

KRISHAN KUMAR

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v.

THE STATE OF RAJASTHAN & ANR.

(Criminal Appeal No. 1088 of 2018)

AUGUST 28, 2018

**[R. BANUMATHI AND VINEET SARAN, JJ.]**

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*Criminal Law – By impugned order, High Court set aside the order of acquittal of appellant and remitted the matter to trial court for denovo trial only on the ground that the prosecutrix was not examined before the trial court – Grievance of appellant was that the impugned order was passed by High Court while considering bail application by another person and that too without issuing notice to the appellant – Held: Since no opportunity of hearing was afforded to the appellant, the impugned order is set aside and matter is remitted to High Court for fresh consideration – Appeal disposed of.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1088 of 2018.

From the Judgment and Order dated 24.08.2015 of the High Court of Judicature for Rajasthan at Jaipur Bench in S.B. Criminal Misc. Bail Application No. 3953 of 2015.

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Vikrant Yadav, Tripurari Rai, Piyush Kant Roy, M. C. Dhingra, Anish Maheshwari, Yunus Malik, Milind Kumar, Abhishek Gupta, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**BANUMATHI, J.** 1. Leave granted.

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2. This appeal arises out of an order dated 24.08.2015 of the High Court of Rajasthan at Jaipur in S.B. Criminal Misc. Bail Application No.3953 of 2015 in which the High Court has set aside the order of acquittal of the appellant and remitted the matter back to the trial court for *de novo* trial only on the ground that the prosecutrix was not examined before the trial court.

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3. We have heard Mr. Tripurari Rai, learned counsel appearing for the appellant, Mr. Abhishek Gupta, learned counsel for the applicant-prosecutrix and Mr. Anish Maheshwari, learned counsel for the respondent-State.

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A           4. Learned counsel for the appellant has submitted that the High Court while considering the bail application in S.B. Criminal Misc. Bail Application No.3953 of 2015 filed by one Satish, even without issuing notice to the appellant herein who was acquitted by the trial court on the ground of absence of evidence, chose to set aside the order of acquittal. It was further submitted that order of acquittal was recorded by the trial court after a full-fledged trial and while so setting aside the acquittal the High Court should have given an opportunity of hearing to the appellant.

B           5. We find force in the submission of learned counsel for the appellant. At this juncture, Mr. Abhishek Gupta, learned counsel appearing for the applicant-prosecutrix, has submitted that against the order of acquittal of the appellant, the prosecutrix has also filed an appeal i.e. S.B. CrI. Misc. Application NO.198 of 2016 in S.B. Criminal Appeal No.802 of 2016 which is stated to be pending before the High Court.

C           6. In such view of the matter and since opportunity has not been afforded to the appellant, the impugned order is set aside and the matter is remitted to the High Court for fresh consideration. The appeal is accordingly disposed of.

D           7. We request the High Court to afford sufficient opportunity to the appellant herein in S.B. CrI. Appeal No.802 of 2016 and to the prosecutrix while considering the matter afresh and decide the same expeditiously in accordance with law.

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Devika Gujral

Appeal disposed of.