

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. 3988 of 2015

IN CC 1061/2011 of J.M.F.C.-I, ALUVA

CRIME NO. 723/2011 OF ALUVA POLICE STATION, ERNAKULAM

PETITIONERS/ACCUSED 1 AND 2:

1. AYOOB, AGED 29 YEARS,
S/O.ABDUL KADER, VAVARUPARAMBIL HOUSE,
CHAKKARAPARAMB
POONITHURA VILLAGE, ERNAKULAM DISTRICT.
2. ABDUL MANAF, AGED 30 YEARS,
S/O.BEERAN, KARIPPAI HOUSE, NEAR JARAM PALLI,
ERUMATHALA, ALUVA, ERNAKULAM DISTRICT.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM (REPRESENTING STATION HOUSE OFFICER,
ALUVA POLICE STATION, ERNAKULAM)

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 3988 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE FINAL REPORT IN CRIME NO.723/2011 OF ALUVA POLICE STATION.

ANNEXURE A2: COPY OF THE AFFIDAVIT SWORN TO BY THE SADDAM

ANNEXURE A3: COPY OF THE JUDGMENT IN CRL.M.C NO.1118/2013 OF THIS HON'BLE COURT.

ANNEXURE A4: COPY OF THE JUDGMENT IN CRL.M.C. NO.5057/2014 OF THIS HON'BLE COURT.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.3988 of 2015

Dated this the 23rd day of July, 2015

O R D E R

The petitioners herein are the two accused in C.C No.1061/2011 of the Judicial First Class Magistrate Court I, Aluva. The said prosecution brought under Section 342 r/w 34 of the Indian Penal Code and 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 these two petitioners employed a boy aged 16 years in their plywood factory. What is made punishable under Section 342 IPC is a wrongful and illegal confinement. It is not known how employing a child will attract the offence under Section 342 of IPC. The other charge is under Section 23 of the Juvenile Justice Act. 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 two petitioners are admittedly not the persons having actual custody or charge or control over the alleged juvenile. In such a situation the prosecution against them 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 342 IPC or under Section 23 of the Juvenile Justice Act, the prosecution against the petitioners 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 petitioners herein in C.C No.1061/2011 of the Judicial First Class Magistrate Court I, Aluva will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

**P.UBAID
JUDGE**

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