

Ajay Malik vs State Of Uttarakhand on 29 January, 2025

Author: Surya Kant

Bench: Surya Kant

2025 INSC 118

REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 441/2025
(Arising out of Special Leave Petition (Crl.) No. 8777/202

Ajay Malik

versus

State of Uttarakhand and Anr.

...Res

WITH

Criminal Appeal No. 442/2025
(Arising out of Special Leave Petition (Crl.) No. 15131/202

State of Uttarakhand

versus

Ashok Kumar and Anr.

...Res

JUDGEMENT

SURYA KANT, J.

Leave granted.

2. The instant appeals arise out of the common First Information Report No. 60/2017 (Case Crime No. 94/2017) (FIR), which inter alia contains allegations of wrongful confinement and trafficking of a female domestic worker—the Complainant.

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3. To further clarify, SLP (Crl.) No. 8777/2022, has been preferred by the accused Ajay Malik in the FIR, as against the judgment dated 01.09.2022 of the High Court of Uttarakhand at Nainital (High Court), whereby Criminal Miscellaneous Application No. 96 of 2018 (CMA), seeking the compounding and quashing of the criminal proceedings initiated against him, was rejected (Ajay Malik's case). SLP (Crl.) No. 15131/2024, on the other hand, has been filed by the State of Uttarakhand, challenging the judgment dated 12.01.2021, in Criminal Revision No. 173 of 2019, whereby the co-accused Ashok Kumar's Revision Application seeking discharge was allowed by the High Court (Ashok Kumar's case).

A. FACTS

4. Considering that these appeals arise from the same incident, their factual matrices remain predominantly uniform, with differences largely being restricted to the differing roles ascribed to Ajay Malik and Ashok Kumar. It is thus necessary to briefly advert to the facts that lay the foundation for these appeals.

A. 1 Background to the materialization of the criminal incident 4.1 The Complainant, a resident of Birhipani Nawatoli Bokhi, Birhipani, District Jashpur, Chhattisgarh, belongs to a financially disadvantaged family from a Scheduled Tribe. In her search for employment to support her family, she was brought to Delhi in 2009 by her neighbours, Subhash and Mohan Ram, under the pretext of securing work.

2|Page 4.2 Upon her arrival in Delhi, the Complainant was handed over to one Shambhu @ Sambhu Prasad, who reportedly operated an office at Britannia Chowk, Shakurpur, Delhi. Shambhu claimed to run the Saint Maryam Placement Services (Regd.), ostensibly showcased as a social welfare society for Scheduled Tribes (Placement Agency). Shambhu forcibly deployed the Complainant as a domestic help/housekeeper in various households, requiring her to perform tasks such as washing utensils and cleaning. As a result, she was reportedly sent to multiple locations, including Karnal, Delhi, Gurgaon, and Kanpur. The Complainant further alleged in the FIR that Shambhu through the Placement Agency failed to compensate her for the labour extracted, and instead misappropriated her earnings. In this regard, the Complainant also alleged that she was routinely assaulted whenever she requested remuneration or sought permission to return home. 4.3 Ajay Malik recruited the Complainant on 16.10.2016, having purportedly entered into a written agreement with the Placement Agency, for her to work as a domestic help at his official residence. Subsequently, two individuals employed by Shambhu dropped off the Complainant at Ajay Malik's home in Dehradun, Uttarakhand. Ajay Malik at the time was serving as a Scientist at the Defence Electronics Application Laboratory, Defence Research and Development Organization under the Ministry of Defence (DRDO), where he had been employed since 1988. As a Class-I Officer, Ajay Malik had been allotted a Type-V Government accommodation, where he resided with his wife

3|Page and two children. The alleged incident is said to have occurred on these premises.

4.4 Ajay Malik, on 22.03.2017, departed from his residence with his entire family, for official duty concerning the SDR-AR Phase II L Band Trials at Hindustan Aeronautics Ltd., Kanpur. During the

absence of Ajay Malik and his family, the Complainant was left behind on the premises, the main entry to which had been locked. A spare key to the home had been entrusted to his friend and neighbour, Ashok Kumar, who is alleged to have visited Ajay Malik's residence regularly to provide the Complainant with drinking water and to keep watch on her. The Complainant has further stated in the FIR that Ajay Malik had also left a mobile phone with the Complainant to remain in regular touch with her, using which she was able to contact the Police Authorities on 29.03.2017, to register a complaint of wrongful confinement. A. 2 Registration of the FIR 4.5 Acting on the Complainant's information, the Police arrived at Ajay Malik's residence, and with the assistance of Ashok Kumar, entered the premises. The Complainant was subsequently recovered, and the Police prepared a Recovery Memo dated 29.03.2017. Following this, an FIR was lodged on 30.03.2017 against four individuals—Ajay Malik, Mohan Ram, Subhash, and Shambhu—under Sections 343 and 370 of the Indian Penal Code, 1860 (IPC), at Police Station Rampur, District Sadar, Dehradun. On the same day, the Complainant's statement was

4|Page recorded under Section 164 of the Code of Criminal Procedure, 1973 (CrPC), before the Judicial Magistrate, First Class, Dehradun. 4.6 The investigation commenced, during which the Investigating Officer recorded witness statements, collected evidence, and subsequently filed the first Chargesheet against Shambhu on 09.07.2017. A second Chargesheet was filed on 31.12.2017 against the remaining three co-accused, whereby Ajay Malik specifically was accused of having committed offences under Sections 343 and 370 read with Section 120B of the IPC. Finally, the third Chargesheet came to be filed on 22.12.2017 against Ashok Kumar, who had not been named in the FIR or the initial complaint, charging him under Sections 343 and 120B of the IPC.

A. 3 Commencement of criminal proceedings 4.7 It is at this juncture that the criminal proceedings against Ajay Malik and Ashok Kumar commenced separately and may be traversed as such.

A. 3. 1 Ajay Malik's case 4.8 Having been Chargesheeted in Case Crime No. 94/2017, Ajay Malik filed CMA No. 96/2018 under Section 482 of the CrPC before the High Court in January, 2018, seeking the quashing and setting aside of the:

(i) criminal proceedings initiated against him through the FIR; (ii) the Chargesheet dated 31.10.2017; and (iii) the summoning order, passed in Criminal Case No. 5282/2017, pending before the Chief Judicial Magistrate, Dehradun. The High Court initially vide order dated

5|Page 25.01.2018, stayed the trial proceedings in the above-mentioned Criminal Application.

4.9 Subsequently, Ajay Malik on 01.08.2022 moved Compounding Application No. 532/2022 before the High Court seeking compounding of the alleged offences under Section 320 of the CrPC. The application was supported by an affidavit affirmed by the Complainant herself, wherein she provided that the parties had amicably settled the dispute. She further deposed that she had no objection, should the offences against Ajay Malik be compounded and the criminal proceedings against him be quashed.

4.10 That being so, the High Court vide the Impugned Judgment dated 01.09.2022, firstly rejected Ajay Malik's compounding application— observing that a prima facie case under Section 370 of the IPC was made out against him, which is a non-compoundable offence under the aegis of Section 320 of the CrPC. Secondly, the High Court also deemed it fit to turn down Ajay Malik's main application under Section 482 of the CrPC on merits, holding that the Chargesheet and witness testimonies combined made out prima facie allegations of wrongful confinement against him.

4.11 As a sequel thereto, Ajay Malik has approached this Court. While issuing notice in Ajay Malik's case on 26.09.2022, this Court passed an ex-parte interim order staying his arrest in connection with the captioned FIR, which operates till date.

6|Page A. 3. 2 Ashok Kumar's case 4.12 Having elucidated the contextual backdrop amid which Ajay Malik's appeal arose, we now advert to the facts in Ashok Kumar's case. We note, at the cost of repetition, that the State of Uttarakhand has preferred this appeal against the order of the High Court discharging him from the criminal proceedings in Sessions Trial No. 124/2018. 4.13 In this scenario, the Police Authorities, having conducted further investigation in connection with the captioned FIR and accompanying complaint, filed Third Charge Sheet No. 93B/2017 against Ashok Kumar under Sections 343 and 120B of the IPC on 22.12.2017. The Magistrate, Dehradun, took cognizance of the same on 31.01.2018. Aggrieved, Ashok Kumar preferred a Discharge Application before the Court of First Additional Sessions Judge, Dehradun, under Section 227 of the CrPC on 06.08.2018. However, the said Court, vide order dated 02.03.2019, rejected his Discharge Application, having found prima facie evidence that he had held the keys to the residence wherein the Complainant was wrongfully confined.

4.14 Discontented with the order of the Sessions Court, Ashok Kumar moved the High Court through Criminal Revision No. 173/2019, which has been allowed vide the Impugned Judgment dated 12.01.2021, quashing the criminal proceedings emanating from the FIR qua him. While doing so, the High Court stressed on the absence of any specific allegations against him in the FIR and subsequent recorded statements. More pertinently, the High Court has also found that Ajay

7|Page Malik's residence had two entry/exit points, with only one being locked—thereby establishing that the Complainant had the option of egress available to her at all relevant times.

4.15 Consequently, the Second Additional District Judge, Dehradun, vide order dated 06.02.2021, dropped the criminal proceedings against Ashok Kumar in Sessions Trial No. 124/2018. It is in this factual backdrop that the aggrieved State is before us in appeal. B. CONTENTIONS

5. Before we formulate the issues that arise for consideration in these appeals, we may briefly note the contentions forwarded by the parties:

5.1 Mr R. Basant, Learned Senior Counsel, appearing on behalf of Ajay Malik, while praying that the Impugned Judgment be set aside and the criminal proceedings pending against him be quashed, submitted as follows:

a) The Complainant's statement under Section 164 of the CrPC indicates that she merely requested Ajay Malik if she could leave his residence, and he responded by requesting her to remain until alternative arrangements could be made. No evidence of active wrongful restraint, as is contemplated under Section 343 of the IPC, is thus presented.

b) A no-objection affidavit filed by the Complainant explicitly denies any confinement or mistreatment by Ajay Malik, indicating a lack of grievance against him. This affidavit should hold significant

8|Page weight, allowing the Court to quash proceedings, following the principles evolved in *Gian Singh v. State of Punjab*¹ and *Narinder Singh v. State of Punjab*.²

c) The interim relief granted by the High Court demonstrates judicial recognition of Ajay Malik's case. In fact, decisions such as *State of Haryana v. Bhajan Lal*,³ and *Rajiv Thapar v. Madan Lal Kapoor*,⁴ emphasise the quashing of frivolous or baseless prosecution.

d) The Complainant's allegations are linked to prior disputes with the Placement Agency, and not Ajay Malik, further diminishing the relevance of the charges registered against him.

5.2 Mr Prashant Bhushan, Learned Counsel, appearing for Ashok Kumar, adopted the relevant part of the contentions put forth on Ajay Malik's behalf and fervently advocated to the correctness of the Impugned Judgment in discharging Ashok Kumar. Additionally, he canvassed the following submissions:

a) Ashok Kumar is not only a DRDO Officer with decades of unblemished service; he also does not have any criminal antecedents. The only role attributable to Ashok Kumar in this entire factual scenario is the key he possessed to Ajay Malik's 1 *Gian Singh v. State of Punjab*, 2012 (10) SCC 303. 2 *Narinder Singh v. State of Punjab*, 2014 INSC 217. 3 *State of Haryana v. Bhajan Lal*, 1990 SCR Supl. (3) 259. 4 *Rajiv Thapar v. Madan Lal Kapoor*, 2013 (3) SCC 330.

9|Page residence, which had been provided to him so that he could keep an eye on the premises in the absence of the latter.

b) Ashok Kumar is being needlessly harassed for innocently and innocuously agreeing to keep the aforementioned keys with him. He was completely unaware of any alleged wrongful confinement being perpetrated by Ajay Malik. He, moreover, never went to Ajay Malik's residence before the police arrived.

c) Ashok Kumar is also not named in the FIR or the Complainant's statement under Section 164 of the CrPC. The Police have mechanically filed a Supplementary Chargesheet, roping him in as an

accused. In any case, the ingredients for the offences alleged against him have not been fulfilled.

5.3 Per contra, Ms Anubha Dhulia, Learned Standing Counsel for the State of Uttarakhand, sought to not only defend the correctness of the High Court in disallowing Ajay Malik's quashing application but also vehemently opposed the discharge of Ashok Kumar. She, accordingly, advanced the following contentions:

i. Ajay Malik's case

a) The Complainant's FIR details allegations of being locked in a house for a week, with the key handed over to Ajay Malik's associate. Moreover, her statements under Sections 161 and 164 of the CrPC corroborate these claims, describing the Complainant's inability to leave the premises and her limited 10 | P a g e access to communication. Additionally, the Recovery Memo records the discovery of the Complainant confined in a locked flat by Police Authorities and a video documenting her release. Taken together, these facts clearly make out the charge of wrongful confinement against Ajay Malik.

b) The victim belongs to a Below Poverty Line-Scheduled Tribe family, which highlights the power imbalance between the Complainant and Ajay Malik. This disparity raises serious concerns about systemic exploitation, with legislative intent ensuring these offences remain non-compoundable under Section 370 of the IPC.

c) The no-objection affidavit relied upon by Ajay Malik and allegedly affirmed by the Complainant is a mere reproduction of the former's Special Leave Petition before this Court. It thereby lacks credibility, given the Complainant's vulnerable status; and potential coercion or manipulation cannot be ruled out at this stage.

d) Lastly, upholding these charges aligns with social and moral principles, ensuring accountability for exploitation and addressing broader societal inequalities. Domestic workers, who often start working when they are underage, are particularly vulnerable to exploitation by the elite classes—and most such cases are never reported.

11 | P a g e ii. Ashok Kumar's case

a) The Complainant's FIR mentioned Ashok Kumar by name— credited as Ajay Malik's friend—who was responsible for looking after the Complainant and the premises in Ajay Malik's absence. Similarly, her statement under Section 164 of the CrPC also details the allegations against Ashok Kumar. The High Court was thus incorrect in holding that no case was made out against him since he was not named in these two documents.

b) The Recovery Memo further sheds light as to how when the Complainant was statedly freed from Ajay Malik's residence by Police Authorities, Ashok Kumar was called to the said premises, having been in possession of the keys thereof. This fact speaks to the reality that the Complainant was

wrongfully confined in the house, with the sole key resting with Ashok Kumar, who while being aware of the Complainant's confinement, nonetheless elected to let her remain in that position.

C. ISSUES

6. We have duly considered the rival submissions of the parties, as elucidated hereinabove, and carefully perused the material on record. We find that the following issues need to be analysed:

i. Whether the High Court acted well within the contours of its powers under Section 482 of the CrPC in rejecting Ajay Malik's quashing petition?

12 | P a g e ii. Whether the High Court fell in error in rejecting the Compounding Application moved by Ajay Malik and supported by the Complainant?

iii. Whether the High Court was legally correct in accepting Ashok Kumar's Criminal Revision, thereby discharging him from the captioned criminal proceedings?

iv. Whether the existing legal framework in India sufficiently protects the rights of domestic workers?

D. ANALYSIS

7. It may be noted at the outset that while evaluating the issues formulated above, we have taken into consideration the credentials of both, Ajay Malik and Ashok Kumar; the contents of the FIR; the Complainant's statements; and her affidavits filed before the High Court and this Court.

D. 1 Issue No. 1: The correctness of rejecting Ajay Malik's quashing application

8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 13 | P a g e of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold; thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations: (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably.⁵

10. Turning to the facts of the present case, it is thus necessary to examine each of the offences alleged against Ajay Malik to determine whether a prima facie case has been established and if there is any justification for quashing the criminal proceedings against him. D. 1. 1 The offences alleged against Ajay Malik

11. The analysis in this regard will address each of the offences enumerated against Ajay Malik, namely: (i) wrongful confinement under Section 343 of the IPC; (ii) human trafficking under Section 370 of the IPC; and (iii) criminal conspiracy under Section 120B of the IPC. 5 State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335.

14 | Page D.1.1.1 Wrongful confinement under Section 343 of the IPC

12. The IPC defines 'wrongful confinement' as 'wrongfully restraining any person in such a manner so as to prevent that person from proceeding beyond certain circumscribing limits'. Put more simply, this offence requires the satisfaction of two prongs: (i) the voluntary restraint of any person; and (ii) the act being done in a manner such that it prevents the said person from proceeding beyond circumscribing limits.

13. The State of Uttarakhand in this regard has vehemently contended that there are several factors militating against Ajay Malik, including the FIR detailing that he allegedly wrongfully confined the Complainant at his residence, and the Recovery Memo which enumerates that the Complainant was locked inside Ajay Malik's residence, with the main gate being doubly locked. The specific allegation thus seems to be that Ajay Malik restricted the Complainant's movements from the circumscribed limit of his residence.

14. While this assertion appears plausible, what raises concern for this Court is the claim that an alternative exit was available to the Complainant, allowing her to freely enter and exit the premises. This fact is fortified by the High Court's findings in the Impugned Judgment in Ashok Kumar's case, which held that:

“7. The learned Magistrate did not consider the aspect of the matter that where the complainant was resided in the house of Ajay Malik which has two entries, one entry the lock was put and another entry was free. Upon consideration of the case record and the document

15 | Page submitted therewith there is no sufficient ground for proceeding against the accused. The revisionist was liable to be discharged under Section 227 of Cr.P.C., which is quoted hereunder:-

“227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution on this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.” [Emphasis Supplied]

15. This factual finding aligns with Ajay Malik's consistent assertion that, although the main entry to his residence was locked, an alternative exit remained accessible for the Complainant to use, which has also been illustrated in the site plan of the subject premises. Furthermore, even as far as the Recovery Memo is concerned, it seems that the Police did not inspect or document the existence of this alternate exit, leaving its availability unverified.

16. Be that as it may, certain additional factual circumstances lend further support to this conclusion. First, the mobile phone allegedly left by Ajay Malik with the Complainant, and subsequently recovered by the police, raises questions about the plausibility of wrongful confinement. It remains unexplained why Ajay Malik would provide the Complainant with a means of communication, allowing her to contact others at will, had he intended to confine her or restrict her within circumscribed limits. Second, the Complainant had been issued a temporary pass issued by the DRDO Colony, where Ajay Malik's residence is located.

The existence of this pass bolsters Ajay Malik's claim that the Complainant frequently left the residence and the colony for errands.

16 | Page Third, the Complainant's own no-objection affidavits, explicitly state that she was never wrongfully confined and that an alternative exit was always accessible to her.

17. On an objective consideration of this uncontroverted material on record, there can be no other conclusion except to hold that the allegations, even if accepted to be true, do not disclose the commission of an offence by Ajay Malik under Section 343 of the IPC. D.1.1.2 Trafficking and exploitation under Section 370 of the IPC

18. We now turn to the allegations against Ajay Malik under Section 370 of the IPC, pertaining to the trafficking and exploitation of the Complainant. In this regard, taking into consideration the extenuating circumstances surrounding this case, this allegation seems to lack any substantial merit. We say so for the following reasons:

i. The FIR includes allegations of assault and exploitation against Ajay Malik and the other co-accused. However, a closer examination reveals that the bulk of the FIR primarily focuses on two neighbours, Subhash and Mohan Ram, who allegedly brought the Complainant to Delhi, and Shambhu, who is accused of persistently harassing the Complainant and exploiting her vulnerable situation.

ii. In the Complainant's statement recorded under Section 164 of the CrPC, the allegations against Ajay Malik seemingly diminish. She instead provides a detailed account of how her neighbours brought her to Delhi and handed her over to Shambhu, who subsequently sent her to work in various cities, withheld her rightful earnings, and consistently denied her requests to return home. In contrast, the only mention of Ajay Malik in her statement pertains to his alleged refusal to send

her home until alternative arrangements were made and his having allegedly locked her in a room. The Complainant also notes that Ajay Malik had left a mobile phone with her before leaving for Delhi and maintained regular contact with her during that time.

iii. The no-objection affidavit submitted by the Complainant before the High Court as part of Ajay Malik's Compounding Application, elucidates that the Complainant has no grievances against Ajay Malik and unequivocally asserts that she was neither trafficked nor wrongfully confined by him. She further expresses her willingness to have all pending criminal proceedings against Ajay Malik quashed. At the High Court's request, the Complainant appeared virtually and reiterated her categorical stance, confirming that she holds no complaints against Ajay Malik. The relevant paragraph from the Impugned Judgment in this case reads as follows:

“10. After having interacted with the complainant/respondent No. 2 herein through video conferencing, she had submitted that the present applicant is not responsible for the act, which was complained of by her and which finds reference in her statement too, which was recorded under Section 164 of Cr.PC.” [Emphasis Supplied] 18 | P a g e

19. Furthermore, during the pendency of these proceedings, the Complainant filed an additional affidavit before this Court as well, which carries significant weight and warrants our undivided attention. In this affidavit, she reiterates that she was never wrongfully confined or trafficked by Ajay Malik and affirms that she was always treated with dignity and respect. She further states that she is now happily married with a daughter and has no desire to prolong the embarrassment caused to Ajay Malik and his family due to the allegations. It is thus abundantly clear that the Complainant has sought to recant the entirety of her allegations against Ajay Malik.

20. In this vein, having duly and holistically considered all of these aspects in toto, we are of the opinion that no prima facie offence under Section 370 of the IPC qua Ajay Malik has been made out as well. Not only is there no evidence of neglect or exploitation of the Complainant by Ajay Malik on record, but her own sworn statements in denying any abuse must also be given due credence.

21. We deem it important to note that while there may have been instances suggesting some degree of labour-based exploitation of the Complainant by Ajay Malik and his family, this is not evident from the face of the record, and we are not inclined to initiate an inquiry into this aspect. In any event, such allegations do not constitute an offence under Section 370 of the IPC, and we cannot conclusively find Ajay Malik guilty of trafficking and exploitation as defined therein. However, that being said, this case has prompted us to frame Issue No. IV, 19 | P a g e whereby we have elaborately addressed the pressing need to establish guidelines to safeguard the rights of domestic workers employed in households across the country.

D.1.1.3 Criminal conspiracy under Section 120B of the IPC

22. Finally, we turn to the allegations against Ajay Malik under Section 120B of the IPC, which deals with punishment for criminal conspiracy. It is trite law that the principal ingredient of this offence is

the agreement to commit an offence.⁶ The charge of conspiracy must be explicitly evidenced, and should be easily discernable in the acts of the conspiring parties. This Court has also previously held, in no uncertain terms, that conspiracy cannot be made out without some kind of physical manifestation of the alleged agreement being established.⁷

23. As previously noted, Ajay Malik employed the Complainant through the Placement Agency established by Shambhu for domestic work at his residence in Dehradun, which she joined on 16.10.2016. She continued to work there for over five months without any untoward incident. As per the purported agreement between the Placement Agency and Ajay Malik, the Complainant's wages were regularly paid to her through the Agency. It therefore appears that the only agreement between Ajay Malik and co-accused Shambhu was the employment of the Complainant as domestic help at the former's residence. ⁶ State of Kerala v. P. Sugathan and Anr., (2000) 8 SCC 203. ⁷ Ram Narayan Popli v. CBI, (2003) 3 SCC 641.

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24. Furthermore, a thorough review of the material on record does not indicate any orchestrated arrangement by Ajay Malik with the co-accused to exploit or confine the Complainant. On the contrary, the case appears to involve minimal interaction or communication between Ajay Malik and the co-accused. Any correspondence between them seems limited strictly to hiring of the Complainant as a domestic worker at Ajay Malik's residence. Against this backdrop, the charge under Section 120B of the IPC qua Ajay Malik is highly speculative and warrants rejection at the very threshold.

D. 1. 2 Whether quashing would be justified?

25. In light of the conclusions reached regarding each of the offences alleged against Ajay Malik, it becomes clear that the Investigating Agency has failed to establish any prima facie case. Since the FIR has been investigated and a Chargesheet has been filed, the FIR alone cannot serve as the basis for dismissing Ajay Malik's claims.

26. Even assuming the FIR is accurate, it does not substantiate the charges, which appear to have been mechanically transcribed into the Chargesheet, despite the Investigating Agency having had sufficient opportunity to gather material evidence. Notably, no element of illegal confinement, trafficking, or criminal conspiracy has been established against Ajay Malik. Additionally, the Complainant has, under oath, stated that she was not illegally confined. If this remains her position in Court, the purpose of proceeding to trial becomes questionable, 21 | P a g e amounting to an exercise in futility and a sheer wastage of judicial resources.

27. Based on the foregoing facts, it appears that the Complainant's primary grievance lies in the unfair treatment she received from Subhash, Mohan Ram, and Shambhu. At this juncture, it is important to note that the allegations against these three co-accused are significantly more serious and grave, considering that charges have been filed against them under Sections 370, 373 and 376 of the IPC. The Placement Agency run by Shambhu could be described as a deceptive front, supposedly

aimed at the welfare of tribal girls, but in reality, it perpetuates their abuse and exploitation. This dubious operation seems to be the root cause of the Complainant's suffering, with Ajay Malik having been included in the FIR without substantial justification.

28. In this backdrop, it appears to us that the Complainant's actions were driven by a fear that should she leave Ajay Malik's employment, as she had done in previous jobs in different cities, she would once again fall under the control of the Placement Agency, which would subject her to further exploitation and abuse. This fear likely led her to lodge the complaint as a means of escaping her situation. This sequence of events aligns with the Complainant's subsequent and consistent stance thereafter, in which she asserts that Ajay Malik and his family did not wrongfully confine or exploit her. Furthermore, she has expressed a desire for the proceedings against Ajay Malik, who is a retired senior citizen now, to be quashed.

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29. In light of the absence of any prima facie evidence of wrongdoing by Ajay Malik; the vague and omnibus claims made in the FIR and subsequently the Chargesheet; and the Complainant's consistent stance to compound and settle the dispute, we are unable to concur with the High Court's conclusion in the Impugned Judgement, which otherwise constitutes a fit case for quashing.

D.2 Issue No. 2: The correctness of rejecting Ajay Malik's Compounding Application

30. We now turn to the second issue in Ajay Malik's case concerning the rejection of his compounding application. As stated previously, Ajay Malik had moved a Compounding Application in his pending petition, based on the strength of the Complainant's no-objection affidavit.

31. Section 320 of the CrPC provides for the compounding of offences, and its appended Schedule lists the various criminal offences that may be compounded or settled by and between the parties under the Court's supervision. In the facts of the instant case, the FIR against Ajay Malik was registered under Sections 343 and 370 of the IPC. Incontrovertibly, Section 370 IPC, being a serious offence, does not find a place on the Schedule attached to Section 320 of the CrPC and is thus classified as a non-compoundable offence.

32. Although we are inclined to agree with the High Court's rejection of Ajay Malik's Compounding Application owing to the non-compoundable nature of alleged offences, this issue is nonetheless rendered academic given our conclusion in the previous issue, where we have rejected the 23 | Page High Court's view regarding Ajay Malik's quashing application.

Therefore, while we may not need to delve into this issue, it must be underscored that a delicate balance ought to be struck in cases wherein the parties seek compounding of the offences. Though well-intentioned, an excessively moralistic order may unnecessarily prolong criminal proceedings, which have no logical conclusion and only serve to further distress the parties. Accordingly, the correctness of the High Court's decision to disallow Ajay Malik's Compounding Application does not require our consideration on merits.

D. 3 Issue No. 3: The State's challenge to Ashok Kumar's discharge

33. Adverting to Ashok Kumar's case, we shall now consider the merit of the State's challenge to the Impugned Judgment therein. At the cost of repetition, the proceedings herein concern Ashok Kumar, a neighbor and friend of Ajay Malik. Although Ashok Kumar was not initially named in the FIR, he was later Chargesheeted by the Investigating Officer and included as a co-accused. The State is aggrieved by the High Court's decision to allow Ashok Kumar's Criminal Revision Petition, thereby discharging him from the criminal proceedings arising from the captioned FIR.

34. It is trite law that the discharge stage acts as a critical filter to eliminate cases lacking legal merit, sparing the accused from unnecessary proceedings, while ensuring that credible cases proceed to trial. Thus, discharge under Section 227 of the CrPC is justified when the material on record fails to disclose a prima facie case against the accused to 24 | P a g e proceed for trial. The legislative spirit behind this provision envisions the rights of the accused being balanced with public interest, so as to ultimately prevent abuse of the legal process.

35. The sum of the allegations against Ashok Kumar is that he held the key to the residence where the Complainant was allegedly wrongfully confined. While we have already negated the claims of wrongful confinement against Ajay Malik based on the High Court's finding regarding the alternative exit available to the Complainant, certain additional mitigating circumstances may be observed in the case of Ashok Kumar. Firstly, there is no direct allegation against him made by the Complainant herself. Neither the FIR nor the Complainant's statements disclose any explicit, illegal act on Ashok Kumar's part. Secondly, Ashok Kumar was not named in the original FIR, and was only added by way of a Supplementary Chargesheet by the Investigating Officer, seemingly as an after-thought. This hasty inclusion lacks any substantive justification. Thirdly, while Ashok Kumar was delivered the keys by Ajay Malik and held them as a favor to him, there is no evidence to suggest that he ever visited the premises or was aware and acting in furtherance of any wrongful confinement of the Complainant.

36. For these reasons, we have no hesitation in upholding the correctness of the reasoned order of the High Court, in allowing the discharge of Ashok Kumar from the criminal proceedings. Given the demonstrable lack of any mens rea or intent on the part of Ashok Kumar, apart from 25 | P a g e the lack of any direct involvement, his discharge is well-founded and warrants no interference by this Court.

D. 4 Issue No. 4: Domestic workers' lacking legal protection in India

37. We lastly address the final issue framed by us in these appeals, which pertains to the rights, protections, and privileges (or lack thereof) accorded to domestic workers in the Indian milieu. While this broader issue may only be tangential to the present appeals, we have taken it upon ourselves to deal with the same in light of the gravity and nature of the systemic issues we have been presented with. D. 4. 1 Background

38. It is an incontrovertible fact that the demand for domestic workers has been mounting in India, in consonance with rapid urbanization and development. According to reports by the International Labor Organization (ILO)—which is a United Nations agency devoted to promoting internationally recognized labour and human rights— domestic workers currently constitute a significant portion of the unorganised workforce in India,⁸ with millions of individuals, primarily women,⁹ engaged in this sector. Their contributions are indispensable to urban households, performing tasks such as cooking, cleaning, caregiving, and other essential services.

8 ILO Report, “Indispensable yet unprotected: Working conditions of Indian Domestic Workers at Home and Abroad”, 2015.

9 ILO Report, “Employer practices and perceptions on paid domestic work: Recruitment, employment relationships, and social protection”, 2023.

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39. While any avenues for employment being opened to marginalised women merit celebration, we are at pains to note that despite their growing demand, this indispensable workforce has also been the most vulnerable to exploitation and abuse. Domestic workers often belong to marginalised communities, such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Economically Weaker Sections. They are compelled to undertake domestic work due to financial hardship or displacement, further reinforcing their vulnerability. That is not to say, however, that we are declaiming this source of gainful employment that is readily available to women across all social sub- stratas. On the contrary, we seek to affirm this important livelihood that is available to so many women, which brings them one step closer to financial security and the accompanying independence.

40. Our concerns instead lie with the non-regulation of this crucial labour sector, which often leads to the aforementioned malignant results. The same is abundantly evident from the factual circumstances of the present appeals, wherein the Complainant was tortured and exploited for several years at the hands of individuals who forcibly transported her to differing cities, in the promise of a better life which never materialised. The purported Placement Agency which employed the Complainant continually leached her salaries, leaving her utterly destitute and helpless.

41. The simple reason for this harassment and rampant abuse, which seems to be prevalent throughout the country, is the legal vacuum 27 | P a g e which exists vis-à-vis the rights and protection of domestic workers. Indeed, domestic workers in India remain largely unprotected and without any comprehensive legal recognition. As a result, they frequently endure low wages, unsafe environments, and extended hours without effective recourse.

42. Before we discuss the Indian legal experience with domestic workers, it is perhaps fitting to advert to the prevailing international standards. D. 4. 2 International norms and standards

43. In the international spectrum, over the course of many decades, the ILO has provided various guidelines and conventions for the betterment of labour laws across the world. It is noteworthy that it has also extensively sought to protect the rights of domestic workers, which it recognises as a uniquely disadvantaged and marginalised class. It proactively advocates for the inclusion of domestic workers in pre-existing labour treaties. For instance, during discussions on the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the definition of 'insolvency' was revised to refer to as 'employer's assets' instead of the narrower term 'enterprise's assets,' ensuring domestic workers were covered. Moreover, Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applies to all 'workers and employers' without any exception.

44. Reference may also be made to the principles of non-discrimination and equal opportunity in the Discrimination (Employment and Occupation) 28 | P a g e Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), which also cover domestic workers. In fact, the ILO Committee of Experts has repeatedly emphasised that laws or policies promoting equality in jobs must include domestic workers and that excluding them would violate these Conventions.¹⁰

45. However, the most significant international development in the realm of the rights of domestic workers was in 2011, with the adoption of the Domestic Workers Convention, 2011 (No. 189). This Convention offers specific protection to domestic workers while laying down the basic rights that such workers are entitled to, and the measures that States must take to ensure decent work conditions. These protections include regulating work settings and providing domestic workers with social security benefits that are at par with other workers. This Convention is supplemented by the ILO Recommendation No. 201, which further addresses the need for facilities like proper accommodation, food, and the medical health of domestic workers.

46. Apart from the illustrative treaties reproduced hereinabove, the plight of domestic workers is also addressed in several other Conventions. For instance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, in its General Comment No. 1, provides for and acknowledges the particularly vulnerable position of migrant domestic workers. Similarly, General Comment No. 26 to the landmark Convention on the 10 ILO Guide, "Effective Protection for Domestic Workers: A Guide to Designing Labour Laws", 2012; ILO Manual, "Achieving decent work for domestic works", 2012.

29 | P a g e Elimination of All Forms of Discrimination Against Women, 1979 addresses female migrant workers and extends to those undertaking domestic work as well.

47. Thus, contemporary international standards not only acknowledge the vulnerability of domestic workers but also strive to provide them extensive protection and parity with other labourers. D. 4. 3 Domestic laws and guidelines

48. Coming to the legal standing of domestic workers within India, there seems to be a degree of lacunae in legislative frameworks, safeguarding and protecting their rights.

49. At this juncture, we must fairly note that there have already been several attempts to bring domestic workers under legal protection. However, for a plethora of reasons that are beyond the scope of the present discussion, these Bills have never materialized into tangible laws or policies. In this regard, we may briefly note the following:

i. The Domestic Workers (Conditions of Employment) Bill of 1959 was among the earliest legislative attempts to regulate the working conditions of domestic workers. It aimed to establish minimum standards for wages, work hours, and employment terms for domestic workers. However, the Bill received little support and was ultimately not enacted into law. ii. The House Workers (Conditions of Service) Bill of 1989 sought to address similar issues, focusing on formalising employment practices and providing essential safeguards for domestic workers.

Despite being introduced, this Bill neither formed the subject of significant Parliamentary discussions nor advanced towards enactment.

iii. The Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004 was introduced in the Rajya Sabha as a private member's Bill. This Bill proposed mandatory registration of domestic workers and required the government to ensure sufficient employment opportunities, medical benefits, and other welfare measures. It also included penalties for employers hiring unregistered workers. However, the Bill was not passed by Parliament.

iv. The Domestic Workers (Registration, Social Security and Welfare) Bill, 2008, introduced by the National Commission for Women, aimed to establish a registration process for domestic workers and to provide them with social security benefits. The Bill did not progress beyond its drafting stage and was not enacted into law.

v. The Domestic Workers (Decent Working Conditions) Bill of 2015 sought to include domestic workers under existing labour laws, such as the Industrial Disputes Act of 1947. The Bill proposed ensuring fair wages and regulated working conditions for domestic workers. However, it remained pending and was not enacted into law.

vi. The Domestic Workers Welfare Bill 2016 proposed including migrant and minor domestic workers within its ambit. The Bill prescribed working conditions, terms of employment, and the collection of a cess from employers to maintain a social security fund. It also mandated the registration of workers by employers and placement agencies. This Bill was, however, not enacted.

vii. The Domestic Workers (Regulation of Work and Social Security) Bill, 2017 sought to regulate the work of domestic workers, prescribe duties for employers and placement agencies, establish Boards for their registration, address issues related to the marginalisation caused by migration, and provide for the inclusion of domestic workers in significant labour laws. However, the Bill was never enacted.

50. It, thus, seems to us that no effective legislative or executive action in furtherance of enacting a statute, which could prove to be a boon to millions of vulnerable domestic workers across the

country, has been undertaken as of now. Over and above the absence of any legislation protecting their interests, domestic labourers also find themselves excluded from existing labour laws as well. These, inter alia, include statutes such as the Payment of Wages Act 1936, Equal Remuneration Act 1976, Sexual Harassment of Women at Workplace (Prevention, 32 | P a g e Prohibition and Redressal) Act, 2013, Juvenile Justice (Care and Protection of Children) Act, 2015, etc.

51. Be that as it may, we must also acknowledge that recent years have witnessed certain positive developments aimed at improving the legal and social status of domestic workers in India. These developments, while still in their initial stages of implementation, signal recognition of the need to address the systemic neglect faced by this workforce. In this regard, reference may be made to the Code on Wages, 2019, which introduces provisions to address the issue of minimum wages for domestic workers. Moreover, statutes such as the Social Security Code of 2020 replace earlier legislation, including the Unorganized Workers' Social Security Act of 2008, bringing domestic workers within the ambit of 'unorganised workers'. This inclusion makes them eligible for various benefits such as social security, health insurance, provident fund, and maternity benefits. Further, the introduction of the e-Shram portal in 2021 has facilitated the creation of a centralised database to identify and register migrant/domestic/unorganised workers, enabling their access to welfare schemes.

52. It is equally noteworthy that despite the absence of comprehensive protections for domestic workers through a Central Law, several States have taken initiatives to safeguard their rights and welfare. Tamil Nadu established the Tamil Nadu Domestic Workers Welfare Board in 2007 under the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. The Board administers various social 33 | P a g e security benefits, including education assistance, marriage assistance, delivery assistance, accidental death compensation, and pensions. These benefits are provided through monetary compensation at fixed rates. Maharashtra has enacted the Maharashtra Domestic Workers Welfare Board Act, 2008, creating District Domestic Labour Welfare Boards with tripartite representation from employers, employees, and the government. This Act allows domestic workers to voluntarily register to access social security benefits, including maternity and child care, education assistance, and medical expense reimbursement. Similarly, Kerala introduced the Kerala Domestic Workers (Regulation and Welfare) Bill, 2021 to protect, regulate, and improve the welfare of domestic workers. The Bill aims to ensure minimum wages, fair treatment, and lawful payment for workers, many of whom are employed through third-party agencies.

53. Amidst this backdrop, which motions the lack of specific protections covering domestic workers in India, it becomes this Court's solemn duty and responsibility to intervene, exercise the doctrine of *parens patriae* and forge the path leading to their proper welfare. In a catena of decisions,¹¹ this Court has repeatedly stepped in and laid down interim guidelines to protect vulnerable groups who were utterly unprotected due to legal gaps. That being said, we do not presently deem it appropriate to lay down an interim legal code which would govern the 11 Rudul Sah v. State of Bihar, (1983) 4 SCC 141; M.C. Mehta (2) v. Union of India, (1988) 1 SCC 471; Nilabati Bahera v. State of Orissa, (1993) Cri. LJ 2899; Vishwa Jagriti Mission v. Central Govt., (2001) 6 SCC 577; Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454; Vineet Narain v. Union of India, (1998) 1 SCC 226;

Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

34 | P a g e working conditions of domestic workers. We say so, being cognizant of the factum that ordinarily, the judiciary should not stray too far out of bounds, and expressly interfere in the legislative domain. The democratic setup of this country may be likened to a tripartite machine, fueled by the doctrine of separation of powers, without which its functioning shall surely come to a grinding halt.

54. It is in this vein, that we once again repose our faith in the Legislature, and the elected representatives of the Indian people, to take the imperative steps towards ensuring an equitable and dignified life for domestic workers. In light of the same, we seek to dispose of these appeals with certain pointed directions to the Government of India. E. CONCLUSION AND DIRECTIONS

55. In view of the foregoing analysis and conclusions arrived at hereinabove, we deem it appropriate to invoke this Court's extraordinary powers under Article 142 of the Constitution of India and issue the following directions:

i. Ajay Malik's appeal (SLP (Crl.) No. 8777/2022) is thus allowed and the Impugned Judgement dated 01.09.2022 passed by High Court in Criminal Misc. Application No. 96/2018 is accordingly set aside. Additionally, the FIR No. 60/2017 (Case Crime No. 94/2017), Chargesheet and all other proceedings therefore arising qua him are hereby quashed.

35 | P a g e ii. There is no merit in the appeal preferred by the State against Ashok Kumar (SLP (Crl.) No. 15131/2024), and it is thus dismissed. Therefore, the High Court's order dated 12.01.2021 in Criminal Revision No. 173/2019 is upheld.

iii. The conclusions drawn in favour of Ajay Malik and Ashok Kumar shall have no bearing on the criminal proceedings pending against the other accused, including those who are alleged to have exploited the Complainant on the pretext of securing her employment. Those proceedings shall be decided as per their own merits.

iv. As regard to the larger issue of the protection of rights of domestic workers, we direct the Ministry of Labour and Employment in tandem with the Ministry of Social Justice and Empowerment, the Ministry of Women and Child Development, and the Ministry of Law and Justice, to jointly constitute a Committee comprising subject experts to consider the desirability of recommending a legal framework for the benefit, protection and regulation of the rights of domestic workers.

v. The composition of the Expert Committee is left to the wisdom of the Government of India and its concerned Ministries. It will be appreciated if the Committee submits a Report within a period of 6 months, whereupon the Government of India may consider the 36 | P a g e necessity of introducing a legal framework which may effectively address the cause and concern of domestic workers.

56. The present appeals are disposed of in the above terms. Consequently, pending interlocutory applications, if any, are also disposed of.

57. Ordered accordingly.

.....J. (SURYA KANT)J. (UJJAL BHUYAN) NEW DELHI DATED:
29.01.2025 37 | P a g e