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Family Courts Act, 1984 — Section 13 — Family Court (Procedure) Rules, 1989 — Rule 9.

I (2007) DMC 116 (Kerala HC)

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I (2007) DMC 6 (SC)

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Civil Procedure Code, 1908 — Section 96 — Hindu Adoption and Maintenance Act, 1956 r/w Order 33, CPC.

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I (2007) DMC 24 (Jharkhand HC)

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Hindu Adoptions and Maintenance Act, 1956 — Sections 3(b), 18.

I (2007) DMC 13 (Delhi HC) (DB)

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I (2007) DMC 22 (Allahabad HC)

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Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b). — Criminal Procedure Code, 1973 — Section 125.

I (2007) DMC 26 (Delhi HC)

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Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b) — Criminal Procedure Code, 1973 — Section 125.

I (2007) DMC 26 (Delhi HC)

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Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b) — Criminal Procedure Code, 1973 — Section 125.

I (2007) DMC 26 (Delhi HC)

- *Pendente lite* — Determination of Amount — Allegations and counter allegations — Respondent-husband doing job in Netherlands — Respondent sought divorce in Netherlands as parties could not pull well together — FIR under Sections 406 and 498A, IPC registered against respondents, parents and relatives of respondent — Petitioner-wife filed petition for restitution of conjugal rights and moved application under Section 24 of Hindu Marriage Act — She alleged respondent is Manager in German firm and drawing more than Rs. 1,50,000/- (INR) p.m. and running hotel — His total income was Rs. 2.50 lacs p.m. — Respondent denied these allegations and denied she was legally wedded wife and that petitioner and her parents trapped respondent and his family for greed — He sought annulment of marriage — Considering allegations and counter allegations, background of families, status of parties, period they lived together, sum of Rs. 20,000/- p.m. as maintenance *pendente lite* and Rs. 10,000/- as litigation expenses quite reasonable — No error in exercise of jurisdiction by Trial Court so as to invite interference under Section 115, CPC.

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Criminal Procedure Code, 1973 — Section 125.

I (2007) DMC 82 (Andhra Pradesh HC)

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I (2007) DMC 129 (SC)

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I (2007) DMC 6 (SC)

- MISCARRIAGE WITHOUT WOMAN'S CONSENT** — Framing of charge — Allegations to constitute offence and sufficient material on record to give rise to grave suspicion with regard to commission of offence under Section 313, IPC — Material on record apparently in favour of accused and, however in context of facts of this case, there is also material against them — Truth can only be ascertained in trial — Charge under Section 313, IPC can definitely be framed and rightly framed by Additional Sessions Judge.

Indian Penal Code, 1860 — Section 313.

I (2007) DMC 47 (Delhi HC)

- MURDER** — Cruelty, Common Intention — Dying Declarations — Mother-in-law of deceased alleged to have poured kerosene oil on body of deceased and set her on fire —

Incident took place within 1 month of marriage — Dying declarations do not specifically spell out case of harassment to deceased on account of non-fulfilment of demand — Defence version that deceased not ready and willing to live in matrimonial home as she disliked her husband, he being illiterate, so also financial condition poor as compared to parents of victim — She lived in matrimonial house intermittently and not continuously — Inconsistency in dying declarations makes prosecution case improbable — Material witness not examined by prosecution — Prosecution failed to establish guilt of accused persons.

Indian Penal Code, 1860 — Sections 302, 498A r/w Section 34

I (2007) DMC 157 (Bombay HC) (DB)

— Dowry Death, Cruelty, Common Intention — Appeal against acquittal — Death of deceased due to burn injuries — Reappraisal of evidence — Difficult to infer that respondent was either present when accident took place or ran away from scene, because nobody has seen him doing so — Police made seizure of kerosene can almost after about 12 days of incident and not seized any kerosene can from spot — Finding of kerosene can in residential house is not unusual and seizure not significant — Statements of two eye witnesses P.Ws. 2 and 3 that victim conveyed to them cause of her burn injuries, unreliable — If victim was indeed in position to make dying declaration police would have made attempt to have dying declaration recorded by Magistrate — On reappraisal of evidence, view taken by Trial Court cannot be said to be unwarranted or improbable — Judgment of acquittal upheld.

Indian Penal Code, 1860 — Sections 302, 304B and 498A r/w Section 34.

I (2007) DMC 34 (Bombay HC) (DB)

— Murder of wife by pouring kerosene on her and setting her on fire — Deceased harassed and treated cruelly by accused for not bringing gift by way of 'Mul', which is practice in their community — Dying declarations reliable — Conviction sustained — In all dying declarations deceased stated it was appellant, who poured kerosene on her and set her on fire by matchstick — All dying declarations consistent with each other — Deceased sustained 88% burns, conscious and was able to answer questions — If some persons other than accused poured kerosene on deceased and burnt her, no reason why deceased thought of implicating accused instead of real culprits — No reason to disbelieve dying declaration of deceased — Judgment of Courts below upheld.

Indian Penal Code, 1860 — Section 302 — Evidence Act, 1872 — Section 32.

I (2007) DMC 67 (SC)

MUTUAL CONSENT — Exercise of extraordinary jurisdiction of High Court — Petition filed by husband for restitution of conjugal right allowed by Family Court — Pending above appeal appellant-wife and respondent-husband entered into compromise, agreeing for dissolution of marriage by mutual consent — Condition provided by Section 10A of 1869, satisfied — This Court can exercise power conferred under Section 10A, by invoking provisions of Section 8 — Judgment of Family Court modified and marriage between parties dissolved.

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I (2007) DMC 39 (Madras HC) (DB)

— Irretrievable break down of marriage — Several cases pending between parties — Despite persuasion of Court parties failed to reconcile their differences — Appropriate case for exercise of extra-ordinary jurisdiction under Article 142 of constitution.

Constitution of India, 1950 — Article 142 — Hindu Marriage Act, 1955 — Section 13B.

I (2007) DMC 105 (SC)

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386(b)(i), Cr.P.C. cannot be exercised for purpose of reversing order of acquittal passed in favour of party in respect of offence charged, in dealing with appeal preferred by him against order of conviction in respect of another offence charged and found proved — This Court refrains from expressing any opinion as to whether appellants could be held guilty of committing offence under Section 498A or 306, IPC on basis of evidence available on record as their acquittal attained finality — It cannot be reversed in appeal filed by appellants challenging their conviction under Section 304B, IPC.

Indian Penal Code, 1860 — Sections 304B, 306, 498A r/w Section 34 — Criminal Procedure Code, 1973 — Section 386(b)(i).

I (2007) DMC 143 (SC)

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I (2007) DMC 87 (SC)

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I (2007) DMC 136 (Kerala HC)

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE — “Shared Household” — Meaning of term — House belonging to or taken on rent by husband or house belonging to joint family of which husband is member — Exclusive property belonging to appellant No. 2 mother-in-law of respondent-wife, cannot be called ‘shared household’ — Husband and wife may have lived together in dozens of places e.g. with her husband’s father, husband’s paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. — Definition of shared household does not include household where person aggrieved lives or at any stage lived in domestic relationship — Claim for alternative accommodation can only be made against husband and not against husband’s in-laws or other relatives — Property in question in present case neither belongs to respondent’s husband nor taken on rent nor joint family property of which husband is member — It is exclusive property of appellant No. 2-mother of husband — Impugned judgment of High Court set aside — Order of Senior Civil Judge dismissing injunction application of respondent upheld.

Protection of Women from Domestic Violence Act, 2005 — Sections 2(s), 17, 19(1).

I (2007) DMC 1 (SC)

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Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 498A, 406.

I (2007) DMC 154 (SC)

QUASHING OF ORDER — Cognizance of offence under IPC and Dowry Prohibition Act against husband and relatives — Second complaint petition by wife before Magistrate within period of 2 and ½ months of acquittal of petitioners of same charges, making omnibus general unsupported allegations, not maintainable in such dispute — No person should be allowed to misuse process of Court for harassing all members of family of husband, distantly related to complainant — Most of them not residing jointly — All facts and circumstances as well as averments made in complaint do not *prima facie* disclose any offence against petitioner Nos. 1 to 8 — Impugned order of cognizance quashed *qua* petitioner Nos. 1 to 8 — Petitioner Nos. 9 to 10 at liberty to raise question about maintainability of second complaint before Trial Court.

Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 323, 341 and 498A — Dowry Prohibition Act, 1961 — Sections 3, 4.

I (2007) DMC 140 (Patna HC)

REGISTRATION OF MARRIAGE — Denial, not justified — Ist marriage of petitioner dissolved as per personal law — Muslim can validly divorce his wife without resorting to proceedings before civil or family Court — Adequate proof of divorce of first marriage as required under muslim law produced *i.e.*, certificate issued by Muslim Juma-Ath — Respondent No. 2 can act on it — Declaration submitted by petitioner, he is divorcee at present — 2nd respondent directed to solemnize and register marriage of petitioner.

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I (2007) DMC 129 (SC)

“**TALAQ**” — To be effective has to be pronounced — *Shamim Ara v. State of U.P.*, V (2002) SLT 538=IV (2002) CCR 105 (SC)

Muslim Women (Protection of Rights on Divorce) Act, 1986.

I (2007) DMC 26 (Delhi HC)

TERRITORIAL JURISDICTION — Cruelty, Dowry demand — Continuing offence — No part of cause of action arose within territorial limits of jurisdiction of District Court — No criminal case lodged at Jabalpur — Interest of justice would be subserved if in exercise of jurisdiction under Article 142 of Constitution, transfer of criminal case pending in Court of CJM, District directed to be transferred to Court of CJM, Jabalpur — Further directions issued.

Criminal Procedure Code, 1973 — Sections 177, 178.

I (2007) DMC 41 (SC)

TRANSFER OF CASE — Maintenance — Enhancement — In convenient and hazardous for wife to attend various proceedings for recovery and enhancement of maintenance amount at place where they were originally initiated — Case transferred.

Criminal Procedure Code, 1973 — Sections 125, 127 and 407(1)(c).

I (2007) DMC 83 (Bombay HC)

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Civil Procedure Code, 1908 — Sections 23 and 24.

I (2007) DMC 79 (Allahabad HC)

WORDS AND PHRASES — “Cruelty” — Meaning and interpretation of term — Law has no standard by which to measure nature and degree of cruel treatment that may satisfy test — It may consist of display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure other.

I (2007) DMC 6 (SC)

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Civil Procedure Code, 1908

— **Sections 23 and 24** — Transfer of matrimonial Case — Scope of provisions of Sections 23 and 24 of Code (see *Transfer of matrimonial Case*)

I (2007) DMC 79 (Allahabad HC)

— **Section 96** — Maintenance — Grant of — Appeal against (see *Hindu Adoption and Maintenance Act, 1956*)

I (2007) DMC 73 (Delhi HC) (DB)

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— **Article 142** — Extra-ordinary jurisdiction — Exercise of — Dissolution of marriage by mutual consent (see *Hindu Marriage Act, 1955* — **Section 13B**)

I (2007) DMC 105 (SC)

Contempt of Courts Act, 1971

— Contempt of Court — Non-compliance of compromise/settlement arrived at between parties — No case made out — Grant of bail and Quashing of Proceedings — Respondent alleged to have complied with only one of terms of settlement *i.e.* paying Rs. 2.50 lacs — For compliance of rest of terms, *viz.*, joint petition for divorce by mutual consent and quashing of FIR on satisfaction of terms, respondent husband not came forward — Allegations in contempt petition denied by respondent — Respondent has not wilfully and with deliberate intention “snatched” order of bail — At the time when bail was granted, respondent preferred petition under Section 482, Cr.P.C. — Expressing his unwillingness to complete with process of settling disputes — Order admitting him to bail issued in presence of Counsel for petitioner — Petitioner has been put to hardship — Respondent alleges change in heart, which he duly intimated in quashing of criminal proceedings before this Court even while complying with terms of compromise relating to payment of amounts — Petitioner has approached Court for divorce, in separate substantive proceedings — More than 2 years lapsed from date of order which respondent alleged to have violated — Not fit case for initiating contempt proceedings.

I (2007) DMC 122 (Delhi HC)

Criminal Procedure Code, 1973

— **Section 125** — Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b) — Interim maintenance — Grant of — Muslim child — Legality — Claim of divorced Muslim wife for maintenance of child limited to period of 2 years only from date of his birth under Section 3(1)(b), if she claims any amount for maintenance of her child in her personal capacity, but claim of child in his or her own personal capacity not barred — Application for maintenance not moved by mother of minor but application filed in her own capacity as minor under guardianship of her mother — Such application filed in personal capacity of minor daughter of applicant, not barred under Section 3(1)(b) of Muslim Women Act and maintainable under Section 125, Cr.P.C. — Family Court committed no illegality by awarding interim maintenance to minor daughter @ Rs. 1,000 p.m.

I (2007) DMC 22 (Allahabad HC)

— Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b) —

Criminal Procedure Code, 1973 — Section 125 — Maintenance — Muslim wife — Challenge against on ground of divorce — Mere statement of husband taken in written statement that he divorced his wife on particular day would not suffice — Pre-requisites to be fulfilled, before Muslim husband able to divorce his wife.

I (2007) DMC 26 (Delhi HC)

- Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)(b) — **Criminal Procedure Code, 1973 — Section 125 — Maintenance — Minor Daughter — Right of child to get maintenance not affected even if Muslim father divorced his wife — ASJ not considered this issue — Impugned order of ASJ set aside and that of M.M. restored.**

I (2007) DMC 26 (Delhi HC)

- **Section 125 — Maintenance — Quantum — Reduction, justified — Income of husband Rs. 2,400 p.m. only she has to look after his aged parents.**

I (2007) DMC 82 (Andhra Pradesh HC)

- **Sections 125 and 125(3) — Maintenance — Default in making payment — Section 125(3), Cr.P.C. circumscribes power of Magistrate to impose imprisonment for term which may extend to 1 month or until payments, if sooner made — For breach of or non-compliance with order of Magistrate wife can approach Magistrate again for similar relief**

I (2007) DMC 136 (Kerala HC)

- **Sections 125, 127 and 407(1)(c) — Transfer of case — Maintenance — Recovery and Enhancement — Convenience of parties or expedient for ends of justice — Transfer of petition to Court wherein wife residing — It will be convenient and not expensive for her to attend Family Court at Aurangabad — Convenience of wife/applicant to be seen — She is required to file 5 proceedings for recovery of amount of maintenance from respondent/husband and all proceedings pending in Court of Magistrate, First Class at Gangakhed — All these five proceedings for recovery can be withdrawn from Court of Judicial Magistrate, First Class, Gangakhed and transferred to Family Court at Aurangabad.**

I (2007) DMC 83 (Bombay HC)

- **Sections 125, 397 and 401 — Maintenance — Grant of — Proof of marriage — Alleged by petitioner- Husband that respondent is not his wife — Trial Court discussed evidence in detail and believed version of wife, concluded marriage is proved and wife entitled to maintenance — Factual findings normally cannot be disturbed by this Court as same arrived on basis of evidence adduced.**

I (2007) DMC 24 (Jharkhand HC)

- **Sections 125 and 482 — Ad interim maintenance — Quashing of Order — Requirements of granting maintenance fulfilled — Wife is legally married wife of petitioner having 2 children born from wedlock and minors are living with her — Wife living separate from her husband— Wife has no means to maintain herself or children — Petitioner admittedly not maintaining his wife and children — Finding of Sessions Judge that petitioner must be earning Rs. 2,000 p.m. not erroneous — Sessions Judge justified in affirming order of magistrate granting *ad interim* maintenance @ Rs. 750 p.m. to wife and two Minor children of petitioner — Amount of maintenance not excessive.**

I (2007) DMC 66 (Patna HC)

- **Sections 125, 482 — Maintenance — Refusal of — Second revision petition — Maintainability (see *Maintenance*)**

— Sections 177, 178 (see *Territorial Jurisdiction*)

I (2007) DMC 41 (SC)

— **Section 386(b)(i)** — Powers of Appellate Court — Appeal against order of conviction — Abetment of Suicide, Dowry death, Cruelty, Common intention (see *Powers of Appellate Court*)

I (2007) DMC 143 (SC)

— **Section 437** — Bail — Dowry death — Death caused due to shock followed by chronic illness (see *Dowry Death*)

I (2007) DMC 135 (SC)

— **Section 482** — Inherent Powers — Exercise of — Concurrent findings of fact (see *Inherent Powers*)

I (2007) DMC 129 (SC)

— **Section 482** — Quashing of order taking cognizance of offence under IPC and Dowry Prohibition Act against husband and other relatives — Second complaint petition by wife before Magistrate within period of 2 and ½ months of acquittal of petitioners of same charges, making omnibus general unsupported allegations (see *Quashing of order*)

I (2007) DMC 140 (Patna HC)

— **Section 482** — Inherent Powers — Exercise of — Power under Section 482, Cr.P.C. to be exercised sparingly — Such powers are extraordinary powers and designed to help those against whom no offence made out.

I (2007) DMC 140 (Patna HC)

— Quashing of FIR — Cruelty, Criminal Breach of Trust (see *Indian Penal Code, 1860 — Sections 498A, 406*)

I (2007) DMC 154 (SC)

Dowry Prohibition Act, 1961

— “Dowry” — Meaning of term — Any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after marriage and in connection with marriage of such parties — **Dowry Prohibition Act, 1961 — Section 2.**

I (2007) DMC 143 (SC)

— Dowry Death — Essential ingredients — Death of woman caused by any burns or bodily injury occurs otherwise than under normal circumstances and woman subjected to cruelty or harassment by her husband or any relative of her husband, for or in connection with any demand for dowry — Indian Penal Code, 1860 — Section 304B — **Dowry Prohibition Act, 1961 — Section 2.**

I (2007) DMC 143 (SC)

— **Section 2** — Dowry Death — Demand for money on account of some financial stringency — Evidence adduced by prosecution does not show any demand for “dowry” as defined in Section 2, Dowry Prohibition Act, made by appellants — Essential ingredient of Section 304B, IPC, viz. demand for dowry not established — Conviction of appellants unsustainable (see *Indian Penal Code, 1860 — Section 304B*)

I (2007) DMC 143 (SC)

Evidence Act, 1872

- **Section 32**— Dying declarations — Reliability — Murder of wife by pouring kerosene on her and setting her on fire (see *Murder*)

I (2007) DMC 67 (SC)

- **Section 113B** — Presumption as to dowry death — Ingredients of Section 113B, Evidence Act — Discussed.

I (2007) DMC 131 (Jharkhand HC)

Family Courts Act, 1984

- **Section 13** — Family Court (Procedure) Rules, 1989 — Rule 9 — Right to Legal Representation — Discretion of Court to grant permission to party to be represented by Counsel without any formal application by party for purpose of applying for and receiving certified copy/free copy of order of proceeding/document in case — Scope of provisions of Section 13, Family Courts Act and Rule 9 of Rules — Discussed.

I (2007) DMC 116 (Kerala HC)

Family Court (Procedure) Rules, 1989

- Family Courts Act, 1984 — Section 13 — **Family Court (Procedure) Rules, 1989 — Rule 9** — Right to Legal Representation — Discretion of Court to grant permission to party to be represented by Counsel without any formal application by party for purpose of applying for and receiving certified copy/free copy of order of proceeding/document in case — Scope of provisions of Section 13, Family Courts Act and Rule 9 of Rules — Discussed.

I (2007) DMC 116 (Kerala HC)

Guardians and Wards Act, 1890

- Guardianship — Custody of boy aged 12 years — Remarriage of mother-appellant cannot be considered as ground for not granting custody of child to mother — Paramount consideration is welfare of minor child — Child in no uncertain terms indicated his desire to stay with his mother — His mother's second marriage proved to be beneficial for child who seems to be happy and contented in his present situation — No finding by High Court that remarriage has adversely affected mental condition of minor child — Mother is drawing pension of Rs. 6,000/- p.m. and having land and properties in her name — Child prefers to stay with his mother and it will be beneficial for boy and his education for better future — High Court erred in allowing appeal on ground of remarriage of appellant without considering other aspects of matter — High Court committed grave error in not ascertaining wishes of minor relevant in deciding grant of custody of minor children — Order passed by Family Court restored and custody of minor boy given to his mother but not without love and affection of natural father who too has right to help in child's upbringing — Respondent permitted to have custody of child from appellant during Onam and other important festivals and during school vacation — Further necessary directions issued — **Guardians and Wards Act, 1890.**

I (2007) DMC 57 (SC)

Hindu Adoptions and Maintenance Act, 1956

- **Sections 3(b), 18** — Interim maintenance — Grant of — Reimbursement of medical expenses to wife — Interim maintenance paid to respondent wife does not include entire expenses incurred by her on medical treatment — Since year 2002, respondent suffering from TB of spine and treatment was ongoing, prolonged and continuing process — Single Judge deferred issue with regard to payment of medical expenses for

later date — Respondent filed appropriate application for reimbursement of medical expenses incurred by her, amounting to Rs. 66,542/- — Duly supported by details of medical expenses incurred by her on her treatment — Respondent also placed on record bills and receipts referred to in statement — Respondent receiving only paltry sum of Rs. 3,000/- p.m. towards interim maintenance and that also in erratic and irregular manner — No reason for appellant not to pay respondent actual sums incurred by her towards her medical treatment — Appellant cannot be permitted to wriggle out of his obligations particularly when he has not even bothered to provide any residential accommodation to respondent and her minor daughter who are staying at paternal home of respondent — Appellant failed to make out any case for interference with impugned order directing appellant to reimburse medical expenses incurred by respondent to extent of Rs. 66,542/-.

I (2007) DMC 13 (Delhi HC) (DB)

- Maintenance — Liability of parents to pay — Quantum — It is settled principle of law that both parents have legal, moral and social duty to provide to their child best education and standard of living within their means — Mere fact that spouse with whom child living is having source of income, even if sufficient, would not absolve other spouse of his obligation to make his contribution towards maintenance and welfare of child even if salary/income of that spouse may be less than other spouse — Child staying with mother and obligation of father to contribute towards maintenance of child disputed on flimsy grounds, *viz.* less salary or passing of order under Section 125, Cr.P.C. by Court of competent jurisdiction — It was proved on record by cogent evidence that defendant was receiving salary of more than Rs. 22,000/- p.m. — Loan taken by husband even if deducted from salary, leaves defendant with sufficient means to make contribution towards maintenance and welfare of his child — Maintenance @ Rs. 5,000/- fixed by Trial Court neither excessive nor suffers from any infirmity, which require this Court to judicially intervene in exercise of its appellate powers — No infirmity in judgment of Trial Court.

I (2007) DMC 73 (Delhi HC) (DB)

Hindu Marriage Act, 1955

- **Section 13(1)(ia)** — Cruelty — Wife failed to prove allegations of physical cruelty on part of respondent-husband — She left matrimonial home and not willing to come back even after request of husband — Appellant-wife was physiotherapist and had independent source of income — She inherited business from her deceased father and that is cause of her rude behaviour — Appellant wife lodged false complaint against husband both before police and before his employer, she committed acts of mental cruelty — Husband deprived of company of wife for last 13 years for no fault of his and this Court does not hesitate in approving decree of divorce — During pendency of proceedings before Family Court, wife got order of alimony *pendente lite* for daughter only as she had sufficient income — Husband directed to comply with order of Lok Adalat regarding maintenance to daughter and pay sum of Rs. 2,000 p.m. for maintenance of daughter — Further observations made and directions issued.

I (2007) DMC 89 (Calcutta HC) (DB)

- **Section 13(1)(ia)** — Cruelty — Wife leaving matrimonial home without any justifiable cause frequently after marriage — Final departure within period of 1 year from date of marriage — Relations with her husband suffered jolt at very inception and cracks in their relation surfaced to widen gradually — Deposition of appellant before Trial Court demonstrating her abnormal State of mind — Refusal of appellant to get medically examined as directed by Court leads to adverse inference on her mental and physical state of mind — She has been living separate for period of 16 years without any serious attempt for conciliation leaves no doubt in mind that relation broken down beyond repair — Cohabitation is essential for valid marriage, which is lacking on part of

appellant wife — No reason to interfere with judgment and decree of Trial Court dissolving marriage between parties.

I (2007) DMC 96 (Gauhati HC) (DB)

- Appeal against Decree of Divorce — Cruelty, Desertion — Limitation to file appeal — Amended provision of Section 28(4), Hindu Marriage Act provides period of limitation of 90 days — When respondent-husband entered into wedlock with M, period of limitation for filing appeal against decree of divorce granted by District Judge expired and no order staying decree obtained by appellant — Fact remains that respondent married again and has child from second wife — No useful purpose would be served if decree of divorce set aside — Appellant cannot possibly live with husband in such scenario nor it will be conducive to upbringing of her son — Decree of divorce passed by District Judge affirmed — Respondent directed to pay lump sum amount of Rs. 8 lacs to appellant as maintenance for herself and her son — Proceedings initiated by appellant or by her son against respondent under Hindu Marriage Act or Section 125, Cr.P.C. or under Section 494, IPC shall stand quashed on payment of amount — Further directions issued — **Hindu Marriage Act, 1955 — Sections 13(1)(ia), 13(1)(ib), 28(4) as amended by Marriage Laws (Amendment) Act, 2003.**

I (2007) DMC 6 (SC)

- **Section 13B** — Divorce by Mutual Consent — Grant of — Irretrievable break down of marriage — Exercise of extra-ordinary jurisdiction under Article 142 of Constitution to dispose of all pending cases to put quietus to litigation — Marriage between parties irretrievably broken down because of incompatibility of temperament — Total disappearance of emotional substratum in marriage — Marriage between parties is only in name — Several cases pending between parties — Parties, despite persuasion of Court, have not been able to sort out their differences and decided to live separately — Public interest and interest of all concerned lies in recognition of fact and to declare *defunct de jure* what is already *defunct de facto* — Appropriate to exercise jurisdiction of this Court under Article 142 of Constitution — In order to ensure that parties may live peacefully in future, imperative all cases pending between parties directed to be disposed of — This would not only help parties, but it would be conducive in interest of minor son of parties — Directions issued accordingly.

I (2007) DMC 105 (SC)

- **Section 24** — Maintenance *pendente lite* — Determination of Amount (*see Maintenance pendente lite*)

I (2007) DMC 64 (Delhi HC)

- Dissolution of Marriage — Denial of — Legality — Petitioner-husband and respondent-wife living separately since 1981 — Several criminal proceedings filed by respondent against her husband — Marriage is irretrievably broken down and there is no possibility of parties living together — Both parties crossed 49 years and living separately and working independently since 1981 — Further only child born has already been married — Not possible for parties to live together there is no purpose in compelling both parties to live together — High Court not justified in refusing to exercise its jurisdiction in favour of appellant — Best course in opinion of this Court is to dissolve marriage by passing decree of divorce, so parties who are litigating since 1981 and have lost valuable part of life can live peacefully in remaining part of their life — Husband ready and willing to pay lumpsum by way of permanent alimony to wife, respondent however expressed her willingness to live with husband — Her desire to live with her husband at this stage and at this distance of time not genuine — Decree of dissolution of marriage passed in favour of petitioner — **Hindu Marriage Act, 1955 — Section 28.**

I (2007) DMC 77 (SC)

Indian Divorce Act, 1869

- **Sections 10A and 8** — Dissolution of marriage by mutual consent — Exercise of extraordinary jurisdiction of High Court — Petition filed by husband for restitution of conjugal right allowed by Family Court — Pending above appeal appellant-wife and respondent-husband entered into compromise, agreeing for dissolution of marriage by mutual consent — Condition provided by Section 10A of 1869, satisfied — This Court can exercise power conferred under Section 10A, by invoking provisions of Section 8 — Judgment of Family Court modified and marriage between parties dissolved.

I (2007) DMC 39 (Madras HC) (DB)

Indian Penal Code, 1860

- **Section 302** — Murder of wife by pouring kerosene on her and setting her on fire — Dying declarations reliable and point towards guilt of accused (see *Murder*)

I (2007) DMC 67 (SC)

- **Sections 302, 304B and 498A r/w Section 34** — Murder, Dowry Death, Cruelty, Common Intention — Appeal against acquittal — Death of deceased due to burn injuries — Reappraisal of evidence — Difficult to infer that respondent was either present when accident took place or ran away from scene, because nobody has seen him doing so (see *Murder*)

I (2007) DMC 34 (Bombay HC) (DB)

- **Sections 302, 498A r/w Section 34** — Murder, Cruelty, Common Intention — Dying Declarations — Mother-in-law of deceased alleged to have poured kerosene oil on body of deceased and set her on fire — Incident took place within 1 month of marriage — Dying declarations do not specifically spell out case of harassment to deceased on account of non-fulfilment of demand — Defence version that deceased not ready and willing to live in matrimonial home as she disliked her husband, he being illiterate, so also financial condition poor as compared to parents of victim — She lived in matrimonial house intermittently and not continuously — Inconsistency in dying declarations makes prosecution case improbable — Material witness not examined by prosecution — Prosecution failed to establish guilt of accused persons.

I (2007) DMC 157 (Bombay HC) (DB)

- **Section 304B** — Dowry Death — Presumption — Death under unnatural circumstances — Evidence of P.Ws. reliable and believable (see *Dowry Death*)

I (2007) DMC 131 (Jharkhand HC)

- Dowry Death — Essential ingredients — Death of woman caused by any burns or bodily injury occurs otherwise than under normal circumstances and woman subjected to cruelty or harassment by her husband or any relative of her husband, for or in connection with any demand for dowry — **Indian Penal Code, 1860 — Section 304B** — Dowry Prohibition Act, 1961 — Section 2.

I (2007) DMC 143 (SC)

- **Section 304B** — Dowry Death — Demand for dowry — Demand for money on account of some financial stringency or for meeting some domestic expenses or for purchasing manure cannot be termed as demand of dowry — Statements of PW 1 and PW 2 if accepted on face value utmost that can be held is that appellant No. 1 asked his wife to bring money for meeting domestic expenses and for purchasing manure — Evidence adduced by prosecution does not show any demand for “dowry” as defined in Section 2, Dowry Prohibition Act, made by appellants — Essential ingredient of Section 304B,

IPC, viz. demand for dowry not established — Conviction of appellants unsustainable

I (2007) DMC 143 (SC)

- **Sections 304B, 306, 498A r/w Section 34** — Abetment of Suicide, Dowry death, Cruelty, Common intention — Appeal against order of conviction.

I (2007) DMC 143 (SC)

- **Section 306 r/w Section 34** — Abetment of Suicide — Deceased alleged to be ambitious lady — Accused are persons with modest means — Deceased wished luxurious life and insisted her husband to set up separate residence from her in-laws since her desires could not be met she committed suicide — Deceased dejected with her financial conditions committed suicide — Acquittal of accused for offence under Section 306, IPC sound and proper.

I (2007) DMC 114 (Karnataka HC)

- Abetment of Suicide, Cruelty — Conviction — Challenge against — Null and void marriage — Allegation of prosecution that during life time of first wife K, S married second time M — After marriage both K and S tortured M as result of which she ultimately committed suicide by burning herself — As alleged marriage with M during subsistence of valid marriage with K is null and void — Conviction and sentence under Section 498A, IPC set aside — However, evidence of 3 witnesses makes it absolutely clear that on account of torture by both K & S, M committed suicide inside house of S — No error committed by Courts below either in matter of appreciation or in their approach relating to evidence in question — Conviction under Section 306, IPC upheld — **Indian Penal Code, 1860 — Sections 306, 498A.**

I (2007) DMC 120 (SC)

- **Section 313** — Miscarriage without woman's consent — Framing of charge — Material on record apparently in favour of accused and, however in context of facts of this case, there is also material against them (see *Framing of Charge*)

I (2007) DMC 47 (Delhi HC)

- **Section 406** — Criminal Breach of Trust — Framing of charge — When MM passed his order of framing charges, none of accused preferred revision against charges framed by him (see *Criminal Breach of Trust*)

I (2007) DMC 47 (Delhi HC)

- **Section 495** — Bigamy — Concealment of former marriage from person with whom subsequent marriage contracted — Charge under Section 495, IPC made against accused and charge should be framed as ingredients of offence already alleged in complaint made by person aggrieved.

I (2007) DMC 47 (Delhi HC)

- **Section 498A** — Expression 'Husband' for purpose of Section 498A, IPC (see "*Husband*")

I (2007) DMC 47 (Delhi HC)

- **Section 498A r/w Section 34** — Cruelty — Necessary for prosecution to establish cruelty perpetrated on deceased is of such nature that it has driven deceased to commit suicide — Conduct of accused in reprimanding deceased for her lethargic habits, strongly advising her to be more compatible with members of family and to evince interest in domestic chores cannot be considered as acts of cruelty — Deceased having led marital life for 7 years with two children, committing suicide suggests careless and unmotherly attitude — Acts complained of against accused do not constitute cruelty under provisions of Section 498A, IPC — View taken by Trial Court sound and proper.

I (2007) DMC 114 (Karnataka HC)

- Sections 498A, 304B r/w Section 4 of Dowry Prohibition Act, 1961 — Cruelty, Dowry Death, Dowry Demand — Failure on part of prosecution to prove aforementioned offence (see *Dowry Death and Cruelty*)

I (2007) DMC 150 (Orissa HC) (DB)

- Cruelty, Criminal Breach of Trust — Quashing of FIR — Investigation not started and no occasion to find out whether there was material to file charge-sheet or not — Too premature a stage for High Court to quash FIR holding FIR *prima facie* does not disclose any cognizable offence against any of respondents and allegations vague in nature — Impugned order of High Court set aside — Criminal Procedure Code, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 498A, 406.

I (2007) DMC 154 (SC)

Limitation Act, 1963

- Section 5 — Hindu Adoption and Maintenance Act, 1956 — Sections 3(b), 18 — Condonation of delay — Delay of 35 days in filing appeal — Grant of medical reimbursement to wife — Justified — Delay not condoned.

I (2007) DMC 13 (Delhi HC) (DB)

Muslim Women (Protection of Rights on Divorce) Act, 1986

- Section 3(1)(b) — Maintenance — Interim maintenance — Application filed by applicant-daughter in her personal capacity — Section 3(1)(b) of 1986 Act not applicable (see *Criminal Procedure Code, 1973 — Section 125*)

I (2007) DMC 22 (Allahabad HC)

- Section 3(1)(b) — Criminal Procedure Code, 1973 — Section 125 — Maintenance — Muslim wife — Challenge against on ground of divorce — Mere statement of husband taken in written statement that he divorced his wife on particular day would not suffice — Pre-requisites to be fulfilled, before Muslim husband able to divorce his wife.

I (2007) DMC 26 (Delhi HC)

- Maintenance — Muslim wife — Bar of 1986 Act — Applicability (see *Criminal Procedure Code, 1973 — Section 125*)

Protection of Women from Domestic Violence Act, 2005

- Sections 2(s), 17, 19(1) — “Shared Household” — Meaning of — Claim for alternative accommodation against in-laws — Maintainability (see *Protection of Women from Domestic Violence*)

I (2007) DMC 1 (SC)

Special Marriage Act, 1954

- Registration of Marriage — Denial of — Legality — Petitioner-Muslim denied registration of marriage as decree of dissolution of first marriage not produced — Petitioner dissolved his first marriage as per personal law and wanted to marry another lady and wanted marriage solemnized and registered under Special Marriage Act (see *Registration of Marriage*)

I (2007) DMC 38 (Kerala HC)
