

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

CRIMINAL APPEAL NO.721 OF 2012

WAKILA & ORS.

APPELLANT(S)

VERSUS

THE STATE OF DELHI & ORS.

RESPONDENT(S)

O R D E R

1. Heard learned counsel for the parties.
2. The Trial Court by judgment dated 26.10.2010 acquitted the private respondent for the offence charged under Section 366, 368 read with 34 and 376(2)(g) and 376-B of the Indian Penal Code, 1860 (hereinafter referred to as, 'the IPC').
3. Aggrieved thereby, the appellant filed an appeal before the High Court bearing Criminal Appeal No.92 of 2011 along with an application invoking Section 391 of the Code of Criminal Procedure (hereinafter referred to as, 'the Cr.P.C.') adverting certain documents by way of Application No.916/2011. The documents sought to be brought on record in the said application were:
 - (i) a final report in FIR No.87/2004 dated 31.10.2010 to show that the case was a false one registered to put pressure upon the appellants for withdrawing/compromising the case registered against the private respondents;

(ii) Similarly, the judgment dated 23.05.2006 in FIR No.416/2004 by which an order of acquittal was rendered against the brother of appellant no.3 by the Court of Sessions Judge, Gurgaon. A copy of the complaint, filed by one of the co-detainees, narrating the circumstances under which he and the appellants were detained by the private respondents on 09.04.2004 and thereafter he was released upon unannounced visit by the Sessions Judge along with the order by the Judicial Magistrate summoning the accused including the appellants.

4. While dismissing the appeal, the learned Single Judge of the Delhi High Court did not advert to the pending application bearing Application No.916 of 2011 invoking Section 391 of the Cr.P.C. The aforesaid procedure adopted is contrary to the law laid down by this Court in *Asim Alias Munmum Alias Asif Abdulkarim Solanki versus State of Gujarat* reported in (2021) 16 SCC 459.

5. In view of the aforesaid infirmity, we are inclined to allow this appeal by setting aside the impugned judgment and order passed by the High Court.

6. Consequently, the appeal stands restored to the file of the High Court to be decided after deciding the application filed bearing Application No.916 of 2011 under Section 391 of the Cr.P.C.

7. The appeal stands allowed.

8. However, we make it clear that the High Court is at liberty

to decide the appeal afresh on merit after deciding the application filed under Section 391 of the Cr.P.C., particularly when we are not expressing anything on merits. We also make it clear that if the said application is disposed of, the same stands restored.

9. Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[S.V.N. BHATTI]

NEW DELHI;
JANUARY 10, 2024

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 SCRIMINAL APPEAL NO(S). 721/2012

WAKILA & ORS.

Appellant(s)

VERSUS

THE STATE OF DELHI & ORS.

Respondent(s)

(IA No. 11569/2011 - STAY APPLICATION)

Date : 10-01-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE S.V.N. BHATTIFor Appellant(s) Mr. Chandra Shekhar, Adv.
Mr. Prashant Shekhar, Adv.
Mr. Ashwani Saini, Adv.
Mr. Yogesh Pachauri, Adv.
Mr. Sanjay Kumar Tyagi, AORFor Respondent(s) Mrs. Sonia Mathur, Adv.
Mrs. Rekha Pandey, Adv.
Mr. Shovan Mishra, Adv.
Mr. Shantanu Sharma, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Mukesh Kumar Maroria, AORMr. Anand Mishra, Adv.
Mr. Amarendra Kumar Singh, Adv.
Dr. (Mrs.) Vipin Gupta, AORMr. S. Parthasarathi, Adv.
Mr. Sriram P, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeal is allowed in terms of the signed order which is
placed on the file.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
COURT MASTER (SH)(POONAM VAID)
COURT MASTER (NSH)