

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

**Crl. Revn. P. 11(AP)2009**

Shri Nguka Taipodia  
S/o Sri Karmo Taipodia  
Permanent resident of Bali village  
P.O. and P.S. : Likabali  
West Siang District, Arunachal Pradesh.

..... *Petitioner*

- *Versus* -

The State of Arunachal Pradesh

..... *Respondent*

Advocates for the petitioner :- Mr. R. Saikia  
Mr. N. Ratan  
Ms. T. Wangmo

Advocates for the respondent :- Mr. R. H. Nabam, P.P., A.P.

P R E S E N T

THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing :- 11.05.2010  
Date of Judgment & order :- 11.05.2010

**JUDGMENT AND ORDER(ORAL)**

Heard Mr. R. Saikia, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This application has been filed under Sections 401 and 482 of the Code of Criminal Procedure, 1973, for setting aside and quashing the order dated 19.03.2009 passed by the learned Additional District & Sessions Judge, Fast Track Court, Basar, whereby the acceptance of pardon tendered by the

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petitioner under Section 307 of the Code of Criminal Procedure, 1973, as an approver, vide order dated 24.01.2005 passed by the learned Addl. Session Judge, FTC, Basar, has been revoked and framed charge against the petitioner, u/s. 376/34 I.P.C.

**3.** From the LCR, it is found that after committal of the case in connection with Likabali P.S. Case No. 03/2003 under Sections 354/376/511 *read with* Section 34 IPC, to the court of learned Additional District & Session Judge, Fast Track Court, Basar, the accused petitioner tendered pardon under Section 307 of the Code of Criminal Procedure, 1973 and he was discharged from the charge levelled against him in the said case by an order dated 24.01.2005 passed by the learned Additional District & Session Judge, Fast Track Court, Basar, in BSR/SESS. Case No. 484/2004 under Sections 376/34 IPC. The case proceeded against the co-accused. The presiding judge who passed the aforesaid order dated 24.01.2005 was transferred and in his place, a new incumbent took over the charge who passed the impugned order dated 19.03.2009 revoking the earlier order dated 24.01.2005 and framed the charge against the accused petitioner.

**4.** I have perused the connected LCRs produced before this court by Mr. R.H. Nabam, learned Public Prosecutor for the State of Arunachal Pradesh. From the records, it is seen that no application was made by the learned Public Prosecutor before the aforesaid learned trial court for revocation of the earlier order dated 24.01.2005. The certification of tender of pardon passed earlier could be revoked only after observing the procedure under Section 308 of the Code of Criminal Procedure, 1973. The aforesaid Section 308 of the Code of Criminal Procedure, 1973, provides, as under :

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"308. Trial of person not complying with conditions of pardon. –

(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by willfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence.

Provided that such person shall not be tried jointly with any of the other accused :

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall –

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal."

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5. The law requires certification from the Public Prosecutor and the court would pass necessary order only after hearing him and the approver whose tender of pardon was accepted earlier. The certificate of the Public Prosecutor to the effect that the conditions of pardon have been violated/broken, is an essential pre-requisite. In the present case, from the records, it is found that the learned Public Prosecutor did not certify to the effect that in his opinion, the accused petitioner has been willfully concealing anything essential or giving false evidence and thereby, did not comply with the condition on which the tender was made.

6. In view of the above, the impugned order dated 19.03.2009 passed by the learned Additional District & Session Judge, Fast Track Court, Basar, in BSR/SESS. No. 484/04 is found to be in contravention of the provision under Section 308 of the Code of Criminal Procedure, 1973 and as such, it is liable to be quashed and set aside. Accordingly, the aforesaid impugned order dated 19.03.2009 is set aside and quashed. Resultantly, the instant petition succeeds. However, there shall be no order as to costs.

7. LCRs be remitted back forthwith to the court below concerned to proceed with the trial of the case in accordance with law.

  
**JUDGE**

*Bikash*