# State Of Rajasthan vs Sohan Lal And Ors on 20 April, 2004

## Equivalent citations: AIR 2004 SUPREME COURT 4520, 2004 (5) SCC 573, 2004 AIR SCW 4321, 2004 AIR - JHAR. H. C. R. 2476, (2004) 5 JT 388 (SC), 2004 (5) SRJ 471, 2004 (5) SCALE 86, 2008 (2) SCC(CRI) 53, 2004 CRI(AP)PR(SC) 404, 2004 (5) ACE 94, (2004) 19 ALLINDCAS 42 (SC), 2004 (2) UJ (SC) 1118, (2004) 2 JCJR 49 (SC), 2004 CRILR(SC&MP) 375, 2004 CALCRILR 887, 2004 CRILR(SC MAH GUJ) 375, 2004 (3) SLT 330, (2004) 2 BOMCR(CRI) 768, (2004) 2 CRIMES 443, (2004) 2 RAJ CRI C 613, (2004) 2 RAJ LW 314, (2004) 3 RECCRIR 730, (2004) 3 JLJR 154, (2004) 4 ALLCRILR 202, (2006) 1 EASTCRIC 251, (2004) 3 SUPREME 404, (2004) 5 SCALE 86, (2004) 49 ALLCRIC 671, (2004) 3 BLJ 273, (2004) 19 INDLD 55, (2004) 2 ALLCRIR 1975, (2004) 28 OCR 443, (2004) 2 CURCRIR 254, (2004) 2 CHANDCRIC 396, (2004) 3 PAT LJR 263, 2004 (2) ANDHLT(CRI) 120 SC

## Bench: Doraiswamy Raju, Arijit Pasayat

```
           CASE NO.:
Appeal (crl.)  895 of 2002

PETITIONER:
STATE OF RAJASTHAN

RESPONDENT:
SOHAN LAL AND ORS.

DATE OF JUDGMENT: 20/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
```

JUDGMENT 2004 Supp(1) SCR 480 The following Order of the Court was delivered :

The above appeal has been filed by the State of Rajasthan against the order of a learned Single Judge of the Rajasthan High Court dated 31.5.2001 in S.B. Crl.A. No. 88 of 2001 whereunder the learned Judge in the High Court has passed the following order while refusing to grant leave and consequently rejected the appeal:

"Heard learned Public Prosecutor.

Perused the judgment impugned and the record available with learned Public Prosectuor. I do not find any error in the judgment impugned. No case for grant of

leave is made out, Accordingly, this leave to appeal is hereby rejected."

Mr. Sushil Kumar Jain, learned counsel appearing for the respondents strenuously contended, despite the earlier Judgments of this court which have unmistakably indicated that in cases where leave to appeal is refused reasons have to be assigned in support of the order that there is considerable difference between the appeal provided for against convictions under Section 374 of the Code of Criminal Procedure (for short "the Cr.P.C.") and an appeal provided for under Section 378, Cr.P.C. Against orders of acquittal and the inherent difference in the manner of availing of such avenue of appeals provided, one automatically without any condition precedent for entertaining and the other regulating the right to appeal subject to the seeking of and obtaining leave of the High Court, has not been noticed in the earlier decisions of this Court and, therefore, this calls for a consideration. Pursuing such line of submissions it has been contended that when a court has said that it does not find any error in the judgment it should be considered to be itself a sufficient reason and the discretion so exercised to refuse leave cannot be found fault with on the ground that no further or other details/reasons have been assigned therefor. Learned counsel for the respondents also attempted to draw an analogy on the basis of the special leave to appeals filed under article 136 of the Constitution of India and the practice adopted by this Court in rejecting summarily, without assigning any reason, such petitions for special leave to appeal. Learned counsel for the appellant-State contended that the omission to give reasons is per se a vitiating factor and that vitiates the order of the High Court, as held in catena of cases.

We have carefully considered the submissions of the learned counsel appearing on either side. This Court in JT (2004) 2 SC 172: State of Orissa v. Dhaniram Luhar, has while reiterating the view expressed in the earlier cases for the past two decades emphasized the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hall mark of a judgment/order and exceted 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. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for or sufficient to obviate and dispense with the obvious necessity to record reasons. 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 licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well known saying - 'varying according to the chancellors 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. The State does not in pursuing or conducting a criminal case or an appeal espouses any right of its own but really vindicate the cause of society at large, to preveni recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and avert anarchy, by upholding rule of law. The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders 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, as in this case, (the court does not find any error), with no further on the face of it, indication of any application of mind whatsoever. All the more so when the orders of the High Court are amenable for further challenge before this Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing statutory right of appeal, though a regulated one cannot be said to be a proper and judicial manner disposing of judiciously the claim before 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. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the First Appellate Court. The need for recording reasons for the conclusion arrived at by the High Court, to refuse to grant leave to appeal, in our view, has nothing to do with the fact that the appeal envisaged under Section 378 Cr.P.C. is conditioned upon the seeking for and obtaining of the leave from the court. This court has repeatedly laid down that as the First Appellate Court the High Court even while dealing with an appeal against acquittal was also entitled and obliged as well to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, in the matter of the extend and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal.

The attempt to draw an analogy on the power of this Court under Article 136 of the Constitution of India and the practice of rejecting appeals at the SLP stage invariably without assigning reasons with the one to be exercised while dealing with an application for leave to appeal under section 378 Cr.P.C. has no meaning and is illogical. First of all, the High Court is not the final court in the hierarchy and its orders are amenable to challenge before this court, unlike the obvious position that there is no scope for any further appeal from the order made declining to grant special leave to appeal. It has been on more than one occasion reiterated that Article 136 of the Constitution does not confer any right of appeal in favour of any party as such and it is not that any and every error is envisaged to be corrected in exercising powers under Article 136 of the Constitution of India. The power of this Court under Article 136 of the Constitution are special and extra-ordinary and the main object is to ensure that there has been no miscarriage of justice. That cannot be said to be the same with an appeal envisaged under Section 378 Cr.P.C. despite the fact that it is made subject to the obtaining of leave to file the appeal. The requirement to obtain leave does not render the nature, extent or the scope of the appeal under the code a precarious one as sought to be assumed, on behalf of the appellant, Consequently, this appeal is allowed and the order of the High Court is set aside.

Considering the nature of the appeal before it and the time lag already involved, in our view, interest of justice would be better served by granting the leave, without expressing any view on the merits of the claims in the appeal before the High Court, to enable the same to be disposed of on its own merits without any further delay. Leave is granted. The High Court will do well to entertain the appeal and after issuing notice to the respondents, will consider and dispose of the same in accordance with law.