

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRMP No. 1115 of 2018

- Raja Ram Vishwakarma S/o Shri Guru Prasad Vishwakarma Aged About 53 Years R/o- Village- Parri, P.S. Surajpur, Tehsil & District- Surajpur, Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through- Secretary, Department of Home Affairs, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
2. Station House Officer Police Station Bishrampur, District- Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh --- **Respondents**

25.06.2018	Mr. Sarfaraj Khan, counsel for the petitioner. Mr.Suryakant Mishra, Panel Lawyer, for the State. It is submitted that an application u/s 311 read with section 391 of Code of Criminal Procedure was preferred before the appellate Court by the accused-petitioner, the said application remained undecided and the prayer made in this petition is only to decide the same as the appeal is heard on merits. It is submitted that the statutory mandate is always open to the appellate court to call for further evidence before the appeal is decided. It is stated that if the appeal is decided and the applications u/s 311 and 391 of Cr.P.C., are kept undecided then it will have no bearing at all. Learned counsel relies on a decision reported in <i>AIR 2004 SC 3114 (Sahira Habibulla H. Sheikh v. State of Gujrat)</i> and submits that it is always open to the appellate Court to call for further evidence before the appeal is decided. Considering the limited prayer made and in view of the settled preposition that it is always open to the appellate Court to call for further evidence before the appeal is decided”, the appellate court is directed to decide the application of the petitioner preferred under section 311 read with section 391 of Cr.P.C., before the appeal is heard on merits.	

R a o	With such observation, the petition is disposed of. A perusal of the record would show that the Co-ordinate Bench of this Court has passed the order dated 01.08.2017 in Cr.M.P. No. 866.2017 to the effect that no final order be passed in criminal proceeding against the petitioner till the next date of hearing. It is stated that the said Cr.M.P., was filed by the petitioner Raja Ram Vishwakarma against the criminal case which was pending before the Court below despite such restraint order, final order was passed by the CJM, Surajpur on 13.09.2017. Irrespective of the fact that subsequently the said Cr.M.P., was dismissed as withdrawn on 14.11.2017 as having become infructuous, but since the issue has been brought to the notice of the High Court it cannot be side-lined. In view of this, on administrative side, the explanation be called from the concerned C.J.M., as to why the order dated 01.08.2017 passed in Cr.M.P.No.966/2017 was not followed. Sd/- GOUTAM BHADURI JUDGE	
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