

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Revn. No. 564 of 2016
Date of decision :- 13.01.2017**

Sandeep

....Petitioner

versus

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Kumar Sharma, Advocate
for the petitioner

RITU BAHRI, J. (Oral)

CRM-4702-2016

For the reasons mentioned in the application, delay of 44 days
in filing of the present revision is condoned.

The application stands disposed of.

CRR-564-2016

The present petition is against order dated 28.09.2015
whereby application filed by the petitioner under Section 319 Cr.P.C was
dismissed.

A bare perusal of the impugned order shows that the
allegations levelled by the petitioner against the accused are general in
nature i.e bride has been harassed by her in-laws. No evidence has been
led by the complainant to prove its case. A tendency has developed for
ropeing in in-laws in dowry cases. There are no specific allegations against

the accused person sought to be summoned. No specific date, time and place have been given by the complainant as to when she has been harassed by the accused persons.

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

"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 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. Further, the husband and mother-in-law are already facing the trial. Sandeep @ Vicky was living separately with his family and was having two motorcycles and one indica car. Mere oral deposition of P.W.5 was rightly held not to be

sufficient enough to summon him as an additional accused and Sandeep @
Vicky was rightly kept in column No. 2 by the Investigation agency.

The petition stands dismissed.

13.01.2017	(RITU BAHRI)
G Arora	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No