

STATE OF HIMACHAL PRADESH

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v.

MANOJ KUMAR @ CHHOTU
(Criminal Appeal No. 1549 of 2008)

SEPTEMBER 29, 2008

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

Criminal Procedure Code, 1973; s. 378(3):

Rape – Acquittal of accused by trial Court giving benefit of doubt – Application to grant leave to file appeal dismissed by High Court – Correctness of –Held: Without appraising entire evidence carefully, trial Court arrived at its conclusion and failed to perform its duties as enjoined on it by law – In such circumstances, High Court ought to have granted the leave and re-appreciated the entire evidence to determine objectively guilt/otherwise of accused – High Court has failed to do so, moreover, it has not given any reasons while refusing to grant leave – Hence, the impugned judgment is unsustainable and set aside – Leave to file appeal is granted – Penal Code, 1860 – S.376 r/w Ss. 511 & 506.

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Judgment/Order – Reasons – Necessities of.

Respondent, accused of rape faced trial for committing the offences punishable u/s.376, 506 and 511 of the Penal Code. Trial Court acquitted the accused giving him benefit of doubt. State filed an application to grant leave to file appeal in terms of s.378 (3) of the Criminal Procedure Code, 1973. High Court dismissed the application without assigning any reasons. Hence the present appeal.

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Partly allowing the appeal, the Court

HELD: 1. The trial Court was required to carefully appraise the entire evidence and then come to a conclusion.

- A 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 trial Court on the facts of the case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted
- B leave and thereafter as a first court of appeal, re-appreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. It has failed to do so. The questions involved were not trivial. The High Court has not given
- C 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. (Para – 5) [1123,D-F]
- D 2.1 Reasons introduce clarity in an order. On 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 amendable to further avenue of challenge. The
- E absence of reasons has rendered the High Court order not sustainable. (Para – 5) [1123,G-H]

State of U.P. v. Battan and Ors. (2001) 10 SC 607; State of Maharashtra v. Vithal Rao Pritirao Chawan AIR (1982) SC 1215 and Jawahar Lal Singh v. Naresh Singh and Ors. (1987) 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.

- G 2.2 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
- H of judicial review in adjudging 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 requirements of natural justice is spelling out reasons for the order made. (Para – 6) [1124,E-G] A

3. Leave is granted to the State to file the appeal. The High Court shall entertain the appeal and after formal notice to the respondent hear the appeal and dispose it of in accordance with law, uninfluenced by any observation made in the present appeal. (Para – 7) [1124,H; 1125,A] B

Case Law Reference

(2001) 10 SC 607	Relied on	Para - 5
AIR (1982) SC 1215	Relied on	Para - 5
(1987) 2 SCC 222	Relied on	Para - 5
(1971) 1 All E.R. 1148	Referred to	Para - 6
(1974) LCR 120	Referred to	Para - 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1549 of 2008 E

From the final Judgment dated 20/11/2006 of the High Court of Himachal Pradesh at Shimla in Cr. M.P. (M) No. 706 of 1006 F

Naresh K. Sharma for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted. G

2. Challenge in this appeal is to the judgment of a Division Bench of the Himachal Pradesh High Court dismissing the application filed in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short the 'Code'). The respondent faced trial for alleged commission of offence punishable under Sec- H

A tions 376/511 and 506 of the Indian Penal Code, 1860 (in short 'IPC'). The Trial Court found that the accusations were not established and directed his acquittal giving him the benefit of doubt. An application for grant of leave in terms of Section 378 of the Code was filed which was dismissed summarily stating
B "Dismissed".

3. According to learned counsel for the appellant-State it was imperative on the High Court to indicate reasons as to why the prayer for grant of leave was found untenable. In the absence of any such reasons the order of the High Court is indefensible.

C 4. Section 378(3) of the Code deals with the power of the High Court to grant leave in case of acquittal. Section 378(1) and (3) read as follow:

D "378(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5),-

E (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an Appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

F (b) the State Government may, in any case, direct the Public Prosecutor to present an Appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

G (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code,
H 3 [the Central Government may, subject to the provisions

of sub-section (3), also direct the Public Prosecutor to A present an Appeal—

- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(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 entire evidence and then come to a conclusion. 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 trial Court on the facts of the case did not perform its duties, as was enjoined on it by law. The High Court ought to have in such circumstances granted leave and thereafter as a first court of appeal, re-appreciated the entire evidence on the record independently and returned its findings objectively as regards guilt or otherwise of the accused. 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 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 amendable to further avenue of challenge. The absence of reasons has rendered the High Court order not sus-

A tainable. Similar view was expressed in *State of U.P. v. Battan and Ors.* (2001 (10) SC 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 B of indicating reasons in such cases has been judicially recognised as imperative. The view was reiterated 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 C 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 D 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 at". E 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 the validity of F 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 requirements of natural justice G 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. In view of the aforesaid legal position, the impugned judgment of the High Court is unsustainable and is set aside. H We grant leave to the State to file the appeal. The High Court

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shall entertain the appeal and after formal notice to the respondent hear the appeal and dispose it of in accordance with law, uninfluenced by any observation made in the present appeal. The appeal is allowed to the extent indicated. A

S.K.S. Appeal partly allowed. B