

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

1. CRR No.3747 of 2014 (O&M)

Munish Kumar

.....Petitioner

Versus

Rajni

.....Respondent

2. CRR No.2122 of 2014

Rajni

.....Petitioner

Versus

Munish Kumar and others

.....Respondent

Date of Decision : 10.06.2016

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Sanjeev Manrai, Senior Advocate with
Mr. S.P. Garg, Advocate
for the petitioner in CRR No.3747 of 2014 and
for the respondent in CRR No.2122 of 2014.

Mr. Parminder S. Sekhon, Advocate
for the respondent in CRR No.3747 of 2014 and
for the petitioner in CRR No.2122 of 2014.

FATEH DEEP SINGH, J.

Though these two revisions [*CRR No.3747 of 2014* titled as *Munish Kumar vs. Rajni* (hereinafter referred as “first revision”) and *CRR No.2122 of 2014* titled as *Rajni vs. Munish Kumar and others* (hereinafter referred as “second revision”)] one by the convict-husband and the other by the disgruntled wife respectively are posed against different judgments/orders passed in different complaints though both the complaints

preferred by the wife but having common roots and shows similar intricacies and thus calls for and needs to be disposed off together as it will make the things all the more clear as well as for the sake of brevity.

The undisputed facts are that the complainant/wife-Rajni initially preferred complaint No.4-T dated 01.10.2008 against her husband-Munish Kumar, father-in-law-Umrao Kotia and mother-in-law-Koshalya under Sections 406, 498-A, 506, 34 IPC registered at Police Station Ghagga. The allegations levelled therein were that a marriage between Rajni and Munish Kumar took place on 28.04.2007 with great pomp and show where the family of the girl had given immense dowry articles as per the desires and wishes of the boy's family. It is alleged that on 18.06.2007, the husband took Rs.80,000/- from the family of the girl and bought a new Vespa scooter. Thereafter, he again started demanding more and laid a claim of Rs.1.00 lac. A female child was born to the couple and thereafter, on 14.06.2008, the husband-Munish Kumar demanded a sum of Rs.1.00 lac from the wife and on her refusal gave her beatings and it was on 07.07.2008, the husband and his mother gave beatings and all the accused tried to strangle her leading to filing of the complaint. On the basis of the statement of Rajni-CW1, dowry articles Ex.C1 to C13, statement of father of the girl Hem Raj-Ex.CW2, list of dowry articles Ex.C1, statement of witness-Bhim Singh-Ex.CW3 and testimony of Dr. Sachin Kaushal-Ex.CW4 who proved MLR Ex.C2 and Pictorial Diagram Ex.C3, accused Munish Kumar, Umrao Kotia and Koshalya were charged for commission of offences under Sections 406 and 498-A of IPC. It is vide judgment dated

14.12.2012, the Court of learned Judicial Magistrate, 1st Class, Samana acquitted the father-in-law and mother-in-law however, convicted husband-Munish Kumar for commission of offence under Section 498-A IPC and sentenced him to undergo rigorous imprisonment for a period of two years with compensation of Rs.50,000/-. The convict-husband preferred an appeal against his conviction bearing No.36-T dated 14.01.2013 whereas the wife preferred a cross appeal bearing No.37-T dated 11.01.2013 wherein she has called conviction of the persons who have since been acquitted as well as conviction for commission of offence under Section 406 IPC and enhancement of the sentences. The Court of learned Additional Sessions Judge, Patiala through common judgment dated 13.10.2014 disposed off both the appeals of the convict-husband as well as wife invariably upholding the findings of trial Court. It is against these findings the convict-husband has preferred “**first revision**” challenging the judgment of his conviction.

It is by another quirk of fate the wife had filed another complaint/ application bearing No.37 dated 29.04.2009 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short “the Act”) against Munish Kumar-husband, Umrao Kotla-father-in-law, Koshalya-mother-in-law, Surinder Pal and Jai Pal-brothers of the husband, Retu wife of Surinder Pal and Meenu wife of Jai Pal as well as married sisters of the husband Radha and Rajni as well as Naresh Kumar husband of Radha. The Court of the Judicial Magistrate, 1st Class, Samana through

orders dated 01.12.2012 awarded Rs.3500/- per month as maintenance to Rajni and her claim for damages stood dismissed as well as allowed her entrustment of dowry articles detailed in Ex.C-1 and directed the respondent-husband to hand back the possession of the same. It is against these findings, the wife-Rajni has filed appeal bearing No.227 of 11.01.2013 and the husband and his co-respondents had filed a Criminal Appeal bearing No.412 of 03.01.2013. The Court of learned Additional Sessions Judge, Patiala passed a common judgment disposing off both these appeal through an order dated 29.04.2014 whereby both the appeals stood dismissed holding that wife-Rajni can receive her dowry articles as per Ex.C-1. It is against these findings **“second revision”** has been preferred by the wife.

Heard Mr. Sanjeev Manrai, Senior Advocate with Mr. S.P. Gard, Advocate for the convict-husband and Mr. Parminder S. Sekhon for the wife and perused the records of the cases.

Mr. Sanjeev Manrai, Senior Advocate on behalf of the revisionist/husband-Munish Kumar at the very onset of his submissions had made a solitary compassionate appeal that the husband out of the awarded sentence under Section 498-A of the IPC of 02 years has already undergone incarceration of more than 17 months and to substantiate the same has placed on record the orders dated 10.02.2015 of Judicial Magistrate, 1st Class Samana and which contentions have not been refuted on behalf of the opposite side. Thus, a prayer has sought to be made by the counsel that

since the convict-husband has already undergone substantive sentence and the offence for which he has been hauled up is not of any heinous nature and called for grant of concession of probation. Though the same has sought to be controverted by the counsel for the wife on the grounds that the husband is guilty for cruelty to the wife and therefore does not deserves compassion.

Going through the arguments, the learned trial Court and so the First Appellate Court have upheld the conviction of the husband only for commission of offence under Section 498-A of the IPC and which prescribes maximum imprisonment of 03 years and fine. The Courts below have upheld the conviction and sentence of two years itself out of which admittedly the revisionist/convict-Munish Kumar had undergone more than 17 months. The revisionist/husband had faced the music of these allegations since the year 2008 for almost 08 years and has also undergone such a substantial amount of imprisonment. He is a young man with aged parents and the fact that he is not a habitual criminal and had only been held guilty for cruelty to his wife and thus, must have undergone much remorse and penance, thus, to ensure that if sent to prison, the petitioner would suffer enormously and may be forced to renounce the path of rectitude, therefore, to ensure that the revisionist keeps away from the life of crime and is able to do something useful for the society at large.

The fact that even the Courts below had failed to consider the exercise of powers under Section 360 Cr.P.C. which have been legislated

with the object and intent to bring about integration in the society and to keep persons going wayward. The provisions are specially enacted as a mark of social engineering and there being no due consideration as to why the Courts below have failed to exercise powers under Section 360 Cr.P.C. as is mandated by virtue of Section 361 Cr.P.C. This Court deems it imperative to exercise its inherent powers and to grant the concession of probation to the petitioner keeping in mind all these factors that have brought to the notice of the Court. In view of which upholding impugned judgment of the Courts below, dismissing the revisions, the impugned judgment is hereby modified and the revisionist-Mukesh Kumar is allowed concession of probation in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on his entering into a bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the trial Court undertaking therein that he shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

The contention of the counsel for the revisionist/wife in the **“second revision petition”** that an inadequate maintenance had been awarded by the Court below, could not be substantiated even in the evidence before the Court below. Admittedly the husband is a Dhobi by profession. The wife has failed to bring in evidence any substantial and cogent evidence as to his actual earnings. Admittedly the family is joint. The learned trial Court on the basis of this avocation of the husband and his

likely earnings by mere judicial prudence, has come to this monetary relief in terms of Section 20 of the Act and thus, has awarded a sum of Rs.3500/- per month however in view of the mandate of Section 20 sub-Section (1) Clause 'd' of the Act does not forbids grant of maintenance to the wife or the children under the provisions of Section 125 of the Cr.P.C. or any other law. Thus, in case the wife is still aggrieved, she has a legal recourse available to her under the appropriate provisions of law. However, in the present case counsel for the revisionist-wife could not convince how the impugned findings were incorrect and inappropriate.

The second ground that has sought to be raised by the revisionist side and has been refuted tooth and nail by the counsel for the husband is over the shared accommodation.

Appreciating the evidence and the stand of the two sides on the records of the Courts below, the wife admits she has relinquished her matrimonial home way back on 09.07.2008 and thus, over this period of more than 08 years much water has flown down the bridge and thus, at this juncture such a plea and that too, in the light of the fact as has been contended by the counsel for the respondent-husband that the husband is behind the bars and in the absence of any definite proof that the husband has his own dwelling unit and that the wife shall be putting up in this shared accommodation of the family, it would be too preposterous to grant such a relief at this juncture. The learned trial Court has rightly appreciated whatever semblance of evidence has been led by the applicant/wife and

thus, finding no illegality or perversity the revision of the wife certainly is meritless and stands dismissed.

In the light of the above going findings, both these criminal revisions stand disposed off accordingly.

Records of the Courts below be sent back.

June 10, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE