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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 952 OF 2006
(Arising out of S.L.P. (C) Nos. 7217-7218 of 2005)

Naz Foundation

Versus

Govt. of N.C.T., Delhi & Ors.

Appellant(s)

Certified to the true copy

[Signature]

Assistant Registrar (Judl.,
.....17.02.06.....
Supreme Court of India)

Respondent(s)

O R D E R

Leave granted.

The challenge in the writ petition before the High Court was to the constitutional validity of Section 377 of the Indian Penal Code, 1860. The High Court, without examining that issue, dismissed the writ petition by the impugned order observing that there is no cause of action in favour of the appellant as the petition cannot be filed to test the validity of the Legislation and, therefore, it cannot be entertained to examine the academic challenge to the constitutionality of the provision.

The learned Additional Solicitor General, if we may say so, rightly submits that the matter requires examination and is not of a nature which ought to have been dismissed on the ground aforesaid. We may, however, note that the appeal is being

strenuously opposed by Respondent No.6. We are, however, not examining the issue on merits but are of the view that the matter does require consideration and is not of a nature which could have been dismissed on the ground afore-stated. In this view, we set aside the impugned judgement and order of the High Court and remit Writ Petition (C) No.7455 of 2001 for its fresh decision by the High Court.

All pleas would be open to the parties. The appellant may make appropriate prayer before the High Court for expeditious decision of the matter.

The civil appeal is allowed.

No costs.

.....CJI.
[Y.K. Sabharwal]

.....J.
[C.K. Thakker]

.....J.
[R.V. Raveendran]

.....J.
[Lokeshwar Singh Pant]

New Delhi,
February 03, 2006.