

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 4959 of 2015

SC 288/2012 of D.C & SESSIONS COURT, PALAKKAD

CRIME NO. 226/2011 OF KUZHALMANNAM POLICE STATION , PALAKKAD

PETITIONER(S)/ACCUSED :-

**ASHARAF, AGED 34 YEARS,
S/O.AHAMMEDKUTTY,
VATTAPPARAMBIL, POOLAMVAYAL,
KUNNAMANGALAM P.O.,
KOZHIKKODE.**

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT(S)/DEFACTO COMPLAINANT & STATE :-

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R BY SMT.V.H.JASMINE, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE A - TRUE COPY OF THE FINAL REPORT IN CRIME NO.226/2011 OF
COYALMANNAM POLICE STATION.**

**ANNEXURE B - CERTIFIED COPY OF THE FIR IN CRIME NO.226/2011 OF
COYALMANNAM POLICE STATION ALONG WITH THE STATEMENT.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.No.4959 of 2015

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Dated this the 4th day of August, 2015

ORDER

The petitioner herein is the sole accused in S.C.No.288 of 2012 pending before the Court of Session, Palakkad. He is being prosecuted under Section 26 of the Juvenile Justice (Care & Protection of Children) Act (for short 'the Act'). The prosecution case is that a Juvenile aged only 17 years was seen employed in the petitioner's hotel on 14.06.2011. Finding a Juvenile aged 17 years in the hotel, the Sub Inspector of Police registered a crime against the petitioner, and after investigation submitted final report in Court. The said prosecution is sought to be quashed on the ground that there is absolutely no material for a prosecution against the petitioner under Section 26 of the Juvenile Justice Act.

2. On a perusal of the materials including the FIR and the final report, I find that the prosecution in S.C.No.288/2012 is liable to be quashed. There is nothing to show that the Juvenile was employed by the petitioner for some hazardous job, or that proper and adequate wages was denied to the Juvenile. It is well settled that when a prosecution is brought under Section 26 of the JJ Act, the prosecution can succeed only when there is a specific, and definite allegation to the effect that the Juvenile was found employed for some hazardous job, without making proper and adequate payment of wages/salary. The position as regards the nature of employment meant by

the term 'hazardous' has been clarified by this Court in so many decisions including **Vinod S. Panicker v. Sub Inspector of Police [2012(4)KLT 314]**, and **Alice v. State of Kerala [2014(2) KLT 175]**. Admittedly, the Juvenile in this case is aged above 14 years, but below 18 years. However, the final report does not contain definite allegation that the Juvenile was found employed for any hazardous job. Cleaning works in a hotel or cleaning plates in a hotel will not amount to hazardous job as meant under Section 26 of the JJ Act. In **Alice v. State of Kerala**, this Court has explained that the term "hazardous" indicates the risk and heaviness of the job, which the age of the child cannot bear. In this case, I find that continuance of the prosecution against the petitioner will be abuse of legal, and judicial process, and the prosecution is liable to be quashed.

Hence, this petition is allowed. The prosecution against the petitioner in SC 288/2012 of the Court of Session, Palakkad will stand quashed under Section 482 Cr.P.C.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE