

A STATE OF HIMACHAL PRADESH

v.

PARAS RAM AND ORS.

(Crl. A. No. 1 of 2008)

B JANUARY 3, 2008

(DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.)

Code of Criminal Procedure, 1973; S.378:

C *Accused persons allegedly committed offences punishable u/ss. 436, 447 and 506 IPC – Acquitted by Trial Court – Leave to file appeal – Grant of – Dismissed by High Court without assigning any reasons – Correctness of – Held: Incorrect – On facts, trial Court did not perform its duties in appraising the evidence carefully before arriving at its conclusion acquitting accused – Under such circumstances, High Court ought to have granted leave, re-appreciated entire evidence as first Court of appeal and returned its finding objectively – High Court by refusing to grant leave to file appeal lost a close scrutiny of the order of acquittal – In the interest of*
D *justice, High Court ought to have set forth reasons indicative of application of its mind – More so, when its order is amenable to further challenge – Besides, reasons introduce clarity in an order and substitute subjectivity by objectivity – Absence of*
E *reasons has rendered the order of the High Court*
F *unsustainable – Leave to file appeal granted – Principles of natural justice – Requirements of.*

Words and Phrases:

'Inscrutable face of the sphinx' – Meaning of.

G **The question which arose for determination in this appeal before this Court was as to whether the High Court was right in dismissing the application to grant leave to appeal without assigning any reasons against the acquittal of accused persons.**

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Partly 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 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 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. (Para – 8) (11-A, B)

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1.2 The questions involved in this case 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. (Para – 8) (11-C)

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1.3 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. (Para – 8) (11-D, E)

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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) 2 SCC 222 – relied on.

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

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A **1.4 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**
B **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**
C **decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. (Para – 9) (12-B, C, D)**

State of Punjab v. Bhag Singh (2004 (1) SCC 547 – relied on.

D **2. The State is granted leave 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. (Para – 11) (12-F)**

E **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1 of 2008**

F **From the final Judgment and Order dated 12.10.2006 of the High Court of Himachal Pradesh at Shimla in CrI. M.P. (M) No. 623/2006**

J.S. Attri, Adv. for the Appellant.

Dr. I.B. Gaur, Adv. for the Respondents.

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

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

H **2. Refusal to grant leave to question judgment of acquittal in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short ‘Cr.P.C.’) is the subject matter of challenge in this**

appeal. According to the appellant-State of Himachal Pradesh, the one line order "Dismissed" of the Himachal Pradesh High Court without assigning reasons therefor does not meet the requirement of law.

3. Respondents (hereinafter referred to as the 'accused') faced trial for alleged commission of offences punishable under Sections 436, 447, 427, 147 and 506 of the Indian Penal Code, 1860 (in short 'IPC').

4. The prosecution case, in brief, is that the complainant Smt. Manjit Kaur is a resident of Village Abada Barana, Distt. Una, H.P. She is a house wife. On 30.6.2003 at about 5.45 p.m. she and her sister-in-law Nirmala Devi were watching television in their house and their children were playing outside, while her husband Gurdial Singh had gone to Kuthar to bring medicines. In the meantime daughter of her sister-in-law aged about 13 years named Poonam came there and told that some persons were uprooting creepers from their field. On this they both came out and saw that the above named accused were doing the same and on seeing the complainant and her sister-in-law the accused came towards the house of the complainant and challenged them that they would set their house on fire. The accused Balbir Singh, Baldev Singh, Jai Gopal and Radhey Shayam were carrying 'Mashals' in their hands and with the help of those Mashals they lit their thatched house on fire from three sides. When the complainant and her sister-in-law tried to take out their articles from the house, the accused threatened them to throw in the fire. On this, the complainant got frightened and she along with her sister-in-law and children rushed towards Kuthar Kalan while raising cries. On listening their cries Santosh Kumari W/o Jog Raj and Yash Pal S/o Bihari Lal, both resident of Kuthar Kalan, reached at the spot. Thereafter the complainant went to Kuthar Kalan and told about this incident to her husband who informed the fire brigade and police. The police reached at the spot and recorded statement of complainant Ex.PW-1/A under Section 154 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') upon which FIR Ex.PW-12/A was recorded

A against the accused. During investigation the police prepared the photographs of the spot and obtained demarcation of the land over which the house in question was situated. After completion of investigation charge sheet was filed and the accused persons faced trial. Thirteen persons were examined
B as witnesses. PWs. 1 and 4 apart from others were stated to be eye-witnesses. The High Court found that there was some delay in lodging the FIR and though large number of people were claimed to have gathered at the spot, the witnesses could not have seen the accused persons. The High Court also found
C that there was some dispute between the parties and, therefore, the prosecution version was suspect. Accordingly, the accused persons were acquitted.

5. The appellant-State filed an application for grant of leave. High Court disposed of the application in the following manner:

D "Dismissed"

6. 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
E of any such reasons the order of the High Court is indefensible. Learned counsel for the respondents supported the order.

7. 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:

F "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
G 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.

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

8. 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 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 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. Bhattan 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').

9. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1)

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- A 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
- B controversy in question and the decision or conclusion arrived 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
- C 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 why the
- D 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.
- E 10. The aforesaid aspects were highlighted by this Court in *State of Punjab v. Bhag Singh* (2004 (1) SCC 547).
- F 11. In view of the aforesaid legal position, the impugned judgment of the 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.
- G S.K.S. Appeal partly allowed.