

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

Crl.MC.No. 5861 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN CC 271/2013 of CHIEF JUDL.MAGISTRATE,
ERNAKULAM

PETITIONER(S)/ACCUSED:

K.K.VINAYAN AGED 53 YEARS
S/O. KRISHNAN, KOLLASSERIL HOUSE, KARALAM VILLAGE
MUKUNDAPURAM TALUK, VELLANI P.O., THRISSUR - 680 701.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENTS/STATE AND COMPLAINANT:

1. THE SUB INSPECTOR OF POLICE
ERNAKULAM CENTRAL POLICE STATION, KOCHI - 682 031.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

3. NISHA JOSEPH AGED 33 YEARS
W/O. JOSEPH, KATTUPALATHU HOUSE, KURIKKADU
THIRUVANIYOOR VILLAGE, ERNAKULAM - 682 312.

R1 BY GOVERNMENT PLEADER: SMT M T SHEEBA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17.08.2015,
THE COURT ON 31.08.2015 PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE A1 - THE ORIGINAL COPY OF THE FINAL REPORT IN C.C.NO. 271/13.

RESPONDENT(S) ' EXHIBITS:NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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Crl.M.C.No.5861 of 2014
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Dated this the 31st day of August, 2015

ORDER

The accused in C.C.No.271 of 2013 of the Chief Judicial Magistrate Court, Ernakulam, who stands indicted for offence punishable under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as “the Act”), seeks quashing of the proceeding in the above case.

2. The petitioner was conducting a tea shop at Kochi. On 16.03.2011, the police from the Central Police Station conducted a search in his tea stall and found that two children belonging to Tamil Nadu aged 15 and 17 years respectively were engaged in the labour. Crime was registered alleging that the petitioner committed the offence punishable under Section 26 of the Act. After investigation, final report was laid and the accused has been summoned. Contending that, none of the ingredients of the offence alleged against the petitioner is

sustainable and that, even by the admitted facts, no offence is made out against him, he has approached this Court under Section 482 of the Code of Criminal Procedure.

3. Heard both sides and examined the records.

4. Section 26 of the Act presupposes exploitation of a juvenile or child in hazardous employment, keeps him in bondage or withholds his earnings. The available materials indicate that at the time of search, both the juveniles were found cleaning the tables. There is absolutely no allegation that they were engaged in any hazardous job. Even according to the juvenile, they had only been doing the work of cleaning the tables. In **Vinod S Panicker Vs. Sub Inspector of Police (2012(4) KLT 314)**, this Court had held that engagement of children in bakery cannot be considered as a hazardous job. Hence, the job of cleaning the table in a hotel cannot be considered as employment in a hazardous job.

5. Section 26 of the Act is also with respect to keeping the juvenile in bondage or exploitation of the children. The statement of the children read with the statement given by other witnesses indicate that they had voluntarily come from Tamil

Nadu. There is absolutely no indication that they are lured, enticed or brought by force by the accused. There is absolutely no allegation that they are kept on bondage. Though bondage can even include financial pressure, there is nothing on record to show that they were coerced to do the job. On the other hand, the juveniles have stated that they came in search of job and were given salary. In the above circumstance, I find that, even from the admitted case of the prosecution, no offence can be made out, even if the prosecution goes for trial. Hence, I feel that continuation of the trial and the proceedings will only result in substantial injustice and amount to abuse of the process of Court. In the above circumstance, the entire proceedings in C.C.No.271 of 2013 are liable to be quashed.

In the result, Crl.M.C. is allowed. C.C.No.271 of 2013 and all further proceedings therein are quashed.

Sd/-
SUNIL THOMAS
Judge

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