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

+ **W.P.(CRL) 2448/2018 & CRL.M.A. 30211/2018**

MR. SAJAN KALRA

..... Petitioner

Through: Mr Jeevesh Nagrath, Mr Aditya
Wadhwa, Mr Shreeyash Lalit and Mr
Chandan, Advocates.

versus

STATE (GOVT. OF NCT DELHI) & ANR.

..... Respondents

Through: Mr Sanjay Lao, ASC for State with
Mr Karanjeet Sharma, Advocate with
SI Karan Pal, P.S. GK-1.
Mr Sunil Sethi, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.11.2019

1. The petitioner has filed the present petition, *inter alia*, praying that FIR bearing no. 171/2013, under Sections 3 and 14 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (hereafter the 'CL Act'); Section 26 of the Juvenile Justice Act, 2000 (hereafter 'JJ Act') and Section 16 of the Bonded Labour System (Abolition) Act, 1976 (hereafter 'Bonded Labour Act'), registered at PS Greater Kailash-I and all proceedings emanating therefrom, be quashed.

2. Although the petitioner also prays that guidelines be framed for the investigation and registration of FIRs in respect of complaints relating to offences under the CL Act, the learned counsel appearing for the petitioner did not pray for such relief. He has restricted the present petition to seek quashing of the FIR in question.

3. On 10.07.2013, a complaint was filed by respondent no.2 stating that an underage child (hereafter referred to as M) was working as a domestic help in the house of the petitioner. On 17.07.2013, a similar complaint was filed before the Child Welfare Committee (CWC) and CWC took cognizance of the same.
4. On 12.08.2013, CWC directed the SHO, Police Station Greater Kailash-I, to conduct age evaluation of M. On conducting an age determination test dated 21.08.2013, it was determined that M's age was between twelve to fourteen years. M's statement was recorded under Section 164 of the CrPC, wherein she stated that she was fifteen years of age.
5. Thereafter, on 26.08.2013, the FIR in question was registered at PS Greater Kailash-I.
6. On 29.01.2014, the Ld. SDM, Haus Khas vide a letter declined the request of the Investigating Officer (IO) for the issuance of a Bonded Labour Certificate on the ground that no offence under Section 16 of the Bonded Labour Act had been made out from the facts of the present case.
7. On 26.08.2013, a chargesheet was filed before the Ld. MM, Saket District Court, New Delhi upon further investigation. On 06.08.2016, the Ld. MM framed charges against the petitioner and other accused persons for the offences under Section 3 and 14 of the CL Act and Section 26 of the JJ Act.
8. On 18.11.2016, respondent no.2 (the complainant—PW1) was examined and he failed to identify the petitioner and had only stated that he had seen M, along with two unidentified individuals, step out of the residence of the petitioner.

9. After recording the testimony of complainant (PW1), he was discharged. The trial has not progressed thereafter. It is not disputed that the petitioner had employed M as a domestic help. The petitioner states that he had approached M/s Gauri Enterprises Placement Services around June, 2013 for employing a domestic help. The petitioner had, on recommendation of the placement agency, employed M as a domestic help for a consideration of ₹8,000/- per month. It is stated that the same was paid directly to the placement agency. It was represented to the petitioner that M was fifteen years of age at the date of her appointment and this is also reflected in the placement form signed by the petitioner and the placement agency (Gauri Enterprises Placement Agency). The age estimation test was conducted on 21.08.2013 and M's age was estimated to be between twelve and fourteen years.

10. The learned counsel appearing for the petitioner submits that there is a catena of decisions of this Court, wherein this Court has taken note of the scope of error in such test and has held that the said benefit ought to be granted to the accused.

11. In the present case, the age of M was represented as fifteen years. It is also relevant to note that M, in her statement under Section 164 Cr.P.C., had also disclosed her age as about fifteen years. The respondents also did not seriously dispute that M's age could be fifteen years as asserted by her and her parents.

12. The exact whereabouts of M are not known as she has since returned to her native place in the State of Jharkhand.

13. In view of the above, this Court had directed that efforts be made to trace M. The status report has been filed which indicates that staff was sent to the native village of M and her mother was contacted. She had informed the staff that M had since gotten married and she is living happily with her family. She had declined to provide any detail as she did not want any interference by the police in her daughter's life.

14. Sub-section (1) of Section 3 of the CL Act expressly provides that *"No child shall be employed or permitted to work in any of the occupation or process"*. The expression 'child' is defined under Clause (ii) of Section 2 of the CL Act as under:-

“ “child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 whichever is more.”

15. In the present case, it is possible that M's age was above fourteen years at the time of her employment. In any event, there is no reason to disbelieve the petitioner. He was not aware that M's age was not fifteen years as was represented to him.

16. It is also relevant to note that there is no allegation that the petitioner had ill-treated or in any manner, exploited M. On the contrary, in her statement recorded under Section 164 of the Cr.P.C., M had stated that she was also provided the same food as consumed by the family. In addition, she was also given some money to buy chips. The petitioner has also produced material to show that he had paid remuneration for the period that M worked as a domestic help.

17. In addition to the above, the petitioner was present in Court and also volunteered that he shall pay a sum of ₹50,000/- to the SOS Children's Village, Bawana within a period of two weeks from today. He is bound down to the said statement.

18. Given the peculiar circumstances of this case and considering that M is now happily married and does not wish to be disturbed, this Court considers it apposite to allow the present petition and quash the FIR in question. This Court is also persuaded to pass this order since the trial in this case is stagnated and come to a standstill.

19. Accordingly, FIR bearing no. 171/2013, under Sections 3 and 14 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (hereafter the 'CL Act'); Section 26 of the Juvenile Justice Act, 2000 (hereafter 'JJ Act'); and Section 16 of the Bonded Labour System (Abolition) Act, 1976 (hereafter 'Bonded Labour Act'), registered at Police Station Greater Kailash-I and all proceedings emanating therefrom, are quashed.

20. The petitioner shall deposit proof of the volunteered contribution of ₹50,000/- to the aforesaid institution with the Registry of this Court within a period of two weeks from today. The Registry is directed to place this petition before this Court if the same is not done.

21. The pending application is disposed of.

VIBHU BAKHRU, J

NOVEMBER 20, 2019/RK