# State Of Orissa vs Dhaniram Luhar on 4 February, 2004

## Equivalent citations: AIR 2004 SUPREME COURT 1794, 2004 (5) SCC 568, 2004 AIR SCW 751, (2004) 3 CTC 374 (SC), (2004) 2 JT 172 (SC), 2004 (3) CTC 374, 2004 (3) SRJ 305, 2004 (2) SCALE 202, 2004 (1) ACE 713, (2004) 3 RECCRIR 164, 2008 (2) SCC(CRI) 49, (2004) 15 ALLINDCAS 33 (SC), 2004 (2) JT 172, 2004 (2) SLT 278, (2004) 1 MADLW(CRI) 398, (2004) 1 HINDULR 651, (2004) 2 MARRILJ 33, (2004) 2 RECCRIR 211, (2004) 3 ALLCRILR 170, 2004 CHANDLR(CIV&CRI) 164, (2004) 1 CURCRIR 344, (2004) 3 BLJ 313, (2004) 1 CHANDCRIC 281, (2004) 27 OCR 807, (2004) 2 SCALE 202, (2005) 1 BOMCR(CRI) 829, (2004) 48 ALLCRIC 641, (2004) 2 EASTCRIC 69, (2004) 2 RECCRIR 868, (2004) 1 SUPREME 947, (2004) 1 ALLCRIR 918, (2004) 2 CRIMES 24, (2004) 2 PAT LJR 239, (2004) 2 ALLCRILR 190, (2004) SC CR R 821, (2004) 2 JLJR 215, (2004) 1 ANDHLT(CRI) 507

### Author: Arijit Pasayat

### Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  1166 of 1997

PETITIONER:
State of Orissa

RESPONDENT:
Dhaniram Luhar

DATE OF JUDGMENT: 04/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J.

The State of Orissa questions legality and propriety of the order by which a learned Single Judge of Orissa High Court rejected the prayer seeking leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short 'the Code'). Following is the order passed on 1.2.1996:

> "Leave to appeal is refused."

The State sought leave to appeal against the order passed by learned S.D.J.M., Nuapada, holding that the respondent Dhaniram Luhar (hereinafter referred to as 'the accused') was not guilty of offences punishable under Section 27(1)(a) of the Orissa Forest Act, 1972 (in short 'the Act').

Stand of the prosecution was that the respondent- accused had encroached about 5 acres of land for the purpose of cultivation in the Patidanger reserved forest. The official witnesses had deposed that the respondent-accused had encroached the land inside the aforesaid reserved forest within Sunabeda Wild Life Sanctuary and also produced sketch map of the plot under occupation of the accused. It is an accepted position that the accused in his statement under Section 313 of the Code had admitted encroachment of Government land. Learned S.D.J.M. held that mere acceptance of encroachment was not sufficient for the purpose of finding him guilty. He held that the authentic copy of the notification purported to have been issued under Section 21 of the Act was required to be filed which had not been done. He further observed that since the notification was not filed, and the procedures prescribed under Sections 21 and 22 were not complied, the respondent-accused was entitled to acquittal. As noted above, the State prayed for grant of leave against acquittal which was rejected by the impugned order. According to it, the Trial Court had erroneously analysed the evidence and did not apply correct principles of law.

Mr. J.K. Das, learned counsel appearing for the appellant-State submitted that the High Court was required to indicate reasons for refusal to grant leave. By a non- reasoned order the same should not have been rejected; particularly, when questions of public importance and substantial questions of law were involved. The accused- respondent has not appeared in spite of service.

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 of the Code deals with the power of the High Court to grant leave in case of acquittal. Sub-sections (1) and (3) of Section 378 read 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 effect of the admission of the accused in the background of testimony of official witnesses and the documents exhibited 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. 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').

Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152).

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 ICR 120)(NIRC) 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.

The above position was highlighted by us in State of Punjab v. Bhag Singh (2004 (1) SCC 547).

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.