

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3004 of 2023

1. Hemant Das @ Hemant @ Fagu Das, aged about 38 years, son of Late Jeetlal Das
2. Kamal Ravidas @ Kamal Das, aged about 43 years, son of Late Jeetlal Das
3. Dumur Das @ Dumar Das, aged about 44 years, son of Late Jeetlal Das
4. Rajendra Kumar Das @ Raju Das, aged about 32 years, son of late Jeetlal Das
5. Munsu Das, aged about 47 years, son of Late Jeetlal Das

All are resident At + P.O. Chapuadih, P.S. Bengabad, Dist. -Giridih.

.... Petitioners

Versus

1. The State of Jharkhand
2. Bhola Das, son of Ramu Das, resident At+P.O. -Baseria, P.S. Giridih (M), District -Giridih.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners
For the State

.....
: Mr. Pran Pranay, Advocate
: Mr. Rajesh Kumar, Addl. P.P.
.....

By the Court:-

1. Heard the parties.
2. Though notice has been served upon the opposite party no.2, but no one turns up on behalf of the opposite party no.2 in-spite of repeated calls.
3. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of the Cr.P.C. with the prayer to quash the order dated 13.02.2020, passed by the learned

Additional Sessions Judge-III, Giridih in Criminal Revision No. 89 of 2017 whereby and where under the criminal revision filed by the opposite party no.2 herein; against the order dated 04.05.2017, passed by the learned Judicial Magistrate -1st Class, Giridih, in connection with Complaint Case No. 1735 of 2016 has been allowed. Prayer has also been made to quash the order dated 24.05.2023, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Complaint Case No. 1735 of 2016 whereby and where under the learned Judicial Magistrate has found *prima facie* case for the offences punishable under Section 109 of the Indian Penal Code read with Section 494/120B of the Indian Penal Code against the petitioners.

4. The allegation against the petitioners is that the petitioners being the relatives of the wife of the complainant were instrumental in solemnization of marriage of his wife namely Shanti Devi during the life time of the husband of Shanti Devi being the complainant. The learned Magistrate vide order dated 04.05.2017 in Complaint Case No. 1735 of 2016 only found *prima facie* case against Shanti Devi in respect of the offence punishable under Section 494 of the Indian Penal Code but did not find any case being made out against the petitioners.
5. Being aggrieved by the said order dated 04.05.2017, the complainant filed Criminal Revision No. 89 of 2017. The learned Additional Sessions Judge-III, Giridih to whom the said criminal revision was transferred, considered that though the learned

Magistrate has observed that the complainant and inquiry witnesses have supported the case of the complainant *in toto* but have not assigned any reason or ground as to why she disbelieved the version of the complainant and the inquiry witnesses, for not finding any sufficient ground to proceed against the petitioners and quashed and set aside the said order by allowing the revision and remitted the case back to the learned Judicial Magistrate to pass a fresh order. Consequent upon the same, the learned Judicial Magistrate found *prima facie* case against the petitioners as well for the said offences as already indicated above.

6. It is submitted by the learned counsel for the petitioners relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi)**, reported in (2009) 16 SCC 605, para -13 of which reads as under:-

"13. As per the section, a person can be said to have abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any willful misrepresentation or willful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of the offence of suicide is essential to bring home the offence under Section 306 IPC"

Wherein the Hon'ble Supreme Court of India has discussed the ingredients of the offences punishable under Section 107 of the

Indian Penal Code and in para -17 & 18 of the said Judgment which reads as under:-

“17. Thus, to constitute “instigation”, a person who instigates another has to prove, incite, urge or encourage the doing of any act by the other by “goad” or “urging forward”. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction” (see Concise Oxford English Dictionary); “to keep irritating or annoying somebody until he reacts” (see Oxford Advanced Learner’s Dictionary, 7th Edn.).

18. Similarly “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing or an act by the latter.”

The Hon’ble Supreme Court of India has discussed the requirement of ‘instigation’ and ‘urge’ respectively to constitute the offence of abetment.

7. It is next submitted by the learned counsel for the petitioners that the learned Additional Sessions Judge -III, Giridih failed to consider that the ingredients of abetment is lacking to array the petitioners as accused persons of the case, even in the complaint itself and in the absence of the same, even though the complainant and the inquiry witnesses have supported the contents of the complaint, there was no occasion to constitute the offence of abetment. Hence, it is submitted that the said order dated 13.02.2020, passed by the learned Additional Sessions Judge-III, Giridih in Criminal Revision No. 89 of 2017 being not sustainable in law be quashed and set aside and consequently the order dated 24.05.2023, passed by the learned Judicial Magistrate -1st Class,

Giridih in connection with Complaint Case No. 1735 of 2016 be also quashed and set aside.

8. The learned Addl. P.P. on the other hand vehemently opposes the prayer as prayed for by the petitioners in this criminal miscellaneous petition and submits that the allegations made in the complaint, statement of the complainant on solemn affirmation and statement of the inquiry witnesses is sufficient to constitute the offences in respect of which *prima facie* case has been found by both, the learned Additional Sessions Judge-III, Giridih in Criminal Revision No. 89 of 2017 and the learned Judicial Magistrate- 1st Class, Giridih, vide order dated 24.05.2023 in Complaint Case No. 1735 of 2016, therefore neither of the courts, has committed any illegality. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

9. Having heard the rival submissions made at the Bar and after going through the materials available in the record, this Court finds that there is absolutely no allegation in the complaint, in the statement of the complainant on solemn affirmation or in the statement of the inquiry witnesses in any way making any allegation against any of the petitioners in the alleged marrying of Shanti Devi with Tulsi Das. Under such circumstances, this Court has no hesitation in holding that the learned Additional Sessions Judge -III has misdirected himself by finding fault with the order dated 04.05.2017, passed in Complaint Case No. 1735 of 2016, as in

the absence of any allegation, no reason was required to be assigned by the learned Judicial Magistrate as to why, it did not found sufficient ground to proceed against these petitioners.

10. Accordingly, the order dated 13.02.2020, passed by the learned Additional Sessions Judge-III, Giridih in Criminal Revision No. 89 of 2017 is quashed and set aside and the consequent order dated 24.05.2023, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with Complaint Case No. 1735 of 2016 is also quashed and set aside and the order dated 04.05.2017, passed by the learned Judicial Magistrate -1st Class, Giridih in connection with in connection with Complaint Case No. 1735 of 2016 is restored.
11. This criminal miscellaneous petition is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th September, 2025
AFR/Sonu-Gunjan/-