

In the court of the Additional Sessions Judge-XIII, Bhojpur at Ara  
Sessions Trial No.773 of 2007  
State Versus Ashok Pathak and others.

21.06.2019	<p>Application under section 317 of the Code of Criminal Procedure has been filed on behalf of all the five accused persons which is being accepted only for today. Attendance has also been filed on behalf of the prosecution.</p> <p>Record has been produced for order on the petition dated 26/04/2019 filed on behalf of the defence with the prayer to keep the prescription of treatment of the accused Kailash Pathak on the record of this case. Rejoinder to the aforesaid petition has been filed on behalf of the prosecution on 16/05/2019. Both the parties have already been heard on the aforesaid petition and its rejoinder.</p> <p>It has been submitted on behalf of the defence that the name of the accused Kailash Pathak is not in the charge sheet because he was not present on the date of occurrence and he was under treatment of one Dr. Abdul Qaiyum. Documents of his treatment i.e. the original prescriptions of Dr. Abdul Qaiyum have been filed which are three years old documents and the same have been filed for marking the same as exhibits.</p> <p>On the other hand , it has been submitted on behalf of the prosecution that this petition has been filed only with the view to delay the disposal of this case as this case is running for final argument and prosecution has already completed its argument. Many opportunities have been given to the defence for production of defence evidence. Further, since the very inception of this case, no such plea of treatment has been taken by the defence and no such fact has been pleaded in the statement of the accused Kailash Pathak under section 313 of the Code of Criminal Procedure. Further, all the three prescriptions are of the same date which creates doubt on the authenticity of the prescriptions and from the prescriptions it is not clear as to the patient was admitted or not. Therefore, prayer has been made to reject the application of the defence.</p> <p>Perused the record. From the perusal of the record it transpires that this is a case under sections 302/34 of the Indian Penal Code and 27 of the Arms Act. The accused namely Kailash Pathak on whose behalf this petition has been filed, is named in the First Information Report but charge sheet was not submitted against him and he has been arrayed in this case as an accused under section 319 of the Code of</p>	
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Criminal Procedure. From the perusal of the record it further transpires that in the very rejoinder filed against the petition under section 319 of the Code of Criminal Procedure, it is the case of the accused Kailash Pathak that he was under treatment on the date of occurrence. Photocopies of the prescriptions of which originals have been filed now have also been filed earlier. However from the perusal of the record it also transpires that after recording of statement of the accused persons under section 313 of the Code of Criminal Procedure, many opportunities have been given to the defence for defence evidence and on the oral prayer of the defence, defence evidence was closed on 18/01/2018. Thereafter, again on the next date i.e. on 16/02/2018 an application under section 311 of the Code of Criminal Procedure was filed on behalf of the defence which was allowed by the order dated 04/07/2018 and after giving several opportunities, defence evidence has been closed by the order dated 21/02/2019. Now, again this petition has been filed when the case was fixed for defence argument and the prosecution has already completed its argument. Moreover, in the petition dated 26/04/2019, which is under order, although it has been mentioned in paragraph no.3 that the aforesaid documents are being filed for marking the same as exhibits but in the very next paragraph i.e. in paragraph no.4, it has been mentioned that permission of this court is necessary for filing the same and in the prayer portion, prayer has been made only to keep the documents filed i.e. the prescriptions concerned to keep on the record.

Therefore, in the petition under order, prayer has only been made to keep the documents filed i.e. the prescriptions of one Dr. Abdul Qaiyum relating to the treatment of the accused Kailash Pathak on the record and, further, the aforesaid documents cannot be marked exhibits without following the procedure prescribed by law. Documents i.e. the prescriptions of one Dr. Abdul Qaiyum relating to the treatment of the accused Kailash Pathak have already been kept with the file of this case. Accordingly, the aforesaid petition dated 26/04/2019 filed on behalf of the defence stands disposed of.

Put up the record on 03/07/2019 for argument on behalf of the defence.

Additional Sessions Judge-XIII

