

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.2620 OF 2017

AND

CRL.M.P.NOS.1856 AND 1857 OF 2017

Mohammed Shafi Maricar

... Petitioner/3rd Accused

Vs.

State by
The Sub Inspector of Police,
Karaikkal Police Station,
Karaikkal.

... Respondent/Complainant

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.60 of 2016 on the file of the Judicial Magistrate No.II, Karaikkal and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.N.A.Nissar Ahmed

For respondent : Mr.Bharath Chakravarthy
Public Prosecutor (Pondicherry)

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.60 of 2016 on the file of the Judicial Magistrate No.II, Karaikkal and quash the same insofar as the petitioner is concerned.

2. The petitioner herein is arrayed as A3 and he has been charged for the offence under Sections 342, 370, 374 read with 34 of IPC and Sections 23 and 26 of Juvenile Justice (Care and Protection of Children) Act 2000.

3. The case of the prosecution is that since 2013 to 06.01.2014, the petitioner and other accused had purchased three juveniles from their parents namely A5 and A6 for Rs.60,000/- and employed them in their residences and compelled them to work against the will of juveniles and wrongfully restrained them in their residences.

4. The petitioner has averred in the affidavit that Section 26 of the Juvenile Justice Act is attracted when a juvenile is procured for any hazardous employment. Section 23 of the Juvenile Justice Act is attracted when the juvenile is assaulted, neglected or caused with unnecessary mental or physical suffering. The offence alleged to have been committed by him does not attract Sections 23 and 26 of the Juvenile Justice Act, as there is no hazardous employment or mental or physical suffering by assault or neglect caused by the petitioner. Further, it is averred in the affidavit that Section 342 which is wrongful confinement, Section 370 which is buying of any person as slave, and Section 374 which is compelling of any person to labour unlawfully, are also not attracted and there is no common intention involving Section 34. Hence, the petitioner has prayed for quashing the proceedings in C.C.No.60 of 2016 on the file of the Judicial Magistrate No.II, Karaikkal.

5. The learned counsel appearing for the petitioner submits that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Further, he submits that there is no material on record to charge the petitioner under Sections 342, 370, 374 read with 34 of IPC and Sections 23 and 26 of Juvenile Justice (Care and Protection of Children) Act 2000 and hence, the same is liable to be quashed.

6. In support of his case, the learned counsel for the petitioner has placed reliance on the judgment of High Court of Kerala in CrI.MC.No.5778 of 2013 [Joseph Vs. State of Kerala], wherein, the allegation against the petitioner / accused was that a girl child aged below 18 years was brought to the house of the petitioner and without providing education, kept in the house for three years and asked to do some work in the house, thereby the petitioner had committed the offence punishable under Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000. In the said case, the High Court of Kerala has held as follows :

"12. In the decision reported in 2012 (4) KLT 314 Vinod S. Panicker v. Sub Inspector of Police, this court has considered the question as to whether engaging a juvenile or child as an employee in a bakery can be considered to be an offence under Section 26 of this Act and found that this will not come under the purview of section 26 of the Act and quashed the proceedings.

13. In order to attract an offence under Section 23 of the Act, it must be proved by the prosecution that :

- (a) person having the actual charge or control over a juvenile or child,
- (b) assaults, abandons, exposes or wilfully neglects the juvenile or
- (c) causes or procures him to be assaulted, abandoned, exposed or neglected,
- (d) in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering.

14. Even assuming that the petitioner as in charge or control of the juvenile or child, he is only providing shelter to the child and looking after her. Merely because she was helping the inmates of the house in the kitchen, voluntarily, it cannot be said that she was put to hazardous work or exposed to danger. She has no such case in her statement before the police as well. In fact when she was found in an abandoned state, the petitioner took her and gave shelter to her and protected her. If she does some work to help the inmates, it cannot be said that she was treated cruelly either physically or mentally so as to attract the provision of this Act.

15. It is true that Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted to protect the interest of juvenile or child, who require care and protection and also to reform the juvenile, who is in conflict with law. In this case, on going through the allegations in Annexure-A1 final report and also the statement of the victim girl herself will go to show that, she was abandoned by her parents and she was left in a house at Bangalore by her mother to work as a servant maid and due to ill-treatment in that house, she was forced to leave that house and

thereafter she was taken care of by the petitioner, while they were working at Bangalore and thereafter she was brought to Kerala and she was living with them. The statement of the victim girl also will go to show that, she was not assaulted or any force has been applied on her or she was compelled to do any hard work and for non-compliance by the girl, she has been subject to any cruelty by the inmates of the house. But her statement will go to show that, after she was taken over by the petitioner, she is being looked after affectionately like their child. So under the circumstances, even if the entire allegations in the evidence collected by the investigating officer is admitted to be true, the ingredients of any of offences provided under the Juvenile Justice (Care and Protection of Children) Act, either under Section 23 or under Section 24 or under Section 26 is attracted in this case. No purpose will be served by allowing the prosecution to continue in such circumstances and it will only be a waste of judicial time.

16. It is settled law, if this court is satisfied that, even if the entire allegations made against the accused was admitted to be true and if, those allegations will not attract or constitute the ingredients of the offence alleged against them, then this court can invoke the power under Section 482 of the 'Code', to quash the proceedings. In view of the discussions made above, this court feels that, it is a fit case where the power under Section 482 of the 'Code' has to be invoked to quash the proceedings. So the application is allowed and further proceedings in S.T.No.779/2012 on the files of the Judicial First Class Magistrate Court, Ettumanoor, as against the petitioner is quashed."

7. The learned counsel for the petitioner has also placed reliance on the judgment in CrI.MC.No.5941 of 2015 [Faisal Vs. State of Kerala] passed by the Kerala High Court, wherein, the allegation against the petitioner was that a juvenile aged 16 years was found employed in a petrol pump ran by the petitioner therein. In the said case, the Kerala High Court has held as follows :

"2. On hearing both sides, I find that the prosecution is liable to be quashed. It is not known how merely employing a juvenile aged 16 years will come under Section 23 of the Juvenile Justice

Act, or under Section 26 of the Juvenile Justice Act. To come under Section 23 of the Juvenile Justice Act, the alleged offence must have been committed by a person having actual charge or control over the juvenile, and the juvenile must have been subjected to mental or physical harassment. Anyway, the Court has now framed a charge against him under Section 26 of the Juvenile Justice Act. Even to come under Section 26 of the Juvenile Justice Act, the prosecution must have a case that the juvenile was employed by the accused for some hazardous job, without making adequate payment of salary or wages. Practically what is made punishable is exploitation of a juvenile by employing him for some hazardous job. In *Vinod S.Panicker v. Sub Inspector of Police* (2012 (4) KLT 314), this Court held that engaging a juvenile as an employee in a bakery cannot be viewed as one putting him to a hazardous employment. In *Alice v. State of Kerala* (2014(2) KLT 175), this Court held the term "hazardous" under Section 26 of the Juvenile Justice Act indicates the risk and heaviness of the job which the age of the child cannot bear. Anyway, it is now settled that a prosecution under Section 26 of the Juvenile Justice Act is possible only when a juvenile is employed for some hazardous job without making proper and adequate payment of wages, or salary. In this case, the prosecution does not have any such allegation.

3. The FIR or the final report does not contain anything regarding the hazardous nature of the job. It appears that the Sub Inspector of Police had the Child Labour (Prohibition and Regulation) Act in his mind when he registered the FIR. The Sub Inspector had some confusion regarding the said Act and the Juvenile Justice Act. The very fact of employing a child below 14 years, for some job enumerated in the schedule to the said Act will constitute an offence under the Child Labour (Prohibition and Regulation) Act. But to come under Section 26 of the Juvenile Justice Act, something more is required. What is made punishable is employing a juvenile aged below 18 years for some hazardous job without making payment of adequate wages or salary. The nature of the job is very important under Section 26 of the Juvenile Justice Act. This Court has explained that the said job must be hazardous in nature. Here, the prosecution has no case anywhere in the prosecution records

that the juvenile was employed for any hazardous job, or that he was not given proper and adequate wages or salary. Merely employing a child will constitute an offence only under the Child Labor (Prohibition and Regulation) Act, provided the age of the child below 14 years. If the child is aged above 14 years the said Act will have no application. Thus I find that the prosecution is liable to be quashed because it is legally unsustainable.

In the result, this petition is allowed. The prosecution against the petitioner herein in S.C No.4/2015 before the Special Sessions Court (Addl.Sessions Court for the trial of offence against women and children), Ernakulam will stand quashed under Section 482 of the Code of Criminal Procedure."

8. The Learned Public Prosecutor appearing for the respondent submits that three juveniles have been illegally kept in the residence of the petitioner and compelled to do household works against their will, which is highly condemnable and also a punishable offence. Further, the Learned Public Prosecutor submits that purchasing juveniles from the parents for doing household works or any other works would definitely attract an offence under the Act. Hence the proceedings against the petitioner cannot be quashed.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

10. On perusal of the records, the allegation against the petitioner is that the petitioner and other accused had purchased three juveniles from their parents for a sum of Rs.60,000/- and employed them in their residence / shop and compelled them to work against their will and wrongfully restrained them in their residences.

11. In this regard, on perusal of the charge sheet filed by the respondent, it is seen that three juveniles namely Madhubala (Age 13), Kalpana (Age 12) and Madhuveena (Age 11) have been illegally sold for the purpose of doing household works in the residence of the accused persons. Madhubala and Madhuveena have been sold to one Ameer Ali and Zeenath Nisha for a sum of Rs.20,000/- each and Kalpana has been sold to one Sellamuthu and Mohamed Shafi for a sum of Rs.20,000/- by their parents namely Gunasekaran and Kalaiyarasi. The accused persons have compelled the juveniles to do household works and caused cruelty to them physically and mentally. The juveniles were not even paid proper remuneration for their work.

12. The Learned Public Prosecutor appearing for the respondent has produced a Case diary before this Court from the original records, wherein, it is seen that on 07.01.2014 at 12.00 p.m., while the Sub-Inspector of Town Police Station, Karaikal, namely R.Akalya, was in the Police Station, one Sundaravadivel, Legal-cum-Probation Officer, Child Welfare Department, Karaikal, came to Police Station and lodged a written complaint to the effect that he is working as Legal-cum-Probation Officer in the Juvenile Justice Board organized by the Social Welfare Department for the past 4 years. On 06.01.2014 at about 7.00 p.m. while he was in his residence, he received information from the Karaikal Child Line that at new Bus Stand, Karaikal, three female children are standing alone by crying and they are found very tired and afraid mood. On receipt of the above information, immediately he rushed to New Bus Stand, Karaikal and reached at about 07.30 p.m. and found that three female children in the age group of 10 to 13 were found standing there with airbags. He approached them after informing his identity and work details and asked them the details such as their name, address and purpose of visit to Karaikal, etc. The three children revealed their name and address as (1) Madhubala (Age 13), (2) Kalpana (Age 12) and (3) Madhuveena (Age 11), Karukkamaram, Puthur, Sirkali, Tamil Nadu. Since it was night hours, he informed to R.Akalya, WSI of Police-cum-Child Welfare Officer of Town Police Station, Karaikal and with her help he took the three children to Navagraha Illam, Vadamatam Road, Kottucherry in an Auto.

13. On 07.01.2014 at 09.00 a.m., he along with Social Worker of Juvenile Justice Board Tmt.Sasily and Karaikal Child Line Team Member Tmt.Gomathi enquired the three children. Madhubala and Madhuveena stated that their parents entrusted them to one Ameer Ali and Jeenath Nisha residing at No.8, Periya Pallivasal Street, T.R.Pattinam and her sister Kalpana was sold to one Humal Hiera @ Sellamuthu W/o Mohamad Safi, residing at No.1, MGJ Nagar, Karaikal, for working in their houses after getting Rs.20,000/- each. They also stated that Ameer Ali and Jeenath Nisha had committed cruelty to Madhubala to work in the Ameerji Grocery to lift bags and other grocery items from shop belonging to them against their will and they gave more risky and hazardous works to Madhubala. Further, they did not give any correct wage / cooly for their work. One Humal Hiera @ Sellamuthu of MGJ Nagar committed cruelty to her sister Kalpana by ordering to do more difficult and risky work and also they compelled her to took the lunch to their children who were studying in school. They also did not give any wage on par with her work. Further, the complainant requested to take necessary action against Ameer Ali and Jeenath Nisha residing at No.8, Periya Pallivasal Street, T.R.Pattinam and One Humal Hiera @ Sellamuthu of MGJ Nagar, Karaikal who caused cruelty to the girl

children and also unlawfully compelled them to work against the will of juveniles and wrongfully restrained them in their residences / shop and also to take action against the parents of the children namely Gunasekaran (43) S/o Mahalingam and Kalaiyarasi (38) W/o Gunasekaran, residing at Keezha Theru, Gopalsamuthiram, Puthur, Sirkali, since they collected money and entrusted them for their domestic work knowing that they were children. Based on the said complaint, all the accused persons were arrested by the respondent police, and during the course of investigation, the parents of the juveniles namely Gunasekaran (A4) and Kalaiyarasi (A6) have admitted their guilty of offence, and later, they were released on bail after giving suitable sureties.

14. On going through the Case diary produced before this Court, it is seen that the petitioner has purchased a juvenile from the parents for a sum of Rs.20,000/- and used the juvenile for risky and more hazardous works, and thereby committed an offence under Sections 342, 370, 374 read with 34 of IPC and Sections 23 and 26 of Juvenile Justice Act 2000. It is also seen from the Case diary that the charge sheet has been laid only after a detailed investigation from the victims as well as the accused persons.

15. While recording the statement from the victims Madhubala and Madhuveena, they have clearly narrated the facts that their parents entrusted them to work in the residence of Ameer Ali and Jeenath Nisha after getting Rs.20,000/- each and the said Ameer Ali and Jeenath Nisha had taken them to their Grocery Shop and given them more risky and hazardous works. Further, they have stated that their sister Kalpana was also sold to one Mohamad Safi Maricar and Humal Hiera @ Sellamuthu and the said Humal Hiera @ Sellamuthu had committed cruelty to her sister Kalpana by ordering to do more difficult work and also by compelling to take lunch for their children who are studying in school.

16. It is well settled legal position that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary

stage. In the present case, it is absolutely clear from the materials available on record that there are specific allegations against the petitioner to attract the offence punishable under the said Act. Hence, this Court is not inclined to interfere with the proceedings in C.C.No.60 of 2016 pending on the file of the Judicial Magistrate No.II, Karaikkal.

17. It is now represented by the learned counsel for the petitioner that the petitioner is a Senior Citizen and also suffering from old age ailments. Hence, the personal appearance of the petitioner before the Trial Court may be dispensed with by this Court.

18. In view of the submission made by the learned counsel for the petitioner, the personal appearance of the petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioner for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C., as and when the Trial Court feels it necessary.

19. In the result, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate - II,
Karaikkal.
2. The Chief Judicial Magistrate,
Puducherry.
3. The Sub Inspector of Police,
Karaikkal Police Station,
Karaikkal.
4. The Public Prosecutor,
Puducherry.

+1cc to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.45252

CRL.O.P.No.2620 of 2017 and
CRL.M.P.Nos.1856 and 1857 of 2017

KSM(CO)
RLP(27/09/2021)