

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 755 OF 2015
(ARISING OUT OF SLP(CRL.) NO.3813/2013)

IRFAN AHMAD & ORS.

Appellant(s)

VERSUS

STATE OF U.P.

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the appellants
as well as the respondent.

The appellants were convicted by the Trial
Court for offences under Section 498-A of the
I.P.C. as well as Section 3 of the Dowry
Prohibition Act, 1961. The First Appellate
Court in Criminal Appeal No.24 of 2011 set
aside the conviction and sentence imposed by
the Trial Court on the sole ground that an
absconding accused, namely, Mohd. Israil whose
case was separated was also convicted without
trial. The merits of the appeal was not gone
into by the Appellate Court.

In the revision, by the impugned order, the High Court having noticed the said part of the judgment of the Appellate Court rightly held that having noted such a gross error in the judgment of the Trial Court relating to the absconding accused, directed that such error should have been rectified by the Appellate Court and on that ground the whole conviction by the Trial Court ought not to have been interfered with and after observing so, remanded back to the Appellate Court. We find full justification in the said approach made by the High Court in the impugned order.

Learned counsel for the appellant only pointed out that in paragraph 13 of the impugned order while remitting the matter back to the Appellate Court, the High Court has also directed the Appellate Court to call for a finding in respect of a charge framed against the accused under Section 323 IPC before deciding the appeal on merits. The apprehension of the appellant is that such a direction issued by the High Court may mislead

the Appellate Court to decide only on such a finding that may be rendered by the Trial Court on Section 323 IPC and that the conviction made under Section 498A IPC as well as Section 3 of the Dowry Prohibition Act, 1961 may not be considered by the Appellate Court.

In the first place, we do not find any basis for such an apprehension expressed on behalf of the appellant, since we find in paragraph 13 the High Court while permitting the Appellate Court to call for a finding of the Trial Court on Section 323 IPC made it clear in the last part of the said paragraph that after receipt of the finding recorded by the Trial Court, the Appellate Court should decide the appeal on merits after giving opportunity of being heard to accused persons and the prosecution.

In any event, we make it clear that the Appellate Court will decide the whole appeal on merits after the finding on Section 323 IPC is called for from the Trial Court, as directed by the High Court.

The appeal stands disposed of by
clarifying the said position.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[SHIVA KIRTI SINGH]

NEW DELHI;
MAY 08, 2015.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3813/2013

(Arising out of impugned final judgment and order dated 07/02/2013 in CRLR No. 123/2012 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

IRFAN AHMAD & ORS.

Petitioner(s)

VERSUS

STATE OF U.P.

Respondent(s)

(with appln. (s) for stay and office report)
(For Final Disposal)

Date : 08/05/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. D.N. Ray,Adv.
Mr. Lokesh K. Choudhary,Adv.
Mrs. Sumita Ray,Adv.

For Respondent(s) Ms. Shalini Kumar,Adv.
For Mr. C. D. Singh,Adv.

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

Leave granted.

The appeal stands disposed of in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

(Signed order is placed on the file)