

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.128 of 2009**

Arising Out of PS.Case No. -134 Year- 1998 Thana –Mokama, District- PATNA

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Umesh Mahto, son of Sato Mahto, resident of Ishwar Tola, Mokamaghat, P.S.
Mokama, District-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ansul- Advocate

For the Respondent/s : Mr. Parmeshwar Mehta-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 20-11-2018

Instant appeal has been called out. During course of argument while the judgment impugned has been gone through, it is evident that the same has been passed by the Assistant Sessions Judge holding the appellant guilty for an offence punishable under Section 326 of the I.P.C. as well as Section 307 of the I.P.C. and further, under both heads has been sentenced to undergo R.I. for seven years independently, directing the sentences to run concurrently. In terms of Section 374(2) of the Cr.P.C., any sentence extending upto seven years inflicted by the Assistant Sessions Judge is appealable before the Court of Sessions and that being so, this appeal would not have been filed, entertained by this Court instead thereof, would have been filed before the learned Sessions Judge as provided under Section 374(3) of the Cr.P.C.



2. At the present moment, learned counsel for the appellant has submitted that mistakenly the wrong forum has been chosen and that being so, appellant be given a liberty condoning the delay to file an appeal before the learned Sessions Judge, otherwise appellant will be prejudiced.

3. The learned Additional Public Prosecutor submitted that instead of filing this appeal before the High Court, appellant would have taken proper recourse as provided under Section 374 of the Cr.P.C.

4. In reply thereto, learned counsel for the appellant has submitted that if he is being allowed an opportunity to prefer an appeal before the Sessions Judge, then in that circumstance, he intends to withdraw this appeal enabling the appellant to file an appeal before the Sessions Judge and for that, limitation should also be condoned with a further direction to allow the appellant to remain on bail granted by this Court, whereupon the learned Additional Public Prosecutor objected.

5. After making patient hearing of rival submission, it is apparent that this appeal should have been filed before the Sessions Judge instead of High Court in terms of Section 374 of the Cr.P.C. However, appellant should not be victimized on that score. That being so, prayer of the appellant is accepted. This appeal is allowed to be



withdrawn giving a liberty to the appellant that in case, appeal is filed within four weeks from today, then in that circumstance, there will be no question of limitation. Furthermore, till the date of filing of memo of Cr. Appeal, the privilege of bail is extended directing the appellant to move afresh before the learned Sessions Judge with a prayer for bail after surrendering before the learned lower Court soon after filing of memo of appeal, who will consider the same in accordance with Section 389(1) of the Cr.P.C.

6. With the aforesaid liberty, instant memo of appeal is dismissed as withdrawn.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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