

# Section 306 CrPC: Tender of Pardon to accomplice

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# Section 306 Code Of Criminal Procedure 1973

## **Section 306:**

- 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).
  - (b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence

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- 3. Every Magistrate who tenders a pardon under Sub-Section (1) shall record-
  - (a) his reasons for so doing;
  - (b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.
- 4. 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.

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- 5. Where a person has accepted a tender of pardon made under Sub-Section (1) and has been examined under Sub-Section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case.-
  - (a) commit it for trial-
    - (i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;
    - (ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act 1952 (46 of 1952), if the offence is triable exclusively by that Court.
  - (b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

# Object and Purpose

**In the case Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80, it was held that:**

- “Section 306 of the Code lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the procedure (sic). Since many a times the crime is committed in a manner for which no clue or any trace is available for its detection and, therefore, pardon is granted for apprehension of the other offenders for the recovery of the incriminating objects and the production of the evidence which otherwise is unobtainable. The dominant object is that the offenders of the heinous and grave offences do not go unpunished, the Legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence.”

# Power to grant pardon is available to a Special Judge

**In the case *Bangaru Laxman v. State*, (2012) 1 SCC 500, it was held that:**

- “41. It has already been held by this Court that the Special Judge is fully vested with the powers of remand. The power of granting remand is a very wide power as compared to the power of granting pardon. Since this Court has already held that the Special Court is clothed with the magisterial power of remand, thus in the absence of a contrary provision, this Court cannot hold that power to grant pardon at the stage of investigation can be denied to the Special Court  
42. In view of the discussion made above, this Court is of the opinion that the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of judicial discretion of the Special Judge before whom such a prayer is made, as in the instant case by the prosecution.  
43. Any other conclusion would be detrimental to the administration of justice, inasmuch as the power to grant pardon is contemplated in situations where a serious offence is alleged to have been committed by several persons and with the aid of the evidence of the person, who had been granted pardon, the offence committed may be proved. The basis of exercise of this power is not to judge the extent of culpability of the persons to whom the pardon is tendered. The main purpose is to prevent failure of justice by allowing the offender to escape from a lack of evidence.”

# Testimony of accomplice must be corroborated

- **In the case Chandra Prakash v. State of Rajasthan, (2014) 8 SCC 340, it was held that:**

“43. In *A. Devendran v. State of T.N.* [(1997) 11 SCC 720 : 1998 SCC (Cri) 220] , the Court has registered the view that there cannot be any dispute with regard to the proposition that ordinarily an approver's statement has to be corroborated in material particulars. Certain clinching features of involvement disclosed directly to an accused by an approver must be tested qua each accused from independent credible evidence and on being satisfied, the evidence of an approver can be accepted. The Court further observed that the extent of corroboration that is required before the acceptance of the evidence of the approver would depend upon the facts and circumstances of the case, however, the corroboration required must be in material particulars connecting each of the accused with the offence, or in other words, the evidence of the approver implicating several accused persons in the commission of the offence must not only be corroborated generally but also qua each accused but that does not mean that there should be independent corroboration of every particular circumstance from an independent source. The Court proceeded to state that all that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and the corroboration could be both by direct or circumstantial evidence. Be it noted, the said principle was stated on the basis of pronouncements in *Ramanlal Mohanlal Pandya v. State of Bombay* [AIR 1960 SC 961 : 1960 Cri LJ 1380] , *Tribhuvan Nath v. State of Maharashtra* [(1972) 3 SCC 511 : 1972 SCC (Cri) 604] , *Sarwan Singh Rattan Singh v. State of Punjab* [AIR 1957 SC 637 : 1957 Cri LJ 1014] , *Ram Narain v. State of Rajasthan* [(1973) 3 SCC 805 : 1973 SCC (Cri) 545] and *Balwant Kaur v. UT of Chandigarh* [(1988) 1 SCC 1 : 1988 SCC (Cri) 1] ..”

# Accomplice must disclose all facts within his knowledge

- **In the case *Mrinal Das v. State of Tripura*, (2011) 9 SCC 479, it was held that:**
- 34. An accomplice who has been granted pardon under Section 306 or Section 307 of the Code gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 of the Code to that effect, the protection given to him can be lifted. Section 306(4) makes it clear that the person accepting a tender of pardon should be examined as a witness first in the Court of the Magistrate and subsequently in the trial court. Once an accused is granted pardon under Section 306, he ceases to be an accused and becomes witness for the prosecution.



**Thank You**