

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. M. P. No.878 of 2019**

1.Bhagirath Gope  
2.Sweta Kumari Gope  
3.Rameshwar Gope  
4.Indrajit Gope ..... Petitioner(s)

Versus

The State of Jharkhand & Anr. .. ... Opp. Party(s)

With

**Cr. M. P. No.1762 of 2019**

Parmeshwar Gope ..... Petitioner(s)

Versus

The State of Jharkhand & Anr. .. ... Opp. Party(s)

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**CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**

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For the Petitioner(s) : Mrs. J. Mazumdar, Advocate  
For the State : Mr. Ravi Prakash, SPP  
Mr. S. K. Shukla, APP  
For the O.P. No.2 : Mr. Prabhash Kumar, Advocate

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**10/ 06.11.2023.** Heard, learned counsel for the parties.

1. Both the aforesaid Cr. M. Ps. arise out of Complaint Case No.2465 of 2012. Petitioner in Cr. M. P. No.1762 of 2019 is the husband, whereas petitioners in Cr. M. P. No.878 of 2019 are the in-laws of the complainant .
2. Both these Cr. M. Ps. have been preferred against the revisional order dated 31.01.2019 passed by learned Sessions Judge, Dhanbad in Criminal Revision No.323 of 2018, whereby and whereunder the rejection of the discharge petition filed by the petitioners before the learned trial Court, has been affirmed by the revisional court. As both these Cr. M. Ps. involve common question of fact as well as law, therefore, they have been heard together and disposed of by this common order.
3. As per the case of the complainant, she was married to Accused no.1 (petitioner- Parmeshwar Gope) in Cr. M. P. No.1762 of 2019 on 15.02.2012 and after the marriage, she went to her matrimonial home at Farraka.

It is alleged that as per the demand made by all the accused persons, a sum of Rs.3,05,000/- was paid in the account of accused no.2 through transfer from the account of father and mother of the complainant. This apart, cash and jewelleryes were also given at the time of marriage.

It is further alleged that accused nos.2 to 5 intervened in the marriage during rituals and they made an illegal demand of dowry of Rs.2 Lakhs and one motorcycle and only on payment of cash, the marriage was solemnized. Complainant remained in her matrimonial home from 16.02.2012 to 10.08.2012, then she was taken by her husband to Jabalpur where he was working. During her stay at Farraka, all the accused persons subjected her to cruelty in reference

to unlawful demand. She was not permitted to go to her parents' home. Complaint regarding this was reported to Farakka Police in writing on 27.07.2012. It is alleged that she was instigated to commit suicide by plunging herself in Farraka Barrage.

She moved with her husband to Jabalpur where she used to be locked in a room and was subjected to cruelty by her husband. In order to secure release of his daughter, her father filed a petition under Section 97 Cr. P. C. before the Magistrate and vide order dated 15.09.2012, as such, she was released and taken back by her father.

4. During enquiry, the statement of the complainant and four witnesses were recorded, on the basis of which, the summoning order was issued.
5. The summoning order was challenged in Cr. M. P. No.1160 of 2013 by the husband (Parmeshwar Gope) and the same was rejected by this Court and the order of rejection was affirmed by Hon'ble the Supreme Court in SLP (Crl.) NO.7366 of 2016. After this, the petitioner(s) preferred discharge petition which was rejected by the learned court below and affirmed in Revision against which the instant Cr. M. Ps. have been filed.
6. It is submitted by learned counsel for the petitioners that the offence as alleged will not be made out against the petitioners particularly against the in-laws, as the complainant had only a brief stay in her matrimonial home for about six months. The allegations are general and omnibus against the entire family and no overt act has been attributed against any of them. There is no material to show that the complainant sustained any injury either physical or even mental on the basis of alleged cruelty suffered by her. It has not been stated that she was assaulted by any of the petitioners at any point of time.
7. It is further submitted that the allegation is confined to the fact that she was not permitted to go to her parents' home and *Bidai* was refused when she came to her matrimonial home after the marriage. The allegation of scolding and abusing is specifically directed against the accused no.1 and not against the in-laws. The incidence which has been referred to unlawful confinement at Jabalpur, Madhya Pradesh is also directed against accused no.1.
8. In Cr. M. P. No.878 of 2019, Petitioner no.1 is the jeth/ brother in law, petitioner no.2 is the wife of petitioner no.1 and petitioner nos.3 as well as petitioner no.4 are brothers-in-law.
9. It is also pointed out that in the statement of the complainant on S.A, in Para-6 to the Court's question it has been stated by the complainant that she was not subjected to any physical cruelty and it was confined to mental cruelty by her husband. Furthermore, in her statement before the Magistrate in a proceeding

filed in the year 2012 under Section 97 Cr. P. C., the complainant stated that she was leaving Jabalpur on her own accord as the husband used to lock at home and used to go his place of work.

10. Learned APP for the State assisted by learned counsel for the O.P. No.2 has defended the impugned order. It is submitted that the summoning order was challenged without success by the petitioner (Parmeshwar Gope) before this Court in the said Cr. M. P. and the same was dismissed and it attained finality after rejection of the SLP before Hon'ble the Supreme Court.
11. Complainant was forced to leave the matrimonial home because being subjected to cruelty in reference to unlawful demand. There is direct evidence of transfer of Rs.3,05,000/- in the account of petitioner no.1 (Bhagirath Gope) in Cr. M. P. No.878 of 2019.
12. After having considered the submissions advanced on behalf of both the sides, the matter is for consideration before this Court whether there are grounds for proceeding against the petitioners for the offence as alleged?
13. As far as the husband of the complainant (**Parmeshwar Gope**) Petitioner in Cr. M. P. No.1762 of 2019 is concerned, there is direct and specific allegation of making unlawful demand and subjecting her to cruelty at both places i.e. Farraka as well as at Jabalpur, therefore, this Court does not find any merit in Cr. M. P. No.1762 of 2019 which is dismissed being devoid of any merit.
14. Furthermore, so far as **petitioner no.1 (Bhagirath Gope)** in Cr. M. P. No.878 of 2019 is concerned, there is allegation that there was transfer of Rs.3,05,000/- in the account at the time of marriage and, therefore, there is prima facie material against him of receiving dowry. As such, Cr. M. P. preferred on his behalf also does not merit consideration.
15. As far as the other petitioners are concerned, they are inlaws and were residents of Farraka where the complainant had brief stay for almost six months after the marriage. The allegations against them are general and omnibus in nature. None other than the complainant herself had stated in her statement in para-6 on S.A that no physical cruelty was meted out to her during her stay at Farraka. The other allegations are ornamental and appear to have been ingeniously made to implicate the entire family in the case. Allegations do not disclose the date, time the place and the manner in which she was subjected to cruelty by these Petitioners. Mere refusal of *Bidai* shortly after the marriage, even if it is assumed to be true, will not amount offence of cruelty which is defined under Section 498A.

Section 498A IPC reads as follows :-

**498A-** Husband or relative of husband of a woman subjecting her to cruelty- whoever, being the husband or the relative of the 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 wilfull 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.**

16. It has been held by Hon’ble the Supreme Court in **2023 SCC OnLine 947 Salib @ Sahlu @ Salim Vs State of UP** while hearing quashing applications that Court should look into the FIR closely, because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

***Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599***

**16.** Recently, in *K. Subba Rao v. State of Telangana* [*K. Subba Rao v. State of Telangana*, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605], it was also observed that : (SCC p. 454, para 6)

“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.”

**17.** The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC 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.

***Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741***

15. The High Court further overlooked the fact that during the pendency of this case, Respondent 2 complainant has obtained an ex parte decree of divorce against her husband Shyamji Mehrotra and the High Court failed to apply its mind whether any case could be held to have been made out against Kumari Geeta Mehrotra and Ramji Mehrotra, who are the unmarried sister and elder brother of the complainant's ex-husband. The facts of the FIR even as it stands indicate that although a prima facie case against the husband Shyamji Mehrotra and some other accused persons may or may not be constituted, it surely appears to be a case where no ingredients making out a case against the unmarried sister of the accused Shyamji Mehrotra and his brother Ramji Mehrotra appear to be existing for even when the complainant came to her in-laws' house after her wedding, she has alleged physical and mental torture by stating in general that she had been ordered to do household activities of cooking meals for the whole family. But there appears to be no specific allegation against the sister and brother of the complainant's husband as to how they could be implicated in the mutual bickering between the complainant and her husband Shyamji Mehrotra, including his parents.

Under the circumstance and for the reasons discussed above, this Court is of the view that the other petitioners save and except those referred above, have been implicated in this case on the basis of general and omnibus allegations levelled against the entire family without any material to disclose that they were directly or indirectly involved in subjecting the complainant to cruelty in reference to the unlawful demand. No overt act has been attributed against them and the complainant shared the domestic household with these petitioners for only a brief span of time. Continuation of the criminal proceeding against them shall be an abuse of process of.

Under the circumstances, Cr. M. P. No.878 of 2019 preferred by petitioner nos.2 (Sweta Kumari Gope), petitioner no.3 (Rameshwar Gope and petitioner no.4 (Indrajit Gope) is allowed.

Accordingly, Cr. M. P. No.878 of 2019 is partly allowed whereas Cr. M. P. No.1762 of 2019 is dismissed.

Petitioner no.1 (Bhagirath Gope) [in Cr. M. P. No.878 of 2019] and petitioner (Parmeshwar Gope) [in Cr. M. P. No.1762 of 2019] are directed to appear before the concerned Trial Court within a period of two weeks from the date of receipt of a copy of this order or the date fixed for framing of charge.

**(Gautam Kumar Choudhary, J.)**

Sandeep/

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