

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Criminal Revision Case No.251 of 2012

Kumarasamy
Petitioner

...Revision

Vs.

The State Rep.by
C.Kandasamy,
Assistant Labour Inspector,
Rasipuram,
Namakkal District.

...Respondent

PRAYER: Criminal Revision Case filed under Section 397 and 401 against the judgement passed by Additional District Judge (Fast Track Court) Namakkal, dated 31.10.2011, made in C.A.No.19 of 2011 confirming the judgement passed by Chief Judicial Magistrate, Namakkal, dated 30.05.2011 made in C.C.No.27 of 2011.

For Petitioner: Mr.A.S.Prabu

For Respondent: Mr.T.Shunmuga Rajeswaran
Additional Public Prosecutor

ORDER

Heard the learned counsel for the revision petitioner and the learned Additional Public Prosecutor for the respondent.

2.This revision is preferred against the concurring findings of the Courts below.

3. The brief facts are that the Assistant Inspector of Labour, Rasipuram, made a surprise inspection in the Power Loom Factory, owned by the revision petitioner on 17.12.2008 and found that the occupier of the factory engaged one Kulandaivel S/o. Gandhi, aged about 13 years, which is contrary to the provisions of Child Labour (Prohibition and Regulation) Act, 1986. A complaint in the form of report has been filed by the Assistant Inspector of Labour, Rasipuram, before the Chief Judicial Magistrate, Namakkal, after obtaining sanction from

the authorities as per law. To prove that Kulandaivel was a minor, prosecution has examined doctor Senthil Kumar as P.W.2 and marked the certificate of age of the minor as Ex.P1. The Trial Court, considering the evidence of P.W.1 and P.W.2 and appreciating the evidence Exs.P1 to P5 held that the accused is guilty of offence under Section 14(1) and Section 3 r/w 11 of Part A of Schedule to the Child Labour Act, which is punishable under Section 14(1) and imposed a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one month.

4. After paying the fine amount, the accused had preferred an appeal before the Additional District Court, Namakkal and the Appellate Court has confirmed the judgement of the Trial Court. While, upholding the sentence and conviction imposed by the Trial Court, the Appellate Court has observed that as per the medical examination conducted by P.W.2, the minor boy Kulandaivel had 24 teeth. Therefore, the doctor has given certificate that the age of the boy is 13 years. Relying upon Section 16(2) of the Child Labour (Prohibition and Regulation) Act, 1986, which says that the certificate issued by a prescribed medical authority shall, for the purposes of the Act, be conclusive evidence as to the age of the child. The Appellate Court has held that the accused has not disproved that the labourer (Kulandaivel) was not a child, at the time of his employment and he has also not produced any contra documents to dispel the said presumption.

5. The learned counsel for the revision petitioner would submit that the doctor, who examined the boy has admitted in the cross examination that the opinion expressed by him, on the physical examination of the boy is only approximate age and it may vary. The complainant P.W.1 in his deposition has not disclosed, how the boy was engaged by the accused petitioner in his Power Loom. Further, he has deposed that he took the doctor P.W.2 along with him during the inspection, but, the same has been denied by the doctor during his cross examination. Though, Section 16(2) of the Child Labour (Prohibition and Regulation) Act, 1986 says that the certificate issued by a prescribed medical authority regarding the age is a conclusive evidence as to the age of the child, the framers of the statute being conscious of the fact that the conclusive evidence is not equivalent to conclusive proof. The expression conclusive evidence in Section 16(2) of Act only says that the certificate is a conclusive evidence regarding the age. Whether the certificate was issued after conducting necessary test and in a manner prescribed under law and the procedures contemplated, is a matter of evidence and proof.

6. Admittedly, in this case, P.W.2, the doctor has issued the age certificate, but, he has not done any scientific test

upon the boy, to ascertain the age except counting the number of teeth. The doctor also concedes that the age certificate based on the number of teeth is not accurate and it may vary. Literature of medical jurisprudence regarding ascertaining the age based on the teeth and forming an opinion say it is always subject to variation plus or minus two years. Under the Act, the proscribed age is below 14 years. According to the prosecution, the boy Kulandaivel was aged 13 years at the time of inspection. But the doctor has given his opinion based on physical verification and not based on X-Ray or other scientific test. Further the prosecution has not proved that the boy Kulandaivel was engaged in labour at the accused Mill. No where in the complaint or in the deposition P.W.1 has spelt about the engagement of the boy in any labour.

7. Therefore, the Court below has improperly applied the provisions under Section 16(2) of the Act and hence, the finding of the Court below is set aside. Accordingly, this criminal revision petition is allowed. The fine amount, if any shall be refunded to the petitioner.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge
(Fast Track Court) Namakkal.

2.The Chief Judicial Magistrate,
Namakkal.

3.The Assistant Labour Inspector,
Rasipuram,
Namakkal District.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.S.Prabu, Advocate, S.R.No. 11156

Cr1.R.C.No.251 of 2012

RV(CO)
GN(11/03/2019)