

ST. NO. 01 (09) OF 2024
SESSIONS CASE NO. 31 OF 2024
CNR NO. WBCS01-000473-2024
 Present: Sri Soumendra Nath Das
 Chief Judge, City Sessions Court, Calcutta
J.O. CODE NO. WB01132

Order No. 45 dated 12.09.2025

1. Today is fixed for for production of the accused persons, further hearing and order.
2. The accused persons, namely, Suryakant Tiwari and Indira Tiwari, are produced from the J.C in physical mode.
3. Ld. Public Prosecutor is present.
4. Ld. Counsel for the accused person namely Suryakant Tiwari is present.
5. Ld. Counsel appointed from the LADCS, Kolkata for the accused Indira Tiwari is present by filing hazira.
6. Heard both sides.
7. Ld. Public Prosecutor has not denied the existence of the statement of PW3 recorded under section 161 of Code of Criminal Procedure in the case diary. All that the Ld. Public Prosecutor has raised that the prosecution does not want to rely on the said statement and such statement was not recorded by the Investigating Officer of this case.
8. So far as the first point relating to un-relied document is concerned, it is the prerogative for the prosecution to chose its evidence to be relied upon, no doubt, but such desire has no relevance to erase out the status of the statement of PW3 under section 161 of the Code of Criminal Procedure as her (PW3) previous statement to invite the applicability of section 145 of the Indian Evidence Act.
9. The second point that the said statement was not recorded by the Investigating Officer, virtually sketches a picture of lackluster attitude of the Investigating Officer who instead of ascertaining the identity of the person who recorded such statement of PW3, kept the same in the case diary in utter disregard to the sanctity of the process of investigation.
10. Therefore, basing upon the provisions of Rule 91A of the Criminal Rules and Orders and observation of the Hon'ble Apex Court in P. Ponnusamy vs the State of Tamil Nadu reported in 2023 (12) SCC 666, this Court allows the defence to invoke the provisions of section 145 of the Indian Evidence Act treating the statement of PW3 under section 161 of the Code of Criminal Procedure dated 19.10.2023 as her previous statement and to use the same as per procedure known to law.
11. In view of above, the petition submitted on behalf of prosecution is thus, disposed of.
12. Fixing **07.11.2025** for production of the accused persons and further cross examination of PW3 Kusum Devi.
13. Issue summons accordingly.
14. The prosecution is directed to ensure the presence of the witness on the next date fixed positively.
15. The Superintendent of the concerned Correctional Homes are directed to produce the accused persons before this Court on the next date fixed.
16. The accused persons be remanded to J.C till 07.11.2025.
17. Let a copy of this order be sent to the Superintendent of the concerned Correctional Homes for information and compliance.

Dictated & corrected by me

Sd/-
 Chief Judge
 City Sessions Court, Calcutta.

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