SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Giriraj Dubey

Crl.A.No.319 of 2013

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

19.02.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. Questioning the assailability and substantiality of the order dated 4.7.2012 passed by the Division Bench of the High Court of Judicature of Madhya Pradesh at Gwalior in M.Cr.C. No. 1835 of 2012 whereby the High Court has declined to grant leave to the State to prefer an appeal against the judgment of acquittal dated 2.12.2011 passed by the learned Sessions Judge, Bhind in Sessions Trial No. 193 of 2010, the present appeal by special leave has been preferred.

3. Shorn of unnecessary details, the facts which are requisite to be stated are that on the basis of an FIR lodged by the complainant, the investigating agency laid a charge-sheet before the competent court against the accused-respondent for the offences punishable under Sections 294 and 436 of the Indian Penal Code (for short "the IPC"). The learned Magistrate, on receipt of the charge-sheet, committed the matter to the Court of Session. The learned Sessions Judge, by his judgment dated 2.12.2011, acquitted the respondent herein of the charge on the foundation that there was no witness to the occurrence of the crime and further PW-2, the wife of the complainant, could not tell the exact abuses hurled at her by the accused respondent. In the application seeking leave to appeal, many a ground was urged challenging the judgment of acquittal. The Division Bench of the High Court, by the impugned order, referred to the trial court judgment and opined that the trial

court, after appreciation of the evidence on record, has opined that the prosecution has failed to prove the offence against the respondent beyond reasonable doubt inasmuch as there was not adequate evidence to substantiate the charges against the respondent and, hence, there was no legality in the judgment of acquittal.

4. Mr. Samir Ali Khan, learned counsel for the State, has raised a singular contention that the High Court, while declining to grant leave to appeal, has really not ascribed any reason whatsoever and what has been stated in the impugned order does not remotely reflect any reason, for the High Court has only stated that the prosecution has failed to establish the offence against the respondent by adducing adequate evidence. It is urged by him that it is obligatory on the part of the High Court to give reasons while dismissing the application for leave.

5. To appreciate the aforesaid submission, we have bestowed our anxious consideration and carefully perused the order passed by the High Court. The High Court has only stated that the trial court, after appreciation of the evidence, had found that the prosecution had failed to establish the offence against the respondent and, hence, the judgment of acquittal did not suffer from infirmity. We are afraid that such an order cannot be said to be a reasoned order. On the contrary, such an order is, irrefragably, cryptic and clearly shows non-application of mind.

6. It needs no special emphasis to say that while dealing with an application for leave to appeal, it is obligatory on the part of the High Court to assign reasons. In State of Maharashtra v. Vithal Rao Pritirao Chawan[1], this Court has observed as follows:-

> "If we would have had the benefit of the view of the learned Judge of the High Court who refused to grant leave on the question as to how he came to the conclusion that the transfer of the charge by making necessary entry in the cash book of cash handed over to the accused does not constitute entrustment, we would certainly have been able to examine the correctness of the view."
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> After so stating, the two-Judge Bench opined that it would be for the benefit of this Court that a speaking order is passed.

7. In State of Orissa v. Dhaniram Luhar[2], this Court, while dealing with an order of refusal to grant leave by the High Court without ascribing any reason, expressed that when the High Court refuses to grant leave without giving any reasons, a close

scrutiny of the order of acquittal, by the appellate forum, has been lost once and for all. The two-Judge Bench proceeded to express thus: -

> "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."
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> It is worth noting that in the said case, this Court has observed that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.

8. In State of Rajasthan v. Sohan Lal and others[3], after referring to the case of Dhani Ram Luhar (supra), it has been ruled that the provision for seeking leave to appeal is to ensure that no frivolous appeals are filed against judgments of acquittal, as a matter of course, but that does not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, pointing out that the court does not notice any infirmity in the order. Emphasis was laid on the factum that the orders of the High Court are amenable to further challenge before this Court and, therefore, such ritualistic observations and summary disposal which has the effect of, at times, as in certain cases, foreclosing statutory right of appeal cannot be said to be proper. The Court further opined that giving of reasons for a decision is an essential attribute of judicial and judicious disposal of the matter before courts, and also the only indication to know about the manner and quality of the exercise undertaken, as also the fact that the court concerned had really applied its mind.

9. In State of Uttar Pradesh v. Ajai Kumar[4], after referring to the decisions in Sohan Lal (supra) and Dhani Ram Luhar (supra), the principle for the need to give reasons was reiterated.

10. Yet in another pronouncement in State of Maharashtra v. Sujay Mangesh Poyarekar[5], a two-Judge Bench reproduced the order where the High Court had opined that the trial court had appreciated the evidence properly and its judgment could not be said to be perverse and, on that score, declined to interfere. In that context, this Court referred to the language employed under Section 378(3) of the Code of Criminal Procedure and stated that if the State is aggrieved by an order of acquittal recorded by a Court of Session, it can file an application for leave to

appeal, as required by sub-section (3) of Section 378 of the Code, and the appeal can only be registered after grant of leave and heard on merits. After so stating, the two-Judge Bench proceeded to lay down as follows: -

> "20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.
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> 21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."

11. Elaborating further, the Court observed that where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. A clarification was given that, however, if arguable points have been raised and if the material on record discloses necessity of deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on its merits. In the said case, as the Bench noted, the High Court did neither. Emphasis was laid on the failure on the part of the High Court to record reasons for refusal of such leave.

12. At this juncture, we are obliged to state that despite the clear law laid down by this Court, it has come to our notice that the High Courts, while declining to grant leave against the judgments of acquittal, do not indicate reasons for formation of such an opinion. In number of cases, anguish has been expressed. It is the duty of every court to bear in mind that when a crime is committed, though an individual is affected or, on some occasions, a group of individuals become victims of the crime, yet in essentiality, every crime is an offence against the collective as a whole. It creates a stir in the society. The degree may be different depending on the nature of the offence. That makes the duty of the High Courts to see that justice is done to the sufferer of the crime which, eventually, mitigates the cause of the

collective and satisfies the cry of the society against the crime. It does not necessarily mean that all windows remain constantly open for all kinds of cases to be entertained in appeal, but, while closing the windows, there has to be proper delineation and application of mind so that none would be in a position to say that the order epitomizes "the inscrutable face of the sphinx". The order has to reflect proper application of mind and such reflection of application of mind has to be manifest from the order itself. Expression of an opinion founded on sound reasoning is like the light of the Sun. Absence of reasons is comparable to use a candle when the sunlight is required. We may repeat at the cost of repetition that we have said so with immense pain and enormous hope that occasions should not arise in future for passing of such cryptic and unreasoned orders. It should be kept in mind that the judgments of this Court, being binding on all courts, are required to be followed in letter and spirit. That is the constitutional mandate and that is the judicial discipline.

13. Consequently, the appeal is allowed, the order passed by the High Court is set aside and the matter is remitted to the High Court to pass a cogent and reasoned order relating to grant or refusal of leave. We may hasten to clarify that we have not expressed any opinion on the merits of the case.

[1] (1981) 4 SCC 129
[2] (2004) 5 SCC 568
[3] (2004) 5 SCC 573
[4] (2008) 3 SCC 351
[5] (2008) 9 SCC 475