

Order reserved on: 06.10.2023
Order delivered on : 13.10.2023

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.285 of 2023

Smt. Rekha RaghuvanshiAppellant

Versus

State of Uttarakhand & othersRespondents

Present:-

Mr. P.C. Petshali, learned counsel for the appellant.
Mr. J.S. Virk, learned Deputy Advocate General with Mr.
Rakesh Kumar Joshi, learned Brief Holder for the State.

ORDER

Coram: Hon'ble Manoj Kumar Tiwari, J.
Hon'ble Pankaj Purohit, J.

In a broad daylight murder, one practising Advocate lost his life. As per the prosecution version, on 13.09.2017 at about 11:15 a.m., when deceased Susheel Kumar Raghuvanshi came out of his house for going to the court, he was shot by two unknown persons, riding on a motorcycle; he was taken to the hospital where he expressed suspicion upon (i) Dabbu @ Serveshwar Prasad, (ii) Brijesh and (iii) Lala Ji @ Vinod Garg for conspiring for his murder. Later on, while being taken to a higher centre for further treatment, he died on the way to Dehradun near Haridwar. The investigation ensued on the first information report lodged by wife of deceased, which was registered in Police Station Kotdwar on 14.09.2017 at about 00:10 a.m. Based on the FIR, a Case Crime No. 281 of 2017 under Section 302 IPC was registered against the accused persons on whom suspicion was expressed by the deceased, namely, Vinod

Lala, Amar Singh, younger son of Jagat Singh and two unknown persons, who were motorcycle borne assailants. A charge-sheet was filed under Sections 302 & 120-B IPC against as many as seven persons. After trial, learned Additional Sessions Judge, Kotdwar, Pauri Garhwal, vide judgment and order dated 31.03.2023, acquitted all the accused persons of the charge levelled against them.

2. Against acquittal of the accused persons, wife of the deceased, Smt. Rekha Raghuvanshi (informant of the case), filed instant appeal before this Court under proviso to Section 372 of the Cr.P.C. The appeal was admitted. Trial Court Record was summoned and notices were issued to the private respondents-accused persons.

3. On 12.07.2023, this Court directed learned counsel for the State to get instructions as to whether State intends to file appeal against the judgment and order impugned in this appeal and the case was adjourned to 18.08.2023.

4. On 18.08.2023, learned State Counsel produced one letter dated 22.07.2023, received by his office from District Magistrate, Garhwal. From perusal of the letter, it was revealed that State Government refused to grant permission to file appeal against order of acquittal recorded by learned Trial Court. Along with said letter, copy of order dated 12.07.2023, issued by Joint Secretary (Law), was enclosed, which revealed that Law Department of the State has turned down the proposal submitted by District Magistrate for filing appeal.

5. Having gone through the impugned judgment and after hearing learned counsel for the appellant, this Court prima facie found that there is enough material for filing appeal against acquittal by the State Government. This Court was surprised to note that when on 12.07.2023, State Counsel was asked to get instructions as to whether State intends to file appeal, the very same day, the proposal for filing appeal submitted by District Magistrate, Pauri Garhwal was turned down, which was pending with the Law Department since 11.05.2023. On this, the Registry was directed to call for comments from the Joint Secretary (Law), Government of Uttarakhand and the matter was adjourned to 14.09.2023.

6. On 14.09.2023, Joint Secretary (Law) submitted his report which was found unsatisfactory. From the report, it was revealed that Principal Secretary (Law) is the final authority to take decision regarding filing of appeal. Consequently, this Court directed the Registry to call explanation from the Principal Secretary (Law) and the matter was adjourned to 04.10.2023.

7. Pursuant to order of the Court, Principal Secretary (Law) has submitted explanation through Deputy Registrar (Judicial) vide letter dated 21.09.2023.

8. Principal Secretary (Law) in his explanation has mentioned that only in cases where there is difference of opinion between Joint Secretary and Additional Secretary, he can go with the opinion of either of the two officers. Relevant extract of the reply given by Principal Secretary (Law) is reproduced below:

“In this regard it is again most humbly submitted that Principal Law Secretary being the Senior most officer in the Law department facilitates the process of request on the opinion rendered by the officers through whom the file reaches to the Principal Law Secretary. In Law Department all the files of various department are routed through Principal Law Secretary. It is only in cases where there is difference of opinion between Joint law Secretary opinion and Additional law Secretary opinion in that case, the Principal law Secretary can concur with the opinion of either of the officer on particular request and that opinion of Principal Law Secretary becomes final.”

9. Public interest demands that appeal against judgment/order passed by Courts, both civil and criminal, are filed in appropriate cases and unnecessary appeals are not filed where filing of appeal would be a useless exercise. Law Department grants permission to file appeal, and no appeal can be filed on behalf of the State without permission of the Law Department. Thus, Law Department has to perform an important public function. Faith of the common people in the system erodes when permission for filing appeal is denied in appropriate cases. Similarly, permission for filing appeal, when granted without application of mind, results in clogging of the superior Courts. Thus, a judicious approach has to be adopted by the Law Department while deciding whether to grant permission for filing appeal in a given case, and for discharging this important public function, Judicial Officers are posted in the Law Department, who are expected to scrutinise the record/evidence in order to form an opinion as to whether a given case is fit for filing appeal or not. However, we are aghast to learn that the proposals for appeal, received by the Law Department, are considered by junior officers, who have little or no experience of dealing with matters of public importance, and the highest officer in the

department simply concurs with the view expressed by his junior officers. This is unbecoming of a Judicial Officer of the rank of senior Principal District and Sessions Judge, posted as Principal Secretary (Law).

10. We disapprove of the stand taken by the Principal Secretary (Law) that the District Government Counsel (Criminal) alone is responsible for not indicating the grounds on which the acquittal order was to be challenged, as it is for the Judicial Officers manning Law Department to find out the infirmity, if any, in the judgment against which appeal is proposed and the possible grounds on which the appeal can be filed.

11. In Government Offices, especially in Secretariat, a paper under consideration is examined at different levels and each officer gives hand written observations on the office note and their notings indicate their thought process. These notes give an idea of the inputs on the basis of which decisions are taken. Although, officers at different levels may express divergent views on a given subject, however, final call in the matter is always taken by the Secretary/Principal Secretary of the concerned Ministry/Department, who forms his opinion based on the views expressed by his subordinate officers. This practice unfortunately does not appear to have been followed in the Law Department. The reply indicates that either the Principal Secretary (Law) is not able to take independent decisions or he avoids responsibility of taking decisions.

12. We disapprove of the manner in which the proposal for filing appeal, submitted by District

Magistrate, Pauri Garhwal, was dealt with by the Principal Secretary (Law). He is warned to be careful in future.

13. Let a copy of this order be placed in service record of the officer concerned, with intimation to him.

14. Appellant is directed to take steps within a week in terms of order dated 17.5.2023. List this appeal for hearing on 18.12.2023.

(Pankaj Purohit, J.)

(Manoj Kumar Tiwari, J.)

AK