

SUPREME COURT OF INDIA

Naresh Kumar

Vs.

Registrar, High Court of Punjab and Haryana

Crl.A.No.1222 of 1998

(G.T.Nanavati and S.Rajendra Babu JJ.)

06.11.1998

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. The appellants are challenging in this appeal the judgment and order passed by the High Court in Criminal Appeal No. 646-SB of 1997 which was earlier registered as Criminal Revision No. 469 of 1996. The High Court reversed the acquittal of the appellants, convicted them under Sections 376, 342 and 506 IPC read with Section 34 IPC and sentenced them to different terms of rigorous imprisonment and also directed payment of fine.
4. The contention of the appellants is that their conviction by the High Court is illegal inasmuch as in absence of any appeal against acquittal and the proceeding having been initiated in suo motu exercise of revisional power it was not open to it to convert it into an appeal and set aside the order of acquittal and convict them.
5. The point is well taken. What the High Court did is something which is not permissible in law. It was well within its powers when it suo motu exercised its revisional power but it was not open to it to convert that proceeding into an appeal against acquittal. It was open to it to set aside the acquittal of the appellants but it was not open to it to convict them. It should have sent the matter back for retrial.
6. We, therefore, allow this appeal. The order of conviction passed by the High Court is set aside but the order of acquittal is confirmed. The matter will now go back to the trial court for retrial and disposal in accordance with law. The appellants are in jail. As this case is remanded to the trial court it will be open to them to apply to the trial court for bail.