

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1146 of 2017**

- Kailash Khediya S/o Chunnilal Khediya Aged About 40 Years R/o Manindragarh In Front Of Vimal Talkies, District Koriya, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through The Superintendent Of Police (Railway) Railway Police Office Raipur, District Raipur, Chhattisgarh

---- Respondent

For Petitioner : Shri Shakti Raj Sinha, Advocate.

For Respondent/State : Shri Neeraj Sharma, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****06/09/2017**

Heard.

1. Petition under Section 482 of Cr.P.C. has been brought with a prayer to interfere with the order dated 3.8.2017 passed by the Sessions Court of Second Additional Sessions Judge, Manendragarh District-Koriya in S.T. No.126/2006 by which the application under Section 284 of Cr.P.C. has been allowed and order has been passed to examine the complainant of the case, namely P.N. Tiwari, on commission.
2. Learned counsel for the petitioner submits that the report on the basis of which the said witness has been directed to be examined on commission does not disclose about the mental fitness and his capability to make statement before the Commissioner. In case, the witness gives statement by making signs & gesture then the purpose of his examination before the Commissioner would not be solved. Hence, the petitioner prays for an issuance of specific direction in this regard.

3. Learned counsel for the State has submitted that he has no objection if the petition is disposed off with directions.
4. Heard both the parties and perused the material on record.
5. Although, no question was raised before the trial Court about the mental fitness and capability of the witness to give statement before the Commissioner or the Court, but looking to the apprehension of the petitioner, this Court feels it appropriate to direct the Commissioner concerned to ascertain the mental fitness and capability of the witness before recording his evidence.
6. Accordingly, this petition is allowed at the motion stage itself. It is directed that the Commissioner appointed by the trial Court shall, before recording the statement of witness P.N. Tiwari, make an observation about his mental fitness and capability to make statement on commission and if he finds him able to respond to the questions put to him by the counsel for prosecution and defence, then to record the said statement in the deposition sheet.
7. With these observations, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE