

1 December 2008

Cr.A. No. 810 of 2003

The Judgment was delivered by: Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court dismissing the application filed by the appellant in terms of S. 378(4) of the Code of Criminal Procedure, 1973 (in short 'the Code'). Appellant had lodged a complaint alleging that cheques issued by the respondents were not honoured by the Bank and in spite of service of notice to the respondent demanding repayment of loan amount, the respondent failed to pay the amount. A complaint u/s. 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') was filed before the learned Chief Judicial Magistrate, Jalandhar, in Complaint Case no.61 of 1998. The said Complaint Case was dismissed by the learned Chief Judicial Magistrate. As noted above, petition in terms of S. 378 (3) of the Code was filed, seeking leave to file appeal before the High Court, which by the impugned judgment dismissed the same.

2. Learned counsel for the appellant submitted that the order passed was a cryptic one and no reasons have been indicated for not granting leave to file an appeal.

3. There is no appearance on behalf of the respondent in spite of service of notice.

4. 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. S. 378(3) of the Code deals with the power of the High Court to grant leave in case of acquittal. S. 378 of the Code reads as follows:

"378. Appeal in case of acquittal. (1) Save as otherwise provided in sub-s. (2) and subject to the provisions of sub-ss. (3) and (5) -

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) 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 an acquittal passed by any court other than a High Court [not being an order u/cl. (a)] or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal -

(a) to the Court of Session, from an order of acquittal passed by a Magistrate, in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order u/cl. (a)] or an order of acquittal passed by the Court of Session in revision.

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

(4) If such an order of acquittal is passed in any case instituted upon Complaint and the High Court, on an application made to it by the complainant in this behalf, grants, special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-s. (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If in any case, the application under sub-s. (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-s. (1) or under sub-s. (2)."

5. 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 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 inv

olved were not trivial.

6. 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 the plainest consideration of justice, the High Court ought to have set forth its reasons, however 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 Others* (2001 (10) SCC 607 2000 Indlaw SC 3698).

7. About two decades back, in *State of Maharashtra v. Vithal Rao Pritirao Chawan* (AIR 1982 SC 1215 1981 Indlaw SC 76) 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 Others*. (1987 (2) SCC 222 1987 Indlaw SC 28717). 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 Art. 141 of the Constitution of India, 1950 (in short the 'Constitution').

8. Even in respect of administrative orders, Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148 : [1971] 2 Q.B. 175) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* ([1974] I.C.R. 120) it was observed:

"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker and 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."

9. The above position was highlighted in *State of Punjab v. Bhag Singh* (2004 (1) SCC 547 2003 Indlaw SC 1159).

10. In the instant case, the High Court ought to have granted leave. The High Court shall hear the appeal on merits. The appeal is allowed. However, we have expressed no opinion on the merits of the case.
Appeal Allowed.