

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1344 OF 2018
ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 7961 OF 2016

KAILASH & ANR.

... Appellant(s)

Versus

SANTOSH & ANR.

... Respondent(s)

O R D E R

- 1) Leave granted.
- 2) The Judicial Magistrate, First Class, Sanwer District, Indore, Madhya Pradesh, by an order dated 24.12.2008, convicted the appellants for marrying off their under-aged son and daughter. The appellants pleaded guilty, as a result of which the Appellant No. 1 was sentenced to sit in Court till rising of the Court, along with a fine of Rs. 1,000/-; and Appellant No. 2 was sentenced to fine of Rs. 1,000/-.
- 3) The Revision Petition, which was filed at the behest of the brother of Appellant No. 1, succeeded before the High Court, wherein the High Court has held that since on the date of the commission of offence, the Child Marriage Restraint Act, 1929 had been repealed by the Prohibition of Child Marriage Act, 2006, the order passed by the Judicial Magistrate would have to be set

aside and a *de novo* trial has to be conducted under the Prohibition of Child Marriage Act, 2006

4) Having heard learned counsel for the parties, we are of the view that the offence under Section 6 of the Child Marriage Restraint Act, 1929 and the offence under Section 11 of the Prohibition of Child Marriage Act, 2006 are the same insofar as the appellants are concerned. It is true that the maximum sentence under the Act of 1929 was three months whereas under the Act of 2006, it is two years. That, however, would make no difference on the facts of this case.

5) We, therefore, treat the order passed by the Judicial Magistrate dated 24.12.2008, as an order under the Prohibition of Child Marriage Act, 2006. Consequently, the appeal is allowed and the judgment passed by the High Court in the Revision is set aside.

6) The appeal is allowed.

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(NAVIN SINHA)

New Delhi,
Dated: November 2, 2018.

ITEM NO.44

COURT NO.8

SECTION II-A

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

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 7961/2016

(Arising out of impugned final judgment and order dated 04-08-2016
in CRLR No. 772/2016 passed by the High Court Of M.P. At Indore)

KAILASH & ANR.

Appellant(s)

VERSUS

SANTOSH & ANR.

Respondent(s)

(IA No. 16936/2016-EXEMPTION FROM FILING O.T.)

Date : 02-11-2018 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Niraj Sharma, AOR
Mr. Sumit Kumar Sharma, Adv.
Mr. Rahul Tripathi, Adv.

For Respondent(s) Mr. Satish Kumar, AOR

Ms. Swarupama Chaturvedi, AOR
Mr. B.N. Dubey, Adv.

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

Application seeking exemption from filing Official Translation
is allowed.

Leave granted.

The appeal is allowed in terms of the signed order.

(MANAV SHARMA)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
ASST. REGISTRAR

(Signed order is placed on the file.)