

CASE NO.:
Appeal (crl.) 778 of 1997

PETITIONER:
State of Punjab

RESPONDENT:
Bhag Singh

DATE OF JUDGMENT: 16/12/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Refusal to grant leave to question acquittal in terms of Section 378 (3) of the Code of Criminal Procedure, 1973 (in short the 'Code') is the subject matter of challenge. According to the appellant-State of Punjab the one line "No merit. Dismissed" order of the High Court without assigning reasons therefor does not meet the requirements of law.

Respondent (hereinafter referred to as the 'accused') faced trial for alleged commission of offence punishable under Section 18 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short the 'Act'). Prosecution version was that on 26.4.1995 accused was found in illicit possession of a large quantity of opium weighing one kilogram which was being carried in a bag. The officer who apprehended the accused informed him that if he wanted the bag to be searched in the presence of a gazetted officer of police or a magistrate, he could indicate his choice. The accused however reposed confidence on the Sub-Inspector of Police who had apprehended the accused. Samples were collected and sent for chemical examination. As the samples were found to contain opium, on completion of investigation accused was challaned to face trial. During his examination under Section 313 of the Code the accused denied the allegations and pleaded false implication.

The trial Court held that the prosecution version was entirely dependent upon the testimony of official witnesses and since no independent witness was involved, the prosecution version was vulnerable. It was noted that the search and seizure was made at a through fare and it is unbelievable that no independent witness was available. The trial Court therefore directed acquittal. The appellant-State filed an appeal before the Punjab and Haryana High Court which refused to grant leave and disposed of the application for leave in the following manner:

"Heard. No merit.
Dismissed."

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.

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

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* (2001 (10) SCC 607). About two decades back in *State of Maharashtra v. Vitthal 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').

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.

In view of the aforesaid legal position, the impugned judgment of the High Court is unsustainable and is set aside. We grant leave to the State to file the appeal. The High Court shall entertain the appeal and after formal notice to the respondents hear the appeal and dispose of it in accordance with law, uninfluenced by any observation made in the present appeal. The appeal is allowed to the extent indicated.

JUDIS