

STATE OF HIMACHAL PRADESH

v.

SARDARA SINGH

(Criminal Appeal No. 1354 of 2008)

AUGUST 27, 2008

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

*Code of Criminal Procedure, 1973 – s.378(3) – Application under – For grant of leave to file appeal, against order of acquittal passed by Trial Court – Summarily dismissed by High Court – Held: Absence of reasons rendered the High Court order not sustainable – 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 – Direction to High Court, to grant leave, as grounds raised not without substance – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.15 – Principles of natural justice – Requirement of speaking order.*

**Respondent faced trial for alleged commission of offences punishable under s.15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was acquitted by the Trial Court. Appellant-State filed application under s.378(3), CrPC for grant of leave to file appeal against the order of acquittal. High Court dismissed the application summarily by simply stating “dismissed”. Hence the present appeal.**

**Allowing the appeal, the Court**

**HELD: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**

A 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  
B 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 primary  
ground for acquittal seems to be that the alleged eye-  
witnesses did not support the prosecution case and,  
C therefore, their presence is doubtful. 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  
D 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,  
E 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. There is  
desirability of a speaking order while dealing with an  
application for grant of leave. The requirement of  
F indicating reasons in such cases has been judicially  
recognized as imperative. 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  
G of India, 1950. [Para 8] [865 B-H, 866 A-B]

1.2. 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  
H

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 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 sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. [Para 9] [866 C-F]

1:3. 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. [Para 11] [866-G]

*State of U.P. v. Battan and Ors.* (2001) 10 SCC 607; *State of Maharashtra v. Vithal Rao Pritirao Chawan* AIR (1982) SC 1215; *Jawahar Lal Singh v. Naresh Singh and Ors.* (1987) 92 SCC 222 and *State of Punjab v. Bhag Singh* (2004) 1 SCC 547 – 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

Case Law Reference

AIR (1982) SC 1215	relied on	Para 8
(1987) 92 SCC 222	relied on	Para 8
(2001) 10 SCC 607	relied on	Para 8
(1971) 1 All E.R. 1148	referred to	Para 9
(1974) LCR 120	referred to	Para 9
(2004) 1 SCC 547	relied on	Para 10

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1354 of 2008

Naresh K. Sharma for the Appellant.

A K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

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

B 2. Challenge in this appeal is to the judgment of a learned Division Bench of the Himachal Pradesh High Court dismissing the application filed by the State in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short the 'Code'). The application was dismissed summarily by simply stating "Dismissed".

C 3. The respondent faced trial for alleged commission of offences punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the 'NDPS Act').

D 4. The trial court directed acquittal on the ground that the evidence of the official witnesses cannot be accepted and accordingly the acquittal was recorded. The application under Section 378 was filed which as noted above was dismissed summarily.

E 5. Learned counsel for the appellant submitted that the manner of disposal of the application is contrary to the decisions of this court in a large number of cases.

F 6. Learned counsel for the respondent submitted that there is no merit in the case and, therefore, the High Court was justified in rejecting the application for grant of leave.

G 7. 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 (1) and (3) of the Cr.P.C. as it stood then, reads as follows:

H "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. A

(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 primary ground for acquittal seems to be that the alleged eye-witnesses did not support the prosecution case and, therefore, their presence is doubtful. 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 H

A 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  
B 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) 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:  
C "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 subjectivity by objectivity. The emphasis  
D 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  
E 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, in other words, a  
F speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

10. These aspects were highlighted in *State of Punjab v. Bhag Singh* (2004(1) SCC 547)

G 11. 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.

12. Appeal is allowed.

H B.B.B.

Appeal allowed.