

Date: 23-09-2019

Today has been fixed for order. Two accused persons filed their hazira and are present in the court today. One accused has filed a time petition.

Time petition is considered and allowed.

The record is taken up for passing order.

The accused persons had filed one petition dated 02-03-2019 stating inter-alia that in the absence of accused persons and their counsel the court inadvertently closed the evidence of the prosecution without issuing summons on all the CSWs and fixed the case record for 313 of the Cr.P.C. and prays for an order for calling the I.O. of the case for examination before the court.

Ld. APP had objected to such prayer of the defence counsel and stated that if the defence intends to adduce the evidence of I.O., the defence can call them as witnesses during examination u/s 313 of the Cr.P.C.

Ld. APP further submitted that prosecution itself does not want to adduce the I.O. in this case and if that is not done the liability is on the prosecution for its case will fail.

Perused the prayer of the defence and considering the objection of the Ld. APP.

Going through the case record, it can be found that on 02-11-2018, two accused persons were present before the court and one prayer u/s 317 Cr.P.C. for the absent accused person was there and the Ld. Advocate for the accused persons had themselves submitted before the court for closing the chapter of the prosecution witness.

However, the court had given one last opportunity of the prosecution to adduce further evidence but the prosecution failed to adduce evidence and therefore on 07-01-2019, in presence of the Ld. Lawyer for the accused persons and the Ld. APP, the evidence of the prosecution was closed and the case was fixed for examination of the accused persons u/s 313 of the Cr.P.C., D/W if any, argument and judgment. On the subsequent date, the Ld. Advocate for the defence had filed the instant petition as in this case, the accused persons has not yet been examined u/s 313 of the Cr.P.C, it does not seems viable to consider the prayer of the accused persons at this

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stage. It is the prosecution, who has to prove its case and to produce the witnesses. If the accused persons feels that the testimony of any witness is necessary and important for the case, they can pray for the same at the suitable opportunity that will be given to them.

In this case the accused persons had not examined themselves and the Ld. Lawyer for the defence has filed this prayer which seems to be premature at this stage and therefore I am not inclined to allow the prayer of the defence. The petition dated 02-03-2019 is therefore, considered and rejected on contest.

Let the date be fixed for 313 of the Cr.P.C., D/W, argument and judgment.

To 18-11-2019 for 313 of the Cr.P.C., D/W, argument and judgment.

Sd/-
D/C by me.

Sd/-
Judicial Magistrate,
Islampur, Uttar Dinajpur.