REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 19 OF 2003

TUTUL KUMARI SEN .. APPELLANT

vs.

STATE OF JHARKHAND & ANR. .. RESPONDENTS

J U D G M E N T

Dr. ARIJIT PASAYAT,J.

Challenge in this appeal is to the judgment of a learned single Judge of Jharkhand High Court allowing the petition filed by the respondent No.2.

The factual matrix needed to be noted in brief.

An application was filed by the respondent No.2 praying for discharge in terms of Sec.227 of the Code of Criminal, Procedure 1973 (in short `the Code'). The move was opposed by the State. The case

was registered for alleged commission of offences punishable under Sections 493 and 376 of the Indian Penal Code, 1860 (in short `the IPC') on the basis of report filed by the present appellant.

The allegation in the FIR is that after two days of Baisakh Purnima the accused came to the house of informant, picked her and committed rape on her. It was further the case of the informant that on the pretext that the accused would marry her, she was repeatedly

subjected to rape and became pregnant and started pressurising on the accused for marriage. The accused and his family members refused and therefore the information was lodged. After investigation police submitted a charge-sheet. The application for discharge was filed

primarily on the ground that age of the informant was not as was shown and therefore no offence under either Sec. 376 or 493 IPC was made out. The trial Court held that this was not a case where the prayer for discharge could be accepted.

The respondent No.2 moved the High Court by filing a criminal revision petition and High Court dispose of the revision petition with the following order:

"On going through the impugned order and after hearing the

learned counsel for the parties, I find that a bare perusal of the FIR in question (Sessions Case No. 312/2001, Ramgarh P.S.Case No.69/2000) does not disclose the commission of any offence. In that view of the matter, therefore, the learned trial Court (Ist Asstt. Sessions Judge, Dumka) was patently in error in refusing to discharge the petitioner.

This petition is allowed. The impugned order is set aside. The petitioner is discharged from the case.

Sd/- V.K.Gupta, CJ."

In support of the appeal learned counsel for the appellant submitted that High Court has clearly erred in interfering in the matter. The High Court's conclusion that commission of any offence has not been disclosed is contrary to the materials on record and on misreading of the FIR lodged.

Learned counsel for the respondent No.2 supported the

judgment.

We find that the order of the High Court is practically unreasoned. It is not certainly the way a revision petition was to be disposed of. There is absolutely no discussion as to why the conclusions of the trial Court in rejecting the prayer made in terms of Sec.227 of the Code were unsustainable. No basis has also been indicated as to why High Court of the view that no offence was disclosed in the FIR. 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. 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. This Court in State of Orissa v. Dhaniram Luhar (2004 (5) SCC 568) has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite

of principles of natural justice. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any license to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: "varying according to the Chancellor's foot". Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. Such ritualistic observations and summary disposal which has the effect of, at times, cannot be said to be a proper and judicial manner of disposing of

judiciously the claim before the courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.

That being so, we set aside the order of the High Court and remit the matter to it for fresh consideration in accordance with law. However, we make it clear that we have not expressed any opinion on the merits of the case.

The appeal is disposed of accordingly.

..... .J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 28, 2009.

SUPREME COURT OF INDIA

JUDGMENT