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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO.380 OF 2023**

|                      |   |    |            |
|----------------------|---|----|------------|
| Suraj Shambhu Shetty | ] | .. | Applicant  |
| vs.                  |   |    |            |
| State of Maharashtra | ] | .. | Respondent |

Ms.Vrishali Raje, for the Applicant.

Mr.S.R. Agarkar, APP for the State.

PSI Swapnil Shinde, Chembur Police Station present.

**CORAM : BHARATI DANGRE, J**

**DATE : 24<sup>th</sup> August, 2023.**

**P.C.**

1] Heard the learned counsel for the Applicant and the learned APP for the State.

The Criminal Application is filed being aggrieved by the order refusing discharge, of the Applicant under Section 75 and 79 of the Juvenile Justice (Care and Protection) Act, 2015.

2] The charge-sheet filed in the Court of Additional Chief Metropolitan Magistrate, Mumbai, against the Applicant accuse him of engaging the services of a child, aged 16 years and forcibly getting work done from him and causing mental and physical harassment.

The charge sheet was filed in the wake of complaint lodged by police constable, who was a part of the task force entrusted to conduct raid under the Child Labour (Prohibition & Regulation) Act, 1986.

Accordingly, the task force visited various premises and on the premises of the Applicant being raided, he was found to have engaged the services of a child and therefore the offence came to be registered against him.

3] During the course of investigation, the statement of the minor boy aged 16, came to be recorded, who stated that he was engaged in the hotel by the Applicant and was entrusted with the work of serving in the hotel, cleaning utensils, tables etc. and in lieu of the said work, he was offered a sum of Rs.4000/- per month.

The juvenile specifically stated that he was engaged in the service 15 days back.

Supporting the said version, another statement is compiled in the charge-sheet, of a waiter working in the same restaurant/hotel, who also categorically state that the since last 15 days the services of a boy aged 16 years were engaged, on a monthly salary and he was entrusted with the work of serving to the customers, cleaning of utensils etc.

4] It is, in this background, that the Applicant approached the Metropolitan Magistrate Court Mazgaon, seeking discharge and the said relief was refused on the ground that it cannot be said that the charges levelled are groundless and baseless and ultimately it will a matter of trial, which will determine his innocence, and no case was found to be made out for his discharge.

5] Heard Ms. Vrishali Raje for the Applicant, who would submit that the word 'bondage' as applied in Section 79, as per the dictionary meaning, must be construed to be "the state of being a slave or prisoner."

She would like to describe the term with its synonym as 'slavery'. According to the learned counsel, there is no 'bondage' involved and therefore Section 79 is not attracted. She also placed reliance upon the Division Bench Judgment of this Court in case of **Rameshkumar s/o Dwarkadas Mundada vs. State of Maharashtra & Ors.**<sup>1</sup>

She has also placed reliance upon the decision of the Kerala HC in the case of **Vinod Panicker vs. Sub Inspector of Police, Perurkada Police Station & Anr.**<sup>2</sup> as well as another decision of Kerala High Court, in case of **Joseph vs. State of Kerala**,<sup>3</sup> in order to buttress her submission.

6] Mr. Agarkar, the learned APP strongly contest the arguments advanced by the learned counsel for the Applicant, and according to him, the relevant Section 79 which has been invoked must be read in context of the intention of legislature in enacting the Juvenile Justice Act and for the purposes of the said act, a juvenile is a child defined under section 2(12) to mean a person who has not completed 18 years of age and the Act of 2015, is enacted with an avowed purpose to prevent exploitation of the children and to protect their human rights by catering to them protection, development, treatment and social reintegration by adopting child friendly approach in criminal proceedings.

According to the learned APP, the intention of the legislature should be clearly given effect to while construing the provisions in the broadest possible view which shall attempt and achieve the object of the enactment.

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1 2009 LL MR (Cri) 1317.

2 2013 Cri.L.J. 833

3 2014 Cri.L.J. 2324

7] Chapter IX of the Juvenile Justice (Care and Protection) Act, 2015 contemplate distinct offences against children and Section 75 and 79 are found to be included therein.

Section 74 prescribe punishment on disclosure of identity of the children in the manner prescribed, whereas, section 75 prescribe punishment for administering cruelty, by a person who is in charge of or control over a child, by assault, abandonment, abuse or exposing or willfully neglecting a child.

Section 76 is the provision which prescribe punishment for employing a child for begging and Section 77 and 78 prescribe punishment for giving intoxicating liquor or harmful drug or psychotropic substance to any child, other than one, which is medically prescribed and using a child for vending, peddling, carrying supplying or smuggling any any intoxicating liquor, narcotic drug or psychotropic substance.

In this scenario, section 79 finds its place and it reads thus ;

**“79. Exploitation of a child employee -**

Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.”

8] A careful reading of the said provision would make it clear that it open with a non obstante clause, “notwithstanding anything contained in any law for the time being in force.”

What is made punishable under the said provision, is an act of

ostensibly engaging a child and keeping him in bondage for the purpose of employment or withholding his earnings or using his earnings for his own purposes.

Though Ms.Raje, the learned counsel for the Applicant has emphatically submitted that the term “bondage” is something which should be construed in the wake of the dictionary meaning as to mean “a state of being in slavery” or ‘bondage’ and in this particular case, since it was the only engagement of a young boy, though his age has not been conclusively proved to be below 18 years, there is no element of bondage.

I am unable to accept her submission for the reason that the terminology used in the said section shall be read, *ejusdem generis*, with the other term and must take colour from it.

The Section has applied the term also ‘ostensibly engages’, the term ostensible mean “ in a way that appears or creates to be one thing, when it is really something else”.

The term ‘bondage’ which is coupled with an act of ostensibly engaging a child must, therefore, take its colour from the context in which the contingencies stipulated, amounting to exploitation of a child.

The Section when read meaningfully thus convey that a person who engages a child ostensibly and keeps him in a bondage, for the purpose of employment and the dictionary meaning of the term Bondage, may not be involved here, for the reason that the practice of slavery is abolished long back and therefore when the legislature introduced the term ‘bondage’ in the Act of 2015, it intended a bondage for the purpose of employment and for no other purpose.

The binding effect of the employment or the fact that the services are engaged by offering a remuneration, shall be construed as underlined intention of the legislature, when it intended to cover an act

of engaging services of a child under the pretext and keeping him engaged for the purposes of employment.

9] Reliance placed by Ms. Raje, upon the decision of the Kerala High court in case of **Joseph vs. State of Kerala** (*supra*), is distinguishable on the facts as here was a child who was found by the accused in an abandoned condition and he took her and gave her shelter and protected her. While she continued to stay with him, she helped the inmates of the house voluntarily and therefore, the learned Judge construed, that it cannot be said that she was made to do hazardous work or exposed to danger and even she has not given statement to that effect. In fact, the Court has construed that she was found in an abandoned state and was given shelter by the Petitioner to protect her and thus if she was entrusted some work, it cannot be said that he had treated her with cruelty, either physically or mentally, so as to attract the provisions of law.

Another decision in the case of **Vinod Panicker** (*supra*), with reference to the Factories Act as well as Mines Act has been juxtaposed against the Child Labour (Prohibition and Regulation) Act and the said decision is delivered in the context of Section 26 of the Juvenile Justice Act, 2000. The Section in the relevant Act, punished an act of ostensibly procuring a juvenile or a child for the purpose of any hazardous employment and keeping him in a bondage and withholding his earnings or using his earning for his own purpose.

The amended Act has, however, used a distinct terminology, and the legislature has chosen not to restrict the said provision of exploitation to hazardous employment, but it has categorically chosen to do away with it and reduced the effect of the Section, for ostensibly

engaging a child and keeping him in the bondage for the purpose of employment.

Hence, the aforesaid decisions are not of any succor to Ms. Raje.

Apart from this, the reliance placed upon the Division Bench Judgment, in case of **Rameshkumar s/o Dwarkadas Mundada** (supra) do not take her case any further as it is in completely different context when the circular issued under the Child Labour (Prohibition and Regulation ) Act, borrowed the definition of the term 'child' from the Juvenile Justice Act and for this reason the Court struck down the said circular, as the definition of the term 'child' under the Juvenile Justice Act , would by no sense of imagination be borrowed in to the Child Labour (Prohibition and Regulation ) Act, which permitted the engagement of a child between the year 14 to 18 years, in respect of certain category of employment, specifically the work which is not hazardous in nature.

10] In the wake of aforesaid, when the charge-sheet is filed by invoking Section 75 and 79 of the Act, I do not think a case is made out for discharge.

As far as submission of the learned counsel for the Applicant is concerned that the prosecution has failed to establish that the child is minor, I am not impressed by the said submission as in the statement given by the child he himself has given his age as 16 years and even the waiter, waiting there has also referred to his age as 16 years. Ultimately this will have to be established at the time of trial as it cannot be concluded that prima facie, at this stage there is no sufficient material to prosecute the present applicant under Section 75 and 79 of the Act of 2015.

In the wake of above, the impugned order, though not very reasoned, is upheld and the present Criminal Application is dismissed.

I must clarify that, the observations are limited for the purpose of present Application.

**[BHARATI DANGRE, J]**