

JAGTAMBA DEVI

v.

HEM RAM AND ORS.

(Criminal Appeal No. 257 of 2008)

FEBRUARY 4, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

*Judgment – Recording of reasons in – Requirement of – Criminal revision set aside by High Court without assigning reasons – Matter remitted to High Court for fresh consideration – Penal Code, 1860 – ss. 332, 353 and 504/34 – Code of Criminal Procedure, 1973 – ss. 107/150 and 300.*

Appellant lodged a private complaint before Magistrate u/ss. 332, 353 and 504/506 IPC. The Magistrate, after recording preliminary evidence, issued summons to the respondent-accused persons. Executive Magistrate directed the file of the case to be consigned. Placing reliance on the order of the Executive Magistrate, the accused persons filed application praying for their discharge on the ground that, the file having been consigned by Executive Magistrate, trial cannot proceed for the same offences. Two of the accused were discharged. Revision against the order of discharge was summarily dismissed by High Court. Hence the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1.1 Impugned order is absolutely non-reasoned. Therefore it is set aside and remitted back for fresh consideration. 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. The absence of

A reasons has rendered the High Court's judgment unsustainable. [Para 6] [358-G; 359-A]

B 1.2 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 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  
C 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.  
D 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. [Para 7] [359-B, C, D, E]

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

F CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 257 of 2008.

From the Judgment and order dated 11.10.2006 of the High Court of Himachal Pradesh at Shimla in Criminal R. No. 111/2006.

G K.K. Mohan for the Appellant.

V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

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

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2. Challenge in this appeal is to the order passed by a learned Single Judge of Himachal Pradesh High Court dismissing the Revision Petition filed by the appellant under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code').

3. Background facts in a nutshell are as follows:

In the year 2001, the appellant was Pradhan of Gram Panchayat Village, Rore, Tehsil Palampur, District Kangra, Himachal Pradesh and continued as such till December, 2005. On 6.1.2003 sanction was given for construction of village road for which the Panchayat received a sum of Rs.20,000/-. According to the appellant, the respondents herein after coming to know of the grant of sanction for Rs.20,000/- pressurized her for construction of a road to their houses instead of constructing a road for which sanction was received. Thereafter, the work on the sanctioned project commenced. On 13.10.2003 when the construction was in progress, the respondents came to the work site at about 4.30 p.m. and abused the complainant in filthy and derogatory language and threatened her with dire consequences. They forcibly obstructed the appellant and the labourers from doing any work on the village road. They caused hurt to the appellant and by using criminal force pushed her and thereby deterred public servant from performing her duties. On 22.10.2003 the Gram Panchayat filed a complaint with the police officials but since no action was taken, a private complaint for alleged commission of offences punishable under Sections 332, 353, 504/506 of the Indian Penal Code, 1860 (in short the 'IPC') was filed in the Court of learned Judicial Magistrate, Palampur. After recording preliminary evidence, an order was passed on 1.7.2004 issuing summons of the accused persons. On 28.9.2004, learned Executive Magistrate directed the file to be consigned by holding that the Kalandara had become time barred and no further action was required. Appellant made a grievance that no notice of the proceedings was given to her and neither she nor her advocate was heard before the passing of the order. An application was filed on 20.7.2005 by the

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A accused persons praying for dropping charges with a contention that the applicants cannot be tried for the same offence. Reference was made to the order dated 28.9.2004 passed by the Executive Magistrate, Palampur. On 7.8.2005 after receiving notice, appellant submitted her reply specifically contending that  
B the provisions of Section 300 of the Code are not applicable to the proceedings. It was submitted that the concept of double jeopardy was not applicable to the proceedings under Section 107/150 of the Code. Learned Additional Chief Judicial Magistrate, Palampur partly accepted the application and  
C dropped proceedings against applicants 1 and 2 namely, Hem Raj and Swroop Chand on the ground that the said applicants cannot be tried for the same offence.

Being aggrieved by the aforesaid order passed by the Additional Chief Judicial Magistrate, Criminal Revision Petition  
D was filed which was numbered as Criminal Revision No.111 of 2006. By the impugned order, the revision was dismissed in summary manner.

4. Learned counsel for the appellant submitted that after  
E issuance of summons the learned Magistrate ought not to have directed discharge of the accused persons. In any event, the dismissal of the revision petition in a summary manner without indicating any reason by the High Court cannot be maintained. It is not a case where it cannot be said that there is no arguable point. The order passed by the learned Additional Chief Judicial  
F Magistrate is thoroughly mis-conceived in law and the High Court ought to have interfered in the revision.

5. Learned counsel for the respondents submitted since  
G there is no merit in the revision petition, the High Court has rightly dismissed the revision petition summarily.

6. The order of the High Court reads as follows:

“Heard. Dismissed”.

H It is absolutely non-reasoned. 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. The absence of reasons has rendered the High Court's judgment unsustainable.

7. 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: "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 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 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 a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

8. We set aside the impugned order of the High Court and remit the matter to the High Court for a fresh consideration. Needless to say the High Court shall pass a reasoned order in the revision petition.

9. The appeal is allowed.

K.K.T.

Appeal allowed.