

Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 646 of 2021
(Arising out of SLP (Crl) No 8204 of 2016)

Brijesh Singh

Appellant(s)

Versus

State of Uttar Pradesh and Others

Respondent(s)

O R D E R

- 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 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.

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.”

- 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.

- 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.

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.

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 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; (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

1 (2013) 15 SCC 257

2 (1981) 4 SCC 129

3 (2004) 5 SCC 568

4 (2004) 5 SCC 573

5 (2008) 3 SCC 351

6 (2008) 9 SCC 475

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 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.”

- 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].
- 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.

⁷ (2020) SCC Online SC 988

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.

11 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
July 20, 2021
CKB