A STATE OF RAJASTHAN

v.

RAJENDRA PRASAD JAIN

(Criminal Appeal No. 360 of 2008)

FEBRUARY 22, 2008

B

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Code of Criminal Procedure,1973 – s.378 – Acquittal u/ ss.7 and 13(1)(d) r/w. s.13(2) of Prevention of Corruption Act –
C *Application seeking leave to file appeal refused by High Court – On appeal, held: Refusal not justified – Trial Court failed to carefully appraise the entire evidence – The matter needed adjudication in appeal – As the order of refusal was without assigning any reason, matter remitted to High Court –*
D *Prevention of Corruption Act, 1988 – ss.7 and 13(1)(d) r/w s.13(2).*

Judgment – Recording of reasons in – Requirement of – Discussed.

E *Precedent –Judicial discipline of abiding by the declarations of law by Supreme Court, cannot be forsaken by any authority or court on any pretext – Constitution of India, 1950 – Article 141 – Judicial Discipline.*

Respondent– accused was prosecuted u/s.7 and
F **13(1)(d) r/w.s.13(2) of Prevention of Corruption Act, 1988. Respondent in his statement u/s.313 Cr.P.C. accepted to have received a sum of money from the complainant party for payment of certain outstanding dues, but such plea was not taken during trap proceedings. Trial Court**
G **acquitted him on the ground that prosecution failed to prove demand and acceptance of bribe. Appellant-State filed an application u/s.378(1) Cr.P.C. seeking leave to file appeal and the same was dismissed by High Court. Hence the present appeal.**

H

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

HELD: 1.1 The impugned order is practicably unreasoned. The High Court appears to have lost sight of the fact that in the statement recorded under Section 313 Cr.P.C., the respondent specifically accepted that he has received a sum of Rs.2,000/– from the complainant for payment of certain outstanding dues, but such a plea was not taken in the course of the trap proceedings. [Para 3] [284-A-B]

1.2 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 effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited needed adjudication in appeal. [Para 7] [284-G-H; 285-A]

1.3 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. [Para 7] [285-B-C]

1.4 Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set

A 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. Reason is the heartbeat of every conclusion, B and without the same it become lifeless. [Paras 7 and 8] [285-C-D, F]

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 (2) C SCC 222; *Raj Kishore Jha v. State of Bihar and Ors.*2003(7) Supreme 152– relied on.

1.5. Reasons are live links between the mind of the decision– taker to the controversy in question and the D 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 E 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. F 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 9] [285-H; 286-A-D]

G *State of Orissa v. Dhaniram Luhar* 2004(5) SCC 568 relied on.

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

2. The requirement of 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 of India, 1950. [Para 7] [285-D, E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 360 of 2008.

From the final Judgment and Order dated 27.04.2006 of the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in S.B. Criminal Leave to Appeal No. 23 of 2002.

Naveen Kumar Singh, Shashwat Gupta and Aruneshwar Gupta for the Appellant.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the Order passed by a Learned Single Judge of the Rajasthan High Court dismissing the application filed for grant of leave to prefer an appeal in terms of Section 378(1) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.').

3. Background facts need to be noted in brief:

Respondent faced trial for alleged commission for offences punishable under Sections 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1978 (in short the 'Act'). Learned Special Judge, Sessions Court, Prevention of Corruption Act, Kota in Sessions Case No. 8 of 2001 directed acquittal. The basic reason for directing acquittal was that the prosecution has failed to prove the demand and acceptance of bribe and also that on the day the complainant claimed to have paid the bribe, no work was pending with the accused.

The appellant State filed an application for grant of leave.

A The same has been rejected by the impugned order. To say the least the order is practicably unreasoned. The High Court appears to have lost sight of the fact that in the statement recorded under Section 313 Cr. P.C. the respondent specifically accepted that he has received a sum of Rs.2,000/- from the B complainant for payment of certain outstanding dues, but such a plea was not taken in the course of the trap proceedings.

4. There is no appearance on behalf of the respondent though notice has been served.

C 5. Parameters to be adopted while dealing with such an application has been laid down by this Court in several cases.

6. Section 378 of the Cr.P.C deals with the power of the High Court to grant leave in case of acquittal. Sub-sections (1) and (3) of Section 378 read as follows:

D

"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 E other than a High Court or an order of acquittal passed by the Court of Session in revision.

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

7. 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 G 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 H guilt or otherwise of the accused. It has failed to do so. The

questions involved were not trivial. The effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited 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').

8. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar and Ors.* (2003 (7) Supreme 152).

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 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons

A 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 B 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. C 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 D performance.

10. The above position was highlighted in *State of Orissa v. Dhaniram Luhar* (2004(5) SCC 568).

11. Therefore, the impugned order of the High Court cannot be sustained and is set aside, and matter is remitted to it. The E High Court shall take up the matter afresh and dispose of the same in accordance with law. The appeal is allowed without any order as to costs.

K.K.T. Appeal allowed.

F