

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

1. CRR No.2230 of 2015 (O&M)

Manju Aggarwal and another

... Petitioners

Versus

Dharmender Kumar and others

... Respondents

2. CRR No.3375 of 2015 (O&M)

Dharmender Kumar and others

... Petitioners

Versus

Manju Aggarwal and another

... Respondents

Date of decision: 8th December, 2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Manju Aggarwal (wife) in person
for herself and her daughter Harshita.

Mr. Dhiraj Chawla, Advocate
for Dharmender Kumar (husband) and others.

FATEH DEEP SINGH, J.

The above detailed two criminal revision petitions by the wife, her daughter, and the husband and her mother respectively, have arisen out of the same order/judgment dated 21.05.2015 passed by the learned Additional Sessions Judge, Ludhiana. In the proceedings culminating into this judgment, which is impugned before this Court by the rival parties, two appeals against the same very order dated 04.09.2014 of learned Judicial Magistrate 1st Class, Ludhiana have

come about again by the same set of respective parties and which were disposed off together by the common judgment now impugned before this Court. The learned Judicial Magistrate 1st Class, while allowing the application of the wife and the daughter under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, 'the Act'), had awarded to the wife maintenance to the tune of Rs.3,000/- per month and to the daughter Rs.5,000/- per month and had also awarded Rs.1.00 lac as compensation besides ordering the husband to ensure that the wife is allowed access to the shared accommodation. However, in the impugned findings, the Court below in the appeals though has enhanced the maintenance in all to Rs.10,000/- for both of them maintaining the same very amount of compensation, but set aside the claim of the wife and the daughter to shared accommodation.

Since both these matters are consanguine to each other, so intertwined, would facilitate brevity if they are taken up and decided together.

After hearing at length the revisionist petitioner Manju Aggarwal for herself and her daughter, in person and Mr.Dhiraj Chawla, Advocate for respondent husband and on due perusal of the records. It is not a matter of any dispute that a marriage between the revisionist Manju Aggarwal and the revisionist Dharminder Kumar Jain took place

on 06.02.1998 and out of this wedlock a daughter named Harshita Jain was born to the couple on 06.12.1998. It is admitted case of the two sides that the parties since the inception of the marriage had been residing together at Solan in a residential house owned by late Sh.O.P. Jain (now deceased) father of the husband where as on date his mother, one of the respondents, Sheela Jain too is residing. The wife by her own stand claims to be holding the degree of BAMS thus, an Ayurvedic Doctor by profession whereas, the daughter who was then a minor when the proceedings had come about, as on date is aged around 18 years. The husband does not disputes that he happens to be a Government Contractor though there is a claim and counter-claim over the quantum of earnings of the husband.

What meets the eye and is much in abundance perceivable from the records that the couple has multiple litigation ensuing out of this matrimonial alliance leading to filing of various cases, criminal as well as civil and the present legal recourse happens to be one of them.

Since the parties have come up though against same orders/judgments which to some extent are in conflict but at the same time this Court holding the view in the light of well enshrined principle of law laid down in '**Sheetala Prasad v. Shri Kant**' AIR 2010 SC 1140 and '**Ramgopal Ganpatrai Ruia v. State of Bombay**' AIR 1958 SC 97 that the scope in a criminal revision under Section 401 Cr.P.C. is to a

limited extent only with a view to check legality and perversity of the findings of the courts below, and whether they are in consonance with the well entrenched position of law. Though with much fanfare the wife has sought to seek support from **‘Ishpal Singh Kahai v. Ramanjeet Kahai’ 2011(3) RCR (Criminal) 474; ‘Chandrakant Nivruti Wagh & others v. Manisha C. Wagh & another’ (Writ Petition No.2738/2011, decided on 04.04.2013 by High Court of Bombay); ‘S. Prabhakaran v. State of Kerala’ 2009(2) RCR (Criminal) 936; ‘Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey’ 2010(5) RCR (Civil) 151; ‘Preeti Satija v. Raj Kumari and another’ 2014(1) RCR(Criminal) 1035; ‘Saraswathy v. Babu’ (Criminal Appeal No.1999 of 2013 decided on 25.11.2013 by Hon’ble Supreme Court); ‘Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and others’ 2011(3) SCC 650; ‘V.D. Bhanot v. Savita Bhanot’ 2012(1) RCR (Criminal)834; ‘P. Babu and others v. Rani’ (Madras High Court – CrI. R.C.Nos.48 and 148 of 2008 & M.P. No.1 of 2008, decided on 25.03.2008); ‘C.Nagarajan v. M.Vennila’ 2015(3) RCR (Criminal) 734; ‘Mr.Amit Satish Shah v. Mrs.Archana Amit Shah & another’ (Bombay High Court - Writ Petition No.6852 of 2013 decided on 14.10.2014); ‘Dr.K.J. Mathiyalagan & another v. Miss. Dhivya’ (Madras High Court – CrI.R.C. No.906 of 2012 decided on 11.03.2013); ‘Krishna Bhattacharjee v. Sarathi Choudhury and**

another’ 2016(1) RCR (Criminal) 152; ‘Sukrit Verma and another v. State of Rajasthan and another’ 2011(3) RCR (Criminal) 6; ‘Mahadeo v. Neelawati @ Pradnya and others’ 2013(3) DMC 208; ‘Karamchand & others v. State NCT of Delhi & another’ 2012(7) RCR(Criminal) 2555; ‘Shahid Sheikh v. Shabanaz & another’ (Bombay High Court – CRWP No.122 of 2013 decided on 16.01.2015); ‘Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another’ 2014(4) RCR (Civil) 570; ‘Vijay B. Verma v. Sita Devi alias Sita Verma’ 2014(1) RCR (Civil) 1018; ‘Shalu Ojha v. Prashant Ojha’ (Hon’ble Supreme Court – CRA No.2070 of 2014 decided on 18.09.2014); ‘Pratima Singh v. Dr. Abhimanyu Singh Parihar’ 1986(1) HLR 483; ‘Harminder Kaur v. Sukhwinder Singh’ 2002(2) HLR 717; ‘Sudhir Kapur v. Neel Mani’ 2015(1) Law Herald 360; ‘Rajeev Preenja v. Sarika’ 2009(159) DLT 616; ‘Shambhu Prasad Singh v. Manjari’ 2012(4) RCR (Criminal) 368; ‘Chaturbhuj v. Sita Bai’ 2008(1) RCR (Criminal) 163 and ‘Mansi Vohra v. Ramesh Vohra’ 2014(12) RCR (Criminal) 1325 to drive home the ambit of the provisions of Sections 17, 18, 19, 20 and 22 of the Act and to hammer-home the point that she as well as her daughter, who are without a roof, needs to live in the shared accommodation of the husband which after the death of the father of husband has also come to his share and he too is residing there and where the wife too has entered and cohabited with

the husband leading to the birth of daughter, and therefore, in an eventuality of divorce between the couple does not absolves the husband of his liability under the Act.

Though with much force and vehemence, Mr.Dhiraj Chawla with much eloquence has sought to thwart what is sought to be put forth by the wife primarily on the grounds that being a professionally qualified woman, she was not entitled to any maintenance and that there has been no due consideration by the courts below of the husband's income in the light of what was there before the Court by virtue of an evidence. The counsel had gone to the extent that after the death of father of the husband, property has devolved upon his mother during her lifetime and therefore, by all means neither the wife nor daughter are entitled to any relief qua shared accommodation and has sought to corroborate the findings and reasonings of the learned first appellate Court.

Appreciating the submissions, it is a matter of fact that the Act has come into being by virtue of consensus arrived at The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women, with an ulterior purpose to attain that the States should act to protect the women against violence of any kind, be it physical, mental, economic or in any manner at the hands of the husband if there is a relationship of husband and wife or even otherwise

between the applicant wife and the respondent in which the relatives of the husband too can be held to be liable. So it could not be, by any means, questioned that the phenomena of 'domestic violence' which is widely prevalent in the world though remains within the domains of four walls of a house quite invisible to the public gaze, though initially in this country was considered to be an offence and its redressal was under the Indian Penal Code or the Code of Criminal Procedure but nothing was much there under the Civil law and that is how such an enactment has come about in such situations as the present scenario. The Act thus covers those women even by virtue of relationship with the abuser when the parties have lived together in a shared accommodation and the very term 'domestic violence' definition has been given a wider scope and interpretation which includes physical, sexual, mental, verbal, economic or by any means whatsoever. The very object of the Act has certainly to the mind of this Court escaped notice of the two courts below, especially the fact that by virtue of Section 16, the Magistrate ought to have considered if the circumstances had warranted or not the proceedings to be held in Camera nor there has been resort to any protection orders through protection officers/service providers by virtue of resort to provisions of Chapter V and no process has been taken for the implementation of the orders of the Court through such means keeping in view the distance of permanent residence of the wife or daughter and

the husband who are miles and miles away. Even during the course of proceedings before this Court, it was much discernible the attempts to frustrate such orders and the ignominy of the wife to have the same implemented, are matters which certainly have a tallying effect on the stand of the husband and his subterfuge to wriggle out of his commitment which he owes towards the wife and the daughter by virtue of seven steps they have taken around the holy fire amidst the holy chanting from the sacred scripts. What meets the eye is that the husband happens to be and as is well entrenched from the record, is a Graduate Engineer and a Class-I Government Contractor and his father (now deceased) worked as an Executive Engineer after whose death his widow, the mother of the husband, is getting pension. One of the petitioners, the daughter, as on date is a student in College. Thus, all these factors are very much essential to work as guidelines in arriving at a judicious decision in the matter.

During the course of submissions, it could not be successfully controverted that in one of the matters before the Court of law, the husband has taken a plea that he is the owner of the house after death of his father where he still as on date is residing along with his mother and his affidavit filed in support of his petition before the learned District Judge, Solan is to the effect:

“... .. The mother and friends of the petitioner got suspicious of such surprise act of

*respondent and they resisted the act of the respondent by not allowing her to enter the house of the petitioner and during such period she had been forcibly trying to enter the house of the petitioner...
... ..”*

Even the stand of mother of the husband in her affidavit on the record filed before this Court in CRM-M No.14855 of 2014 accepts the fact that she has become owner of Jain Bhawan on 14.05.2004 after almost six years of the marriage, that too after death of her husband which took place on 30.09.2002. Thus, by all means it was in this household the wife had come about to settle immediately after her marriage as her permanent abode by way of matrimonial home and where she resided and cohabited and the learned Court below in its impugned findings has arrived at a conclusion that the house at Solan stands in the name of mother-in-law of the complainant wife and she cannot claim right in the self-acquired property of her parents-in-law. There is nothing discernible brought to the notice of this Court in the evidence by learned counsel representing the husband, are matters which have serious repercussions on the final outcome and how the Court below has placed reliance on ‘**S.R. Batra & another v. Taruna Batra**’ **2007(3) SCC 169** and rather than appreciating in the wholesome the stands and the evidence on the records, the Court has resorted to pick-and-chose apparently suitable to the Court to draw a pre-conceived

conclusion. Rather it is much after the parties have initiated litigation against each other and after birth of the girl, this transfer has come about as it is own stand of Mr.Dhiraj Jain that the wife had remained in the company of her husband till year 2000. Rather to the mind of this Court, for a dubious reason and a motivated cause this transfer has come about when the wife had initiated the proceedings way back, when the husband has filed the petition under Section 13 of the Hindu Marriage Act, 1955 immediately thereupon when the couple was at loggerhead, are matters which have a cascading effect on the case of the husband; when by that time the couple was having no holds barred. The documents proved on the record reflect to much extent as has been noticed by the Court of learned Magistrate detailed by virtue of Ex.PW2/4; Ex.PW2/5; Ex.PW2/6; Ex.PW2/9; Ex.PW2/11; Ex.PW2/16; Ex.PW2/18; Ex.PW2/19; Ex.PW2/20 and Ex.PW2/21, the contracts which were allotted in the year 2009-10 to the husband, some of them exceeding Rs.50.00 lacs (then) and which were lost sight of by the learned Judge, who passed the impugned findings. So factually it cannot be concluded that the house was not an ancestral property or was a joint property at the time of marriage when the wife joined the matrimony, lived and cohabited for a long period of time uninterruptedly. As in the said case, it was exclusive property of the mother which is not so in the present case. So the very foundations of the impugned judgment

certainly are factually incorrect. Though the present Act had come about in the year 2005 and in the past wife had lived together with the husband in a shared household from where now as is there she has been forced out and so is the daughter who at that relevant time was a minor and the own stand of the husband that they did not permit the wife to enter house as detailed above, certainly the provisions of Section 3 of the Act comes into play and this Court holds such a conduct of the husband and his family to be purely and purely nothing short of a domestic violence by such way of throwing her out of the matrimonial home, insulting/ridiculing her and so the child born out of this along with the deprivation of her economic necessities and also to his legitimately born daughter, for which this Court seeks support from **‘V.D. Bhanot v. Savita Bhanot’ 2012(1) RCR (Criminal) 834** and **‘Krishna Bhattacharjee v. Sarathi Choudhury & another’ 2016(1) RCR (Criminal) 152**. As has been held by their Lordships in **Krishna Bhattacharjee’s case (ibid)**, the Courts need to have a more sensitive approach by virtue of provisions of this Act. Keeping in view the income of the husband, who also happens to be the father of a growing-up girl, who is on the very threshold of her entering into adulthood from the past of her minority, have been deprived of comforts of her life, a roof over her head, certainly are not only helpless but hapless also and therefore, are by all means aggrieved persons, thus casting upon the

Court a duty to ensure that the very principle of administration of justice is taken to its logical conclusion.

As is there the daughter is getting education, needs to settle down in life, get married and the wife needs to look after herself till her old age and death if she does not chooses to have the other way round, would certainly by virtue of interpretation of the very spirit of the Act and its objects, impels this Court to differ with the impugned findings holding that in view of the present trend of rising prices, the future of daughter and the needs of the wife, likely expenses on unforeseen events in life and for their sustenance, it would suffice to hold if both the wife and daughter are allowed maintenance commensurate with the status of the husband and keeping in view his earnings and income, it would be sufficient to hold that the wife shall be entitled to maintenance at the rate of Rs.50,000/- per month whereas the daughter who needs money for education, upbringing and her requirements being on the higher side in life, shall be entitled to maintenance at the rate of Rs.85,000/- per month and the impugned order certainly without appreciating this aspect of the evidence had purely relied upon a similar order of the Hon'ble High Court passed in some other matter and has drawn conclusion awarding Rs.10,000/- in lump sum as maintenance which as such stands set aside and the orders of maintenance awarded by the Trial Magistrate are modified. Keeping in view that the couple throughout had been litigating

and that during the course of this long drawn battle, the wife and the daughter must have spent huge amount on paying the counsel fees, to and fro journeys to the Courts for their witnesses' conveyance and during the course of their life needs medical aid besides unforeseeable requirements in life, the physical and mental agony suffered all these years, for which the compensation awarded by the courts below is certainly contrary to the stark realities of life and the amount of compensation is enhanced under Section 20 of the Act to the tune of Rs.10,00,000/-. Besides this, the wife and the daughter needs accommodation to live, for which it be ensured in terms of Section 19 of the Act that the daughter and the wife are allowed adequate accommodation in this multiple storey house ensuring protection to their lives and personal liberty as well as privacy suitable for their living and requirements. To ensure that the husband certainly regards the orders of this Court and does not create hurdles in the way of its implementation, it would be appropriate for this Court to ensure and issue directions appointing a Protection Officer at the present place of residence of Manju Aggarwal and her daughter Harshita as well as at Solan where the husband resides, to ensure due implementation of the orders of this Court under the provisions of law as enshrined under Section 9 of the Act and if so necessitated, may seek appropriate assistance from the police of the concerned area as well as judicial courts.

In the light of the same, present petition filed by the wife and her daughter bearing CRR No.2230 of 2015 is allowed in those terms thus, modifying the orders to that extent whereas the petition filed by the husband and his mother bearing CRR No.3375 of 2015 being hopelessly without merit is outrightly dismissed.

With this, all the civil miscellaneous applications filed in both these revision petitions also stand disposed off.

(FATEH DEEP SINGH)
JUDGE

December 08, 2016

rps

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