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SLP(Crl.)No. 5475-5476 OF 2003
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 390-391 OF 2004
(Arising out of SLP(Crl.) Nos.5475-5476/2003)

BRIJ KISHORE
.....APPELLANT (S)

.....

VERSUS

STATE OF U.P.
.....RESPONDENT (S)

.....

O R D E R

Leave granted.

Criminal Appeal No.102 of 1988, filed by the appellant in the High Court, against the judgment and order dated 06.02.1988, passed by IInd Additional Sessions Judge, Kheri in Sessions Trial No.207 of 1986 has been dismissed by the High Court by the impugned judgment dated 19.5.2003. The trial court had convicted the appellant for offence under Section 376 IPC and sentenced him to undergo seven years' rigorous imprisonment. The appeal was decided by the High Court in the absence of appellant or his counsel. From the facts, it seems evident that the appellant has been quite vigilant except only that he could not appear on the date when the appeal was dismissed by the impugned judgment. The application filed by the appellant for recalling the

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order dated 19.5.2003 has been dismissed by the High Court by order dated 22.7.2003 for want of competence to alter the judgment dated 19th May, 2003. Having regard to the facts and circumstances of the case, we are of the view that the appellant is entitled to be heard on merits in his appeal by the High Court. Therefore, without expressing any opinion on merit, we set aside the impugned judgment dated 19.5.2003 and remit Criminal Appeal No.102 of 1988 for its fresh decision in accordance with law. The High Court is requested to expeditiously decide the case since it relates to an incident of 1985 and the appellant is in custody now. As far as possible, the appeal may be decided within a period of four months. The appeals are accordingly allowed.

.....J.

(Y.K. SABHARWAL)

.....J.

(S.B. SINHA)

NEW DELHI;
MARCH 26, 2004

ITEM No.36

Court No. 5

SECTION II
A/N MATTER

Petition(s) for Special Leave to Appeal (Crl.) No. 5475-5476/2003

(From the judgement and order dated 19/5/2003 and 22/07/2003 in Crl.Appeal No.102 of 1988 and CRLMA No.3419/03 in Crl.Appeal No.102 of 1988 of The HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH, LUCKNOW)

BRIJ KISHORE

Petitioner (s)

VERSUS

STATE OF U.P.

Respondent (s)

(With Appln(s). for bail)
(With Office Report)

Date : 26/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)

Mr. Abhijat P. Medh, Adv.

For Respondent (s)

Mr. Vikas Bansal, Adv.
Mr. Jatinder Kr. Bhatia, Adv.

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

Leave granted.

We set aside the impugned judgment dated 19.5.2003 and remit Criminal Appeal No.102 of 1988 for its fresh decision in

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accordance with law. The High Court is requested to expeditiously decide the case since it relates to an incident of 1985 and the appellant is in custody now. As far as possible, the appeal may be decided within a period of four months.

The appeals are accordingly allowed.

(Satish K. Yadav) (V. P. Tyagi)
Court Master Court Master
(Signed order is placed on the file)