

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

**CRIMINAL APPEAL NO. 2161/2009**

**KHALIL PASHA & ORS. . . APPELLANT(S)**

**VERSUS**

**ABDUL GANI & ORS. . . RESPONDENT(S)**

**O R D E R**

1. We have heard learned counsel for the appellants. By the impugned judgment, the High Court set aside the acquittal in favour of six accused who are appellants before us. Appellant No. 3 has expired during the pendency of this appeal.

2. The High Court reversed the acquittal in exercise of its power of revision under Section 401 of the Criminal Procedure Code, 1973 (for short, Cr.P.C.) due to several reasons which we do not propose to deal with. While reversing the acquittal, however, the

High Court does not appear to have given opportunity to the accused by way of adjourning the matter to enable appearance of advocate or issuing notice to the accused to engage an advocate since none appeared before it.

3. Learned counsel for the appellants submits that the advocate of the appellants had died before the matter was called out for hearing in the High Court and they did not have an opportunity to engage another advocate since they resided in Nanded, about 250 Kms. from the Seat of the High Court. Section 401 (2) of Cr.P.C. reads as follows :

"No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."

4. Having regard to the fact that an acquittal has been reversed without hearing

the accused persons, we are of the considered opinion that the interest of justice require that the matter be heard afresh by the High Court on merits after hearing the accused. The matter is remanded back to the High Court to be heard afresh after giving opportunity of hearing.

5. The High Court may dispose of the matter as expeditiously as possible, preferably not later than six months.

6. The appeal is disposed of accordingly.

.....J.  
[ S.A. BOBDE ]

.....J.  
[ L. NAGESWARA RAO ]

NEW DELHI,  
JULY 11, 2018.

ITEM NO. 108

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2161/2009

KHALIL PASHA. & ORS.

Appellant(s)

VERSUS

ABDUL GANI & ANR.

Respondent(s)

Date : 11-07-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Appellant(s) Mr. Amol Nirmalkumar Suryawanshi, AOR

For Respondent(s) Mr. Shivaji M. Jadhav, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is disposed of in terms of the signed  
order

[ Charanjeet Kaur ]  
A.R.-cum-P.S.

[ Indu Kumari Pokhriyal ]  
Asstt. Registrar

[ Signed order is placed on the file ]