

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1298 of 2018**

Mohan Deshmukh @ Konda S/o Mangalu Ram Deshmukh Aged
About 19 Years R/o Papara, Awaspara, Police Station Suregaon,
District- Balod, Chhattisgarh. **--- Petitioner**

Versus

State of Chhattisgarh through Station House Officer, Police Station
Suregaon, District- Balod, Chhattisgarh. **---- Respondent**

For the applicant	:	Mrs. Hamida Siddiqui, Advocate.
For the Respondent	:	Mr. Ravi Bhagat, Dy.G.A.

HON'BLE SHRI JUSTICE GOUTAM BHADURI**CAV ORDER****(Reserved on 18.01.2019)****(Pronounced on 12.04.2019)**

1. The impugned judgment dated 22.06.2018 passed in Special Sessions Case No.37/2017 is under challenge in Cr.M.P.No.1298 of 2018 preferred by the convict/petitioner under Section 482 of the Code of Criminal Procedure , 1973 (for brevity "CrPC") and is also under scrutiny in reference case i.e., Cr.M.P.No.1245 of 2018 as envisaged u/s 318 of CrPC.
2. The learned Sessions Judge, while holding that the petitioner could not understand the proceedings being deaf and dumb has convicted him under Section 376(1) of Indian Penal Code, 1860 (for brevity "IPC") and forwarded the matter to this High Court for orders as provided under section 318 of CrPC.
3. Both the cases have been heard together and either side including the Registry has failed to draw the attention of the

Court towards the fact that the judgment of conviction is appealable under Section 374(2) of CrPC, which reads thus :

“374. Appeals from convictions

(1)

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

..... “

4. In the facts situation of the case, section 318 of CrPC would be relevant which is reproduced hereunder:

“Section 318. Procedure where accused does not understand proceedings – If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of Court other than a High Court if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.”

From bare perusal of the impugned judgment, it is evident that the charges under Section 376 of IPC and Ss.3(1)(b)1 & 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were framed against the convict/petitioner and after recording the statements of prosecution witnesses as well as defence witnesses, the judgment of conviction has been pronounced. Since the judgment of conviction has been passed in a trial, section 374(2) of CrPC postulates that if any person is convicted on a trial held by a Sessions Judge may appeal to the High Court.

5. Section 318 of CrPC also postulates that the Court may proceed with the trial and if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court.
6. In the case in hand, the learned Sessions Judge proceeded with the trial and convicted the petitioner under Section 376(1) of IPC and acquitted him from all other charges framed against him and forwarded the proceedings to this High Court under Section 318 of CrPC.
7. In the opinion of this Court, though the matter is before this Court being forwarded under Section 318 of CrPC and the High Court is empowered to pass such order, as it thinks fit, yet the statutory right of convict to appeal against the judgment of conviction is not abrogated, defeated or taken away and therefore an appeal would lie under Section 374 of Cr.P.C.
8. It is trite, where statutory right to appeal against any judgment or order has been provided, the High Court should not exercise its extraordinary jurisdiction under section 482 of CrPC.
9. In view of the above, the petition filed by the convict/petitioner under Section 482 of CrPC against the impugned judgment of conviction deserves to be and is dismissed summarily as being not maintainable reserving liberty in favour of the petitioner to prefer a duly constituted appeal as provided in CrPC, if so advised.

**Sd/-
GOUTAM BHADURI
JUDGE**