

NARESH KUMAR

v.

KALA WATI & ORS.

(Criminal Appeal No. 578 of 2002)

FEBRUARY 25, 2009

**[DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND ASOK  
KUMAR GANGULY, JJ.]**

*CODE OF CRIMINAL PROCEDURE, 1973:*

*Criminal revision filed by complainant – Heard by High Court in absence of counsel for revisionist – HELD: Reasons for non-appearance of counsel for revisionist, having been explained, matter remitted to High Court for disposal afresh in accordance with law.*

The instant appeal was filed by the complainant against the order passed by the High Court dismissing his revision petition questioning the acquittal of respondent nos. 1 and 2 by the trial court of the charges u/ss 498-A/302/34 IPC. It was contended for the appellant that the High Court dismissed the revision petition in the absence of his counsel with the help of *amicus curiae* who did not have even records with him.

Disposing of the appeal, the Court

**HELD:** It is not necessary to go into the merits of the case. The appellant has indicated the reason for which there was no appearance when the matter was called out. That being the position, the order of the High Court is set aside and the matter remitted to it for disposal afresh in accordance with law and expeditiously. [Para 5] [443-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal

A Appeal No. 578 of 2002.

From the Judgment & Order dated 12.9.01 of the High Court of Delhi at New Delhi in CrI. Revision No. 138/1996.

B Rajendra Singhvi, Maitreyi Singhvi, K.K.L. Gautam and Ashok Kumar Singh for the Appellants.

Nagendra Rai, Tara Chandra Sharma and Neelam Sharma for the Respondent.

C The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Delhi High Court dismissing the Revision Petition filed by the appellant.

D 2. Background facts in a nutshell are as follows:

E The appellant is the brother of one Smt. Rekha Rani Jain (hereinafter referred to as the 'deceased') Respondents 1 & 2 faced trial for alleged commission of offences punishable under Section 498A, 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Learned Additional Sessions Judge, Delhi, in Sessions Case No.80 of 1992 held that the prosecution has been able to establish the accusations. Appellant filed a revision petition questioning acquittal. On the day the matter was fixed before the High Court it appears the learned counsel appearing for the present appellant did not appear before the Court and only the learned counsel for the State appeared.

F The High Court held that since the appellant was not represented, the matter had to be decided *ex parte*. The High Court appointed a learned counsel as *Amicus Curie* and recorded that with the assistance of the learned *Amicus Curie* and learned counsel for the State, the records perused and were stayed there was no case for interference.

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3. Learned counsel for the appellant submitted that on the date fixed there was an accident because of which learned counsel who was appearing in the case all through could not appear. It is pointed out that learned *Amicus Curie* did not have even records with him and he could have hardly rendered any assistance to the court. It is also submitted that the accused persons were not represented before the High Court.

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4. Learned counsel for the accused on the other hand submitted that the High Court analysed the evidence in great detail and no interference is called for.

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5. It is not necessary to go into the merits of the case. The appellant has indicated the reason for which there was no appearance when the matter was called before Learned Single Judge. That being the position, we set aside the impugned order and remit the matter to the High Court for fresh disposal in accordance with law. To avoid unnecessary delay, let the parties appear before the High Court on the 3rd of March, 2009 without any further notice. The learned Chief Justice of the High Court is requested to direct listing of the case before an appropriate Bench. It is made clear that we have not expressed any opinion on the merits of the case.

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6. The appeal is disposed of accordingly.

R.P.

Appeal disposed of.