A STATE OF UTTAR PRADESH

v.

ANIL KUMAR @ BADKA & ORS.

(Criminal Appeal No. 1094 of 2018)

B AUGUST 29, 2018

[ABHAY MANOHAR SAPRE AND UDAY UMESH LALIT, JJ.]

Code of Criminal Procedure, 1973: s.378(3) – Application
C *seeking leave to file appeal – Parameters which the High Court should keep in mind for deciding the application, discussed – In the instant case, the trial court and the appellate court ordered acquittal of the respondent – State filed application seeking leave to file appeal challenging the acquittal – High Court declined to grant leave and rejected the application – State's appeal – Held:*
D *High Court in its order neither set out the facts nor the submission of the parties nor the findings nor the reason as to why the leave to file appeal was declined to the appellant – Thus, it was a clear case of non-application of mind to the case by the High Court – Impugned order set aside and matter remitted to High Court for deciding the*
E *application for grant of leave to appeal afresh on merits in accordance with law keeping in view the law laid down in* Sujay Mangesh *case – Penal Code, 1860 – ss.363, 366, 376, and 120B.*

State of Maharashtra v. Sujay Mangesh Poyarekar **(2008) 9 SCC 475 : [2008] 13 SCR 750 – relied on.**

F **Case Law Reference**

[2008] 13 SCR 750	**relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1094 of 2018.

G From the Judgment and Order dated 02.09.2014 of the High Court of Judicature at Allahabad in Government Appeal No. 3317 of 2014.

Garvesh Kabra, Vikash Chaudhary, Ms. Mona K. Rajwanshi, B. P. Gupta, Ram Naresh, Mukesh Kumar Singh, Saurabh Chopra, Shekhar Kumar, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed by the State of U.P. against the final judgment and order dated 02.09.2014 passed by the High Court of Judicature at Allahabad in Government Appeal No.3317 of 2014 whereby the Division Bench of the High Court dismissed the application filed by the appellant herein seeking leave to file appeal under Section 378(3) of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") and affirmed the judgment dated 31.05.2014 passed by the Additional Sessions Judge, Court No.3, Kannauj acquitting the accused-respondents in S.T. No.204 of 2012.

3. Keeping in view the short point involved in the appeal, it is not necessary to state the facts in detail except few to appreciate the grievance of the appellant.

4. The respondents (accused) were prosecuted and tried for commission of offences punishable under Sections 363, 366, 376 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") pursuant to lodging of FIR No. 139/2012 in Police Station Gursahay Ganj, sub-District Sadar, District Kannauj in Sessions Trial Case No. 204 of 2012 in the Court of the Additional District Judge, Court No.3, Kannauj. The prosecution adduced evidence in support of their case.

5. By judgment dated 31.05.2014, the Additional Sessions Judge on appreciating the evidence adduced by the prosecution acquitted the respondents (accused) of the charge of offences punishable under Sections 363, 366, 376, 120-B IPC.

6. The State of U.P., felt aggrieved by the respondents' acquittal, filed an application for leave to appeal before the High Court under Section 378 (3) of the Code.

7. By impugned order, the High Court declined to grant leave and accordingly rejected the application made by the State. It is against this order, the State has filed this appeal by way of special leave petition in this Court.

8. Heard learned counsel for the parties.

9. Learned counsel for the appellant-State has made only one submission. According to him, the High Court while dismissing the

A application for leave to appeal did not assign any reason and hence the impugned order is rendered bad in law. It was his submission that there were several discrepancies and errors in the judgment of the Sessions Judge against which the leave to appeal was sought and, therefore, this was a fit case where the High Court should have granted leave to appeal for further probing into the case by the Appellate Court. In support of his submission, he placed reliance on the decision of this Court in **State of Maharashtra vs. Sujay Mangesh Poyarekar,** (2008) 9 SCC 475.

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10. We are inclined to agree in part with the submission urged by the learned counsel for the appellant.

C 11. The question as to how the application for grant of leave to appeal made under Section 378 (3) of the Code should be decided by the High Court and what are the parameters which the High Court should keep in mind remains no more *res integra*. This issue was examined by this Court in **State of Maharashtra vs. Sujay Mangesh Poyarekar** (supra). Justice C.K. Thakker speaking for the Bench held in paras 19, 20, 21 and 24 as under:

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> **"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.**
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> **20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.**
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> **21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking**

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leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted.

24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave."

12. Coming now to the facts of this case, it is apposite to reproduce the impugned order in verbatim infra:

"On a careful perusal of the judgment and record, it cannot be said that the view taken by the trial judge is perverse or unreasonable. Simply because another view might have been taken of the evidence provides no ground for interfering with the order of acquittal unless the view taken by the trial judge is not a possible view. On the evidence

available on record, it cannot be said that the view taken by the trial judge was not a reasonably possible view.

In this view of the matter, there is no merit in the application for leave to appeal which is rejected and consequently, the Government Appeal is also dismissed."

13. We are constrained to observe that the High Court grossly erred in passing the impugned order without assigning any reason. In our considered opinion, it was a clear case of total non-application of mind to the case by the learned Judges because the order impugned neither sets out the facts nor the submissions of the parties nor the findings and nor the reasons as to why the leave to file appeal is declined to the appellant. We, therefore, disapprove the casual approach of the High Court in deciding the application which, in our view, is against the law laid down by this Court in the case of **State of Maharashtra vs. Sujay Mangesh Poyarekar** (supra).

14. In the light of the foregoing discussion, the impugned order deserves to be set aside. The appeal thus succeeds and is accordingly allowed and the impugned order is set aside. The case is remanded to the High Court for deciding the application made by the appellant for grant of leave to appeal afresh on merits in accordance with law keeping in view the law laid down by this Court in **State of Maharashtra vs. Sujay Mangesh Poyarekar** (supra).

15. It is made clear that we have not applied our mind to the merits of the case and remanded the case to the High Court having noticed that it was an unreasoned order. The High Court will accordingly decide the application on merits uninfluenced by any of our observations made in this order.

Devika Gujral Appeal allowed.