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BRIJESH SINGH

v.

STATE OF UTTAR PRADESH AND OTHERS

(Criminal Appeal No 646 of 2021)

JULY 20, 2021

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

C

Code of Criminal Procedure, 1973: s. 378 – Appeal against acquittal – Grant of leave to appeal against order of acquittal by trial court – Principles to be considered by the High Court – On facts, trial court acquitted second to sixth respondents for commission of offence under the Penal Code and Dowry Prohibition Act – Application for leave to appeal by the informant – Rejected by the High Court – On appeal, held: Judgment of the High Court did not meet the requirements to be observed, consistent with the provisions of s. 378 – High Court to set forth its reasons, indicating at least in brief, an application of mind to the nature of the evidence and the findings arrived at – Mere observation that the order of the trial judge has taken a possible view without an application of mind to the evidence and the findings not consistent with the duty cast upon the High Court while determining said application – State had also filed an application for leave to appeal against the judgment of acquittal by the trial court and the same was denied by the High Court following the impugned judgment – In view thereof, the impugned judgment passed by the High Court is set aside – Matter remitted to the High Court for determination afresh – Penal Code, 1860 – s. 302 r/w s. 149, ss. 304B and 498A – Dowry Prohibition Act - ss. 3 and 4.

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State of Madhya Pradesh vs Giriraj Dubey (2013) 15 SCC 257:[2013] 1 SCR 1097; State of Maharashtra vs Vithal Rao Pritirao Chawan (1981) 4 SCC 129; State of Orissa vs Dhaniram Luhar (2004) 5 SCC 568:[2004] 2 SCR 68; State of Rajasthan vs. Sohan Lal (2004) 5 SCC 573:[2004] 1 Suppl. SCR 480; State of U.P. vs Ajai Kumar (2008) 3 SCC 351:[2008] 2 SCR 552; State of Maharashtra vs Sujay Mangesh Poyarekar (2008) 9 SCC 475:[2008] 13 SCR 750; Chaman Lal vs State of Himachal Pradesh (2020) SCC Online SC 988 – referred to.

Case Law Reference

[2013] 1 SCR 1097 referred to Para 4

(1981) 4 SCC 129 referred to Para 6

[2004] 2 SCR 68 referred to Para 6

[2004] 1 Suppl. SCR 480 referred to Para 6

[2008] 2 SCR 552 referred to Para 6

[2008] 13 SCR 750 referred to Para 6

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
No. 646 of 2021.

From the Judgment and Order dated 24.09.2014 of the High Court
of Judicature at Allahabad in CrI. Misc. Application U/S 372 Cr.P.C.
(Leave to Appeal) No.351 of 2014.

Ms. Sonia Mathur, Sr. Adv., Uday Prakash, Punit Pathak, Vipul
Shukla, Sujit Kumar, Ramjee Pandey, Advs. for the Appellant.

Rajan Chourasia, Sarvesh Singh Baghel, Surendra Nath Pandey,
Z. U. Khan, M. Z. Chaudhary, Sulaiman Mohd. Khan, Syed Imtiyaz Ali,
Ali Safeer Farooqi, Aftab Ali Khan, Advs. for the Respondents.

The following Order of the Court was passed :

ORDER

1. Leave granted.

2. By a judgment dated 14 August 2014, the Additional Sessions
Judge, Ghaziabad, acquitted the second to sixth respondents in Sessions
Trial No 2125 of 2012, where they were tried for having committed
offences punishable under Section 302 read with Section 149, Section
304B and Section 498A of the Indian Penal Code and Sections 3 and 4
of the Dowry Prohibition Act. The judgment of the trial Judge was sought
to be assailed before the High Court by the appellant, the original
informant, by filing an application for leave to appeal, being Criminal
Miscellaneous Application (Leave to Appeal No 351/2014). The Division
Bench of the High Court of Judicature at Allahabad dismissed the
application on the basis of the following reasons:

“On a careful perusal of the judgment and record, it cannot be
said that the view taken by the trial judge is perverse or

A unreasonable. Simply because another view might have been taken of the evidence provides no ground for interfering with the order of acquittal unless the view taken by the trial judge is not a possible view. On the evidence available on record, it cannot be said that the view taken by the trial judge was not a reasonably possible view.

B In this view of the matter, there is no merit in the application for leave to appeal which is rejected and consequently the Appeal is also dismissed.”

C 3. Notice was issued in the Special Leave Petition on 17 October 2016 after condoning the delay. In pursuance of the notice, Mr Z U Khan has appeared on behalf of the second to sixth respondents.

D 4. Ms Sonia Mathur, senior counsel appearing on behalf of the appellant has submitted that while considering an application for the grant of leave to appeal against the order of acquittal, the High Court was required to scrutinize the evidence and findings and to determine as to whether leave should be granted to appeal. In this context, learned counsel placed reliance on the provisions of Section 378 of the Code of Criminal Procedure 1973 and on the decision of this Court in *State of Madhya Pradesh vs Giriraj Dubey*¹.

E 5. On the other hand, Mr Z U Khan, learned counsel for the second to sixth respondents submits that there are concurrent findings of fact which have led to the acquittal of the accused and he sought to invite the attention of the Court to the findings which have been recorded by the trial Court.

F 6. Having evaluated the rival submissions, we are of the view that the impugned judgment of the High Court does not meet the requirements which are to be observed, consistent with the provisions of Section 378 of the Code of Criminal Procedure 1973, where the High Court hears an application for leave to appeal against an order of acquittal. In *State of Madhya Pradesh vs Giriraj Dubey* (*supra*), a two-Judge Bench of
G this Court has extensively adverted to the precedents of this Court on the subject. The earlier decisions which have been followed in the above decision are: (i) *State of Maharashtra vs Vithal Rao Pritirao Chawan*²;

¹ (2013) 15 SCC 257

H ² (1981) 4 SCC 129

(ii) *State of Orissa vs Dhaniram Luhar*³, (iii) *State of Rajasthan vs. Sohan Lal*⁴; (iv) *State of U.P. vs Ajai Kumar*⁵; and (v) *State of Maharashtra vs Sujay Mangesh Poyarekar*⁶. The principle which has been enunciated is that the High Court must set forth its reasons, indicating at least in brief, an application of mind to the nature of the evidence and the findings which have been arrived at. In other words, merely observing that the order of the trial Judge has taken a possible view without an application of mind to the evidence and the findings is not consistent with the duty which is cast upon the High Court while determining whether leave should be granted to appeal against an order of acquittal.

7. In *State of Orissa vs Dhaniram Luhar* (*supra*), the principles which must govern a case such as the present, where the High Court is requested to grant leave to appeal against an order of acquittal by the trial court have been enunciated. The Court has observed:

“6. 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, reappreciated 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

³ (2004) 5 SCC 568

⁴ (2004) 5 SCC 573

⁵ (2008) 3 SCC 351

⁶ (2008) 9 SCC 475

A 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* [(2001) 10 SCC 607: 2003 SCC (Cri) 639]. About two decades back in *State of Maharashtra v. Vithal Rao Pritirao Chawan* [(1981) 4 SCC 129: 1981 SCC (Cri) 807: 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 recognised as imperative. The view was reiterated in *Jawahar Lal Singh v. Naresh Singh* [(1987) 2 SCC 222: 1987 SCC (Cri) 347]. 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.”

D 8. These principles have been more recently followed in a judgment of this Court in *Chaman Lal vs State of Himachal Pradesh*⁷ [Criminal Appeal No 1229 of 2017, decided on 3 December 2020].

E 9. The Court has been apprised of the fact that the State of Uttar Pradesh had also filed an application for leave to appeal against the judgment of acquittal by the trial court and leave to appeal was denied by the High Court on 7 July 2015. However, it is common ground that in declining to grant leave to the State to appeal, the High Court followed order which is impugned in the present appeal, in which the informant was denied leave to appeal by the judgment of the High Court dated 24 September 2014.

F 10. For the above reasons, we are of the view that an order of remand would be warranted to the High Court. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 24 September 2014 and remit Criminal Miscellaneous Application (Leave to Appeal No 351/2014) to the High Court of Judicature at Allahabad for determination afresh.

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11. Pending applications, if any, stand disposed of.

⁷ (2020) SCC Online SC 988