

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3189-2014

Date of decision:23.4.2015

Dheeraj Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Dr.Ms. Amanpreet Sandhu, Advocate for the petitioner.

Mr. K.D.Sachdeva, Addl. A.G., Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant criminal revision petition is directed against the judgment dated 15.9.2014 passed by the learned Additional Sessions Judge, Patiala, whereby appeal of the petitioner against the impugned judgment of conviction dated 30.7.2013, passed by the learned learned Judicial Magistrate Ist Class, Patiala, was dismissed, upholding the conviction and sentence of the petitioner.

Brief facts of the case, as recorded by the learned trial Court in para 2 of its judgments, are that on 10.7.2010 one application was moved before in-charge, Women Cell, Model Town, Patiala, by Seema Rani daughter of Manu Ram, resident of Kalan Colony, Badunagar, Patiala, in which she stated that her marriage was solemnised on 28.5.2010 with Dheeraj Kumar son of Rai Singh, resident of Naya Gaon, Sector-11, Chandigarh. She stated that he gave beatings to her after the second day of marriage and also demanded more dowry including car from parents.

Complainant stated that her parents spent more than their capacity at the time of marriage and gave sufficient dowry, comprising articles like motorcycle, gold ring, gold jewellery and other articles of dowry. He was drug addict and he gave threats to kill her father and brother. Complainant stated that he demanded car from her parents and threatened that otherwise he would kill himself and would blame her as well as her parents. He also kept her gold ornaments and she was turned out from his house only in three wearing clothes. Her mother-in-law (Rekha Devi), father-in-law (Rai Singh), brother-in-law (Sudhir) sister-in-law (Babita), brother-in-law (Sunil) and sister-in-law (Sangita) also gave beatings to her and demanded dowry. Finding a prima facie case under Sections 406 and 498-A of IPC read with Section 34 of IPC against the accused, in view of the aforesaid statement of the complainant, present case was registered and pursuant to the completion of investigation, the challan was forwarded to the Court against accused Dheeraj Kumar.

After completion of the investigation, challan was presented. The copy of challan along with accompanying documents were supplied to the accused-petitioner. Having found a prima facie case against the accused, charges were framed. The accused pleaded not guilty and claimed trial.

With a view to prove its case, prosecution examined ASI Nasib Singh as PW-1, Nand Kishore was examined as PW-2, whereas Seema Devi-complainant was examined as PW-3. SI Surjit Kaur was examined as PW-4. Besides the above-said prosecution witnesses, prosecution brought on record other relevant documentary evidence. After closing of the prosecution evidence, statement of the accused was recorded under Section

313 Cr.P.C., All the incriminating material was put to him. The accused denied his involvement and pleaded false implication due to party faction in the village and also because of civil litigation between the parties. However, the accused did not examine any witness in his defence.

After hearing the learned counsel for the parties and going through the record of the case, the learned trial Court came to the conclusion that the prosecution has duly proved its case, however, only qua the offences under Sections 498-A and 406 IPC. So far as offence under Section 323 IPC was concerned, it was held that the prosecution could not prove the commission of said offence. Accordingly, the petitioner was convicted for the offence under Sections 498-A and 406 IPC. He was acquitted of the charge under Section 323 IPC, vide judgment dated 30.7.2013.

Thereafter, the learned trial Court heard the parties on quantum of sentence and petitioner was awarded the sentence to undergo rigorous imprisonment for a period of one year under Section 498-A IPC and to pay a fine of Rs.1,000/-. In default of payment of fine, the accused was ordered to undergo further rigorous imprisonment for 20 days. Similarly, convict was awarded sentence to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- for the offence under Section 406 IPC. In default of payment of fine, the accused was ordered to undergo further rigorous imprisonment for 20 days. Both the sentences were ordered to run concurrently.

Feeling aggrieved against the above-said impugned judgment of conviction and order of sentence of even date i.e. 30.7.2013 passed by the learned Judicial Magistrate 1st Class, Patiala, petitioner filed his appeal

before the learned Sessions Court, which came to be dismissed by the learned Additional Sessions Judge, Patiala, vide his impugned judgment dated 15.9.2014. Hence this criminal revision petition.

Learned counsel for the petitioner, at the very outset, submits that she does not intend to challenge the conviction of the petitioner. She restricts her prayer to consider the present criminal revision petition only qua the quantum of sentence of the petitioner.

On the other hand, learned counsel for the State submits that since the allegations against the petitioners were direct and serious, he being the husband, he was not entitled for any reduction of sentence. He prays for dismissal of the criminal revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that it is just and expedient to reduce the sentence of the petitioner to the period already undergone by him, while upholding his conviction. It is so said, because in terms of the custody certificate filed by way of affidavit dated 22.4.2015 in the Court today, petitioner has already undergone the sentence for a period of 8 months and 25 days as on 22.4.2015, including the period of remissions, out of total sentence awarded to him for a period of one year.

The above-said view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Braham Dass v/s State of Himachal Pradesh** 1988 (2) RCR (Criminal). The relevant observations made by Hon'ble the Supreme Court in **Braham Dass's case** (supra), which can be gainfully followed in the instant case, read as under:-

“6. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.”

In another case titled as **“Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723,”** the Hon'ble Supreme Court observed as under:-

“After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16 (1)(a)(i) and therefore, for adequate and special reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.”

An identical question had arisen before this Court in **Des Raj**

made in para 9 of the judgment, aptly apply here and the same read as under:-

“9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that the speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Courts shall understand this right, and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction.”

Reverting back to the fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the judgments, referred to hereinabove, coupled with the reasons aforementioned, conviction of the petitioner is upheld.

However, his sentence is ordered to be reduced to the period already undergone by him.

Resultantly with the above-said modification in the impugned judgments, the instant criminal revision petition stands partly allowed. Petitioner is directed to be released forthwith, if he is not required in any other case.

Disposed of, accordingly.

23.4.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE