IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM No. M-14555 of 2017
Date of decision : 27.04.2017

Prem Lata ....Petitioner

versus

State of Haryana and others ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner

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RITU BAHRI , J. (Oral)

In the present petition filed under Section 482 Cr.P.C, prayer is for setting aside impugned orders dated 04.06.2015 and 17.03.2017 (Anneuxre P-6 and P-8) vide which the application of the the petitioner under Section 319 Cr.P.C for summoning respondent Nos. 2 and 3 as an additional accused was dismissed.

A bare perusal of impugned orders shows that allegations levelled by the petitioner against respondent Nos. 1 and 2 were vague and general in nature, as no time, place and date has been mentioned, when the demand was raised and in front of whom it was raised. Further, getting the petitioner treated from a Baba also does not amount to cruelty because in rural areas, general people because of mis-beliefs of getting result earlier, prefer to this kind of local treatment. The complainant/petitioner has also not been able to show that findings of investigation officer that accused sought to be summoned have a different ration card of a different place than the one where complainant resided.

Reference at this stage can be made to a judgment of Hon'ble the

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Supreme Court in a case of ***Jogendra Yadav & Ors. v. State of Bihar & Anr., 2015(3) RCR Crl 935*** wherein in para 12, it has been observed as under:-

> *12. We are not unmindful of the fact that the interpretation placed by us on the scheme of Sections 319 and 227 makes Section 227 unavailable to an accused who has been added under Section 319 of the Cr.P.C. We are of the view, for the reasons given above that this must necessarily be so since a view to the contrary would render the exercise undertaken by a Court under Section 319 of the Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 of the Cr.P.C., on the basis of a mere prima facie view. The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. If allowed to, such an action of discharge would not be in accordance with the purpose of the Cr.P.C in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has committed an offence. It would be apposite to refer to the principle of purposive construction of a statute invoked by this Court in* ***New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr. 2008(1) R.C.R. (Civil) 875 : 2008(1) R.C.R. (Rent) 208 : 2008(1) Recent Apex Judgments (R.A.J.) 458 : (2008) 3 SCC 279****, which is as under:*
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> *"51..... With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the*

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statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in Ashoka Marketing Ltd.

52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

"*Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably*."

All the above said evidence were sufficient enough to dismiss the application under Section 319 Cr.P.C, as Hon'ble the Supreme Court has consistently held that the evidence should be more than prima facie evidence, if the additional accused are to be summoned. Merely on the oral deposition of the complainant/petitioner, the accused/respondent Nos. 2 and 3 have rightly been not summoned.

Accordingly, the petition stands dismissed.

27.04.2017 **(RITU BAHRI)**
G Arora **JUDGE**

Whether speaking/reasoned	***Yes***
Whether reportable	**No**

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