

CASE NO.:
Appeal (crl.) 971 of 2006

PETITIONER:
Suga Ram @ Chhuga Ram

RESPONDENT:
State of Rajasthan & Ors.

DATE OF JUDGMENT: 18/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 5630 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

This appeal is by the informant questioning correctness of the order passed by a Division Bench of the Rajasthan High Court at Jodhpur dismissing the revision application filed by the appellant under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the Cr.P.C.) questioning legality and correctness of the order of acquittal passed by the trial court in respect of respondent Nos. 2 to 5. The said respondents faced trial for alleged commission of offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the 'Atrocities Act'). By judgment dated 22.6.2004 the trial court i.e. Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Balotra, District Badmer, Rajasthan held the accused persons to be not guilty and directed their acquittal. State of Rajasthan filed application in terms of Section 378 (3) Cr.P.C. for grant of leave to appeal. By order dated 29.4.2005 the said application was rejected. Much before on that date i.e. on 20.9.2004, the appellant had filed an application for revision of the order of acquittal. As noted above, by the impugned order the High Court dismissed the revision application on the ground that the State's application for grant of leave has been dismissed and therefore the revision petition was not entertainable.

In support of the appeal learned counsel for the appellant submitted that the High Court had summarily rejected the application for grant of leave filed by the State. The order was a non-reasoned, cryptic one and is not sustainable in view of what has been stated by this Court in several cases. In any event, this revision application has been filed earlier, and that should have taken up along with the application for grant of leave. The revision application filed by the appellant cannot be treated as infructuous and not entertainable merely because State's application for grant of leave has been rejected. According to learned counsel for the appellant 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.

Learned counsel for the respondent Nos. 2 to 5 submitted that the special leave petition is not maintainable. The application for revision was not maintainable, in view of the fact that the prayer in the said petition was to direct conviction. Section 397 Cr.P.C. stipulates that only retrial can be directed and an order of acquittal cannot be converted to one of conviction in an application filed by the complainant.

Section 378 (3) of the Cr.P.C. deals with the power of the High Court to grant leave in case of acquittal. Section 378 (1) and (3) of the Cr.P.C. 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 primary ground for acquittal seems to be that the eye-witnesses did not make any effort to save the deceased and therefore their presence is doubtful. 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. Vithal 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.

These aspects were highlighted in *State of Punjab v. Bhag Singh* (2004(1) SCC 547)

Respondents Nos. 2 to 5 have questioned locus standi of the appellant to file the appeal.

A doubt has been raised in many cases about the competence of a private party as distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution against a judgment of acquittal by the High Court. We do not see any substance in the doubt. Appellate power vested in this Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. It is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (See *Durga Shankar Mehta v. Thakur Raghuraj Singh* (AIR 1954 SC 520)). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of this Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in this Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of this Court is not circumscribed by any limitation as to who may invoke it. Where a judgment of acquittal by the High Court has led to a serious miscarriage of justice this Court cannot refrain from doing its duty and abstain from interfering on the ground that a private party and not the State has invoked the Court's jurisdiction. We do not have slightest doubt that we can entertain appeals against judgments of acquittal by the High Court at the instance of interested private parties also. The circumstance that the Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate Court, at the instance of a private party, has no relevance to the question of the power of this Court under Article 136. We may mention that in *Mohan Lal v. Ajit Singh* (1978 (3) SCC 279) this Court interfered with

a judgment of acquittal by the High Court at the instance of a private party. An apprehension was expressed that if appeals against judgments of acquittal at the instance of private parties are permitted there may be a flood of appeals. We do not share the apprehension. Appeals under Article 136 of the Constitution are entertained by special leave granted by this Court, whether it is the State or a private party that invokes the jurisdiction of this Court, and special leave is not granted as a matter of course but only for good and sufficient reasons, well established by the practice of this Court.

Above was the view expressed by this Court in *Arunachalam v. P.S.R. Sadhanantham and Anr.* (1979 (2) SCC 279). The view has again been reiterated by the Constitution Bench in *P.S.R. Sadhanantham v. Arunachalam and Anr.* (1980 (3) SCC 141).

It is to be seen whether the broad spectrum spread out of Article 136 fills the bill from the point of view of "procedure established by law". In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on this Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the Court. Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limits, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136. Is it merely a power in the court to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of the appeal? There cannot be even a shadow of doubt that there is a procedure necessarily implicit in the power vested in this Court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the judges of the highest Court of the land with scrupulous adherence to settled judicial principles, well established by precedents in our jurisprudence.

It is manifest that Article 136 is of composite structure, is power-cum-procedure - power in that it vests jurisdiction in this Court and procedure in that it spells a mode of hearing.

These aspects were highlighted in *Esher Singh v. State of A.P.* (2004 (11) SCC 585).

Unfortunately it does not appear to have been brought to the notice of the High Court that the complainant's revision petition was pending challenging the acquittal when the application for grant of leave to appeal was taken up. The ideal situation would have been to hear both the applications together.

In view of the principles set out above it would be appropriate to direct the High Court to hear both the applications for grant of leave as filed by the State and the revision application filed by the informant i.e. D.B. Criminal Revision No. 667 of 2004 and D.B. Criminal Leave to Appeal No. 300 of 2004 together. Needless to say that the applications are to be considered in accordance with law.

Appeal is allowed to aforesaid extent.