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SLP(Crl.)No. 1611 OF 2001

ITEM No.3

Court No. 8

SECTION II
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Crl.) No. 1611/2001

(From the judgement and order dated 19/07/2000 in DR 5/99 of The HIGH COURT OF CALCUTTA)

STATE OF WEST BENGAL

Petitioner (s)

VERSUS

ISMILE SEIKH @ KHAYAPA SK.

Respondent (s)

(With Appln(s). for stay)
(For Final Disposal)

Date : 17/10/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s)

Mr. Tara Chandra Sharma,Adv.

For Respondent (s)

Mr. S. Muralidhar,Adv.

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

.....L.....I.....T.....T.....T.....T.....T.J
.SP2

Leave granted.
Appeal is allowed.

.SP1

(Suman Wadhwa)
Court Master

(S.Malkani)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1082 OF 2001 @@
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State of West Bengal ... Appellant

vs.

Ismile Seikh @ Khayapa SK. ... Respondent

ORDER@@
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.....L.....I....T.....T.....T.....T.....T.....T.....T.J
.SP2

Leave granted.

We have heard learned counsel for the parties.

At the outset, the learned counsel appearing for the appellant, State of West Bengal, drew our attention to the order passed on 16.10.2001 this Court in SLP(Crl.)No.1567-1568 of 2001 on 16.10.2001 and submitted that on similar fact situation and involving the same question of law, the judgment of the Calcutta High Court was set aside and the criminal appeals were remitted to the High Court for fresh disposal in accordance with law with certain observations. The learned counsel submitted that since the judgment under challenge in the present case is based on the same analysis and reasons and suffers from similar errors of law as in the aforementioned case this appeal may be allowed and the case remitted to the High Court for fresh disposal on merits in accordance with law. He filed a copy of the order for our perusal.

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Learned counsel appearing for the respondent on perusal perusal of the copy of the order in the decided case, fairly accepted the position that this appeal should be disposed of by passing a similar order.

On perusal of the order passed on 16.10.2001 we find ourselves in respectful agreement with the same.

In view of the agreed position, we allow this appeal, set aside the judgment of the High Court in Death Reference case No. 5 of 1999 with Criminal Appeal No.355 of 1999, disposed of on 19.7.2000, and remand the cases to the High Court for fresh disposal in accordance with law. Since it is a case of death reference, the High Court would do well in taking up the cases immediately after the ensuing Dussehra holidays. We would request the learned Chief Justice of the High Court to post the cases before a Bench of which any of the learned judges who have passed the impugned judgment/order would not be a member.

.SP1

.....J.
(D.P. MOHAPATRA)

New Delhi;
October 17, 2001.

.....J.
(SHIVARAJ V. PATIL)