

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1780 of 2018

1. Bhanu Pratap, S/o. Late Udlaram Sahu, Aged About 60 Years
 2. Smt. Kumari Bai, W/o. Bhanu Pratap, Aged About 57 Years
- Both R/o. Palari, Police Station Gurur, District- Balod, Chhattisgarh.

---- Petitioners

Versus

State Of Chhattisgarh, Through- District Magistrate, Balod, District- Balod, Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Jitendra Gupta, Advocate
For State/Respondent	:	Mr. Vaibhav A Goverdhan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.01.2019

Heard

1. The present petition is against the order dated 27.07.2018 passed by the First Additional Sessions Judge, Balod in Criminal Revision No.31/2018 whereby an application under Section 91 of Cr.P.C. was dismissed.
2. The petitioners are accused who are facing trial under Section 498A of I.P.C. on a complaint made by one Umeshwari. During the course of trial, an application was moved that as per the statement of the complainant, she had earlier made a complaint on 31.05.2016 and three counseling were conducted. After such application was filed, the report was made to the police. The petitioners herein who are accused sought for the production of such counseling register wherein certain statement of the complainant and other witnesses were recorded.
3. Learned trial Court dismissed the application on the ground that the petitioners were not able to disclose the fact in whose

possession the register is presently been kept. The said dismissal of application under Section 91 of Cr.P.C. dated 10.05.2018 was subjected of challenge before the revisional Court and the revisional Court too by an order dated 27.07.2018 had dismissed the revision. Hence this petition.

4. Perused the application filed under Section 91 of Cr.P.C. by the petitioners who are the accused before the Court below facing trial under Section 498A of I.P.C. It purports that the petitioners /accused had called for the counseling register which took place before the charge sheet was filed as per the statement of the complainant itself. It purports that three counseling were conducted, however, no register was produced along-with the charge sheet. The nature of the case is of 498A of I.P.C. therefore the counseling if had taken place after the primary report was made, the respective statement of the parties including the complainant and the accused would be relevant factor which may decide the course of conduct adopted by the parties and their *mens rea*. If the same was a part of investigation and is not been produced and the accused want to rely on the same, it would be relevant document for consideration and deprivation of the same may result into miscarriage of justice. The reason of dismissal by the Court below is completely absurd and it is not expected for accused to know in whose possession, the said counseling document would have been kept. It is for the prosecution agency to know the fact, therefore, under the circumstances the application under Section 91 of Cr.P.C. is allowed.
5. The prosecution is directed to produce the copy of the counseling register and also directed to produce the original at the time of evidence so that the witness may be confronted at the time of

evidence as statement has been made at the bar that still the evidence has not been started.

6. With such observation, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok