

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Cr1.MC.No. 1702 of 2015

IN SC 213/2012 OF THE COURT OF SESSION, KASARAGOD

PETITIONER/ACCUSED:

P.AHAMMED KOYA, AGED 56 YEARS,
S/O. MOIDEENKUTTY,
RESIDING AT CENTURY HOUSE, POINACHI,
KASARAGOD DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/COMPLAINANT AND STATE:

1. THE SUB INSPECTOR OF POLICE ,
VIDHYANAGAR POLICE STATION,
KASARAGOD DISTRICT - 621121.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

R1 & R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
23-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1702 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE FINAL REPORT IN S.C NO.213/2012

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1702 of 2015

Dated this the 23rd day of July, 2015

O R D E R

The petitioner herein is the accused in S.C No.213/2012 of the Court of Session, Kasaragod. The said prosecution brought under Section 23 of the Juvenile Justice (Care and Protection of Children) Act is sought to be quashed on the ground that there is absolutely no material for such a prosecution. The prosecution case is that in June 2011 the petitioner employed two boys aged 16 years in his hotel. Section 23 of the Juvenile Justice Act reads as follows:

“Punishment for cruelty to juvenile or child: whoever, having the actual charge or control over a Juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause to such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine nor with both.”

2. For a prosecution under Section 23 of the Juvenile Justice Act the accused must be a person having actual charge or control over a juvenile or a child. The act of offence

made punishable is assault on the child, or exposure of the child, or abandonment or neglect of the child in a manner likely to cause to such juvenile, or the child, unnecessary mental or physical suffering. In this case the the petitioner is admittedly not the person having actual custody or charge or control over the juvenile. In such a situation the prosecution against him under Section 23 of the Juvenile Justice Act is quite unsustainable. I fail to understand why the police officer brought such a charge. It must be either out of ignorance, or it must be a malicious charge. In the absence of anything, or any material, to constitute the essentials of the offence under Section 23 of the Juvenile Justice Act, the prosecution against the petitioner is liable to be quashed. Employing a child aged above 14 years will not come under the Special Act prohibiting child labour also. Even for a prosecution under the Child Labour (Prohibition and Regulation) Act, the alleged juvenile must be aged below 14 years. For a prosecution under Section 26 of the Juvenile Justice Act, the prosecution must have a case that a juvenile was employed for some hazardous job, without making proper and adequate wages. There is no such situation in this case. Innocently employing a juvenile aged between 14 years

and 18 years for some job which is not hazardous in nature will not come under the Juvenile Justice Act, or under the Child Labour (Prohibition and Regulation) Act. I find that this prosecution is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner herein in S.C No.213/2012 of the Court of Session, Kasaragod will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**P.UBAID
JUDGE**

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