

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1437 of 2017

Birendra Singh @ Ruby Singh, S/o. Late Om Prakash Singh Tomar, R/o. Pujari Nagar, Tikrapara, Raipur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through the District Magistrate, Raipur, Chhattisgarh.

--- Respondent

For Petitioner	:	Dr. N.K.Shukla, Senior Advocate with N Naha Roy, Advocate
For Respondent	:	Mrs. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.04.2018

Heard

1. The instant petition is against the order dated 19.09.2017 wherein the bail has been canceled in a trial and arrest warrant has been issued.
2. Learned counsel for the petitioner would submit that when the case was fixed for judgment, at that stage, the trial Court discovered the ballistic expert report and also FSL report was on record. Thereafter it was exhibited and copy was given to the accused. It is stated subsequent to it the counsel of the accused without authority of the accused has expressed not to cross examine the witness for which an affidavit was filed by the counsel. Thereafter, an application under Section 311 of Cr.P.C. was filed by the petitioner accused to cross examine the ballistic expert and the FSL report and the same having been rejected, it was a subject of revision wherein the coordinate Bench of this Court by an order dated 05.02.2018 has allowed the application

under Section 311 of Cr.P.C. in Criminal Revision No.933/2017 and allowed the application. It is contended on behalf of the petitioner that because of the fault of the Court, the petitioner suffered. It is further stated that subsequently an application was filed for exemption, as he was to treat his mother outside Raipur but the same was also not considered and rejected. Therefore, one opportunity may be given to the petitioner to appear before the Court below by cancellation of the warrant issued.

3. Learned State counsel opposes the argument and would submit that this petition is not maintainable since no application was filed for cancellation of the warrant under Section 70(2) of Cr.P.C. before the Court below and the procedure under Section 447 of Cr.P.C. should have been adopted.
4. Perused the order dated 19.09.2017. The order would record that initially the case was fixed for 13.09.2017 for orders, on that date the petitioner went away from the Court and on the request made by the counsel the date was given on 15.09.2017. On 15.09.2017 an application was filed under Section 311 of Cr.P.C. wherein the judgment/order was passed on it on 18.09.2017 and the application under Section 311 of Cr.P.C. was dismissed and the case was fixed for 19.09.2017. On 19.09.2017 admittedly the petitioner was absent and an application was filed under Section 317 of Cr.P.C. giving a reason that he had gone to treat her mother at Nagpur and he is the only person in his family. The trial Court in its order while adjudicating the same recorded that false averments have been made in the application under Section 317 of Cr.P.C. by petitioner that he is the only person in the house to get her mother treated as in the counter case which was pending,

the brother of the petitioner Rohit Singh Tomar appeared as witness who was the real brother. The Court further recorded the fact that no document is produced before the Court that his mother was being treated at Nagpur. The order of this Court while allowing the Criminal Revision No.933 of 2017 on 05.02.2018 itself recorded that an affidavit was given by one Ashish Soni, counsel for the applicant alongwith an application under Section 311 of Cr.P.C. before the trial Court mentioning that prior to making submission of not examining the ballistic expert, it was made without the consultation of the client i.e. petitioner.

5. The entire facts which is recorded in the order sheet would lead to show that the false statement of facts were made before the Court that the petitioner is only person in the family and had taken his mother for treatment to Nagpur. While the revision was adjudicated, the revisional Court had taken cognizance of the fact that the affidavit was given by the counsel of the petitioner that the statement to not to cross examine over Ballistic and FSL expert was made without authority. The facts if are entirety taken together, it would lead to show that the petitioner made all efforts to control the proceeding of the Court through his Advocate and even did not refrain to pass on the allegations on his own counsel for that without his instructions the counsel made the submission. Unfortunately too the counsel in order to control the proceedings gave affidavit in support of application under Section 311 of Cr.P.C. without considering the fact that it may expose him for professional misconduct. Therefore, the criminal case cannot be made an accused managed affair. The truth of facts by order of the Court must prevail as otherwise it will have no sanctity in the

public. In the result, I am not inclined to interfere with the order passed by the Court below.

6. Accordingly, the petition is dismissed. The petitioner shall be at liberty to file an application for cancellation of warrant before the appropriate Court, if so advised.

Sd/-
(Goutam Bhaduri)
Judge

Ashok