

(2025) 02 CAL CK 0008

Calcutta High Court (Appellate Side)

Case No: C.R.R. 149 Of 2025

Enforcement Directorate

APPELLANT

Vs

Shri Pritimoy Chakraborty

RESPONDENT

Date of Decision: Feb. 6, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 306

Hon'ble Judges: Suvra Ghosh, J

Bench: Single Bench

Advocate: Arijit Chakraborty, Deepak Sharma, Swati Kumar Singh, Riju Ghosh, Vartika Pandey

Final Decision: Allowed

Judgement

Suvra Ghosh, J

1. The petitioner is aggrieved by the order passed by the Learned Judge, Special (CBI) Court No. 1, Calcutta in M.L. Case no. 04 of 2019 on 14th

November, 2024 dismissing the petition filed by the opposite party under section 306 of the Code of Criminal Procedure.

2. Learned counsel for the complainant has submitted that the observation of the learned trial Court in the order impugned that the opposite party is not

an accomplice shall prejudicially affect the prosecution case and chances of conviction of the opposite party shall be bleak in view of such

observation.

3. Learned counsel for the opposite party submits that he intends to be an approver in connection with the proceeding and therefore filed an

application under section 306 of the Code before the learned Trial Court, which was turned down.

4. The opposite party filed an application under section 306 of the Code before the learned trial Court seeking tender of pardon to him on condition to

cooperate with the investigating agency in all respects. In response to the said application, the complainant/ Enforcement Directorate submitted before

the learned trial Court in writing that it would be beneficial for the complainant to have the opposite party as an approver. Despite both the parties

having consented to grant of pardon to the opposite party, the learned trial Court chose to personally examine the opposite party in his chamber and

came to a conclusion that he was not an accomplice and was not directly or indirectly privy to the offence alleged. The learned Court has also held

that the application under section 306 of the Code was filed by the opposite party on being induced by other factors and was not voluntary.

5. It shall be useful to reproduce section 306 of the Code.

“Tender of pardon to accomplice.- (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy

to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the

trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may 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.

(2) This section applies to “

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of

1952);”

6. In the present case, the opposite party has expressed his desire for tender of pardon on condition of his making a full and true disclosure of the

whole of the circumstances within his knowledge in relation to the offence and to every other person concerned.

7. The Hon^{ble} Supreme Court, in the authority in *Jasbir Singh v/s. Vipin Kumar Jaggi* reported in 2001 (3) RCR (Cri) 818, has observed that the

power under section 306 of the Code is exercised by Special Judge 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 Sessions Judge cannot assess the probable value of the possible evidence of the proposed approver in anticipation and wholly in the abstract.

8. Herein, since the complainant has acceded to the request of the opposite party under section 306 of the Code, the application ought to have been allowed by the learned trial Court.

9. In view of the above, the revisional application is allowed.

10. The order impugned dated 14th November, 2024 passed by the Learned Judge, Special (CBI) Court No. 1, Calcutta in M.L. Case no. 04/2014 be set aside/quashed.

11. The application filed by the opposite party under section 306 of the Code of Criminal Procedure is allowed.

12. Pardon be tendered to the opposite party in terms of the condition laid down under section 306 of the Code.

13. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.