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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET
ASIDE FIR/ORDER) NO. 12198 of 2017****FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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**GAURANGBHAI SURESHBHAI KAPARIYA (HUSBAND) &
ORS.****Versus****STATE OF GUJARAT & ANR.**

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Appearance:**MR MK POOJARA for MR ASHISH M DAGLI(2203) for the
Applicant(s) No. 1,2,3,4,5****MR VINOD M GAMARA(5910) for the Respondent(s) No. 2****MR KM ANTANI, APP for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 01/09/2026****ORAL JUDGMENT**

1. This application under Section 482 of the Criminal Procedure Code, 1973 (the Code) is filed by the applicants praying to quash and set aside the FIR being C.R. No. I-106 of 2017 dated 25.04.2017,

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registered with Mahila Police Station, Rajkot City, District: Rajkot City for the offences punishable under Sections 498A, 323, 406 and 114 of the Indian Penal Code, 1860 (IPC) and Sections 3 and 7 of the Dowry Prohibition Act.

2. Facts in nutshell of the prosecution case are that marriage of the *de facto* complainant with applicant No. 1 herein came to be solemnized on 15.05.2011 and they resided in a joint family comprising her parents-in-law, brother-in-law as well as the uncle-in-law. It is alleged that when the *de facto* complainant got pregnant, her mother-in-law did not given her complete food to eat and the applicant No. 1 did only to the extent what his father told him. Her brother-in-law also used to ask not to stay in their house and thus, all were quarreling with her and hence, the *de facto* complainant along with applicant No. 1 went Bombay and started residing over there, where, the applicant No. 1 initially behaved properly, however, thereafter, started quarreling and behaved in a bad manner. The *de facto* complainant then gave birth to a child to whom, on 27.10.2014, the applicant No. 1 brought with him at Rajkot without informing to the *de facto* complainant. Hence, the *de facto* complainant went to Rajkot along with her parents however, the applicants did not allow them to enter into the house and threatened to beat if she would enter. Hence, the *de facto* complainant, with the help of the Police, got custody of their child. It is further alleged that despite several demands were made, the applicants did not return the *de facto* complainant her Stridhan.

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Further, though the applicant No. 1 was informed about hospitalization of their son, he did not turn up and the applicants asked that they have no relations with them. Thus, on the said facts, FIR in question came to be registered against the applicants.

3. Heard, learned advocate for the respective parties.

3.1 The learned advocate for the applicants would submit that the FIR filed by the respondent No. 2 is nothing but an abuse of process of law inasmuch as, the alleged period of offence is between 2011 and 2014 and the FIR is filed on 25.04.2017 that too, by suppressing material facts and deliberately and conveniently not referring the proceedings *viz.* divorce petition being Family Suit No. 147 of 2016 filed by the applicant No. 1 before the Family Court at Rajkot on 11.05.2016.

3.2 The learned advocate for the applicants would further submit that in the said proceedings, summons was issued and the *de facto* complainant appeared through her Advocate and filed Reply also on 08.08.2016. It is submitted that even an application for maintenance was also preferred by the *de facto* complainant on the very same day, whereas, the present FIR is dated 25.04.2017 arraigning the present applicant No. 1 *i.e.* the husband as well as the other family members including the uncle of the applicant No. 1 who is aged about 67 and blind from birth.

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3.3 It is further submitted that while the *de facto* complainant alleges harassment and cruelty, it is other way round inasmuch as, if the findings of the Family Court in the Judgment and Decree dated 18.09.2024 passed by the learned Judge, Family Court in the said Family Suit No. 147 of 2016 are referred, copy of which is made available by the learned advocate for the applicants and is taken on record, it is specifically observed therein that the applicant No. 1 – husband was treated with cruelty by the wife - *de facto* complainant.

3.4 The learned advocate for the applicants would further submit that the applicant No. 1 and the respondent No. 2 - *de facto* complainant stayed together at Bombay, however, the applicant No. 1, in fact, was put to under tremendous pressure and harassment and was compelled to leave Bombay with his minor son. It is submitted that an Intimation to that effect was also given at Virar Police Station on 06.05.2014 and thereafter, a Statement of the applicant No. 1 was also recorded on 15.11.2024 by the police. Thus, it is submitted that only with a view to harass and pressurize the applicant No. 1 and his family members after a long lapse of time, present criminal proceedings are initiated against the applicants.

3.5 The learned advocate for the applicants submitted that so far as applicant No. 4 – Jalpesh Sureshbhai Kapariya, who is the brother-in-law of the *de facto* complainant, is concerned, he being a

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student of MBBS was residing separately from his family members since 2006 as was studying in Pramukh Swami Medical College situated at Karamsad. He also did internship at a Hiren Patel Center for Medical Course and Education and a certificate to that effect is also issued on 03.04.2013. He also got a certificate from Sardar Patel University, Vallabh Vidhyanagar. Further, he took admission at Madurai Medical College, Tamilnadu and a completed his course in Diploma in Anesthesia and also got a certificate. He was then offered job at Department of Cardiac Anesthesia at BGS Global Hospital at Bangalore and did private job for some time also and presently, doing study at Noble Hospital, Pune. It is thus submitted that present FIR is nothing but a tactic to harass the pressurize the applicants.

3.6 It is submitted that on the contrary, the *de facto* complainant suppressed the fact that while she was residing with the applicants, she was allowed to undergo further studies, she took admission in the Saurashtra University for the Post Graduate Diploma in Hospital Management and she was also allowed to start her Clinic as a Consulting Homeopath at the residence of the applicants.

3.7 It is also submitted by the learned advocate for the applicants that so far as Stridhan is concerned, the *de facto* complainant had already taken with her the jewellery, which could be evidence from the proceedings in Family Suit No. 147 of 2016,

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more particularly, from the documents Exhs. 65, 66 and 67 produced therein.

3.8 Making above submissions, it is requested to allow this application.

4. As against that, the learned advocate for the *de facto* complainant and the learned Additional Public Prosecutor for the respondent – State would submit that a *prima facie* case is made out against the present applicants from the bare reading of the FIR itself and accordingly, exercise of discretion under Section 482 of the Code is not warranted and accordingly, it is urged to reject this application summarily.

4.1 It is submitted that the applicants are headstrong persons and that, specific allegations are levelled in the FIR against them with regard to continuous harassment and torture meted out to the respondent No. 2 and in the circumstances, no case is made out for interference.

4.2 The learned advocate for the respondent No. 2 would further submit that Reply was also filed in the Family Suit No. 147 of 2017 narrating the conduct of the applicant *prima facie* disclosing offence punishable under Sections 498A, 323, 406 and 114 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act.

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4.3 The learned advocate for the respondent No. 2 as well as the learned Additional Public Prosecutor for the respondent – State submitted that as per the settled law, inherent powers under Section 482 of the Code should be used sparingly and with a view to curb the abuse of process of law. It is submitted that in the case on hand, a *prima facie* case is made out against the applicants and hence, they requested that it is ultimately a matter of trial after which, the truth could be churned out and hence, it is requested not to entertain this application.

4.4 Making such submissions, it is urged by the learned Additional Public Prosecutor that this application may not be entertained and it is requested to be rejected.

5. Heard, the learned advocates for the parties and perused the papers available on record.

5.1 At the outset, it would be apt to refer to a decision in case of *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, wherein, the Hon'ble Apex Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of Paragraph 102 of the said judgment is extracted below:

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“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the code.

(3) Where, the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

(5) Whether, the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where, there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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5.2 The applicants have preferred this application under Section 482 of the Code, seeking the quashing of the First Information Report (FIR) and all consequential proceeding in pursuance thereto. The allegations against the present applicants are with regard to quarreling on small things; the applicant No. 1 - husband was not behaving in a proper manner; he (applicant No. 1) also took away her one year old child to Rajkot and when she went to Rajkot, she and her family members were not allowed to enter the house. Further, the *de facto* complainant was threatened to beat. Further, her Stridhan etc. were not returned. Thus, it appears that a matrimonial discord between the husband and wife led to filing of the present FIR in which all the family members are implicated.

5.3 Before adverting to the case on hand, it would be appropriate to refer to a decision of the Apex Court in ***Preeti Gupta v. State of Jharkhand, 2010 (0) AIJEL-SC 48656***, wherein the Court held:

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the Courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The Courts are receiving a large number of cases emanating from Section 498-A of the Indian Penal Code which reads as under:-

["498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the

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husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this Section, cruelty' means:- [(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or]

[(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."]

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30. It is a matter of common experience that most of these complaints under Sec. 498-A IPC are led in the heat of the moment over; trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are led with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents : should not be reflected in the criminal complaints. Majority of the complaints are led either on their advice or with their concurrence. The learned members of the Bar who belong to a-noble profession must maintain its noble traditions and should treat every complaint under Sec. 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

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32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases led by the complainant if the husband or the husband's relations : had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the Courts but also have led to enormous social unrest affecting peace,

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harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

5.4 Further, in the decision in *Kahkashan Kausar @ Sonam v. State of Bihar, 2022 (0) AIJEL-SC 68351*, the Apex Court observed that:

"12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in *Rajesh Sharma and Ors. Vs. State of U.P. & Anr., (2018) 10 SCC 472* has observed:-

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the

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Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be led under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are led in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr.*, (2014) 8 SCC 273 it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

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16. 16. In *Geeta Mehrotra & Anr. Vs. State of UP & Anr.*, (2012) 10 SCC 741 it was observed:-

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"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao vs. L.H.V. Prasad & Ors.* reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: "there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes."

17. Recently, in *K. Subba Rao v. The State of Telangana*, (2018) 14 SCC 452 it was also observed that:-

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse

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of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

5.5 Tested on the above observations in various pronouncements of the Apex Court, if the case on hand is adverted, following aspects emerge:

a) the allegations against the applicants are vague and omnibus;

b) the ingredients of the offences alleged are not satisfied qua the present applicants inasmuch as, so far as offence punishable under Section 498A of the IPC is concerned, the complainant alleged that all accused harassed her but no specific and distinct allegations have been made against either of the appellants herein, i.e., none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. Cruelty, as defined in Section 498A IPC is: (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or

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to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The FIR in question reveals no such conduct and/or act on the part of the applicants herein so as to attract the provisions of Section 498A IPC. It is trite that small and scattered incidents without any immediate proximity do not constitute offence of cruelty;

c) furthermore, regarding similar allegations of harassment and demand for dowry made in the FIR, however, without there being any specific instance. There is not an iota of averment in the FIR as to what were the demands much less there is any demand for dowry was made by the applicants and thence, the provisions of Dowry Prohibition Act are also not attracted;

d) so far as Section 323 IPC, which relates to punishment for voluntary causing of hurt, is concerned, FIR reveals nothing to show as to what hurt was caused to the de facto complainant. There is not even an allegation of slapping the de facto complainant. Mere allegation in the FIR is to the effect that the de facto complainant was prevented from entering into the house, and threatened that if entered, she would be pushed away, which in the opinion of the Court cannot fall into voluntary causing any

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hurt to the de facto complainant and thus, ingredients of this section are also not satisfied;

e) so far as Section 406 IPC is concerned, the same relates to criminal breach of trust. Assuming for a moment that ornaments and Stridhan or the dowry, if any, are in the custody of the present applicants, in that case, reference of judgment and decree of the Family Court in Family Suit No. 147 of 2016 would be apposite, from which, it would be evident from Exh. 65, which is the Receipt of having received Stridhan back by the de facto complainant, which is dated 23.02.2014 and signed by her. It is pertinent to note that aspect of having not received the Stridhan and ornaments back is coming forward for the first time after filing of the divorce petition by the applicant No. 1 in the year 2016, in the present FIR, which is filed in 2017 (25.04.2017) and the said aspect of not received Stridhan etc. is also not challenged by the de facto complainant. Thus, invocation of Section 406 IPC is incompatible with the facts on record. Further, the applicants have already made it clear that they are ready and willing to part with, if anything, remains with them and to handover the de facto complainant;

f) the contents of the FIR itself, does not repose confidence so far as allegations qua present applicants;

g) in K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452, it is held that the Courts should be careful in proceeding

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against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

5.6 In view of the above, taking into consideration the facts and circumstances of the case *vis-a-vis* the aforesaid decisions of the Apex Court, this Court is of the considered opinion that the present case squarely falls within the parameters (1), (3), (5) and (7) as enshrined in the case of *Bhajan Lal (supra)* as the proceedings against the present applicants appear to be manifestly frivolous and instituted with the ulterior motive for wreaking vengeance and accordingly, the Court is inclined to exercise powers vested under Section 482 of the Code and quash the FIR *qua* the present applicants.

7. *In fine*, this application succeeds and is allowed, accordingly. FIR being C.R. No. I-106 of 2017 dated 25.04.2017, registered with Mahila Police Station, Rajkot City, District: Rajkot City for the offences punishable under Sections 498A, 323, 406 and 114 of the Indian Penal Code, 1860 (IPC) and Sections 3 and 7 of the Dowry Prohibition Act, along with all consequential proceedings emanating therefrom, is quashed and set aside *qua* the present applicants only.

7.1 Rule is made absolute, accordingly.

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7.2 It goes without saying that *de facto* complainant may recourse to the remedy available to her under the law, if so advised, for getting the remaining Stridhan etc., if any.

7.3 **Direct service** is permitted.

[P. M. Raval, J.]

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