

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

**Crl. Revn. No. 330 of 2017
Date of decision :- 22.03.2017**

Simran Kaur @ Soni

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner

Mr. A.P.S. Gill, AAG, Punjab

RITU BAHRI, J. (Oral)

The present petition is against order dated 19.10.2016 passed by learned Addl. Sessions Judge, Bathinda, whereby the petitioner has been summoned to face the trial on an application filed by the prosecution under Section 319 Cr.P.C, which was allowed.

Learned counsel inter alia contends that the petitioner could not have been summoned on an application under Section 319 Cr.P.C, as no role has been attributed to the petitioner, either in the F.I.R or in the statement dated 23.02.2016 (P-2) recorded under Section 164 Cr.P.C of the complainant. All the allegations in the F.I.R against the main accused Lakhwinder Singh @ Vicky, who is stated to have committed sexual assault with the complainant without her consent.

The petitioner has been summoned merely on the statement of

the complainant, who stated that the petitioner heard her screaming and she came upstairs, but she did not help her. Further, she and Vicky threatened the complainant not to disclose the incident to her parents.

Learned State counsel on instructions from the Investigating Officer stated that no video of the incident has been recovered. Further the petitioner is the landlord of Vicky who was residing in the house of the petitioner as tenant.

Thus, the allegations that the petitioner and Vicky had threatened the complainant not to disclose the incident to anyone, does not exist and further merely on the oral deposition of the complainant, an inference cannot be drawn that she had facilitated Vicky to commit rape upon the petitioner. No offence under Section 376 IPC is made out against the petitioner.

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."

The oral deposition of the complainant was not sufficient enough to summon the petitioner on 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. In the present case, no role has been attributed to the petitioner, either in the F.I.R or in the statement dated 23.02.2016 (P-2) recorded under Section 164 Cr.P.C of the complainant. Mere oral deposition of the complainant, was not sufficient enough to summon the petitioner as an additional accused

In view of the above facts, the present revision petition is allowed and order dated 19.10.2016 is hereby set aside.

22.03.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No