

Crl.M.P.No.8185 of 2016
in
Crl.A.Sr.No.32963 of 2016

M.VENUGOPAL, J.

The Petitioner/Appellant/Victim (P.W.3) has preferred the instant Criminal Miscellaneous Petition praying for passing of an order before this Court to condone the delay of 277 days in preferring the instant Criminal Appeal Sr.No.32963 of 2016 as against the Judgment in S.C.No.187 of 2007 dated 18.08.2015 passed by the Learned Principal Sessions Judge, Chengalpattu.

2.According to the Learned Counsel for the Petitioner/Appellant, the Respondents 1 and 2 (A1 and A2) operating a Rice Mill in the name and style of Sri Balaji Rice Mill situated at S.No.331/3, Kadalur Village, Chayyur Vattam, Kancheepuram District. In this Rice Mill, the Petitioner/Appellant along with others were forced to work as 'Bonded Labourers'.

3.The stand of the Petitioner is that the Respondents 1 and 2 gave money advance to her and in exchange for the said advance, she worked in the Rice Mill. Only after started working at the Rice

Mill, she came to know that she was engaged by a cruel person who restricted her freedom. Also that, the Respondents 1 and 2/A1 and A2 had not allowed her or other victims to leave the Rice Mill freely and denied their freedom of movement. In fact, she and other victims were not permitted to visit their native places and even if they visited their native places and tried to move away from the Rice Mill, the Respondents 1 and 2/A1 and A2 would bring them back by employing their personal associates. Moreover, the money spent by the Respondents 1 and 2 in tracing them would be added to their 'Bonded Debts'.

4.The plea of the Petitioner is that the Respondents 1 and 2 had not paid them the minimum wages and they had not attended to their basic needs and they were compelled to work for more hours in a day and when they asked for minimum wages, the Respondents 1 and 2 became angry and compelled them to work by carefully locking them on the premises. When that be the fact situation, on 08.11.2006, the Sub Divisional Magistrate cum Revenue Divisional Officer, Madurantagam identified her and along with other victims as Bonded Labourers and the RDO released all of them from 'Bondage' and issued a Release Certificate to each one of

them and rehabilitated them and in fact, lodged a complaint before the Koovathur Police in Kancheepuram District. Based on the said complaint, a FIR in Crime No.305 of 2006 was registered and the offences mentioned in the FIR do attract charges under the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 and that the 3rd Respondent/Complainant investigated the matter and filed the final report.

5.At this stage, the Learned Counsel for the Petitioner/Appellant brings it to the notice of this Court that the Respondents 1 and 2/A1 and A2 were charged in respect of offences under Sections 16 and 18 of the Bonded Labour System (Abolition) Act, 1976 and Sections 344, 352 I.P.C. and Section 14(1) of the Child Labour Prohibition and Regulation Act. After considering the materials available on record, the Learned Sessions Judge, Chengalpattu acquitted the Respondents 1 and 2 in S.C.No.187 of 2007 on 18.08.2015 by coming to the conclusion that the charges levelled against the Respondents 1 and 2 (A1 and A2) were not proved beyond reasonable doubt and released them under Section 235(1) Cr.P.C.

6.The Learned Counsel for the Petitioner/Appellant urges before this Court that in S.C.No.187 of 2007, the trial Court delivered its Judgment on 18.08.2015 and that the Petitioner filed copy application on 01.09.2015 and the necessary stamp papers were called on 11.09.2015 and the stamp papers were deposited on 12.09.2015 and a copy of the Judgment was made ready on 16.09.2015 and delivered on 18.09.2015. In this process, there had occasioned a delay of 277 days in preferring the instant Crl.A.Sr.No.32963 of 2016 on 03.08.2016, which is neither wilful nor wanton but due to the aforesaid reason.

7.That apart, it is the version of the Petitioner that she is an uneducated person and belongs to a Scheduled Tribe Community and therefore, she does not have any knowledge about the relief she can receive from this Court in Appeal. Besides these, the Petitioner along with her family had spent a considerable time looking after all the other legal formalities concerning their release from Bondage. Continuing further, it is their prime plea that the eke out their livelihood as daily wage earners/coolies and do not have sufficient financial capability to look after the Appeal.

8.The Learned Counsel for the Petitioner/Appellant, in support of the contention that the Petitioner/Appellant (P.W.3) had ascribed adequate reasons in CrI.M.P.No.8185 of 2016 to condone the delay of 277 days in the subject matter in issue, seeks in aid of the decision of this Court reported in ***Kanniammal V. Govindan and two others [2013 (2) MWN (Cr.) 180]*** wherein it is observed that '***a reasonable period of limitation for victims to prefer an Appeal can be fixed at 60 days before the High Court and 30 days before the Sessions Court***'. Also, in paragraph Nos.7 and 8 of the aforesaid decision, it is opined as under:

"7.This Court fully agrees with the decision rendered by the Hon'ble Delhi High Court and reasonable period of limitation is fixed for the victims to prefer an Appeal under Section 372, Cr.P.C. as 60 days before the High Court and 30 days before the Sessions Court.

8.In this matter, this Court perused the Affidavit filed by the Petitioner and also the Counter filed by the Respondents 1 and 2. Considering the reasons given in the Affidavit filed by the Petitioner and as the delay is

also nor enormous, in the interest of justice as there is sufficient cause to condone the delay, Petition is allowed.”

9. Conversely, it is the submission of the Learned Counsel for the Respondents 1 and 2 that all the alleged victims had not served at all with the Respondents 1 and 2 more particularly the Petitioner/Appellant/Victim (P.W.3) in their Rice Mill and only three of the 9 victims referred to in the FIR had served with them and none of them had incurred any bonded debt at all to come under the definition of Bonded Labourer. Also, it is represented that no advance was obtained from the Respondents 1 and 2 by any of the victims in pursuance of the Bonded Labour System.

10. The Learned Counsel for the Respondents 1 and 2 projected an argument that the Rice Mill in question itself was in small scale run for 2 years only viz., from its establishment in the year 2005, end of 2006 and the unit of boiling and drying the paddy in the Rice Mill is closed and now only the hulling of paddy and flour mill is run.

11.The core contention advanced on behalf of the Respondents 1 and 2 is that the Petitioner/Appellant/P.W.3 was ably assisted and guided by the non-governmental organisation (P.W.4) and almost five different governmental officials came to their rescue etc. and it is strange to mention a reason that the Petitioner is not aware of the legal relief. Further, the statutory period of preferring an Appeal was over long ago and since the Petitioner/Appellant has not preferred the Appeal in time, the condonation of delay petition in Crl.M.P.No.8185 of 2016 filed by the Petitioner is per se not maintainable in the eye of Law.

12.On behalf of the 3rd Respondent/Complainant, the Learned Government Advocate (Crl. Side) submits that the VAO/P.W.1 gave a complaint on 11.11.2006 mentioning that 8 victims including the Petitioner/Appellant were employed in the Rice Mill of the Respondents 1 and 2/A1 and A2. As a result of the filing of the complaint, a case in E-5 Koovathur Police Station in Crime No.305 of 2006 was registered under Sections 1, 2 & 4 of the Bonded Labour System Act, 1976 which was registered by the then Sub Inspector of Police on 11.11.2006 and thereafter, the investigation of the case was taken up by the Deputy Superintendent of Police,

who filed the charge sheet under Sections 341, 344, 352 I.P.C. Section 14(1) of the Child Labour (Prohibition and Regulation) Act and Section 3(1)(vi) of the Scheduled Caste and Scheduled Tribes (Prevention and Atrocities) Act, 1989, Sections 16 and 18 of the Bonded Labour System (Abolition) Act, 1976.

13.It comes to be known that after a full fledged trial of the main case in S.C.No.187 of 2007 on the file of the Learned Principal Sessions Judge, Chengalpattu, the Respondents 1 and 2 were acquitted on 18.08.2015 based on the merits of the case.

14.The Learned Government Advocate (Crl. Side) for the 3rd Respondent takes a stand that the reasons ascribed by the Petitioner/Appellant/P.W.3 in her affidavit in Crl.M.P.No.8185 of 2016, at paragraph 11, inter alia, to the effect that she is an uneducated, belonging to a Scheduled Tribe Community and does not have any knowledge about the relief she can receive through this Court etc. are not bona fide, reasonable and acceptable one. As such, Crl.M.P.No.8185 of 2016 filed by the Petitioner/Appellant (to condone the delay of 277 days in preferring the Crl.A.Sr.No.32963 of 2016) is not maintainable in Law.

15. In this connection, this Court aptly refers to Section 372 Cr.P.C. which runs as under:

"S.372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

{Proviso inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), s.29 (w.e.f. 31-12-2009}

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]"

16. By virtue of the aforesaid Amendment which forms part of the whole scheme under which the definition of 'Victim' was inserted by way of Section 2(wa) Cr.P.C. so as to confer an active role to a victim of an offence in a judicial process arising from an offence.

17. A cursory glance of the definition Section 2(wa) Cr.P.C. mentions "***'Victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.***"

18. That apart, a mere running of the eye in respect of definition of Section 2(d) to (j) of the Bonded Labour System (Abolition) Act, 1976 reads as under:

"(d) "bonded debt" means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

(e) "bonded labour" means any labour or service rendered under the bonded labour system;

(f) "bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

(g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that -

(i) in consideration of an advance obtained by

him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would -

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

{Inserted by Act 73 of 1985, S.2}

[Explanation.- For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of Section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1970 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is "bonded labour system"

within the meaning of this clause.]

(h) "family", in relation to a person, includes the ascendant and descendant of such person;

(i) "nominal wages", in relation to any labour, means a wage which is less than, -

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality;

(j) "prescribed" means prescribed by rules made under this Act."

19. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in National Commission For Women V. State of Delhi and another, (2010) 12 Supreme Court Cases 599 at special page 602 & 603, wherein at paragraph 8, it is observed as follows:

"8. Chapter XXIX of the Code of Criminal Procedure deals with "Appeal(s)". Section 372 specifically

provides that no appeal shall lie from a judgment or order of a criminal court except as provided by the Code or by any other law which authorises an appeal. The proviso inserted by Section 372(Act 5 of 2009) with effect from 31-12-2009, gives a limited right to the victim to file an appeal in the High Court against any order of a criminal court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case, would confer a right only on a victim and also does not envisage in appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to the High Court as it is effectively challenging the quantum of sentence."

20. One cannot brush aside an important fact that whenever it is shown that a person is made to provide forced labour, a Court of

Law would presume that he is doing so, in consideration of an advance or other weak consideration received by him/her and therefore, he or she is a 'Bonded Labourer'. However, this presumption is a rebuttable one provided a requisite satisfactory materials are produced before the Court. In reality, the State Government is not entitled to repudiate its primary obligation to identify, release and rehabilitate the Bonded Labourers on the plea that they must show in an appropriate proceeding conducted or advisory system of Justice that they are Bonded Labourers, as per decision of the Hon'ble Supreme Court in ***Bandhua Mukti Morcha V. Union of India, AIR 1984 SC 802.***

21.As per Section 15 of the Bonded Labour System (Amendment) Act, 1976, 'whenever any debt is claimed by a Bonded Labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.' A mere glance of the complaint (FIR) lodged by Mr.Rajagopal (V.A.O.), Kadalur, Chayyur Circle before the Koovathur Police Station exhibits that the date of occurrence was on 08.11.2006 and the date of information received at the Police Station was on 11.11.2006 at 15 hours and the Accused were

mentioned as (i) Hemanth Kumar (ii) Vadivel (Respondents 1 and 2/A1 and A2). Based on the said complaint of V.A.O., it comes to be known that in Crime No.305 of 2006 the Sub Inspector of Police, E-5 Koovathur Police Station had registered a case under Sections 1, 2 and 4 of the Bonded Labour System (Abolition) Act, 1976.

22.Before this Court, a heavy reliance is placed on the side of Respondents 1 and 2 to the effect that P.W.3 (Petitioner/ Appellant) before the trial Court, in her evidence, had in a crystalline fashion deposed in chief examination that she is working in a School and in the Ramkumar Rice Mill of the Accused her father Selvam had taken a loan from Accused Ramkumar Rice Mill and they were released and a certificate was issued in their favour. Significantly, P.W.3 (Petitioner herein), in her cross examination, had stated in categorical term that they were released and after that they were enquired by the Police at Mamallapuram. In this regard, the emphatic argument projected on the side of the Respondents 1 and 2/A1 and A2 is that only P.W.3's father had taken the loan from Accused Ramkumar's Rice Mill and in that Rice Mill, the Petitioner's (P.W.3's) father worked and nowhere in her evidence of P.W.3 she had stated that she worked as a Bonded Labourer in the Rice Mill

belonging to that of Respondents 1 and 2. Therefore, a foundation is laid on the side of Respondents 1 and 2 to take a stand that when the Petitioner/ Appellant (P.W.3) is not a 'victim', she is not entitled to prefer the instant Criminal Appeal in Sr.No.32963 of 2016 before this Court, of course with a delay of 277 days.

23.Repelling the plea taken on behalf of the Respondents 1 and 2/Accused, the Learned Counsel for the Petitioner draws the attention of this Court that to the proceedings of the Revenue Divisional Officer, Madurantakam dated 08.11.2006 (in Na.Ka.No. 3029/D) wherein the Petitioner's name Selvi, W/o.Sankar was mentioned and her address was also mentioned at as Irular Residence, Kunnavakkam, Thirukalukundram Circle. In fact, the Petitioner (Selvi) and 8 others were found to be Bonded Labourers and they were accordingly released by the proceedings of the Revenue Divisional Officer dated 08.11.2006 as stated supra.

24.Added further, it is quite evident that Revenue Divisional Officer of Madurantakam had issued a Release Certificate (Order under Section 12 of the Bonded Labour System (Abolition) Act, 1976) which relates to the Petitioner viz., Selvi wherein it was

mentioned that she was found to be a Bonded Labourer against her wishes and forced to work without reasonable wages at the Balaji Rice Mill for the owner, Thiru Hemanth Kumar, Vadivel in order to extinguish the debt, under physical threat to her life. In fact, the Petitioner and others were by virtue of the release order dated 08.11.2006 were declared free of all their obligation and debt liabilities to the Respondents 1 and 2. Viewed in that perspective and also in the teeth of the Revenue Divisional Officer's Proceedings and the Release Certificate dated 08.11.2006 issued in respect of the Petitioner and others, a contra plea cannot be taken on the side of the Respondents 1 and 2 that the Petitioner and others mentioned in the FIR were not Bonded Labourers and in short, this Court is of the considered view that a stand cannot be taken on behalf of the Petitioner/Appellant/P.W.3 that the Petitioner/Appellant is not a Bonded Labourer and therefore, she cannot fit within the purview/domain of a term 'victim' under Section 372 Cr.P.C. accordingly, the said plea is rejected by this Court.

25.Be that as it may, the Petitioner/Appellant in her affidavit in CrI.M.P.No.8185 of 2016 at paragraph 11 had clearly stated that she is an uneducated belonging to a Scheduled Tribe Community

and does not have any knowledge about the relief she can receive from this Court etc. and therefore, she had filed the present Appeal in Crl.A.Sr.No.32963 of 2016 on 03.08.2016 with a delay of 277 days. The reasons ascribed on behalf of the Petitioner/Appellant/ P.W.3 is resisted on behalf of the Respondents 1 and 2 stating that the Petitioner/Appellant was ably assisted by P.W.4 (Selvam Sudhakar) who works in Private N.G.O. International Justice Mission and she, in her evidence before the trial Court in S.C.No.187 of 2007, had, among other things, stated that in Respondents 1 and 2 Balaji Rice Mill, relative of Rajendiran, Lakshmi H/o.Jayapaul, Selvam, Sandiya, Sankar, Selvi Ravi, Velliyan, Bangaru, Bhakiyam were working and suffering a lot and without permission of the Rice Mill Owners, the aforesaid persons were not permitted to move out and they were paid low wages etc. In short, with the information/details received by her, she met on 06.11.2006 the Madurantakam R.D.O., Mr.Balasubramanian and who on the same day informed her that he was an urgent duty and that he would enquired on 08.11.2006 on Wednesday about this matter and already on 08.11.2006 itself she had given a complaint in the R.D.O's office etc.

26. When a Court of Law deals with an Application/Petition for condonation of delay, ordinarily, it is to adopt a lenient and liberal approach and not to indulge in a pedantic or hyper technical or technical approach. By condoning the delay in a given situation, the maximum thing that would happen is a party/litigant will undoubtedly get an opportunity to take part in the main arena of proceedings and his cause can be decided on merits. Per contra, if the condonation of delay petition is dismissed at the threshold, there is a possibility even a meritorious case can be thrown out at the nascent stage. It is to be remembered that no litigant/party generally files a Revision/Appeal with a deliberate delay if he or she does so, then, they run a serious risk.

27. Notwithstanding the above, although the Petitioner at para 11 of her affidavit in CrI.M.P.No.8185 of 2016 had assigned the reason to the effect that she is uneducated and belongs to a Scheduled Tribe and does not have any knowledge about the relief she can receive from this Court etc. and when the reality is that P.W.4 after ascertaining the details of Bonded Labourers through Rajendiran had later on lodged a complaint on 08.11.2006 and met the R.D.O., Madurantakam, this Court is of the considered view that

the reasons strictly speaking assigned for the delay at para 11 are not to be accepted at the face value. However, considering the fact that the Bonded Labour System is a pernicious practice and since the Bonded Labour System (Abolition) Act, 1976 is meant to provide for abolition of Bonded Labour System with a view to prevent the economic and physical exploitation of weaker strata of Society and also this Court, keeping in mind Article 23(1) of the Constitution of India which prohibits 'beggar' and other similar forms of forced labour and further provides that any violation of the said prohibition shall be an offence punishable in accordance with Law etc., by taking a lenient and liberal view and also to prevent an aberration of Justice and to promote substantial cause of Justice, condones the delay of 277 days in preferring the present Appeal in Crl.A. Sr.No.32963 of 2016.

28.In the result, the Crl.M.P.No.8185 of 2016 (filed by the Petitioner) is allowed.

17.10.2016

Index : Yes / No
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