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**(1971) 10 GUJ CK 0005**  
**In the Gujarat High Court**

Hasmukhlal N. Vakilna

APPELLANT

Vs

Bhairavnathsingh and Others

RESPONDENT

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**Date of Decision :** 05-10-1971

**Acts Referred:**

Official Secrets Act, 1923 — Section 5

Penal Code, 1860 (IPC) — Section 109, 116, 120B, 165A, 182

**Citation :** (1972) CriLJ 560 : (1972) GLR 811

**Hon'ble Judges :** T.U. Mehta, J

**Bench :** Single Bench

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## Judgement

T.U. Mehta, J.—The question which is raised by this revision application is whether tender of pardon to an accomplice u/s 337 of the Criminal Procedure Code can be granted for the offences not covered by any of the three categories contemplated by that section, in cases, where during the course of the same transaction, some offences, which are covered by Section 337 of the Criminal Procedure Code, are committed along with some other offences, which are not so covered. The question arises to be considered in the background of the following facts.

2. Opponent No. 1 Bhairav Nath Singh, is the Income Tax officer serving at Surat. He has filed a criminal complaint against the opponents Nos. 2, 3 and 4 as well as the present petitioner in the Court of J. M. F. C. at Surat for the offences under Sections 120B, 182, 193, 196, 201, 380, 466, 471, 109, 116 and 511 of Indian Penal Code on the allegation that all the accused persons including the present petitioner have conspired to misguide the Income Tax authorities and with a view to see that the said authorities arrive at a false decision, they have forged certain documents and attempted to use these documents as genuine. The allegation is that with a view to carry out this object, the accused persons have committed theft of Government record and have destroyed some original documents and substituted some forged documents in their place.

3. It is an admitted fact that the complaint was filed against opponents Nos. 2, 3

and 4 and the present petitioner as well as one Amarchand Maganlal Panwala, who has expired during the pendency of the complaint before the learned Magistrate. This Amarchand Maganlal was the original accused No. 1 while the opponents Nos. 2, 3 and 4 were respectively the original accused Nos. 2, 3 and 5. The petitioner is the original accused No. 4. It is said that original accused No. 1 Amarchand Maganlal, who has since died, was working as the "karta" of a joint family of which the opponents Nos. 2 and 3 are the members. The petitioner, who is the original accused No. 4, is practising as an Income Tax practitioner and was working as the tax adviser of the original accused Nos. 1, 2 and 3. The opponent No. 4 is original accused No. 5, who was, at the relevant time, serving as Talati-cum-Secretary.

4. The complaint of the opponent No. 1 who is Income Tax officer working at Surat is that for the assessment year 1965-66, the original accused No. 1 had filed a return on 11th September, 1965. The return showed that certain agricultural lands and plots, as per the statement appended with the return, were sold, for the amount of Rs. 2,21,000/-. Subsequently on further inquiry made by the Income Tax officer the accused Nos. 1 to 4 taking the help of original accused No. 5, who was working as Talati-cum-Secretary, manipulated the revenue record and forged some documents with a view to show that the lands in question were agricultural lands. It is not necessary for the purpose of disposal of this revision application to go into other details of the complaint filed by the opponent No. 1. But it would be sufficient to state that this complaint was for the offences contemplated and covered by Section 337 of the Criminal Procedure Code as well as for the offences which were not so covered. I have already mentioned above the offences for which this complaint was filed. Out of these offences, the offences contemplated by Sections 182 193 196 and 201 are admittedly not covered by any of the three categories of the offences mentioned in Section 337 (1) of the Criminal Procedure Code.

5. During the pendency of the complaint the learned Assistant Government Pleader, in whose charge the prosecution was, gave an application on 7th January, 1971 to the learned Magistrate, before whom the complaint was pending, making a request that original accused No. S. Nanabhai Lalbhai Modi (Opponent No. 4 here) should be tendered pardon u/s 337 of the Criminal Procedure Code for all the offences for which the complaint was filed. " This application was resisted by rest of the accused persons but the learned Magistrate Passed an order on 15th February, 1971 stating that this was a fit case where the original accused No. 5 should be tendered a pardon for all the offences in question on condition that he made a full and true disclosure of all the facts and circumstances within his knowledge. However, before tendering the pardon, the learned Magistrate made a report to obtain the sanction of the Sessions Judge as contemplated by the proviso attached to Section 337 (1) of the Code.

6. Thereafter in the month of March, 1971 the present petitioner submitted an

application before the learned Magistrate drawing his attention to the decision given by the Supreme Court in *The State Vs. Hiralal Girdharilal Kothari, D.P. Chadda and F.X. Jacobs*, and contended that pardon contemplated by Section 337 of the Criminal Procedure Code cannot be given for the offences which are not covered by any of the three categories of the offences mentioned in that Section. The learned Magistrate appears to have again heard the parties and rejected this contention distinguishing the facts of the Supreme Court decision. Against that order, the present petitioner preferred a revision application No. 20/71 before the Sessions Judge, Surat. This revision application was heard and disposed of by Additional Sessions Judge Surat, by his order dated 7th July 1971. The learned Addl. Sessions Judge, agreed with the view taken by the learned Magistrate and held that the facts of the Supreme Court decision relied upon by the petitioner, were distinguishable. The petitioner has therefore approached this Court by this revision application and has contended that both the lower Courts have erred in holding that the pardon granted u/s 337 of the Criminal Procedure Code with regard to the offences contemplated by Sections 182 193, 196 and 201 I. P. C. is proper.

7. As stated above, the only point which arises to be determined in this revision application is whether in cases where an accused person is sought to be prosecuted for some offences which are covered by Section 337 of the Criminal Procedure Code along with other offences, which are not so covered, it would be proper to grant pardon for all the offences which admittedly arise out of the same transaction.

8. This question is answered in affirmative by several High Courts in India. Following are the important decisions answering the above referred question in the affirmative. The first is the decision given by a Division Bench of the court of Judicial Commissioner, Sind in *Harumal Paramanand v. Emperor* AIR 1915 Sind 43, wherein it is held that all that sections 337 and 338 of the Criminal Procedure Code require is that there should be an offence, that is triable exclusively by the Court of Session under inquiry or trial and the fact that there may be other offences alleged or charged which are not so triable is immaterial. It is further observed in that case that in such cases the offence triable exclusively by the Sessions Court is obviously the main offence charged, being generally punishable with heavier punishment and treated by the Legislature as more serious than others not so triable and the condition that a pardon should be tendered only when there is such an offence under inquiry or trial is clearly due to a desire to limit power of pardon to cases where the seriousness of the main crime alleged may justify such an exercise of the prerogative of the Crown, which is delegated to the Courts under these Sections. The said Division Bench thereafter proceeded to trace the history of Section 337 and has observed that the courts have not to construe Sections 337 and 338 in the narrow manner. Having said so, the learned judges have applied the following observations regarding interpretation found at pages 385 and 398 of Maxwell's Interpretation of Statutes. 3rd Edition:

The paramount object in construing penal as well as to other Statutes, is to ascertain the Legislative intent, and the rule of strict construction is not violated by, permitting the words to have their full meaning or the more extensive of two meanings, when best effectuating the intention.

Another decision on the point is the one given by a Division Bench of Lahore High Court in *Balmokand v. Emperor* AIR 1915 Lah 16. Reference to page 21 of the report shows that in that case a contention was raised that as the committing magistrate, at the time of the offer of pardon, was inquiring into an offence u/s 124-A which was not triable exclusively by Court of Session or the High Court. Section 337 of the Criminal Procedure Code could not have been used at all. Rejecting this contention the High Court held that it was sufficient to point out that the Magistrate was also dealing "admittedly" with an offence u/s 302 and Section 120B of the Indian Penal Code and that the case as a whole was undoubtedly one exclusively for a Sessions or High Court. The third decision dealing with this question is the one given by Nagpur High Court in *Ismail v. Emperor* AIR 1925 Nag 409 wherein Baker, J. C. relying upon the above referred decisions has held that the fact that there may be other offences urged or charged along with the offence specifically covered by section 337 of the Code, is not material and will not invalidate the pardon granted u/s 337 of the Code.

9. Allahabad High Court has also taken the similar view in *Shiam Sunder Vs. Emperor*, .

10. Thus, the above referred four decisions make it clear that according to these different High Courts, it would be open to the Court to grant pardon u/s 33V of the Criminal Procedure Code if along with the offences covered by the three categories referred to in that Section, the prosecution is also for other offences, which are not so covered. However, the difficulty arises in view of the decision given by the Supreme Court in the above referred case of *The State Vs. Hiralal Girdharilal Kothari, D.P. Chadda and F.X. Jacobs*, , wherein most of the above referred decisions have been referred to and distinguished. Since the whole of basis of the contentions raised on behalf of the petitioner by his learned advocate Shri Shethna rests on certain observations made by the Supreme Court in this above referred decision of *The State Vs. Hiralal Girdharilal Kothari, D.P. Chadda and F.X. Jacobs*, it would be necessary to state the facts of that case along with the arguments which were advanced before their Lordships of the Supreme Court and the treatment given to these arguments by the Court. The facts of the Supreme Court decision were that one Jacobs was working as General Foreman of Government Printing Press at Rashtrapati Bhawan and was supervising the printing of budget proposals in his official capacity. The case of the prosecution was that this Jacobs; entered into conspiracy to divulge the budget proposals on receiving some consideration for the same. It was alleged that pursuant to this conspiracy he actually divulged certain information to some other persons. This involved an offence against the Official Secrets Act No. XIX of 1923 as well as

offence under the Prevention of Corruption Act, 1947. These offences were with regard to the budget proposals for the financial year 1956-57, The alleged conspiracy was discovered on 9-3-1956 and thereafter the case was registered u/s 165-A of the Indian Penal Code. Section 5(2) of the Prevention of Corruption Act. Section 5 of Official Secrets Act and Section 120B of Indian Penal Code. Investigation was undertaken on 10-3-56 against all the conspirators. Thereafter the Additional District Magistrate concerned, tendered pardon u/s 337 of the Criminal Procedure Code to one of the accused persons named A. L. Mehra on 23rd March, 1956. The order of the District Magistrate tendering pardon to this accused was with reference to all the four offences mentioned above.

11. Sometime thereafter, owing to some technical difficulty, a complaint u/s 5 of the Official Secrets Act read with section 120B of the I. P. C. was separately filed against all the persons involved. It was stated in that complaint that the proceedings with regard to the charge u/s 5 (2) of the Prevention of Corruption Act were proposed to be taken separately. Accordingly proceedings on the complaint u/s 5 of Official Secrets Act read with section 120B I. P. C. started before the concerned Magistrate. When the matter reached the High Court proceedings u/s 5 (2) of Prevention of Corruption Act and section 165A of I. P. C. had not yet started.

12. In the course of the proceedings before the learned Magistrate for the offence u/s 5 of Official Secrets Act, the prosecution wanted to examine the above referred Mehra as an approver. The other accused persons objected to this but the Magistrate overruled the objection and therefore, the matter was taken in revision to Sessions Court. The Sessions Court took the view that as proceedings before the Magistrate were u/s 5 of the Official Secrets Act read with section 120B, I. P. C. and as these sections were not covered by Section 337 of the Criminal Procedure Code, Mehra could not be treated as an approver. This view was confirmed by the High Court. But the matter was taken to the Supreme Court on a certificate granted by the High Court.

13. Before the Supreme Court it was contended that the view taken by the Magistrate was correct. While dealing with this contention the Supreme Court analysed Section 337 and held that pardon contemplated by that section can be given provided the offences in question fell within any of the three categories mentioned below:

- (i) Any offence triable exclusively by the High Court or Court of Session.
- (ii) Any offence punishable with imprisonment which may extend to seven years and
- (iii) Any offence under any of the following sections of the I. P. C. : 161, 195, 165-A, 216-A, 369, 401, 435 and 477-A.

According to the view taken by the Supreme Court pardon can be tendered with respect . only to an offence which falls in one of these categories. But it was

urged before the Supreme Court that Section 337 (1) contemplated tender of pardon on condition of the person pardoned making a true and full 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. It was contended that this meant that the person to whom pardon was tendered was expected to tell the whole truth including details of any other subsidiary offence which might have been committed in the course of the commission of the offence for which pardon is tendered and therefore the pardon so tendered must be held to include the subsidiary offence even though if the subsidiary offence alone were committed and were not of the nature mentioned in Section 337 (1), no pardon could have been tendered for the same. In order to substantiate this proposition, the learned Counsel, who argued the matter before the Supreme Court, further put reliance upon the provisions contained in Section 339 of the Code, according to which, any person who has accepted pardon, either by wilfully concealing anything essential or by giving false evidence, does not comply with the condition on which the tender was made, may be tried for the offence in respect of which the pardon was tendered or for any other offence of which he appears to have been guilty in connection with the same matter. It was pointed out to the Supreme Court that the specific provision for trial for any other offence which might have been committed in connection with the same matter in Section 339 shows that the pardon would cover the other offence also even though it may not be an offence for which the pardon could have been tendered u/s 337 (1) of the Code.

14. This argument has been rejected by the Supreme Court principally on three grounds; Paragraph 6 of the report contains these three grounds but perusal thereof shows that their Lordships of the Supreme Court have not specifically dealt with that part of the contention of the learned Counsel for the appellant which goes to show that true and full disclosure of other subsidiary facts, which an approver, who is granted pardon, is required to make during the course of his deposition, gives an indication that the pardon should cover all the offences which are subsidiary to the main offence. The Supreme Court has disposed of the matter on the following three principles which in my opinion, constitute the ratio of the decision:

(1) Words of section 339 are of no help in construing section 337 and we must look to the words of Section 337 in deciding whether a pardon could be tendered for a particular offence.

(2) The fact that in application by which the police request the Magistrate concerned for tender of pardon or in the order of the Magistrate tendering pardon, the principal section is mentioned along with other offences for which pardon could be tendered, would not mean that pardon could be tendered for an offence under that section if under the law, as provided in Section 337 (1), no pardon could be tendered, and

(3) As we read section 337 (1) it is practically clear that pardon could only be

tendered under that provision with respect to three categories of offences mentioned above.

It is obvious that these three principles form the ratio of the decision given by the Supreme Court. The Supreme Court applied this ratio to the facts of the case before it and came to the conclusion that the Section 5 of the Official Secrets Act read with section 120B of the I. P. C. did not fall within the three categories specified above, no pardon could have been tendered for the offences contemplated by that section.

15. From the facts of the Supreme Court case, which are stated above, it would appear that these observations were meant to apply to the point of time when the pardon was granted on 23rd March. 1956. It should be noted that on that date, all the four offences, two of which were not covered by the provisions of section 337, were being investigated. Under these circumstances, it was contended by Shri Shethna that when a case involves two types of offences-one covered by Section 337 of the Code, and the other not so covered-the ratio of the Supreme Court decision would apply and no pardon could be tendered with regard to the offences, which are not so covered by Section 337 (1) even though all these offences have been committed during the course of one and the same transaction. Or the face of it, this argument appears to be irresistible. But on closer scrutiny it is found that the argument does not correctly state the ratio of the said judgment of the Supreme Court. The over-riding circumstance which has weighed with the Supreme Court is the fact that the trial for Section 5 of the Official Secrets Act read with section 120B. I. P. C. was separated from the rest of the offences and it was for the purpose of that trial that the question of Pardon came to be considered by the Court. It is for this reason that the court has repeatedly put emphasis on the fact that offences u/s 5 of Official Secrets Act and Section 120B I. P. C. were not covered by any of the three categories of the offences contemplated by Section 337 of the Code. Separation of trial for these offences made a considerable difference because, but for that separation these offences were triable exclusively by a Sessions Court in view of the fact that the whole case would have been committed to the Sessions Court. Effect of separation resulted in a situation wherein commitment of the accused to Sessions to stand his trial for offences u/s 5 of Official Secrets Act and Section 120B, I. P. C. was no more necessary and therefore, the case was taken out of any of the three categories of the cases contemplated by Section 337. Cri. P. C. Therefore, this decision of the Supreme Court would be available to the prosecution only in cases where, for some reasons, the offences in question is to be triable exclusively by a Court of Session.

16. If we scrutinise the facts of the instant case, we find that all the offences, which are mentioned in the complaint, arise out of the same transaction and the trial thereof is not severable. The result. therefore, is that if the committing Magistrate comes to a conclusion that the accused persons should be committed to a Court of Session to stand their trial, it would not be possible for him to order

a separate trial for the offences, which are not exclusively triable by the Court of Session. If this is so, the learned Magistrate will be required to commit the whole case to the Session, with the result that the accused persons will be tried by Sessions Court not only for the offences, which are covered by Section 337 of the Code but also for those offences, which are not so covered. In other words, it would not be open to the committing Magistrate to split up" the trial on the basis of the offences, which are exclusively triable by the Court of Session, and the offences, which are not so. exclusively triable. If this be so. it is apparent that even though the complaint is also with regard to the offences, which are not exclusively triable by the Court of Session, these very offences become exclusively triable by the Court of Session by virtue of the fact that they arise out of the same transaction and are expected to be tried along with offences which are exclusively triable by the Court of Session. It is common knowledge that there are many transactions which result in offences of two types, namely, (1) those which are exclusively triable by the Court of Session and (2) those which are not so exclusively triable. It is not uncommon to find the same transaction giving rise to offences u/s 302 and Section 323 (simple hurt) I. P. C. or Section 302 and Section 380 (theft) or section 392 (robbery). It is also not unusual to find the commission of the offence of dacoity contemplated by Section 395 with the : offence of simple hurt punishable u/s 323 I. P. C. All this combination of offences involves those offences which are exclusively triable by a Court of Session as well as the offences not so exclusively triable by a Court of Session, But if they arise out of the same transaction, it is not permissible to the committing Magistrate to split up the trial and to commit the accused to the Court of Session to stand trial only for those offences which art exclusively triable by a Court of Session. Under the circumstances, in cases such as these, the committing Magistrate would necessarily be obliged to commit the whole case to the Court of Session. If that is so, even the offences, which are not exclusively triable by a Court of Session, would be so triable by virtue of the fact that they arise out of the same transaction and, are joined with other offences, which are exclusively triable by the Court of Session. Thus such offences would be covered by the first of the three categories of offences contemplated by Section 337 (1) of the Code as pointed out by the Supreme Court.

17. Here it should be noted that if in cases wherein an accused person is sought to be tried for offences under Sections 302 and 323 I. P. C., the Magistrate tenders pardon u/s 337 only for the offence u/s 302 and does not do so with regard to the other offence u/s 323 I. P. C. on the ground that it is not the offence covered by any of the three categories pointed out by the Supreme Court, the result would be that the same person would be a witness in one case and an accused person in the other case, even though both the cases are covered by the same set of facts and circumstances. Obviously such a situation could never have been contemplated by the Legislature. It can be said that in order to avoid any such situation, the Magistrate can refuse to tender pardon even with regard to offence contemplated by Section 302 which is covered by

one of the three categories contemplated by Section 337 of the Code. But if such a procedure is adopted, then the whole purpose of enacting Section 337 of the Code would be lost. As observed by the Supreme Court in *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another*, , the very object of the provisions contained in Section 337 (1) of the Code is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that with the aid of the evidence of the persons pardoned, the offence can be brought home to the rest. It is this object which would be frustrated if the court refuses to tender pardon in case of grave offence merely on the ground that the accused person is also sought to be tried for an offence for which pardon could not be granted if that offence stood alone for the trial.

18. The facts of the instant case show that it will not be possible for the committing Magistrate to split up the trial of the accused for offences under Sections 182, 193, 196 and 201 I. P. C. He shall have therefore to commit the accused to Sessions to stand trial for all the offences mentioned in the complaint if it finds that there is a prima facie case. Therefore, the result is that even the offences under Sections 182, 193, 196 and 201 I. P. C. become exclusively triable by Court of Session and fall within the first of the three categories of cases contemplated by Section 337 Cri. P. C. If this is so. the decision given by the Supreme Court in *State v. Hiralal* does not come in the way of granting pardon for all the offences mentioned in the complaint. I, therefore, see no point in this revision which stands dismissed. Rule discharged.