

HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet

Criminal Miscellaneous Petition No.515 of 2016

Bholaram Dhruw, aged 29 years, S/o Birjhu, R/o Village Amlidih, P.S. Bhatapara Gramin, District Raipur (Now District Bhatapara – Baloda Bazaar), Chhattisgarh

---- **Petitioner**

versus

State of Chhattisgarh, through P.S. Bhatapara Gramin, District Raipur (Chhattisgarh) (Now District Bhatapara – Baloda Bazaar), Chhattisgarh

----- **Respondent**

11.8.2016	Ms. Nirupama Bajpai, Advocate for the Petitioner/Appellant. Ms. Madhunisha Singh, Panel Lawyer for the State/Respondent. An appeal, being Criminal Appeal No.1113 of 2001 was filed by four persons Bholaram Dhruw, Onkar Verma, Narayan and Duklaha Verma, whereby they challenged the judgment of the Trial Court convicting them under Sections 396 and 201 of the Indian Penal Code. The criminal appeal came-up for hearing on 26.2.2016 before a Bench comprising of the then Chief Justice Shri Navin Sinha and one of us Shri P. Sam Koshy, J. With regard to Appellant Bholaram Dhruw, in paragraph 2 of the judgment in Criminal Appeal No.1113 of 2001, it is mentioned as follows: “2. The Appellant Bholaram is stated to have completed his period of custody and has been released. Learned Counsel for the Appellants submits that she has no further instructions with regard to him for pursuing the appeal.” Thereafter, the appeal was heard on merits and the following order was passed: “24. The only material against Appellants Onkar and Narayan is the confession leading to recovery of the	

belongings of the deceased from the house of Appellant Duklaha. The recoveries have been proved by PW-2, Mohit Ram. But PW-10, Umashankar has not stated how he identified the common items of Puja as specifically belonging to the deceased alone by any distinguishing features during the TIP. In any event the TIP, Exhibit P-20, stands vitiated in view of the statement of PW-18, Theerdas, that the police remained present throughout the TIP.

26. Resultantly, the appeal of Appellant Duklaha is dismissed. The appeal of Appellants Onkar, Narayan and Devesh are allowed giving them benefit of doubt.

27. Appellant Duklaha is directed to surrender and/or be taken into custody forthwith for serving out the remaining period of his sentence. We are informed that today he is approximately 87 years of age. It is directed that the Jail authorities shall take necessary steps to make his incarceration humane and provide all necessary assistance medical or otherwise.

28. The Appellants Onkar, Narayan and Devesh are required to execute necessary bail bonds in compliance of Section 437-A Cr.P.C.”

The result is that Appellants Onkar and Narayan have been acquitted of the charge framed against them and the appeal filed by Appellant Duklaha is dismissed. However, no order has been passed as far as the appeal of Appellant Bholaram Dhruw is concerned.

True it is, that in paragraph 2 of the judgment, it is noted that Appellant Bholaram Dhruw has completed the period of custody and has been released.

Learned Counsel for the Appellant/Petitioner herein also stated that she had no further instructions with regard to

pursuing the appeal on his behalf, but no order was passed in the judgment.

Furthermore, in a criminal case, even if the Counsel appearing for the accused submits that he has no instructions, it is the duty of the Court either to direct the High Court Legal Services Committee to appoint a Counsel from its panel to argue the case of the said accused or to issue a bailable warrant against the accused informing him that the Counsel engaged by him is not appearing in the case and he has to make alternative arrangement or if he so desires he may approach the High Court Legal Services Committee for appointment of a Counsel from its panel to argue his case. Right to get a Counsel as legal aid is now a fundamental right.

In the instant case, merely because Appellant Bholaram Dhruw was unrepresented in the Court or the Counsel appearing for him pleaded no instructions, is not a ground to pass no order on the appeal of the said Appellant.

In any event, in the present case, no order has been passed either allowing or dismissing the appeal of Appellant Bholaram Dhruw. In these circumstances, we are of the considered view that the appeal of Appellant Bholaram Dhruw is still pending.

Since, the appeal on behalf of Appellant Bholaram Dhruw cannot be deemed to have been disposed of, therefore, the said appeal with regard to Appellant Bholaram Dhruw be listed for hearing on 31st August, 2016.

Consequently, the instant Criminal Miscellaneous Petition stands disposed of.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge