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STREET LEGAL**Her choice**

A woman claimed damages from the operating surgeon because she gave birth to a child despite undergoing a sterilisation procedure. The Supreme Court held that getting pregnant after the operation did not automatically entitle her to claim damages. She must establish if there was negligence while performing the operation. Further, it was up to the mother to opt for a medical termination of pregnancy once she came to know of it. If she opted to bear the child, the child ceased to be unwanted and hence compensation could not be claimed (*State of Punjab vs Shiv Ram*).

Ground for divorce

The husband filed a divorce petition on grounds of cruelty. He alleged that the wife used to torture him and often threatened to commit suicide. The trial court held that the grounds were not adequate for granting a divorce. Acting on an appeal by the husband, the Andhra Pradesh High Court held that merely the filing of a criminal case might not be a ground for divorce, but if cruelty was established, divorce ought to be granted. It further said that the fact that the wife had also filed a maintenance case and was living apart for 13 years proved that she didn't wish to lead a happy married life (*Gajjala Shankar vs Mrs Anuradha*).

The dead don't talk

The husband was convicted under Section 498A when his wife killed herself. The conviction was based on the evidence submitted by his wife's mother and sister, who said that she had told them how her husband harassed her and demanded dowry. The husband filed a revision against the order. The Andhra Pradesh High Court held that in this case, it was impossible to cross-examine what had been communicated to the witnesses. The husband was, therefore, acquitted. (*S. Narasimulu vs State of UP*)

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Four acquitted in dowry death case

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BY HERALD REPORTER

PANJIM, MAY 14 — The District and Sessions Court, South Goa Margao has acquitted four persons accused in connection with death of a woman in Curchorem allegedly due to dowry harassment eight years ago, on the grounds that the prosecution failed to prove the charges of subjecting her to cruelty before her death owing to dowry demands.

Archana Killedar who had married Anil in May 1997 succumbed to burn injuries at Curchorem in February 1998 under mysterious circumstances and later a case of harassment for dowry leading to her death was filed against her husband and four others.

Case was booked against Anil Killedar (husband) - a government servant, his brother Arun, his mother Shakuntala, his sister Anita Garud and his father Madhav Killedar charging them for committing offences under Sections 304-B, 489-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Madhav died after charge sheet was filed and accordingly the proceedings against him abated.

Acquitting the four, the III Additional Sessions Judge Desmond S D'Costa said there is not an iota of evidence to show that

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just before her death, the accused had subjected Archana to such cruelty so as to drive her to commit suicide.

No direct evidence of the accused actually demanding any valuables from Archana's family could be proved by the prosecution.

The judge agreed to the contention of Adv Menino Teles who appeared for the accused that there was no evidence at all to show that there was any understanding that if the gifts were not given, the marriage would not go ahead. Making references to provisions of Dowry Prohibition Act, the judge said dowry means any property or valuable security given by one party to a marriage to the other party, as consideration for the marriage of the said parties.

For Archana's wedding, an agreement was signed by fathers of the bride and groom listing the items to be exchanged by the two parties. The judge said there is nothing to show that the gifts were exchanged as the consideration of the marriage and as such, they are exempted from the concept of dowry, he added.

The prosecution examined 34 witnesses in support of its case including 11 relations of Archana. P P Bhanudas Gaonkar who represented the State said that from day one of the marriage the accused persons were demanding a wooden cot from the family of Archana, a point, which was disproved by the defence lawyer.

Going through the case thoroughly, the judge in his 43 page judgement, said the relations had given different and conflicting versions about the "demands" for cot, loan for truck, loan for a house, gold chain and clothes. It has come on record that the investigating officer Mahesh Gaonkar recorded the statements of the witnesses more than one month of the incident. "... This put the court on guard in assessing their evidence", the judge

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LUCKNOW: A division bench of the high court comprising Justice Bhanwar Singh and Justice JM Paliwal here on Tuesday quashed the entire criminal proceedings pending against an assistant income tax commissioner, Sanjiv Yadav, for dowry harassment.

The bench passed the order while allowing a writ petition filed by Dharam Raj Yadav (Sanjiv's father) and others for quashing the chargesheet while treating it to be a petition under Section 482 Cr PC.

It may be recalled that the proceedings against Sanjiv was initiated on the basis of an FIR lodged by his wife Dipti Yadav on January 11, 2005 alleging harassment for dowry.

After going through the material on record, the bench observed that the investigating officer had acted in a malafide manner and had manipulated things to mislead the court of the additional chief judicial magistrate as well as this court.

The bench further remarked that the additional chief judicial magistrate had also acted without application of mind in taking cognizance of the matter as the Lucknow court had no jurisdiction to deal with the offence alleged to have been committed in Jaunpur, Sultanpur, Gorakhpur etc.

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The bench also came to the conclusion that the presents and gifts given at the time of marriage to Sanjiv or his family members could not be termed as dowry.

The court, hearing Dr LP Misra for the petitioner and counsel for the complainant and state, had reserved its verdict on December 1 last. The judgement was delivered in the open court on Tuesday.

Addl Adv general: Jaideep Narain Mathur, has been appointed additional advocate general by the state government.

Born in 1963, Jaideep had his education at La Martinier College, Lucknow and did his law graduation from Lucknow university.

He started practicing in the high court in 1988 under his father Mr PN Mathur, senior advocate and former president of Oudh Bar Association, Lucknow bench.

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