

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

**CRM No.M-47988 of 2017 (O&M)
Date of Decision: December 13, 2018**

Sachin Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Aman Chaudhary and Mr.G.S.Virk, Advocates
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing the order dated 25.10.2017 declining the application under Section 227 Cr.P.C. in case FIR No.15 dated 05.07.2006 under Sections 409, 420, 467, 468, 471, 120-B IPC, Section 13 (1)(d) and 13(2) of the Prevention of Corruption Act, registered at Police Station Vigilance Bureau, FS-I, Punjab at Mohali, as learned Special Judge, Mohali has failed to appreciate the facts and law and has failed to look into the charge framed by the Court of SDJM, Amloh where the petitioner was challaned in same FIR and is facing trial.

Notice of motion was issued. Learned State counsel appeared

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, admittedly present petitioner has been summoned by the Court under Section 319 Cr.P.C. and that order has not been challenged by the present petitioner and has become final. Now, after a long period when the remedy by way of filing revision petition has become time barred, the application under Section 227 Cr.P.C. has been filed for discharge. Learned State counsel has cited the law laid down by the Hon'ble Supreme Court in Jogendra Yadav & Ors. vs. State of Bihar & Anr., 2015(3) RCR (Criminal) 935, in which, it is held as under:-

*“9. It was, however, urged by learned counsel for the appellants that in order to avail of the remedies of discharge under Section 227 of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C. It is, however, not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court. It is now settled vide the Constitution Bench decision in **Hardeep Singh v. State of Punjab and Others [2014(1) R.C.R (Criminal) 623: 2014 (1) Recent Apex Judgments (R.A.J.) 384 : (2014) 3 SCC 92]** that the standard of proof employed for summoning a person as an accused under Section 319 of the Cr.P.C., is higher than the standard of proof employed for framing a charge against an accused. The Court observed for the purpose of Section 319 of*

the Cr.P.C., that "what is, therefore, necessary for the Court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of a person sought to be added as the accused in the case." As regards the degree of satisfaction necessary for framing a charge this Court observed in para 100:-

"100. However, there is a series of cases wherein this court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 of the Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further".

The Court concluded in para 106 as follows:-

"106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction....."

10. Thus it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

*11. This view is further fortified by the fact that a person is added as an accused under Section 319 of the Cr.P.C., on the basis of evidence; whereas an accused is discharged under Section 227 of the Cr.P.C., on a sifting of material collected i.e. "the record of the case and the document submitted herewith" in order to find out whether or not there is sufficient ground for proceeding against the accused. In fact it may be noted that the mandate of Section 228, Cr.P.C., is that the Judge only need be of "opinion that there is ground for presuming that the accused has committed an offence" before framing a charge. In fact this Court has held in **Ajay Kumar Parmar v. State of Rajasthan reported in 2012(4) R.C.R. (Criminal) 617 : 2012 (5) Recent Apex Judgments (R.A.J.) 185 : (2012) 12 SCC 406** that appreciation of evidence at the stage of Section 227 of the Cr.P.C., is not permissible (vide para 17). It is, therefore, clear that an order*

for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of evidence.

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 fulfill 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 fulfill 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."

13. Ms. Prerna Singh, learned counsel for the State also submitted that a person who is an accused under Section 319 ought not to be given an opportunity to avail of the remedy of discharge under Section 227 since it would be contrary to the scheme and intent of the Cr.P.C.

14. We have no difficulty in accepting this submission for the reasons stated above. We are also satisfied that it would not result in any undue hardships to the accused since the remedy before a superior court is available."

I have gone through the above-cited judgment and same fully applies to the facts of the present case.

As admittedly the order under Section 319 Cr.P.C. has already become final, therefore, accused cannot be discharged on the application under Section 227 Cr.P.C..

In view of the above discussion and in view of the law laid down by the Hon'ble Supreme Court, I find that the impugned order dated 25.10.2017 passed by learned Addl. Sessions Judge, SAS Nagar, Mohali, is correct and as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

December 13, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No