SUPREME COURT OF INDIA

Kumari Shaima Jafari

Vs.

Irphan @ Gulfam

Crl.A.No.2031 of 2012

(K.S.Radhakrishnan and Dipak Misra,JJ.)

11.12.2012

JUDGMENT

Dipak Misra,J.

1.This is an application for grant of permission to file Special Leave Petition under Article 136 of the Constitution of India for assailing the judgment and order dated 4.7.2012 passed in Government Appeal No. 3432 of 2011 by the Division Bench of the High Court of Judicature at Allahabad, whereby the Bench declined to entertain the appeal directed against the judgment of acquittal rendered by the learned Additional Sessions Judge, Kanpur Nagar in S.T. No. 944 of 2007 wherein the accused persons faced trial for the offences punishable under Sections 363, 366, 328, 323, 506, 368 and 376(2)(g) of the Indian Penal Code (for short "the IPC").

2. On a perusal of the material on record, there cannot be any dispute that the appellant was the complainant and the real aggrieved party. Being aggrieved by the decision of the High Court, she has sought permission to prefer the special leave petition. Regard being had to the essential constitutional concept of jurisdiction under Article 136 of the Constitution of India as has been stated in Arunachalam v. P.S.R. Sadhanantham[1] and the pronouncement by the Constitution Bench in P.S.R. Sadhanantham v. Arunachalam[2] where the assail was to the decision in Arunachalam (supra) under Article 32, we allow the application and permit the applicant to prosecute the Special Leave Petition. The Crl.M.P. No. 24427 of 2012 is accordingly disposed of.

3. Leave granted.

4. The spinal issue that has spiralled to this Court is whether the appeal preferred by the Government questioning the legal substantiality of the judgment of acquittal could have been dismissed by the High Court in such a manner as it has been done.

5. At this juncture, it is apposite to state that the complainant had filed Appeal No. 1674 of 2011 which has also been dismissed by another Division Bench on the foundation that when the Government Appeal had already met its fate of dismissal, there was no justification to entertain the said appeal. No fault can be found in the order passed by the Division Bench dealing with the appeal preferred by the complainant as that cannot survive after the Coordinate Bench had given the stamp of imprimatur to the judgment of acquittal passed by the learned trial Judge in the Government Appeal. Hence, the prayer has been restricted and, rightly so, by the learned counsel for the appellant to the assail of the judgment passed in the Government Appeal.

6. To dwell upon the seminal issue, it is seemly to reproduce the judgment passed by the High Court in appeal. It reads thus: -

> "The learned trial Judge has discussed elaborately the evidence of PW1, the prosecutrix, which appears at pages 12 to 20 of the judgment in the light of submissions of the defence and we are satisfied that it could not be a case under any of the sections for which the accused had been charged and tried. The judgment herein suffers from no perversity and, as such, the appeal is dismissed."

7. It is urged by Mr. Shakil Ahmed Syed, learned counsel for the complainant-appellant, that it is obligatory on the part of the High Court while dealing with an appeal to ascribe reasons and not to dismiss it in a cryptic manner. He would further submit that reference to certain paragraphs of the judgment of the trial Court would not clothe the decision of the High Court to be reflective of appreciation and reason but, on the contrary, it would still be an apology for reason which the law does not countenance.

8. The issue that emerges for consideration is whether the aforesaid delineation by the High Court in appeal can be treated to be informed with reason. At this stage, we think it apt to refer to certain authorities of this Court where there has been illumined enunciation of law as regards the duty of the High Court while dealing with criminal appeals, whether it may be an appeal preferred by the Government or an application for leave to appeal by the complainant against the judgment of acquittal.

9. In State of Uttar Pradesh v. Jagdish Singh and Others[3], a three- Judge Bench, while dealing with the role of the High Court at the time of disposal of a criminal appeal, stated

thus: -

> "This Court has observed before, in more than one case, that when the High Court disposes of a criminal appeal it should set forth the reasons, even though briefly, in its order. That is a requirement necessitated by the plainest considerations of justice. We are constrained to remark that the repeated observations of this Court have not received the attention which they deserve. The impugned order before us does not disclose the reasons for making it. We trust that it will not be necessary for us to make these observations in any future case."

10. In State of U.P. v. Haripal Singh and Another[4] while laying emphasis on ascribing of reasons while disposing a criminal appeal, a two- Judge Bench has opined thus: -

> "It appears that the appeal was preferred by the State of Uttar Pradesh against the order of acquittal dated 24-5-1989 passed by the Special Sessions Judge, Pilibhit in Case No. 153 of 1986. The said sessions case was filed against the respondent-accused under Section 302 read with Sections 307 and 34 IPC. The leave application was dismissed summarily without indicating any reason and the consequential order of dismissal of appeal was also passed without indicating any reason. It is really unfortunate that the appeal was disposed of without giving any reason whatsoever. On 26- 4¬1988, against a similar order of dismissal in limine passed by the Allahabad High Court in State of U.P. v. Jagdish Singh1 (an appeal) was moved before this Court and a three Judges' Bench of this Court deprecated such order disposing of the appeal without giving any reason. Unfortunately, a similar improper order has been passed in this case. To say the least, it is a sorry state of affairs. We, therefore, allow this appeal, set aside the order of dismissal of the appeal in limine and send the matter back to the High Court with a direction to dispose of the matter within a period of four months from the date of receipt of this order."

11. Yet again, in Narendra Nath Khaware v. Parasnath Khavare and Others[5], this Court had the occasion to deal with such a situation. In that context, the Court observed thus: -

> "We are constrained to observe a growing tendency with the High Courts in disposing of Criminal Appeals involving vexed questions of law and fact in cursory manner without going into the facts and the questions of law involved in the cases. May be this approach is gaining ground on account of huge pendency of cases. But such a summary disposal is no solution to the problem of arrears of cases in courts. Disposal of appeals where the High Court is the first court of appeal in such a manner results in denial of right of appeal to the parties. So long as the statute provides a right of appeal, in our view the court will be failing in its duty if the appeal is disposed of in such a

casual and cavalier manner as the High Court has done in the present case."

12. Be it noted, in the above-referred case, an appeal against acquittal was preferred by the State of Bihar and the High Court had dismissed the appeal by stating that it was clear from the perusal of the record that the witnesses named in the fardbayan had not been examined by the prosecution and also the witnesses examined in Court were examined by the police after eight months after the date of occurrence. The High Court had also stated that the investigating officer had not been examined. The said deliberation was treated to be unsatisfactory and, if fact, not appreciated by this Court.

13. From the aforesaid pronouncements, it is graphically clear that the deliberation by the High Court while exercising criminal appellate jurisdiction has to be reflective of due cogitation and requisite rumination. It must reflect application of mind, consideration of facts in proper perspective and appropriate ratiocination either for affirmation or reversal of the judgment. The reasons ascribed may not be lengthy but it should be cogent, germane and reflective. It is to be borne in mind, to quote from Wharton's Law Lexicon: -

> "The very life of law, for when the reason of a law once ceases, the law itself generally ceases, because reason is the foundation of all our laws."

14. This Court, in Raj Kishore Jha v. State of Bihar and others[6] and State of Orissa v. Dhaniram Luhar[7], had held that "reason" is the heartbeat of every conclusion and without the same, it becomes lifeless. It is dangerous to forget that reason is the essential foundation on which a conclusion can be based. Giving reasons for an order is the sacrosanct requirement of law which is the aim of every civilized society. And intellect respects it. It would not be out of place to state here that the reasons in criminal jurisprudence must flow from the material on record and in this regard, a line from Bossuet is worth reproducing: -

> "The heart has reasons that reason does not understand." We have said so as a Judge should not be guided by any kind of emotion, prejudice or passion while giving his reasons.
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> 15. At this juncture, it may be instructive to sit in a Time Machine and have a look at what our "Shastras" have stated about the role of an adjudicator. While describing the role of a Judge, it has been stated thus:-
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> "Vivaade pruchhati pprasnam pratiprasnam tathaiva cha Nyayapurvancha vadati pradvivaaka iti smrutah."

15. The free English translation of the same would be that he who puts questions and counter questions (to petitioner and respondent) in a dispute and gives his concluding observations is

called ‘Praadvivaakah’ or a Judge.

16. In certain ancient texts while describing a Judge, it has been laid down that a Judge is also called a ‘vivaakah’ i.e. he who considers the matter from legal spectrum after applying his mind. Be it noted ‘vivek’ means conscience. In another place in smritis it has been said that adjudicator has to decide the dispute with great care and caution after patient hearing.

17. A Judge in the times of yore in this country was wedded to Dharma. We are not going to delve into the connotative expanse of the term “Dharma”. In one context, it has been stated that Dharma is not a thing that can be determined by any person as per his whim. Thus, personal whim or for that matter any individual notion has no place while doing an act of justice which is a facet of Dharma. In Nyaya Shastras, there is reference to the methodology of inference which involves a combination and inductive and deductive logic. The logic, as is understood, means :-

> “The science of right reasoning or the science of discussion.”

18. We have referred to the aforesaid concepts solely for the purpose that even the ancient wisdom commanded that the decision has to be founded on reasons.

19. Coming to the judgment passed by the High Court, it is clear as a cloudless sky that it does not show any contemplation or independent application of mind as required of an appellate Court. Reference to the trial Court judgment in such a manner would not clothe the judgment to be reflective of reasons or indicative of any analysis. It does not require Solomon’s wisdom to state that it is absolutely sans reasons, bereft of analysis and shorn of appreciation. Thus viewed, this Court has no other option but to overturn the same and send the appeal for re-hearing to the High Court and we so do.

20. Resultantly, the appeal is allowed and the judgment passed by the High Court in Government Appeal No. 3432 of 2011 is set aside and the appeal is remitted for re-hearing by the High Court.

[1] (1979) 2 SCC 297
[2] (1980) 3 SCC 141
[3] 1990 (Supp) SCC 150
[4] (1998) 8 SCC 747
[5] (2003) 5 SCC 488
[6] JT (2003) Supp 2 SCC 354
[7] JT (2004) 2 SC 172