

SANTOSH

V.

STATE OF U.P.

Criminal Appeal No. 470 of 2009

MARCH 16, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]**

Code of Civil Procedure, 1908 – O. 9 – Revision petition – Dismissal of – By ex-parte order – Recalling of order – Denied on the ground that revision was decided on merits – On appeal, held: In view of the fact that various reasons are indicated for non-appearance, matter remitted to High Court, for consideration afresh, on merits.

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 470 of 2009**

From the Judgement and Order dated 27.04.2004 of the High Court of Judicature at Allahabad in Criminal Revision No. 1622 of 1989.

R.D. Upadhyay, S.B. Pandey, for the Appellant.

S.G. Hasnain, S.A. Abde, Anil Kumar, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the Revision Petitions filed by the appellant. Two revisions petitions were filed and one of them i.e. Criminal Revision No.1622 of 1989 was by the appellant. The matter was taken up ex-parte and the revision petition was dismissed after referring to various aspects. An application for recall was filed

- A which was dismissed on the ground that the order which was sought to be recalled was passed on merits and therefore cannot be recalled.

- B 3. Though many points were urged in support of the application it is not necessary to go into those in detail. While issuing notice on 7.11.2008 it was indicated that the matter may be remitted to the High Court for fresh hearing as the revision petition was dismissed in the absence of learned counsel for the appellant. During the hearing of the application learned counsel for the appellant indicated various reasons for which
- C there was non appearance on the day the matter was taken up. That being so, it would be appropriate to set aside the impugned order and remit the matter to the High Court for a fresh consideration on merits. To avoid unnecessary delay let the parties appear before the High Court on 24.3.2009 so that a
- D date of hearing can be fixed. The Hon'ble Chief Justice of the High Court is requested to post the matter before an appropriate Bench.

4. The appeal is allowed.

K.K.T.

Appeal allowed.