STATE OF HARYANA

v.

SURJIT SINGH

(Criminal Appeal No. 195 of 2002)

NOVEMBER 28, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

ADMINISTRATION OF CRIMINAL JUSTICE:

High Court by non-speaking order refusing leave to file appeal u/s 378(3) CrPC – HELD: The manner in which appeal against acquittal has been dealt with by the High Court cannot be approved – Requirement of indicating reasons in such cases has been judicially recognized as imperative – Judicial discipline to abide by law declared by Supreme Court cannot be forsaken under any pretext by any authority or court – High Court directed to grant leave – Code of Criminal Procedure, 1973 – s.378(3) – Judgment/order – Need to indicate reasons – Judicial discipline – Constitution of India, 1950 – Article 141.

The respondent was prosecuted for committing offences punishable u/ss 7 and 13(2) of the Prevention of Corruption Act, 1988. The trial court convicted the accused u/s 7, but acquitted him as regards the charge u/s 13(2). The State moved the High Court in terms of s.378(3) CrPC. Since the High Court summarily dismissed the application observing, "leave to appeal declined", the State filed the appeal.

Allowing the appeal, the Court

HELD: 1.1. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal,

A **and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. Reasons introduce clarity in an order. The High Court ought to have set forth its reasons, howsoever**
B **brief, in its order indicative of application of its mind, all the more when its order is amenable to further avenue of challenge. The requirement of indicating reasons in such cases has been judicially recognized as imperative. Judicial discipline to abide by declaration of law by this**
C **Court, cannot be forsaken, under any pretext by any authority or Court. [Para 5] [761-A-C, E-F]**

State of U.P. v. Battan and Ors. **2001 (10) SCC 607;** *State of Maharashtra v. Vithal Rao Pritirao Chawan* **AIR 1982 SC 1215 and** *Jawahar Lal Singh v. Naresh Singh and Ors.* **1987**
D **(2) SCC 222, relied on.**

Breen v. Amalgamated Engineering Union, **1971 (1) All E.R. 1148 and** *Alexander Machinery (Dudley) Ltd. v. Crabtree* **1974 LCR 120, referred to.**

E

1.2. The High Court ought to have in the circumstances granted leave and thereafter as a first court of appeal, analysed the entire evidence on record independently and returned its findings objectively as regards guilt or otherwise of the accused and applicability
F **of a particular provision. It has failed to do so. The questions involved were not trivial. The absence of reasons has rendered the High Court order not sustainable. The High Court directed to grant leave, as grounds raised are not without substance. [Para 5 and**
G **8] [761-A; 762-E]**

Case Law Reference:

2001 (10) SCC 607	**relied on**	**para 5**

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AIR 1982 SC 1215	**relied on**	**para 5**	
1987 (2) SCC 222	**relied on**	**para 5**	
1971 (1) All E.R	**referred to**	**para 6**	
1974 LCR 120	**referred to**	**para 6**	B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 195 of 2002.

From the final Order dated 9.5.2001 of the High Court of Punjab and Haryana at Chandigarh in Crl. Misc. No. 116-MA of 2001. C

T.V. George for the Appellant.

Ratnakar Dash, Sahid Ali Rao and Javed Mahmud Rao for the Respondent. D

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court summarily dismissing the application under Section 378(3) of the Code of Criminal Procedure, 1973 (in short 'Code'). Respondent faced trial for alleged commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act'). The allegation was that the respondent-accused demanded Rs. 1500/- by way of illegal gratification for recording mutation on the basis of purchase made by the complainant by a registered sale-deed. On conclusions of Trial Court in Sessions Case No. 49 of 1996, learned Special Judge, Jagadhri, held that the prosecution has succeeded in bringing home the guilt of the accused for offence punishable under Section 7 of the Act, but has failed to prove offence punishable under Section 13 of the Act. Appellant moved the High Court in terms of Section 378(3) of the Code questioning correctness of the conclusions in the E F G H

A judgment of the Trial Court that the prosecution failed to prove offence punishable under Section 13 of the Act. As noted above, the High Court summarily dismissed the application by observing as follows:

B "Leave to appeal declined"

2. Though various points were urged in support of the appeal, primarily it was contended that the manner of disposal of the application under Section 378(3) of the Code is indefensible.

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3. Learned counsel for the respondent, on the other hand, supported the impugned order.

4. Section 378 (3) of the Cr.P.C. deals with the power of the High Court to grant leave in case of acquittal. Section 378 D (1) and (3) of the Cr.P.C. as it stood then, read as follows:

"378(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-section (3) and (5), the State Government may, in any case, direct the Public E Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

F xxx xxx xxx

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court".

5. The Trial Court was required to carefully appraise the G entire evidence and then come to a conclusion regarding applicability of a particular provision. If the Trial Court was at lapse in this regard the High Court was obliged to undertake such an exercise by entertaining the appeal. The High Court ought to have in such circumstances granted leave and H thereafter as a first court of appeal, analysed entire evidence

on the record independently and returned its findings objectively as regards guilt or otherwise of the accused and applicability of a particular provision. It has failed to do so. The questions involved were not trivial. The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal, and seems to have been completely oblivious to the fact that by such refusal, a close scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On the plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in *State of U.P. v. Battan and Ors* (2001 (10) SCC 607). About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan* (AIR 1982 SC 1215) the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was re-iterated in *Jawahar Lal Singh v. Naresh Singh and Ors.* (1987 (2) SCC 222). Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the 'Constitution').

6. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived

A at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging B the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary C requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

7. These aspects were highlighted in *State of Himachal* D *Pradesh v. Sardara Singh (Crl.A. @ SLP(Crl.)* 4503 of 2006).

8. In view of the principles set out above, it would be appropriate to direct the High Court to grant leave as grounds raised are not without substance. We, however, make it clear E that we have not expressed any opinion on the merits of the case.

9. Appeal is allowed.

R.P.