

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No.1268 of 2018**

Naresh Kenwat, son of Bodhram Kenwat, aged about 61 years, resident of House No.630, Vivekanand Nagar, Mopka, Police Station Sarkanda, District Bilaspur, Chhattisgarh

**---- Applicant**

**versus**

State of Chhattisgarh through the Station House Officer, Police Station Sarkanda, District Bilaspur, Chhattisgarh

**--- Respondent**

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| For Applicant  | : | Shri Goutam Khetrapal, Advocate |
| For Respondent | : | Shri Sumit Singh, Panel Lawyer  |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**Order on Board**

**7.2.2019**

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred against the order dated 22.6.2018 passed by 5<sup>th</sup> Additional Sessions Judge, Bilaspur in Sessions Trial No.161 of 2016, whereby the Additional Sessions Judge has allowed the application under Section 311 of the Code of Criminal Procedure filed by the prosecution and has summoned one witness, namely, Dr. Rani Kesari.
3. According to the prosecution, marriage of the present Applicant was solemnised with Triveni Kenwat on 25.5.2014 and thereafter on 5.2.2016 she consumed poison and was immediately hospitalised by the present Applicant in CIMS, Bilaspur where she remained admitted upto 11.2.2016. Thereafter, during the course of treatment at Apollo Hospital, Bilaspur, she died on 16.2.2016. It

is the further case of the prosecution that on 9.2.2016, dying declaration of Triveni Kenwat (deceased) was recorded by Naib-Tahsildar Narendra Kumar Banjara. On completion of the investigation, a charge-sheet was filed against the present Applicant as well as other co-accused persons and trial is going on. On 21.6.2018, an application under Section 311 of the Code of Criminal Procedure was filed by the prosecution for summoning prosecution witness Dr. Rani Kesari on the ground that Dr. Rani Kesari had given an opinion on 9.2.2016 that the patient is fit for giving statement at present and, therefore, her statement is essential. Vide the impugned order dated 22.6.2018, the Trial Court allowed the application of the prosecution and summoned Dr. Rani Kesari. Hence, this revision by accused Naresh Kenwat.

4. Learned Counsel appearing for the Applicant submits that according to the charge-sheet, on 6.2.2016 and 8.2.2016, the doctor had not given any consent for recording of statement of Triveni Kenwat (deceased) and thereafter while filing the charge-sheet the prosecution did not submit any document regarding the consent of Dr. Rani Kesari dated 9.2.2016. He further submits that in this case the Tahsildar was examined before the Court below on 23.9.2017, wherein he has not deposed anything regarding consent of the doctor dated 9.2.2016. In paragraph 13 of his cross-examination, he has categorically stated that before recording of dying declaration of Triveni Kenwat, he did not meet any doctor nor did he take any opinion from any doctor regarding fitness of Triveni Kenwat about giving statement by her. Thereafter, on 7.6.2018, when this witness again came for making deposition then in paragraph 26 of his cross-examination, he, for

the first time, has stated that when he was recording dying declaration of Triveni Kenwat, at that time, he was shown a fitness certificate of Triveni Kenwat by the police issued by a doctor and on the basis of the said fitness certificate he had recorded the dying declaration of Triveni Kenwat. The Trial Court, without taking the said document on record, allowed the application of the prosecution under Section 311 of the Code of Criminal Procedure and directly summoned prosecution witness Dr. Rani Kesari which is not in accordance with law. Learned Counsel for the Applicant further submits that thus it is clear that neither the fitness certificate was a part of the charge-sheet nor was it a part of the case diary nor was fitness of Triveni Kenwat in the knowledge of anyone till the Tahsildar was examined before the Trial Court for the first time. Thus, it is clear that later on a concoction of document was done in the case. Since the fitness certificate of Triveni for giving statement is a concocted document, the Applicant has submitted his affidavit before the Trial Court itself, wherein certain allegations have been made by him against the staff of the Court regarding concoction of the document (fitness certificate). Learned Counsel prays that liberty may be granted to the Applicant to move an appropriate application before the Sessions Judge for transfer of the case.

5. Learned Counsel appearing for the State supported the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. It is not in dispute that on 6.2.2016 and 8.2.2016, no opinion was

given by any doctor with regard to fitness of Triveni Kenwat for giving statement by her. While filing the charge-sheet, the prosecution has not submitted any document regarding consent of a doctor for recording statement of Triveni Kenwat. On 23.9.2017, when the Tahsildar was examined before the Trial Court, he categorically stated that before recording of the dying declaration of Triveni Kenwat he did not meet any doctor nor did he talk with any doctor about fitness of Triveni for giving statement by her. On 7.6.2018, for the first time, this witness has disclosed the fact that when he went for recording of statement of Triveni Kenwat, at that time, he was shown a fitness certificate of Triveni by the police for giving statement by her then he recorded the dying declaration of Triveni. Thereafter, the present application under Section 311 of the Code of Criminal Procedure was filed by the prosecution for summoning prosecution witness Dr. Rani Kesari. In these circumstances, when an allegation of concoction of the fitness certificate has been levelled, the Trial Court ought to have inquired into the matter. But, the Trial Court, without inquiring into the matter and without taking the aforesaid fitness certificate on record, allowed the application under Section 311 of the Code of Criminal Procedure filed by the prosecution and summoned Dr. Rani Kesari. Hence, the impugned order of the Trial Court is not in accordance with law.

8. Consequently, the impugned order dated 22.6.2018 is set aside. It is directed that an inquiry shall be conducted into the concoction of the aforesaid document and thereafter a fresh order shall be passed in accordance with law. Since, vide an affidavit, certain allegations have been levelled by the Applicant against the Court

staff and a prayer has been made on his behalf to grant him liberty for moving an appropriate application before the Sessions Judge for transfer of the case to an appropriate jurisdictional Court, the liberty, as sought for, is granted.

9. The instant revision is allowed to the extent indicated above.

Sd/-  
**(Arvind Singh Chandel)**  
**Judge**