

Tender Of Pardon To Accomplice: A Critical Study

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Abstract:

No one can be escaped from their karmfal. A person who knowingly voluntarily and intentionally unites with the principal offender in the commission of a crime as principal, accessory or aider or abettor. It means a person who help another commit a crime is an accomplice and disclose the manner of commission of heinous offence. But yet they himself make liar will be punished according their act.

Key-Words: Crime, Heinous Offence, Intentional, voluntarily.

Introduction:

^lepkj lc “kadj ik,] ohj Hknzq dfj dksi iBk,A tX; fo/kal tkbZ frUg fdUgk] ldy lqjUg fof/korq Qyq fnUgkAA^

(Doha no. 64 of Ramcharitra Manas, Balkand : Tuldidas)

If any person causing an offence must be punished according to law. The basic funda of rule of law is that every person is equal in the eye of law.

No one can be escaped from their karmfal but the provision of the Criminal procedure code 1973 gives some exceptions of this rule. Sec 306 to 308 chapter 24 of this code provided regarding pardon to accomplice. An accomplice means person who intentionally voluntarily participate with another in a crime by encouraging or assisting in the commission of the crime or by failing to prevent it though under duty to do so. It means one who knowingly, voluntarily and intentionally unites with the principal offender in the commission of a crime as a principal, accessory or aider or abettor. In short, a person who help another commit a crime. he or she called accomplice.

Legal provisions:

The Criminal Procedure Code 1973 and the Indian Evidence Act 1872 provides regarding tender of pardon to accomplice **section 306** of the Criminal Procedure Code provides thus – With a view to obtaining the evidence to any person supposed to have been directly or indirectly concerned in or privy to an offence, to with this section applies the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry in to or the trial of the offence and the Magistrate of the First Class inquiring in to 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.

This section applies to -

- (a) Any offence triable exclusively by the Court of Session or by the Court of Special Judge appointed under the Criminal law Amendment Act 1952.
- (b) Any offence punishable with imprisonment which may extend to seven years or with a more severe

sentence.

According to sec. 307 of the Cr.P.C.-

- **Power to direct tender of pardon** - at any time after commitment of a case but before judgement is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

Sec.-114 of the Evidence Act provides - Court may presume existence of certain fact which he thinks likely to have happened

Illustration (b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

Sec. 133 of the Evidence Act also provided regarding weightage of statement made by accomplice. This section provides thus – An accomplice shall be a competent witness against an accused person.

It is tendered only in case of the serious offences like offences triable by the Court of Session and any offence punishable with imprisonment which may extend to seven year or with a more severe sentence. The court has been applying its judicial mind to see whether the accused should be granted a pardon or not.

Pardon as a tool for reduce pendency of cases:

The pendency of cases in the Court of India many more in present time (till Jun - 2023 resource – Danik Bhaskar) pending case are approximate more than four crore and every court trying to continue for reduce the pendency of cases. Court may use as a tool the legal provision the tender of pardon to accomplice for reduce the pendency of cases.

The tender of pardon is made on the condition that an approver shall make a full and true disclosure of the whole of the circumstances with in his knowledge relating to the commission of offence.

Every person accepting a tender of pardon made under sub section (1)-

- a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial if any.
- b) Shall, unless he is already on bail be detained in custody until the termination of the trial. (sub section (4) of Section. 306)

Credibility of statement:

The credibility of statement made by accomplice before the court which is ground conviction of another accused or not. The require of conformation by another either evidence is compulsory declared by the courts and also provided the Evidence Act.

An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. (Section-133 of the Evidence Act.).

Here is clear that statement of accomplice is sufficient evidence for conviction of accused. But the provision of section 114 of the Evidence Act provided differ of this provision.

Illustration (b) of sec 114 of Evidence Act provided thus - "That an accomplice is unworthy of credit, unless he is corroborated in material particular"

Case Study and discuss:

Between this two sections conflict decided by the Supreme Court in the case **K. Hashim Singh Vs. State of Tamilnadu** (2005)

The Supreme Court had that it ultimately depends upon the court's view as to the credibility of the evidence tendered by an accomplice if it is found credible and cogent, the Court can record a conviction on its basis even if uncorroborated.

Sitaram San Vs. State of Jharkhand AIR 2008 S.C. 391 the Supreme Court observed that sec. 133 of the Evidence Act expressly provides that an accomplice is a conviction is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. But this section has to be read along with sec. 114 (b). The latter section empowers the Court to presume the existence of certain facts. Although sec. 114 (b) provides that the court may presume that the evidence of an accomplice

is unworthy of credit unless corroborated may is not must and no decision of Court can make it must. The court is not obliged to hold that the accomplice is unworthy of credit. It ultimately depends upon the court's view as to the credibility of evidence tendered by an accomplice.

In a case of **Mrinal Das Vs. State of Tripura** AIR 2011 S.C. 3753 the Supreme Court held that thought conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver Yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars.

When the approver has forfeited his pardon or failure to perform the condition of pardon court may prosecute an offence giving false evidence. But the court find the approver complied with the condition of the pardon pass judgement or acquittal (Sec. 308 of the Cr.P.C.)

Thus, in order to prosecute the approver who has failed to comply with the condition of tender of pardon, a certificate from the Public Prosecutor is a necessary precondition.

The onus lie on the prosecution to prove that the approver has wilfully concealed anything essential or has given false evidence and therefore rendered himself liable for forfeiture of his pardon.

Conclusion:

In India's criminal justice the tender of pardon to accomplice is a double-edged sword. On the one hand it can be a powerful tool in uncovering criminal activities, whereas on the other hand it also demands careful handling and judicial scrutiny to safeguard the integrity of the legal process. It is very crucial to make a balance between obtaining crucial information and protecting against potential abuse to uphold the principle of justice and to maintain public trust in the legal system.

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