

ITEM NO.46

COURT NO.3

SECTION IIB

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 S

Diary No(s). 16495/2017

(Arising out of impugned final judgment and order dated 08-09-2016 in CRLA No. 724/2009 passed by the High Court Of Kerala at Ernakulam)

KUNJUMON &amp; ANR.

Petitioner(s)

VERSUS

JOJU K.V &amp; ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP, exemption from filing O.T.)

Date : 31-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR  
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Raghenth Basant, Adv.  
Ms. Aanchal Tikmani, Adv.  
Mr. Shakul G, Adv.  
Mr. Mithun Verghis, Adv.  
Ms. Liz Mathew, AOR

For Respondent(s)

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

Delay condoned.

By the impugned judgment, the High Court has set aside the judgment under appeal before it and remitted the matter to the trial Court, the operative portion of the order is reproduced as follows:-

"In the result, this Criminal Appeal is allowed in part and the acquittal passed by the court below in respect of A1 and A2 is set aside. The case is remitted to the court below for giving an opportunity to A1 and A2 to adduce further evidence on their part as discussed above. If so advised, the

complainant can also adduce further evidence, if any. It is made clear that it is open to the parties to have recourse to Section 320 Cr.PC, if so advised. The court below shall not insist the appearance of the complainant again before the court below. It is made clear that the complainant and the witnesses who were already examined on the side of the complainant need not be examined again. A1 and A2 shall appear before the court below on 03.10.2016."

We do not see any reason to interfere with the impugned order. However, learned counsel for the petitioners submitted that there are observations in the impugned order which would virtually prejudice the further trial pursuant to the remission and, therefore, prayed that the trial Court be directed to consider the case in accordance with law without being influenced by any observations made in the impugned order.

In the facts and circumstances of the case, we see some justification of the prayer made by the learned counsel and direct that the trial Court may consider the case of the petitioners in accordance with law without being influenced by the observations made by the High Court.

Subject to the above observations, the special leave petition is dismissed.

(DEEPAK MANSUKHANI)  
AR-cum-PS

(RAJINDER KAUR)  
Court Master