

1\$  
SLP(Crl.)No. 4514 OF 2000

ITEM No.34

Court No. 9

SECTION IIA  
A/N MATTER

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. 4514/2000

(From the judgement and order dated 13/04/2000 in GA 3/92  
of The HIGH COURT OF PATNA AT RANCHI)

FAHIM KHAN & ANR.

Petitioner (s)

VERSUS

STATE OF BIHAR

Respondent (s)

( With Appln(s). for bail&exemption from filing O.T. )  
( With Office Report )

Date : 12/05/2001 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. R.K.Jain,Sr.Adv.  
Mr. Ranjan Dwivedi,Adv.  
Mr. R.S.Sharma,adv.  
Mr. Feroze Ahmad,adv.

For Respondent (s) Mr. Kumar Rajesh Singh,adv.  
Mr. B.B. Singh,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.

.PA  
.PL55

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 661 OF 2001 @@

Fahim Khan & Anr. ... Appellants

vs.

State of Bihar ... Respondent

ORDER@@  
CCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....T.J  
.SP3

Leave granted.

We have heard Mr. R.K.Jain, learned senior counsel appearing for the appellants and Mr. Kumar Rajesh Singh, learned counsel appearing for the State of Bihar. Our attention is drawn to the direction of the High Court in paragraph 14 of the judgment, which reads as under:

.....L.....I.....T.....T.....T.....T.....T.J  
.SP1

"In the result, this appeal is allowed and the judgment impugned is set aside and the matter is remitted back to the learned trial court to pass a fresh judgment on the evidence already adduced by the parties after hearing them in accordance with law."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.J  
.SP3

Mr. R.K.Jain submits that the High Court having discussed the evidence should have made its independent

-2-

assessment of the materials on record and decided the appeal on merits instead of remitting the matter to the trial court merely for passing a fresh judgment on the evidence already adduced.

Mr. Jain further submits that in the facts and circumstances of the judgment under challenge should be set aside and the matter remitted to the High Court for decision on merits. Learned counsel for the State fairly accepts the position that the matter should be remitted to the High Court for disposal on merits in accordance with law.

In view of the agreed position which, in our view, is fair and proper in the facts and circumstances of the case, we allow this appeal, set aside the judgment under challenge and remit the matter to the

-3-

High Court for disposal on merits in accordance with law after giving opportunity of hearing to the parties.

.SP1

.....J.  
(D.P. Mohapatra)

New Delhi;  
May 12, 2001.

.....J.  
(Shivaraj V. Patil)