

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 14th August, 2018

+ **W.P.(CRL) 1925/2018 and Crl. M.A. No. 11823/2018 (stay)**

BHAGWAT SINGH MEENA

..... Petitioner

Represented by: Mr. S.N. Gupta and Ms. Shika Meena, Advocates with petitioner in person.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Represented by: Ms. Purnima Malik, Advocate for Mr. Avi Singh, Additional Standing Counsel for State with SI Anuj Singh, PS Hazrat Nizamuddin.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 29th May, 2018 petitioner prefers the present petition.
2. Petitioner was facing summary trial under Section 16 of the Bonded Labour System (Abolition) Act, 1976 and vide the judgment dated 28th May, 2018 the learned Additional District Magistrate held that the respondent employed the victim Walter Kerketta @ Raju and did not pay wages as per the Minimum Wages Act, 1948 and thus it is to be presumed that the employment of victim Walter Kerketta @ Raju was a bonded labour. The petitioner being the first offender while pronouncing the sentence on the same day the learned Additional District Magistrate directed the petitioner to pay a fine of ₹2,000/- under Section 16 of the Bonded Labour System (Abolition) Act, 1976.

3. Learned counsel for the petitioner states that a sum of ₹2,000/- imposed as fine for conviction Section 16 of the Bonded Labour System (Abolition) Act, 1976 has already been paid by the petitioner.
4. Grievance of the petitioner is to the subsequent order of learned Additional District Magistrate dated 29th May, 2018 wherein he reviewed his order dated 25th May, 2018 on 29th May, 2018 awarded punishment of 15 days imprisonment and fine of ₹2,000/-. It is this order dated 29th May, 2018 whereby besides the fine of ₹2,000/- a sentence of imprisonment for 15 days has been imposed on the petitioner which is under challenge in the present petition.
5. It is trite law as also reiterated by the Hon'ble Supreme Court in the decision reported as 2018 SCC OnLine SC 819 Mohammed Zakir vs. Shabana that a criminal court has no power to review its order except typographical/clerical mistakes under Section 362 Cr.P.C. Non-imposition of a sentence for a term cannot be said to be a clerical/typographical error with there no supporting material being on record to show that the learned Additional District Magistrate awarded the sentence of 15 days imprisonment and a fine of ₹2,000/- vide order dated 25th May, 2018.
6. Section 16 of the Bonded Labour System (Abolition) Act, 1976 reads as under:

16. Punishment for enforcement of bonded labour.—Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

7. It is thus evident that the sentence prescribed under Section 16 of the Act is both imprisonment for a term which may extend to three years and also with fine which may extend to ₹2,000/-. Thus vide order dated 25th May, 2018, when the learned Additional District Magistrate awarded sentence of fine for a payment of ₹2,000/- only under Section 16 of the Bonded Labour System (Abolition) Act, 1976, it committed an error as the sentence required to be awarded was a term of imprisonment as well as fine. Thus being an illegality committed by the learned Trial Court the impugned order dated 25th May, 2018 is set aside by this Court in exercise of its power of superintendence as held by the Supreme Court in the decision reported as 2010 (8) SCC 329 Shalini Shyam Shetty vs. Rajendra Shankar Patil. Thus the matter is required to be remanded back to the learned Additional District Magistrate for hearing the petitioner on the quantum of sentence and passing an appropriate order on sentence.

8. At this stage, learned counsel for the petitioner states that the petitioner has already challenged the judgment of conviction and order on sentence before the learned Additional Sessions Judge in a criminal appeal, which is pending before the Court of Shri Gulshan Kumar, learned Additional Sessions Judge, Saket Court. The next date fixed before the learned Additional Sessions Judge is 18th October, 2018 as informed by the learned counsel for the petitioner.

9. It is thus directed that in case the learned Appellate Court upholds the conviction of the appellant for offence punishable under Section 16 of the Bonded Labour System (Abolition) Act, 1976 it would pass an appropriate order on sentence thereafter inconformity with the requirement of Section 16 of the Bonded Labour System (Abolition) Act, 1976.

10. Petition and application are disposed of.

11. Copy of this order be conveyed to the learned Additional Sessions Judge.

(MUKTA GUPTA)
JUDGE

AUGUST 14, 2018

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