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STATE OF PUNJAB

v.

BHAG SINGH

DECEMBER 16, 2003

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[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Practice and Procedure :*

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*Judgment—Reasons—Giving of—Accused acquitted by trial court—High Court refused to grant leave to appeal under S. 378(3) Cr.P.C. without giving reasons—Correctness of—Held: Reasons substitute subjectivity by objectivity—Right to reason is an indispensable part of a sound judicial system—High Court order set aside—State granted leave to appeal.*

D

*Constitution of India, 1950:*

*Article 141—Declaration of law—Judicial discipline to abide by—Held: cannot be forsaken even by the highest Court in a State.*

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The respondent-accused was tried for an offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The trial court held that the prosecution version was entirely dependent upon the testimony of official witnesses and since no independent witness was involved, the prosecution version was vulnerable and, therefore, acquitted the accused. The appellant-State filed an application before the High Court under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave to appeal. The High Court dismissed application without giving any reasons. Hence the appeal.

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On behalf of the appellant, it was contended that it was imperative on the High Court to indicate reasons as to why the prayer for grant of leave to appeal was found untenable.

Allowing the appeal, the Court

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**HELD :** 1.1. The trial Court was required to carefully appraise the entire evidence and then come to a conclusion. If the trial Court was at

a 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 this Case did not perform its duties, as 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 requirement of independent witness and discarding the testimony of official witnesses even if it was reliable, cogent or trustworthy needed adjudication in appeal. The High Court has not given any reasons for refusing to grant leave to file an appeal against the 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. 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 amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. [907-G-H; 908-A-D]

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

1.2. 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. [988-E-F]

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 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 the Court. Another rationale is that the affected party can know why the decision has gone

**A** against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The “inscrutable force of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance. [908-H; 909-A-C]

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

**3. The impugned judgment of the High Court is unsustainable and is set aside. The appellant-State is granted leave to file appeal. [909-C-D]**

**C** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 778 of 1997.

**D** From the Judgment and Order dated 24.4.97 of the Punjab and Haryana High Court in Crl. M. No. 163-MA of 1997.

Bimal Roy Jad and Ms. Sumita Pandit for the Appellant.

R.C. Kaushik (NP) for the Respondent.

**E** The Judgment of the Court was delivered by

**F** **ARIJIT PASAYAT, J.** : Refusal to grant leave to question acquittal in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short the ‘Code’) is the subject matter of challenge. According to the appellant-State of Punjab the one line “No merit. Dismissed” order of the High Court without assigning reasons therefor does not meet the requirements of law.

**G** Respondent (hereinafter referred to as the ‘accused’) faced trial for alleged commission of offence punishable under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short the ‘Act’). Prosecution version was that on 26.4.1995 accused was found in illicit possession of a large quantity of opium weighing one kilogram which was being carried in a bag. The officer who apprehended the accused informed him that if he wanted the bag to be searched in the presence of

**H** a gazetted officer of police or a magistrate, he could indicate his choice.

The accused however reposed confidence on the Sub-Inspector of Police who had apprehended the accused. Samples were collected and sent for chemical examination. As the samples were found to contain opium, on completion of investigation accused was challaned to face trial. During his examination under Section 313 of the Code the accused denied the allegations and pleaded false implication. A B

The trial Court held that the prosecution version was entirely dependent upon the testimony of official witnesses and since no independent witness was involved, the prosecution version was vulnerable. It was noted that the search and seizure was made at a through fare and it is unbelievable that no independent witness was available. The trial Court therefore directed acquittal. The appellant-State filed an appeal before the Punjab and Haryana High Court which refused to grant leave and disposed of the application for leave in the following manner: C

“Heard. No merit.  
Dismissed.” D

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. 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) of the Code reads as follows: E

“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 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

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

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 H

A the appeal. The trial Court on the facts of this 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 requirement of independent witness and discarding testimony of official witnesses even if it was reliable, cogent or trustworthy needed adjudication in appeal. 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 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').

Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union*, [1971] 1 All E.R. 1148 observed

G "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 at". Reasons substitute

H 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, A  
render it virtually impossible for the Courts to perform their appellate  
function or exercise the power 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 B  
why the decision has gone against him. One of the salutary 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.

In view of the aforesaid legal position, the impugned judgment of the C  
High Court is unsustainable and is set aside. We grant leave to the State  
to file the appeal. The High Court shall entertain the appeal and after formal  
notice to the respondents hear the appeal and dispose of it in accordance  
with law, uninfluenced by any observation made in the present appeal. The  
appeal is allowed to the extent indicated. D

V.S.S.

Appeal allowed.