of Bihar*[14],; *Niranjan Singh v. State of Punjab*[15], and *State of Tamil Nadu v. Suresh & Anr*[16].

In *Bhiva Doulu Patil v. State of Maharashtra*[17], this court considered the judgment in *Bhuboni Sahu v. The King*[18], wherein it has been observed as under:

> "The danger of acting upon accomplice evidence is not merely that the accomplice is on his own admission a man of bad character who took part in the offence and afterwards to save himself betrayed his former associates, and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence, and the story may be true in all its details as to eight of them, but untrue as to the other two, whose names have been introduced because they are enemies of the approver. This tendency to include the innocent with the guilty is peculiarly prevalent in India, as judges have noted on innumerable occasions, and it is very difficult for the court to guard against the danger." This Court placing reliance on the above held as under:
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> "7. The combined effect of Ss. 133 and 114, illustration (b) may be stated as follows: According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

12. In Jasbir Singh (supra) this Court dealt with the issue observing that the court while considering the application for tendering pardon is not to consider the possible weight of the approver's evidence even before it was given. The evidence of an approver does not differ from the evidence of any other witness except that the evidence of the approver is looked upon with more caution.

The suspicion of such evidence may be removed and if the evidence of an approver is found to be trustworthy and acceptable, then the evidence might will be decisive in securing a conviction. Thus, the court while exercising such power should not assess the probative value of the possible evidence of the person seeking permission to become an approver in anticipation and wholly in the abstract.

13. The observations made in Lt. Commander Pascal Fernandes (supra) were sought to be construed by the learned ASG as requiring the court to indubitably agree to the tendering of pardon if the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony. We do not agree since this court was contemplating a situation where the proper course for the Judge was to ask for a statement from the prosecution and as the prosecution emphasized that it indubitably agreed to the tendering of pardon as it will be in the interests of a successful prosecution of the other offenders.

14. It was contended by Mr. K.V. Vishwanathan, learned ASG that the court must invariably agree to tendering a pardon if the proposal to pardon originates from the prosecution or if the prosecution supports it. Since the prosecution, as in this case, supported the plea of respondent no.2 for grant of pardon and for becoming an approver, the High Court committed an error in reversing the order of the Special Judge. If this contention is accepted, it would completely marginalize the role of the court and take away the discretion of a judge in ensuring a fair trial and doing justice in a criminal case. We, therefore, reject the contention.

15. The aforesaid view stands fortified by the judgment of this Court in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashta*[19], wherein it has been held that the order of pardon cannot be passed mechanically and the court has to apply its mind while exercising such powers. In *Bawa Faquir Singh v. Emperor*[20], while dealing with the issue of grant of pardon under the provisions of the old Code, it was held that tendering pardon under the provisions of Section 337 of the old Code is "a judicial act and under the special precautions, rules and consequences which the statute sets out".

16. Section 306 Cr.P.C. is verbatim to Section 337 of the old Code. There is no change at all with respect to the power to grant pardon. More so, exercise of judicial power in relation to grant of pardon is required so as to remove any suspicion of political consideration or to ensure that the pardon is in the interest of justice (Law Commission of India – 48th Report, July 1972). The Constitution Bench in Saravanabhavan and Govindaswamy (supra) considered the issue of veracity/reliability of the evidence of an approver and not who can be made an approver or what is the role of the court while considering the application for grant of pardon.

17. No judgment had been brought to our notice wherein the aforesaid quoted portions of three-Judge Bench judgments in Lt. Commander Pascal Fernandes (supra) and Laxmipat Choraria (supra) had been taken into consideration. The trend has been that without making reference to the afore-mentioned observations in the aforesaid judgments, this Court has observed that the court while exercising the power to grant pardon need not examine the culpability of the accused seeking pardon.

18. The concept of public policy was explained by Lord Mansfield in Holmon v. Johnson,

(1775) 1 Cowp 341 observing that the principle of public policy is: ex dolo malo non oritur action. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise ex turpi causa, or the transgression of a positive law of this country, there the court says he has no right to be assisted. (See also: *Kedar Nath Motani & Ors. v. Prahlad Rai & Ors*[21].

Public policy, though based on morality and its notions are inherently subjective, has apparently been referred to as synonymous with the policy of law or the policy of the statute. However, in modern times it has become quite distinct from that of policy of law as it has rightly been said that a just thing may not be legally right as morality and law are not co-extensive. (Vide: *Murlidhar Agarwal & Anr. v. State of U.P. & Ors*[22].,; and *S. Khushboo v. Kanniammal & Anr*[23].

19. In *P. Rathinam Nagbhusan Patnaik v. Union of India*[24], this Court observed that in judicial sense, public policy does not simply mean sound policy or good policy, but it means the policy of a State established for the public weal, either by law, by courts, or general consent.

20. From the aforesaid discussion on the issue, it is evident that the law laid down by this Court in Lt. Commander Pascal Fernandes (supra) and Laxmipat Choraria (supra) still holds the field. In spite of our repeated query, no case where a different view from the aforesaid two cases has been taken could be brought to our notice.

In view of the above and considering the judgment of the Privy Council in Bawa Faquir Singh (supra), we are of the view that the grant of pardon by a court under Section 306 Cr.P.C. on being asked by the accused and duly supported by the State is a judicial act and while performing the said act, the Magistrate is bound to consider the consequences of grant of pardon taking into consideration the policy of the State and to certain extent compare the culpability of the person seeking pardon qua the other co-accused.

21. For illustration, we take a case where a person hires a professional criminal to kill his entire family i.e. father and brothers and succeeds in the said mission. Later on, if he turns approver, the mercenary who got paid to execute the conspiracy gets hanged while the principal accused who hired the mercenary has not only escaped the liability in criminal trial but would also succeed in inheriting the entire property of his family which otherwise is not permissible in view of the law of succession, etc. Under Section 25 of the Hindu Succession Act, 1956, the murderer stands disqualified for inheritance. The provision reads as under:

> "25. Murderer disqualified – A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the

person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder." The Section deals with the disqualification from inheritance of a person who commits murder or abets commission of murder. The provision of the section provides for a statutory recognition to the Hindu Law whereunder the rule is applied not on the basis of text but upon the principle of justice, equity and good conscience. (Vide: *Kenchava Kom Sanyellappa Hosmani & Anr. v. Girimallappa Channappa Somasagar*[25]. The rule had been made applicable by all courts consistently including this court as is evident from the judgment in *Vallikannu v. R. Singaperumal & Anr*[26].

22. Once the immunity extends to the accused and the accused is made an approver, he stands discharged whereupon he seizes to be an accused and would be examined only as a witness unless the said privilege is revoked on violation of the condition of disclosing complete truth. [See: *State (Delhi Admn.) v. Jagjit Singh*[27], and *Jasbir Singh* (supra)].

Thus, the illustration cited hereinabove quoting Section 25 of the Act 1956 reflects the policy of law and the court must be alive to such situations while passing an order otherwise the consequences may be too abhorrent.

23. In *Laxmipat Choraria* (supra), this Court observed that a person on whose head a sword remains hanging may not depose the whole truth for the reason that if an accused is facing a large number of criminal cases and pardon is granted in one case only, he may not be able to come out of the clutches of the police pressure.

Thus, it is quite possible that he may not be able to speak the whole truth for the reason that he is under a constant pressure of police and in such an eventuality, the pardon may facilitate perjury which may cause a serious prejudice to the co-accused. The Court is only required to be not oblivious of such fact-situation.

24. The other facts which could also be taken note of are the correspondence between the Judicial Authority of Switzerland and the CBI as well as the communication, particularly reply to the Letter Rogatory sent by Indian Authorities, letter dated 13.1.1998 sent by S.C. Barjatya to the Swiss Bank, letter dated 4.2.1998 sent by Manju Barjatya, wife of S.C. Barjatya to Swiss Bank Corporation and contradictory statements in the complaint dated 4.1.1998 by S.C. Barjatya and the FIR dated 29.1.1999. The Court may also take note of the statutory provisions of Section 166A Cr.P.C. etc. and further correspondence between different departments on the issue of sanction for prosecution of the respondent.

25. We do not say that the court does not have jurisdiction to grant pardon nor we say that the court can be directed by the superior court to consider the matter in a particular manner. We simply suggest that these are relevant factors which must be kept in mind by the court while exercising such power. It is further clarified that we do not want to suggest

that the finding recorded by the criminal court is binding on civil court as the issue raised by the learned ASG that the matter of succession under Section 25 of the Act 1956 has to be dealt with by a civil court and the civil court may not be bound by the findings recorded by the criminal court nor we suggest that the court has to examine each and every point meticulously. The court may consider all relevant facts and take a prima facie view on the basis of the same.

26. So far as the entertainment of the case at the behest of the respondent by the High Court is concerned, we may state that he may not have a legal right to raise any grievance, particularly in view of the law laid down by this Court in *Ranadhir Basu v. State of West Bengal*[28]. However, the revisional powers under Section 397 read with Section 401 Cr.P.C. can be exercised by the court suo motu, particularly to examine the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceeding of the inferior court.

These two Sections in Cr.P.C. do not create any right in the favour of the litigant but only empower/enable the High Court to see that justice is done in accordance with recognized principles of criminal jurisprudence. The grounds of interference may be, where the facts admitted or approved, do not disclose any offence or the court may interfere where the facts do not disclose any offence or where the material effects of the party are not considered or where judicial discretion is exercised arbitrarily or perversely. (See also: Everest Apartments Co-operative Housing Society Ltd., Bombay v. State of Maharashtra & Ors., AIR 1966 SC 1449; and *State of U.P. v. Kailash Nath Agarwal & Ors*[29].

27. Indisputably, respondent no.1 has agitated the issue regarding the application filed by respondent no.2 seeking pardon and had lost before the High Court as well as before this Court as the Special Leave Petition stood dismissed. However, these facts had not properly been placed by the appellant before the High Court. While passing the impugned judgment and considering the fact that the material required to be considered had not even been placed before the court while disposing of the application for grant of pardon and the manner in which the application had been dealt with as the respondent no.2 and the present appellant had been playing hide and seek with the court and in spite of the fact that the court had asked the appellant to disclose the criminal cases pending against the respondent no.2, no information was furnished to the court, we are of the considered opinion that in the facts and circumstances of the case, substantial justice should not be defeated on mere technicalities.

28. In view of the above, we do not find any cogent reason to interfere with the impugned judgment and order. The appeal lacks merit and is accordingly dismissed. Interim order passed earlier stands vacated.

Before parting with the case, we would clarify that no observation made by us in this

judgment, on factual issues should be taken as final by the court concerned. The court shall proceed in accordance with law.

Judgment referred

[1]*AIR 1968 SC 0595*

[2]*AIR 2001 SC 2734*

[3]*5 Cox Cr. cases 0507*

[4]*AIR 1968 SC 0938*

[5]*1866 (1) QB 0308*

[6]*AIR 1966 SC 1273*

[7]*2012 (1) SCC 0010*

[8]*AIR 1952 SC 0054*

[10]*AIR 1957 SC 0637*

[11]*AIR 1994 SC 2420*

[12]*AIR 2005 SC 0128*

[13]*AIR 2011 SC 1594*

[14]*AIR 1983 SC 911*

[15]*AIR 1996 SC 3254*

[16]*AIR 1998 SC 1044*

[17]*AIR 1963 SC 0599*

[18]*AIR 1949 PC 0257*

[19]*2009 (6) SCC 0498*

[20]*AIR 1938 PC 0266*

[21]*AIR 1960 SC 0213*

[22]*AIR 1974 SC 1924*

[23]*AIR 2010 SC 3196*

[24]*AIR 1994 SC 1844*

[25]*AIR 1924 PC 0209*

[26]*AIR 2005 SC 2587*

[27]*AIR 1989 SC 0598*

[28]*AIR 2000 SC 0908*

[29]*AIR 1973 SC 2210*