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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 7th OF MAY, 2024

MISC. CRIMINAL CASE No. 12469 of 2024

BETWEEN:-

1. **NEERAJ KUMAR SARAF S/O SHRI JAMUNA PRASAD, AGED ABOUT 52 YEARS, OCCUPATION: BUSINESS R/O OLD WARD NO 25 NEW WARD NO 32 CHAPRA QUARTER OPPOSITE MAIN RAOD SHAHDOL (MADHYA PRADESH)**

2. **PANKAJ SARAF S/O SHRI JAMUNA PRASAD, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS R/O WARD NO 25 NEW WARD NO 32 CHAPRA QUARTER OPPOSITE MAIN ROAD SHAHDOL DISTRICT SHAHDOL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI JANAK LAL SONI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION MAHILA THANA DISTRICT REWA (MADHYA PRADESH)**

2. **SMT SHILPA SARAF W/O SHRI SATENDRA SARAG D/O TEERATH PRASAD DONI, AGED ABOUT 33 YEARS, R/O PADAMDHAR COLONY WARD NO 5 DHEKHA REWA DISTRICT REWA (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1/STATE BY SHRI K.S. BAGHEL – GOVERNMENT ADVOCATE)

MISC. CRIMINAL CASE No. 48243 of 2023

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BETWEEN:-

SEEMA SARAF W/O PANKAJ SARAF, AGED ABOUT 38 YEARS, OCCUPATION: HOUSE WIFE R/O WARD NO 25 KIRAN TALKIES RAOD NEAR CHAPERA KATAR SHAHDOL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI JANAK LAL SONI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION MAHILA THANA DISTRICT REWA (MADHYA PRADESH)**

2. **SMT. SHILPA SARAF W/O SHRI SATENDRA SARAF, AGED ABOUT 33 YEARS, OCCUPATION: D/O TEERATH PRASAD SONI R/O PADAMDHAR COLONY WARD NO 5 DHEKHA REWA (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1/STATE BY SHRI K.S. BAGHEL – GOVERNMENT ADVOCATE AND RESPONDENT NO.2 BY AWDHESH KUMAR AHIRWAR)

This application coming on for admission this day, the court passed the following:

ORDER

By this common order M.Cr.C.No.48243/2023 shall also be disposed of.

2. In M.Cr.C.No.12469/2024, the applicants are elder brothers-in-law (जेठ) of the complainant whereas in M.Cr.C.No.48243/202, the applicant is the wife of applicant No.2 (जिठानी) of the complainant.

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3. The facts necessary for disposal of the present applications in short, are that the complainant lodged an FIR on 30.11.2021 on the allegations that she got married to Satyendra Saraf on 11.05.2017 in Shahdol in accordance with Hindu rites and rituals. At the time of her marriage, her parents had given sufficient dowry as per their financial status. However, after four months of marriage, her husband as well as applicants started scolding her on the question of bringing less dowry and they used to beat her on trivial issues and started demanding a Fortuner vehicle and 20 Tola of Gold and they were all the time scolding that only if the Fortuner vehicle and 20 Tola of Gold is brought, only then she will be allowed to stay in her matrimonial house otherwise they will kill her. However, the financial condition of her parents is not such to fulfill the demand and ultimately they could not give Fortuner vehicle and 20 Tola of Gold. On 30.10.2021 all of them, after beating her ousted her from her matrimonial house, thereafter she informed her parents and accordingly her parents have taken her back from her matrimonial home and since then she is residing in her parental home.

4. Challenging the FIR lodged by the respondent No.2, it is submitted that in fact the respondent No.2 had given a knife blow in the abdominal region of her husband Satyendra Saraf. As a result, an offence has been registered against respondent No.2.

5. It is further submitted that in the light of order dated 20.04.2024, the applicant has also filed the complete charge-sheet. It is further submitted that in fact the FIR has been lodged by way of counter blast to the petition filed by her husband under Section 13 of

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Hindu Marriage Act. It is submitted that the petition for divorce was filed on 16.11.2021 and the notices were received by the respondent No.2 on 23.11.2021 and the FIR was lodged on 30.11.2021.

6. It is further submitted that even according to the respondent No.2, she had stayed in her matrimonial house for four and half long years and during this period, she never made any complaint to the police and thus it is submitted that the allegations that applicants were treating the complainant with cruelty by demanding Fortuner Car as well as 20 Tola of Gold is false. It is further submitted that in fact the complainant before leaving her matrimonial house has taken away all her *Stridhan* which has been acknowledged by the Vice President of Nagar Palika Parishad, Shahdol.

7. Considered the submissions made by counsel for applicants.

Whether the respondent No.2 had given a knife blow in the abdominal region of Satyendra Saraf/ her husband.

8. On perusal of record, it is clear that complete order sheet has not been filed and incorrect statement was made by counsel for applicants.

9. The applicants have filed a copy of written complaint made by Satyendra Saraf to Superintendent of Police, Shahdol, which is at Page-18 of the application. In this application, it is specifically mentioned that Satyendra Saraf himself had caused self inflicted injury in his abdominal region. The exact words mentioned in the complaint are as under:-

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> *“सुबह जब मैं तैयार हुआ तो उसका वही रात वाला रवैया चालू हो गया और वही बात कहने लगी कि जाकर ट्रेन के नीचे कट जाउंगी फांसी लगा लुंगी और तब मैं उसे खींचकर सोफे में बैठाया तो चाकू निकाल ली और खुद को मारना चाहा eSaus pkdw Nhuk vkSj ;k dgsa fd eSaus [kqn dks pkdw ekj fy;k”*

10. It is really shocking that in the document, which has been filed along with this application although the counsel for applicant had underlined the words “*मेने चाकू छीना और या कहें कि मैने खुद को चाकू मार लिया*” but thereafter tried to erase the underlining by applying whitener. Although, the counsel for applicants had read the complaint, in which it was specifically mentioned by Satyendra Saraf that he himself had caused injury by Knife on his abdominal region, in spite of that the counsel for applicants tried to mislead this Court by making a submission that it was the respondent No.2 who had given a knife blow in the abdominal region of her husband Satyendra Saraf. When the counsel for applicants was confronted with the aforementioned misrepresentation, then he also admitted that no criminal case was ever registered against respondent No.2.

11. Thus, it is clear that counsel for applicants have tried to mislead this Court by misquoting the facts specifically when he himself had underlined the important lines in the complaint, in which it was specifically mentioned by Satyendra Saraf that he himself had caused injury to him by the knife.

Whether FIR was lodged by way of counter blast to the divorce petition.

12. The Supreme Court in the case of **Pratibha v. Rameshwari Devi,** reported in **(2007) 12 SCC 369** has held as under:-

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"**14.** From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in *Bhajan Lal case* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted hereinabove. The High Court has drawn an adverse inference on account of the FIR being lodged on 31-12-2001 while the appellant was forced out of the matrimonial home on 25-5-2001.

15. In our view, in the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that Respondent 2 husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with Respondent 2 husband.

16. It is pertinent to note that the complaint was filed only when all efforts to return to the

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> matrimonial home had failed and Respondent 2 husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.
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> **22.** For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers under Section 482 of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not."

13. It is well established principle of law that the findings of the Civil Court are not binding on the Criminal Court.

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14. The Supreme Court in the case of **Kishan Singh v. Gurpal Singh,** reported in **(2010) 8 SCC 775** has held as under :

> **16**[**]**.** In *Iqbal Singh Marwah* v. *Meenakshi Marwah* this Court held as under : (SCC pp. 389-90, para 32)
>
> "*32*. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."
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> **17.** In *Syed Askari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)* this Court considered all the earlier judgments on the issue and held that while deciding the case in *Karam Chand*, this Court failed to take note of the Constitution Bench judgment in *M.S. Sheriff* and, therefore, it remains per incuriam and does not lay down the correct law. A similar view has been reiterated by this Court in *Vishnu Dutt Sharma* v. *Daya Sapra*, wherein it has been held by this Court that the decision in *Karam Chand* stood overruled in *K.G. Premshanker*.
>
> **18.** Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in

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> civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.

15. The Supreme Court in the case of **Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.),**reported in **(2009) 5 SCC 528** has held as under :

> **24.** If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidence brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in *K.G. Premshanker* v. *Inspector of Police* wherein this Court inter alia held: (SCC p. 97, paras 30-31)
>
> "*30*. What emerges from the aforesaid discussion is—(*1*) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (*2*) in civil suits between the same parties, principle of res judicata may apply; (*3*) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (*4*) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

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31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by *A* on *B*'s property, *B* filed a suit for declaration of its title and to recover possession from *A* and suit is decreed. Thereafter, in a criminal prosecution by *B* against *A* for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of *B* over the property. In such case, *A* may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is—whether judgment, order or decree is relevant, if relevant—its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

25. It is, however, significant to notice that the decision of this Court in *Karam Chand Ganga Prasad* v. *Union of India*, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating: (*K.G. Premshanker case*, SCC p. 98, para 33)

"*33*. Hence, the observation made by this Court in *V.M. Shah case* that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in *Karam Chand case* are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in *M.S. Sheriff case* as well as Sections 40 to 43 of the Evidence Act."

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Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court.

26. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision of the Evidence Act or for that matter any other statute has been brought to our notice.

27. Another Constitution Bench of this Court had the occasion to consider a similar question in *Iqbal Singh Marwah* v. *Meenakshi Marwah* wherein it was held: (SCC p. 387, para 24)

"*24*. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure

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prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (*b*)(*ii*)."

28. Relying inter alia on *M.S. Sheriff*, it was furthermore held: (*Iqbal Singh Marwah case*, SCC pp. 389-90, para 32)

"*32*. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

29. The question yet again came up for consideration in *P. Swaroopa Rani* v. *M. Hari Narayana*, wherein it was categorically held: (SCC p. 769, para 11)

"*11*. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

16. The Supreme Court in the case of **Prem Raj Vs. Poonamma Menon** decided on **2.4.2024 in S.L.P.(Cr.) No.9778/2018** has held as under :

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9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In *M/s. Karam Chand Ganga Prasad and Anr. vs. Union of India and Ors.(1970)3 SCC 694*, this Court observed that:

> "…….It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

In *K.G. Premshanker vs. Inspector of Police and Anr, (2002)8 SCC 87*, a Bench of three learned Judges observed that, following the *M.S. Sheriff vs. State of Madras, AIR 1954 SC 397*, no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in *Vishnu Dutt Sharma vs. Daya Sapra (Smt.) (2009)13 SCC 729*, had observed as under:

> "26. It is, however, significant to notice a decision of this Court in *Karam Chand Ganga Prasad v. Union of India (1970) 3 SCC 694*, wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein…"

This Court in *Satish Chander Ahuja vs. Sneha Ahuja (2021)1 SCC 414,* considered a numerous precedents, including *Premshanker* (supra) and *Vishnu Dutt Sharma* (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

> The issue has been laid to rest by a Constitution Bench of this Court in *Iqbal Singh Marwah vs. Meenakshi Marwah, (2005)4 SCC 370* : "32. Coming to the last

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contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

> "15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such

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> as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.
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> 16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

(Emphasis Supplied)"

17. If the wife had maintained silence in order to save her marital life and did not lodge the report, then her silence for the noble cause should not be considered against her by holding that the FIR was lodged by way of counter blast to the divorce petition. Once, the wife had realized that all the chances of reconciliation have vanished on account of filing of divorce petition and if she decided to take action in

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accordance with law, then she cannot be blamed for the same. On the contrary, it can be said that earlier she tried to save her marital life and only after realizing that everything is over and if she decided to make a complaint about the cruelty meted out to her, then she cannot be non-suited for her good gestures of maintaining silence.

18. It is next contended by the counsel for the applicants that in fact the respondent No.2 had left her matrimonial house after taking all her goods in the presence of the Vice President, Nagar Palika Parishad, Shahdol, which is evident from the acknowledgment given by the respondent No.2.

19. The applicants have filed an I.A.No.10653/2024 along with the deposition sheet of Shri Kuldeep Nigam, Vice President, Nagar Palika Parishad, Shahdol. In his cross-examination, he has admitted that it is nowhere mentioned that who had weighed the ornaments and he has also stated that generally the women goes to their parental home. Thus, it is clear that Kuldeep Nigam, Vice President, Nagar Palika Parishad, Shahdol had prepared the note without weighing the gold ornaments mentioned in the same. Furthermore, if the respondent No.2 has taken her *Stridhan* with her, then no one can make a complaint about that because only the wife is the owner of her *Stridhan*.

Whether the allegations made in FIR are false.

20. Whether the allegations made in the FIR are correct or not cannot be adjudicated by this Court at this stage.

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21. It is well established principle of law that this Court can quash the FIR only when the un-controverted allegations do not make an offence. Since, there are specific allegations against the applicants that not only they started demanding Fortuner Car and 20 Tola of Gold after four months of her marriage but she was forcefully ousted from her matrimonial house and since then respondent No.2 is residing in her parental home coupled with the fact that compelling a married woman to live in her parental home on account of non-fulfillment of demand of dowry would also amount to mental cruelty.

22. No other argument is advanced by counsel for applicants.

23. Accordingly, this Court is of the considered opinion that no case is made out warranting interference.

24. Accordingly, the applications fail and are hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*