

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK  
&  
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

**CRIMINAL REFERENCE NO. 01 of 2024**

**IN REFERENCE OF : STATE OF MADHYA PRADESH**

**Vs.**

**KALYAN RAIKWAR**

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**APPEARANCE:**

*Shri Deependra Singh Kushwaha – Additional Advocate General for the appellant/State.*

*Shri R.K. Sharma – Senior Advocate and Shri V.D. Sharma – Advocate along with Ms. Bhavya Sharma – Advocate as amici curiae.*

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**JUDGEMENT**

**{Delivered on 29<sup>th</sup> the Day of June, 2026}**

***Per: Justice Anand Pathak,***

1. The instant criminal reference has been made by the learned Special Judge (POCSO Act), District Gwalior (M.P.) under Section 318 of the Code of Criminal Procedure, 1973 after convicting the respondent/accused for the offences under Sections 449, 376(AB), 506 of IPC and Section 6 of Protection of Child from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”) vide judgment dated 14.05.2024 in SC Case No. 186/2022, on account that though the respondent/accused was not of unsound mind but on account of being deaf & dumb, the respondent/accused is unable to understand the Court proceedings, hence, referred the matter for

further course to this Court. Hence, this reference is before this Court.

**BRIEF FACTS OF THE CASE**

2. The factual matrix which led to the presentation of the instant reference is that an FIR came to be lodged at crime no.488/2022 at Police Station Thatipur, District Gwalior (M.P.) for the offences u/s. 376 (AB), 506 of IPC and Sections 5m/6 of POCSO Act giving the following particulars as is stated in para 4 & 5 of the judgment dated 14.05.2024 passed in SC Case No.186/2022:

“...कि दिनांक 13.07.22 को पीडिता की माता ने अभियुक्त द्वारा उसकी अवयस्क पुत्री उम्र 7 वर्ष के कपडे उतारकर पीडिता के साथ बलात्संग करने के सम्बन्ध में लेखिय रिपोर्ट यह पेश की है कि वह कोचिंग पढ़ने जाती है व उसके पति सेल्समेन है, उसके घर में उसका पति, पीडिता, सास, ससुर व ननद के साथ रहती है, उसके ससुर 6 साल से पैरालिसिस के मरीज है। अभियुक्त पिछले एक माह से उसके ससुर की मालिशकरने के लिए उनके घर आता था। दिनांक 11.07.22 को अभियुक्त 8 दिन कीछुट्टी के बाद फिर से उनके घर ससुर की मालिश करने आया था। दिनांक 12.07.22 को दोपहर करीब 1 बजे उसकी सास ने बताया था कि अभियुक्त ने कल दोपहर मेंकरीब 3 बजे कमरे का गेट बंद कर कुंदी लगा दी और कमरे में पीडिता भी थी तथा उसकी सास ने पीडिता से बार बार पुछा की कि अंकल ने गेट क्यों लगाया था और गेट लगाकर क्या किया था, तब पीडिता ने बताया कि एक दिन पहले मालिश वाले अंकल दोपहर में आये थे तब दादू की मालिश करने

के बाद दादू बाथरूम करने चले गए थे और दादी चाय बनाने चली गयी थी, बुआबाहर पोर्च में सोफे पर सो रही थी और वह बुआ के पास लेटी थी तभी अंकल ने उसे हाथ से इशारा कर अपने पास दादू के कमरे में बुलाया और कमरे की कुन्दी लगाकर उसकी चङ्डी और लेगी उतार दी थी फिर अंकल ने अपना पेंट और चङ्डी उतार ली थी और उसे जमीन पर लेटाकर अंकल ने उसकी बाथरूम की जगह पर अपनी बाथरूम की जगह लगाकर हिलने लगे थे, थोड़ी देर बाद दादी ने कमरे का गेट खटखटाया तो वह अंकल जल्दी से उठ गये थे और उससे बोले की जल्दी से अपने कपड़े पहन लो और अंकल ने अपने कपड़े पहनकर गेट खोल दिया था, फिर दादी ने अंकल से पुछा कि गेट क्यों लगाया था तो अंकल बोले कि वह बच्ची को बता रहा था कि दादू को पानी कैसे देना है और बाद में अनक्ले बोल रहे थे कि किसी को भी यह बात बताई तो तुम्हारे दादू की तब्यत सही नहीं होगी, फिर उन्होंने पीडिता से पुछा की अंकल ने तुम्हारे कपड़े उतारे तो तुमने दादी को क्यों नहीं बुलाया तो पीडिता से पुछा की अंकल ने तुम्हारे कपड़े उतारे तो तुमने दादी को क्यों नहीं बुलाया तो पीडिता ने बताया कि वह बहुत डरी हुयी थी इसलिए उसने किसी को कुछ नहीं बताया था।

पीडिता के पिता खाटूश्याम से दर्शन कर वापस घर आये तब उसने साड़ी बात बताई थी और अभियुक्त उन के घर पर आया था तब वह सब उसे अपने साथ लेकर रिपोर्ट लिखने थाने लेकर गए थे। अभियुक्त ने उसकी बच्ची के साथ उसके कपड़े उतार कर गलत काम

किया है। पीडिता की माता की लेखिय रिपोर्ट प्रदर्शपी-04 के आधार पर थाना थाटीपुर, अपराध क्रमांक 488/22 अंतर्गत धारा 376(एबी), 506 भा.द.स. एवं धरा 5(एम)/6 लैंगिक अपराधों से बालको का संरक्षण अधिनियम 2012 का दर्ज कर पीडिता का मेडिकल परीक्षण कराया गया। साक्षीगण के कथन लेखबद्ध किये गए तथा पीडिता और अभियुक्त की मेडिकल परीक्षण के उपरांत वस्तुएं जप्त कर पीडिता की उम्र के सम्बन्ध में दस्तावेज प्राप्त किये गए थे। विवेचना उपरांत अभियुक्त पत्र विशेष न्यायालय केसमक्ष पेश किया गया।”

3. On the basis of the aforesaid FIR, investigation got initiated and charge-sheet was filed along with all investigative processes being undertaken before the learned trial Court, whereinafter the trial began after framing of charges u/s. 376(AB), 506, 449 of IPC and Sections 5(m) r/w. 6 of POCSO Act, wherein the charges were denied by the respondent/accused through counsel.
4. During trial the prosecution witnesses from PW-1 to PW-11 were examined and when the trial was at the stage of accused examination u/s. 313 of Cr.P.C., the plea was raised by the respondent/accused through counsel that as the accused is deaf & dumb, therefore, his examination be conducted by the medical board or medical officer.
5. When the examination from the medical board was undertaken and even the sign language experts were called, the respondent/accused allegedly unable to understand the sign language and even was unable to understand the questions being asked for accused examination. Therefore, in view of Section 318 of Cr.P.C. and judgment of the Chhattisgarh High Court in the case of *State of*

*Chhattisgarh Vs. Deepak Kumar Sahu, (2007) 1 MPHT 80* trial Court without examining the accused u/s. 313 of Cr.P.C. and entering into defence evidence stage, directly rendered the judgment of conviction dated 14.05.2024 in SC Case No.186/2022 by learned Special Judge (POCSO Act), District Gwalior (M.P.) and thereafter, made the reference to this Court u/s. 318 of Cr.P.C. while concluding in para 82 as stated hereunder:

“82. अभियुक्त का उक्त निर्णय उसके मूक/बाधिर होने के कारण द.प्र.स. की धारा 318 के प्रावधान अनुसार परीक्षण किये बिना किया गया है। ऐसी स्थिति में द.प्र.स. की धारा 318 के प्रावधान अनुसार आपराधिक प्रकरण का सम्पूर्ण अभिलेख एवं निर्णय की एकअतिरिक्त प्रति सहित माननीय प्रिंसिपल रजिस्ट्रार उच्च न्यायालय खंडपीठ ग्वालियर माननीय प्रधान जिला न्यायाधीश ग्वालियर के माध्यम से प्रेषित किया जाता है।”

6. Hence, this reference is before this Court for further orders in view of section 318 of Cr.P.C.
7. Issue involved in the present reference is; “Whether the proceedings been submitted u/s. 318 of Cr.P.C. before this Court is proper and as per settled legal matrix in view of material available on record and otherwise ?”
8. Learned *amici curiae* argued at length and while placing reliance on several judgments in *Re: Boura @ Drigpal, (2006) 4 MPLJ 72, State of Chhattisgarh Vs. Deepak Kumar Sahu, (2007) Cr.L.J. 1522, State of Rajasthan Vs. Gani Mohammad* judgment dated 19.02.2009 passed in Crim. Misc. Pet. No. 222/2005, *Charan Singh Vs. State of U.P., (2022) 4 ILR A53, Shantaram Dattatraye & Ors. Vs. State of Karnataka, 2003 Cr.L.J. 1775, Bijay Nanda @*

*Bijay Kumar Nanda Vs. State of Orissa*, (2010) 2 Orissa Law Reviews 192, *State of Orissa Vs. Rathlal Dhanwar @ Kunda*, (2019) III ILR-CUT-37, submits that not in all cases where accused is deaf & mute reference can be made. If the accused does not understand the proceedings then he can be made understood the proceedings by way of his relative or interpreter. Trial may go in ordinary way and examination of accused under Section 313 of Cr.P.C. can be made in writing. Of course, if the case is genuine and accused is not acting or faking by all means adopted, the accused could not be made understood the incriminating material against him or any other proceedings of the Court then reference can certainly be made as a measure of extra caution so that tenets of fair trial is maintained.

9. It is further submitted that when the accused though is not of unsound mind but cannot be made to understand the proceedings of the Court, the matter is referred to the High Court whereas the proceedings resulted into conviction and only after conviction matter can be referred and if the accused is found to be of unsound mind or a lunatic, then he has to be dealt with in accordance with Chapter XXV of the Cr.P.C.
10. As submitted, it is the duty of the trial Court to make an inquiry as to whether the accused can be made to understand the proceedings of the Court and would record a finding that, despite all endeavours, the accused cannot be made to understand the proceedings rather he is capable to understand the nature and consequences of the act and also he is not of unsound mind, then the trial can proceed and even accused be made punishable to any sentence despite accused being deaf and dumb. In case, the accused can understand the proceedings,

no need for reference of the case under Section 318 of the Cr.P.C. arises.

11. While referring to the factual matrix of the case, including the medical report obtained, that the accused does not appear to be whether he is deaf and dumb, learned *amici curiae* also referred to the details of the earlier case in ST No. 489/2013, where the accused suffered conviction vide judgment dated 20-12-2014 for offence under Sections 376(2)(i), 376(2)(I) of the IPC and Section 5(k) read with Section 6 of the POCSO Act. In the said trial, the accused did not raise the plea of being deaf and dumb. Even in the medical report, his conduct is referred to as Malingering [meaning pretending to be ill so as to escape something (here conviction and sentence)].
12. Learned Additional Advocate General appearing on behalf of the State was in unison with the submissions advanced by the learned *amici curiae*. As submitted, on the basis of record, this is a case where accused is deliberately avoiding the proceedings by pretending himself to be a deaf and mute person, whereas he is actually misleading the Court. The medical report and the evidence as surfaced on record indicate that the accused knew the nature of the act and its consequences very well. After appreciation of the evidence, the impugned judgment is being passed.
13. Heard the submissions advanced by the learned *amici curiae* as well as learned Additional Advocate General at length and perused the record.
14. The accused is facing conviction in respect of offence under Sections 449, 376(AB), 506 (Part I) of IPC and Section 5(m) read with Section 6 of POCSO Act against the victim being aged around 7 years, 5

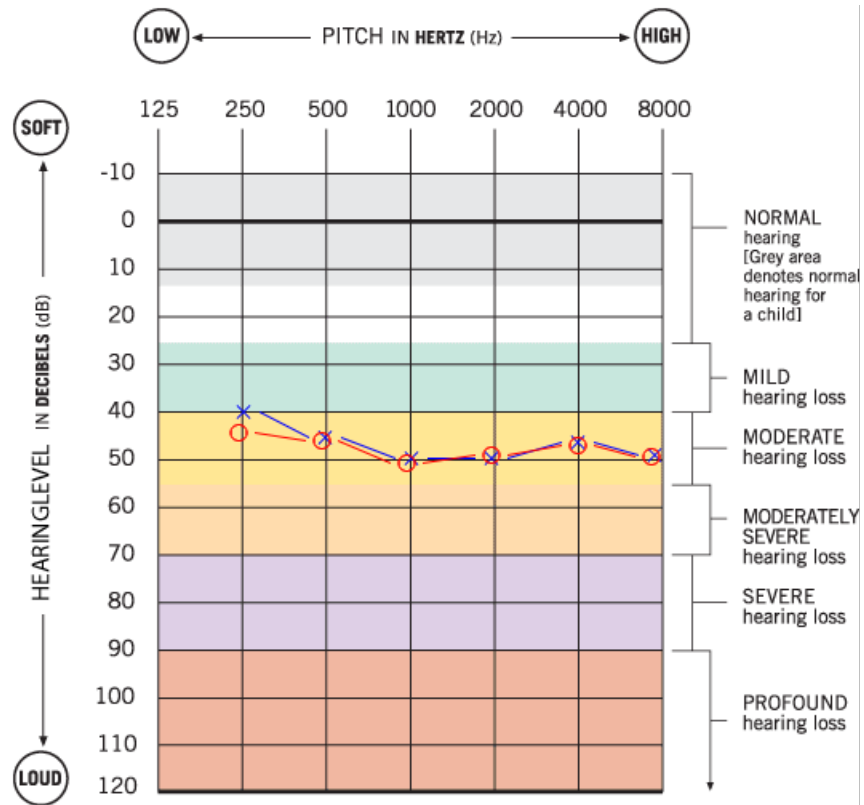
months and 20 days at the time of commission of offence.

15. It is worth while to mention here that neither during investigation nor at any time during examination of prosecution witnesses, the respondent/accused or his counsel raised any plea in respect of difficulty to understand the court proceedings by the accused and even cross-examination of witnesses have been conducted at length including to put forth the defence (in cross-examination itself) that there was some monetary dispute which is the basis of initiation of instant criminal proceedings and it was only at the time of accused examination being undertaken u/s. 313 of Cr.P.C. on 14.12.2023 (as is evident from the order sheets of the learned court), wherein the learned trial court observed that though accused showed up his name but when questions were asked in respect of prosecutrix and alleged offence, then he by virtue of signs and gestures had shown that he is neither able to hear nor speak, wherefore, the examination was adjourned and medical report in that regard was called by the court below.
16. The said medical opinion was received by the trial court on dated 21.02.2024, wherein it was opined by the medical expert that though accused bears certain deafness but is not totally deaf and after using Hearing Aid of amplification can make the accused understand the conversation. The same is on record as per order sheet dated 21.02.2024 of the trial court. The report of Pure Tone Audiometry Test (PTA test) was also called, but as the said machine is not available, the same could not take place and the accused was referred to AIIMS Bhopal for further Auditory Tests. The report of AIIMS Bhopal showed that V wave in his auditory test comes at 80 decibel points and his hearing loss is from severe to profound and using of

hearing aid would help him, but due to his non-cooperation, definite results could not be provided by AIIMS Bhopal. It was on the request of counsel for accused, that trial court should himself interact with the accused, hence, he was called on 20.04.2024 as is evident from the order sheet of the trial court, where accused didn't answer to any of the questions so asked by the trial court. Thereafter, it was ordered that sign language experts be called for conducting accused examination u/s. 313 of Cr.P.C. and the case was fixed for 27.04.2024. In compliance of the order, Smt. Rakhi Asthana & Shri Ramsewak Baraiya were present who after interaction with accused opined that he is even unable to understand the sign language but he is not "unsound mind" but cannot be made to understand the proceedings of the court. Thus, the trial court without examining the accused u/s. 313 of Cr.P.C. by virtue of Section 318 of Cr.P.C. proceeded with the trial which resulted in conviction vide judgment dated 14.05.2024 and in terms of section 318 of Cr.P.C., the case was referred to this Court for further orders. All these proceedings of trial court are part of the record.

17. The medical report in respect of respondent/accused assumes great importance wherein the medical board has opined the accused to be "MALINGERING" meaning pretending to be ill so as to escape something (in the present case conviction and sentence), as is opined that though accused is not "unsound mind" and he is not totally deaf which means he can hear at loud amplification and even has ability to understand the consequences of his actions and is able to instruct his counsel in trial. It is also opined in the report that the respondent/accused can hear loud sounds above 70 dBHL which means he is suffering from severe to profound hearing loss as is

demonstrated in the table given below:



18. This requires usage of hearing aid wherein accused was giving inconsistent response and no significant change by using hearing aid could be noticed which would show that either accused was faking/acting. At internal page 15 of the said report, it is shown that hearing aid trial was done but no response and cooperation was given by accused, hence referred to higher center, where on internal page no. 16 certain history is written may be in respect to something >2 years being written which shall be verified by doctor or accused or his family members which includes children and wife and thus, it is a case of faking hearing loss *prima facie*, which can be deciphered from previous conviction against the respondent/accused for the

sexual offence itself. The copy of the medical report of respondent/accused and other documents are part of record.

19. So far as documents exhibited in instant trial conducted at SC No.186/2022, clearly shows that on every document respondent/accused has signed in Hindi writing his name “कल्याण” whether it is arrest memo (Ex. P-16), consent for medical examination (Ex. P-18), Sahmati Panchnama (Ex. P-19), sample for DNA examination (Ex. P-20) and he had also signed the orders sheets of the trial court when he was present which is reflected from the orders sheet dated 13.10.2023, 14.12.2023, 23.12.2023, 03.01.2024, 09.03.2024, 20.04.2024, 27.04.2024 as well as on *acknowledgement of receipt of notices been issued* by this Court through Jail Superintendent as is available on ERP portal at Sr. No. 4 & 5 at ADV. It shows that he is capable of understanding the proceedings of the court and only when he could understand, then only he had made his signature on the aforesaid documents.
20. To substantiate the aforesaid contention that the respondent/accused is not totally a deaf and dumb person, it is required to peruse the *arrest memo of the respondent/accused Ex.P-16* as well as *Crime Details Form Ex.P-5* wherein it has been stated that the accused while speaking stammers. Therefore, the respondent/accused neither totally deaf nor mute/dumb as per the aforesaid analysis of medical reports/documents and exhibits, even also, the statements of prosecution witnesses especially that of prosecutrix (PW-1) including her police and magistrate statement u/s. 161 & 164 (Ex. P-2) of Cr.P.C. as well as complaint (Ex P-3) shows that respondent/accused is capable of speaking and had threatened the prosecutrix not to tell about the incident to anyone.

21. The important factum which didn't come to light before the trial court was in respect to previous conviction delivered against respondent/accused for the offence of rape u/s. 376(2) of IPC to suffer 10 years (RI) with fine & default stipulation wherein the respondent/accused faced allegations in respect of rape of a 14 years old disabled girl, wherein the FIR bearing crime no. 519/2013 was registered at P.S. Bahodapur, District Gwalior (M.P.) and he was convicted for the offences u/s. 376(2)(i), 376(2)(l) of IPC & sections 5(k) r/w. section 6 of POCSO Act vide judgment dated 20.12.2014 in S.T. No.489/2013 wherein the appeal against the conviction & sentence is pending before the this Court bearing CRA No.144/2015.
22. In the said appeal vide order dated 14.08.2019, the respondent/accused was released on bail vide suspending his sentence. It was after the release of the accused in that case of 2013, committed another sexual offence of which the present proceedings emanates from in the year 2022 and surprisingly, in the trial of 2013 case, no such plea of being deaf & dumb and unable to understand the proceedings of the court came to highlight either by the respondent/accused or his counsel or family members & even his statement u/s. 313 of Cr.P.C. 1973 had also been recorded by the trial court and conviction as well as sentence was implicated.
23. In criminal appeal (CRA No. 144/2015) it was for the first time referred by the accused that the respondent/accused is a deaf & dumb person who has certificate/proof of the same and that formed one of the arguments in suspension of sentence application, but if that be the case, then why the said certificate or plea was not taken at the time of trial or even advancing final arguments or even while stating mitigating circumstances when heard on point of sentence after

conviction as is evident from kind perusal of the judgment of conviction dated 20.12.2014. This creates suspicion on the part of the respondent/accused only for getting benefit in criminal proceedings.

24. Non-disclosure of previous antecedents itself doubts the conduct of the respondent/accused and as he has not approached with clean hands and thus, no benefit could be availed by as it is his deliberate omission to state previous conviction before the trial court because while applying for bail before the trial court, the respondent/accused has not mentioned his previous antecedents which speaks volume about the conduct of the respondent/accused. This has even been highlighted by this Court in order dated 10.03.2026 passed in this reference itself when personally interacted with the respondent/accused and hence, requires orders on this reference as the said material was not on record with the trial court and if the same would had been placed, then trial court would had been reluctant in sending the reference, as apparently the respondent/accused was faking or exaggerating his physical deformity to gain advantage.
25. Looking to the nature of the allegations, the evidence surfaced against the accused, and the defence taken by the accused as a person with disability (deaf and dumb), an inquiry of the other family members of the accused and background report accompanied by the educational qualifications and other attributes of the accused could also have been enquired so that equity and justice can be balanced. The allegations are serious in nature, and an accused in such circumstances cannot escape the wrath of the proceedings by cleverly managing to represent himself as deaf and dumb or as a person who cannot understand the proceedings held against him. **A cautious approach is required. Victim's rights are also required to be seen.**

26. The documents in relation to Crime No.519/2013 registered at P.S. Bahodapur, Dist. Gwalior (M.P.) especially the arrest memo so prepared in that case of accused/respondent shows following glaring information, wherein arrest memo (crime no. 519/13) shows educational qualification of respondent/accused as “कक्षा 2” whereas in present matter, the arrest memo shows “अशिक्षित” and in occupation, the former shows “मालिश” but the latter shows “मजदूरी” and in arrest memo (Ex. P-16) in present matter, in तकिया कलाम column it is written “क्षेत्रीय हिंदी” which categorically shows that the respondent/accused has attended school and speaks (though stammers) at time as is stated in Ex. P-16 and it might be a case, where deliberately such a *modus operandi* been adopted by the respondent/accused to evade the criminal justice system.
27. In S.T. No.489/2013 which culminated into judgment of conviction and sentence dated 20.12.2014 by the learned Fifth ASJ, Gwalior (M.P.), the respondent/accused was examined u/s. 313 of Cr.P.C. as is evident from para 5 of the said judgment. Thus, the record of the said Sessions Trial as well as record in CRA No.144/2015 can be perused for arriving at a just conclusion in present matter. After perusing the medical report, record of ST No.489/2013 as well as CRA No. 144/2015, also record of the instant case by examining the near kins of the respondent/accused and to call for educational qualifications details from the school in which he went and other social background persons in whose company he was in & also from jail authorities as well as inmates regarding his daily routine are some additional tools

which may be employed, if required.

28. Prosecutrix (PW-1) of both the cases have stated that respondent/accused could speak & there is no evidence by any of the witnesses, that the respondent/accused could not speak or is dumb, neither any of the medical examiners who examined respondent/accused during investigation in both the cases, have opined so and even no document in respect of his deaf & dumb ailment is on record in both the cases, which doubts the very credibility of such illness.
29. The evidence of prosecutrix (PW-1) assumes importance, and incidentally, in both the cases, the prosecutrix have stated that the respondent/accused could speak, and there is no evidence by any of the witnesses that the respondent-accused could not speak or is dumb. Notably, neither any of the medical examiners who examined the accused during investigation in both the cases have opined so, nor is any document in respect of the deaf and dumb ailment on record in both the cases. Therefore, it creates doubt about the very credibility of such illness.
30. Interestingly, in earlier Case No. 489/2013, which culminated into the judgment of conviction and sentence dated 20.12.2014 by the 5th ASJ, Gwalior, the accused was examined under Section 313 of CrPC, as is evident from para 5 of the said judgment. However, the accused in the present case is showing himself as a person who cannot understand the proceedings and is deaf and dumb. The question remains that when he participated in the earlier sessions trial without raising this plea and without representing himself as deaf and dumb, then in this trial, his attempt is to wriggle out on the pretext of being deaf and dumb. This clever disposition requires further enquiry.

31. The accused knew the nature and consequences of the act very well. Once an accused knows the consequences of the act, then his plea that he does not understand the proceedings loses its sheen.
32. Nowhere the defence alleged either in previous trial or in this trial that the respondent/accused is not able to understand the proceedings of the court as on one hand he had defended one trial without any plea & in this case, the respondent/accused was reluctant to use the hearing aid and didn't respond to the questions asked by the trial court nor cooperated with the medical examiners team for auditory purposes, which raises serious reservations against the conduct of the respondent/accused.
33. The remand order sheet & form as available over ERP portal of this Court at LC (Lower Court) details at Sr. No.12 titled as POLICE REMAND-JUDICIAL REMAND categorically shows that the Special Judge who had referred the matter u/s. 318 of Cr.P.C. should have taken assistance of the order-sheets of Presiding Officer who had ordered judicial remand (both P.O. being different) of the respondent/accused as in the remand order sheet dated 14.07.2022, it has been categorically stated that **“अभिज्ञत से पूछे जाने पर उहे कोई चेट न हेन व्यक्त किय |”** Even in the Judicial Remand form it has been stated that *respondent/accused was heard*. Order-sheets of court proceedings are sacrosanct. From different order-sheets, Court proceedings by way of evidence recorded of witnesses indicate disposition of accused. {See: **D.P. Chadha Vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221, State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, (1982) 2 SCC 463, Bhagwati Prasad Vs. Delhi State Mineral Development**

**Corporation, (1990) 1 SCC 361 and Dr. G.C. Chourasiya Vs. State of Madhya Pradesh and others, (2023) 4 MPLJ 222}.**

34. This categorically shows that proper evaluation or inquiry in respect of condition or conduct of the respondent/accused has not been made.
35. In view of the above facts and circumstances of the case, it appears that *prima facie* this is a case where the mandatory provision of Section 313 CrPC is not being complied with by recording the accused statement, and if needed, the accused examination be made **in writing as per Section 313(5) of CrPC, which was inserted by the 2009 Amendment Act in accordance with law**; otherwise, it will prejudice the cause of the accused and accused would try to get advantage of it.
36. Therefore, the trial Court is directed to record the accused statement as per Section 313 of CrPC, and if required written examination be ensured. It is also open for the trial Court to call any sign language expert for ensuring the accused statement under Section 313 of CrPC. The accused is expected to cooperate in the proceedings, and if the accused still does not cooperate in any of the circumstances referred hereinabove, then after giving sufficient opportunity in this regard, the trial Court may proceed to pronounce judgment in accordance with law. This way, interest of justice would be served both ways.
37. The impugned judgment by which the trial Court referred this reference to this Court, is hereby set aside/modified for the purpose of ensuring opportunity of the accused statement under Section 313 of Cr.P.C. to the respondent/accused so that the trial may not later on be vitiated on the pretext of non-examination of the accused statement. Needful be done at an expeditious note, preferably within

four months from the date of passing of this order.

38. The reference is answered accordingly and is disposed of in terms referred above.
39. Copy of this judgment be sent to the trial Court for necessary information and compliance.
40. Before parting, this Court intends to record deep appreciation for the valuable assistance rendered by Shri R.K. Sharma, Senior Advocate and Shri V.D. Sharma, Advocate and Ms. Bhavya Sharma, Advocate as *amici curiae*.

**(ANAND PATHAK)**  
**JUDGE**

**(PUSHPENDRA YADAV)**  
**JUDGE**

Anil\*