

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2017

PRONOUNCED ON : 28.07.2017

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.21812 of 2015
and
MP.No.1 of 2015

1.Rajkumar
2.Kamariya Nazrin

.. Petitioners

Vs

1.State by
Inspector of Police,
M1, Madhavaram Police Station
Chennai – 600 051.

2.P.Bhavanai

.. Respondents

Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the case pending investigation in Crime No.1341 of 2015 on the file of the respondent police and quash the same as against the petitioners.

For Petitioners : Mr.Natarajan, Sr.C
for M/s.Madumathi

For R1 : Mr.C.Emalias, APP

For R2 : No representation

ORDER

The petitioners, who are the accused 1 and 2 in Crime No.1341/2015, pending on the file of the first respondent police, has filed this petition under Section 482 Cr.P.C praying to quash the criminal proceedings initiated against them.

2.The FIR in Crime No.1341/2015 has been registered by the first respondent against the petitioners for the offences under Sections 323, 343, 370 and 374 IPC and Sections 16 and 18 of the Bonded Labour System (Abolition) Act, 1976, based on the complaint lodged by the second respondent/complainant. It proceeds to state that the second respondent/complainant received an information from one Valarmathi, Labour Officer, Tiruvallur District as if there is a child labour crime occurred in the flat of the petitioners. Based on the same, she came along with the police officials to that flat and rescued a girl namely, M.S.Joys aged about 27 years and the same has been informed to the Revenue Divisional Officer, Ambattur, who, in turn, conducted enquiry with the victim girl and the witnesses at Taluk Office, Madhavaram and recorded the same. According to the statement of the victim girl, she has been working in the house of the petitioners for the past 15 years and when she was left in that house, her father was allegedly paid Rs.200/- by the first petitioner. She

further stated that the second petitioner used to harass her. She also stated that she was not allowed to leave the house and she was beaten up frequently during the course of work resulting in bodily injuries. Denying the allegations raised in the FIR, the petitioners are before this Court for quashing the same.

3. According to the petitioners/A1 and A2, the victim girl is a native of Tanjore District and her father Thanasami, who is a drunkard, used to send her for domestic work in various houses for collecting money, during the course of which, she was sent to the house of the second petitioner, who, at that time, was unmarried and a dispute arose between the father of the girl and the mother of the second petitioner, which was settled before the District Legal Service Authority, Tanjore District, thereby, the girl continued to stay with the mother of the second petitioner, on her own will. After the marriage of the second petitioner with the first petitioner, the victim girl came along with them to Chennai. It is further stated by the petitioners that there was no harassment or ill-treatment caused by them as alleged in the complaint and they are treating her as a member of their family.

4. With regard to the allegation raised against the petitioners

that the girl was handed over to the petitioners, after receiving Rs.200/- by her father, 15 years back, learned senior counsel appearing for the petitioners vehemently contended that 15 years back, the first petitioner was aged about 17 years and was only a school boy. In that event, neither he has an occasion to meet either the second petitioner or her mother, nor the girl was handed over to him for carrying out the household work. Therefore, he contended that no case is made out, insofar as the offences under [Sections 16](#) and [18](#) of the Bonded Labour System (Abolition) Act are concerned, as none of the conditions mentioned in Clause (g) of [Section 2](#) defining 'Bonded Labour System' gets fulfilled and the victim, in the face of allegation, cannot be said to have been working under Bonded Labour System and only in case, the work is being taken under Bonded Labour System, one can be prosecuted under the provision of the [Bonded Labour System \(Abolition\) Act, 1976](#).

5.Further, it was contended by the learned senior counsel for the petitioners that there has been absolutely no allegation so as to attract offence either under [Section 323 or 343, 370 or 374 of the Indian Penal Code](#) against the petitioners as it has never been the case of the prosecution that the petitioners had indulged themselves in any act concerning slavery nor it is the case of taking compulsory

labour from the victim girl unlawfully, rather the material available would go to show otherwise that she was doing household work voluntarily and in fact, she was treated as a member of the petitioners' family and therefore, no ingredient is there constituting offence under either of the sections of the Indian Penal Code as alleged in the First Information Report. Under these circumstances, the criminal proceedings initiated against the petitioners is fit to be quashed.

6.Mr.C.Emalias, learned Additional Public Prosecutor reiterated the fact, which is there in the First Information Report.

7.Having heard the learned senior counsel appearing for the petitioners and the learned Additional Public Prosecutor for the first respondent and taking into account the materials brought on record, it does appear that on the allegation that work was being taken from the girl namely, M.S.Joys, aged about 27 years, who was rescued at the instance of the second respondent / complainant, a case was filed against the petitioners herein, under Sections 323, 343, 370 and 374 IPC and Sections 16 and 18 of the Bonded Labour System (Abolition) Act, 1976, but, in my considered view, none of the offences gets attracted.

8. Insofar as the charges under Sections 16 and 18 of the Bonded Labour System (Abolition) Act is concerned, it is wholly unjustified, as either of the provisions gets attracted from the allegations made against the petitioners. Even if those allegations are taken to be true, the application of the aforesaid provisions get attracted, only when one takes the work from anyone under Bonded Labour System. In this regard, it is noteworthy to refer the definition of "Bonded Labour System" as defined under section 2(g) of the Act, which reads as follows:

"2(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 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 way 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 about 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."

For prosecuting one under the provisions of the said Act, the prosecution needs to establish any of the conditions, which are there in clause (g) of [Section 2](#) defining Bonded Labour System. In the instant case, it is never the case of the prosecution that work was being taken from the girl on account of any of the reasons mentioned in [Section 2\(g\)](#) of the Act. Further, even if the allegation raised against the petitioners that the girl started to work in the house of the petitioners 15 years back, after paying Rs.200/- to her father, is true,

as rightly argued by the learned senior counsel for the petitioners, fifteen years back, the first petitioner was only 17 year old school going boy. Therefore, the offence under [Sections 16 and 18](#) of the Bonded Labour System (Abolition) Act never gets attracted against the petitioners herein.

9.Regarding the charges levelled against the petitioners under the provisions of the Indian Penal Code, when the petitioners cannot be found guilty of the offences under the provisions of the Bonded Labour System (Abolition) Act, the question of charging them under [Sections 323, 343, 370 and 374 IPC](#) does not arise, as the charges levelled under the latter Act are only the charges consequent to the charges under the former Act. Even otherwise, none of the ingredients constituting offence either under [Section 323](#) or [343](#) or [370](#) or [374 IPC](#) gets attracted, in the facts and circumstances of the case as the act alleged against the petitioners of taking work from the girl will never fall within the mischief as contained in [Section 370 IPC](#). Similarly, no allegation is there that the work was being taken compulsorily from the girl. In fact, the girl was, according to the petitioners, treated as a family member of the petitioners.

10.For the reasons stated above, this Court is of the considered

opinion that in the event of the criminal proceedings being allowed to continue against the petitioners, the same amounts to abuse of process of law and it is not likely to favour the prosecution. Therefore, it is a fit case, wherein, the criminal proceedings initiated against the petitioners is, in order to secure the ends of justice, liable to be quashed.

11. In the result, the Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioners in Crime No.1341/2015 on the file of the first respondent is quashed. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No
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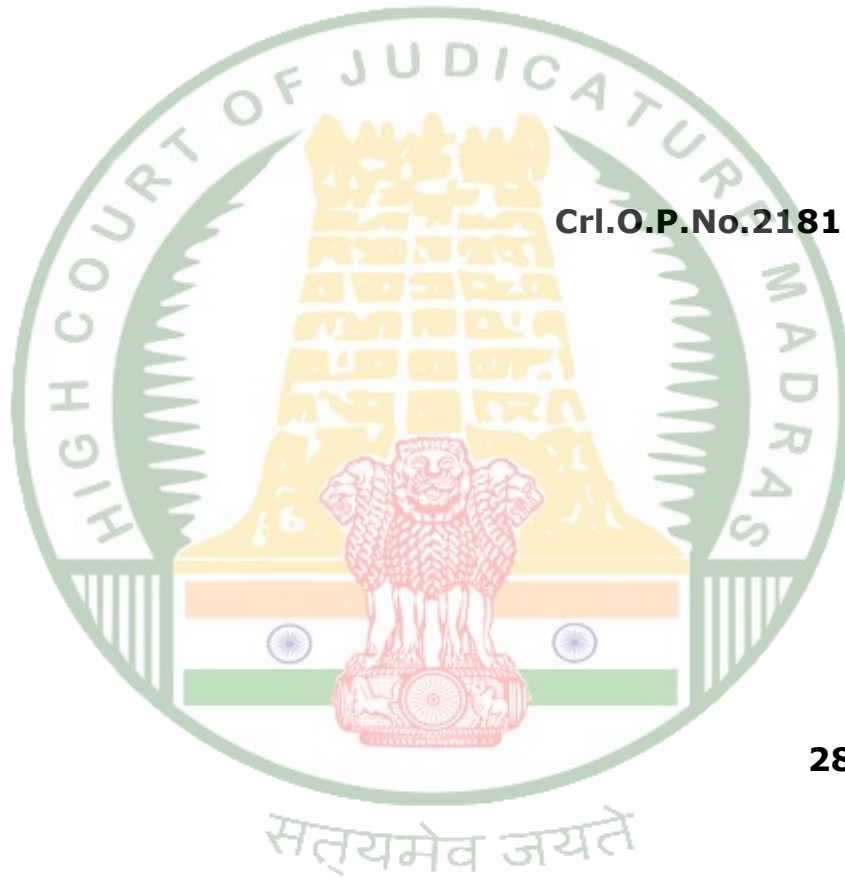
28.07.2017

To

1. The Inspector of Police,
M1, Madhavaram Police Station
Chennai – 600 051.

2. The Public Prosecutor,
High Court, Madras -104.

R.MAHADEVAN, J.



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