

SUPREME COURT OF INDIA

State of H.P

Vs.

Shish Ram

Crl.A.No.....of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

15.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Himachal Pradesh High Court dismissing the application filed by the appellant-State for grant of leave to file appeal against the judgment of acquittal passed by the Trial Court i.e. learned Additional Chief Judicial Magistrate, Kandaghat, Camp at Solan, H.P. in Criminal case no.133/2 of 02/95. Respondent faced trial for alleged commission of offences punishable under Sections 420, 467, 468 and 471 of the *Indian Penal Code, 1860* (in short the `IPC').

3. Though various points were urged in support of the appeal, the primary stand was that by non-reasoned order the application was disposed of.

4. There is no appearance on behalf of respondent in spite of the service of notice.

5. The order which is impugned in the present appeal reads as follows:

“Be registered. Heard. Dismissed.”

6. 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's judgment not sustainable.

7. Even in respect of administrative orders *Lord Denning M.R. in Breen v. Amalgamated Engineering Union*¹ observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree*² 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.

7. In *State of Punjab vs. Bhag Singh*³, it was observed as follows:

“4. 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:

"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.

xx xx xx

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

5. 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 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.*⁴. About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan*⁵ 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.*⁶. 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. The appeal is allowed.

¹(1971 (1) All E.R. 1148)

²(1974 LCR 120)

³(2004 (1) SCC 547)

⁴(2001 (10) SCC 607)

⁵(AIR 1982 SC 1215)

⁶(1987 (2) SCC 222)