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Crl.O.P.No.1281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.1281 of 2021

and

Crl.M.P.No.771 of 2021

1. Sathishkumar
2. Kumaraswamy
3. Palaniammal
4. Deepa
5. Ramya

...Petitioners / A1 to A3, A5 and A6

-Vs-

- 1.The State rep. by  
The Inspector of Police,  
Adhiyaman Kottai Police Station,  
Dharmapuri District.

... 1<sup>st</sup> Respondent / Complainant

- 2.S. Bharathi

... 2<sup>nd</sup> Respondent / Defacto Complainant

**Prayer:** Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the complaint in P.R.C.No.40 of 2018 on the file of the Judicial Magistrate No.II, Dharmapuri and to quash the same.

For Petitioners

: Mr. V. Sakkarapani

For Respondents

: Mr. A. Damodaran

Additional Public Prosecutor



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**ORDER**

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This Criminal Original Petition has been filed seeking to quash the proceedings in P.R.C.No.40 of 2018 on the file of the Judicial Magistrate No.II, Dharmapuri filed for the alleged offence under Sections 370, 374, 344 IPC and Sections 16, 17 and 18 of the Bonded Labour System (Abolition) Act, 1976 (the Act).

2.It is alleged in the final report that the victims from the State of Maharashtra and Chhattisgarh of which 18 were men and 12 were women were employed with the company run by the petitioners; that they were not given proper salary; that they were not allowed to go out of the establishment and thus, the petitioners had committed the aforesaid offences.

3.The learned counsel for the petitioner would submit that the offences under the Bonded Labour System (Abolishment) Act is not made out, in the instant case. Section 2(g) of the Act, defines the Bonded Labour System, as per which, there must be an agreement between the debtor and creditor and pursuant to the agreement, in consideration of the advance obtained by the debtor either the debtor himself or any member



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of his family should render labour or service for the benefit of the creditor.

4.The learned counsel submitted that in the impugned final report there is no such allegation to attract the offence under the Bonded Labour System (Abolition) Act. The learned counsel further submitted that neither Section 370 IPC nor 374 IPC is made out and also read out the statement made by LW-3 who worked as an agent and brought these victims to be employed with the petitioners. According to his statement, salaries were paid and credited to his account and all these amounts were sent to the family members of the victims and the victims were also aware of the said fact. Hence, he prayed for quashing of the impugned proceedings.

5.The learned Additional Public Prosecutor submitted that there are materials in the impugned final report to show that no salary was paid to the victims and they were not allowed to go out of the establishment freely. Further, they were not given sufficient food and hence, the offences alleged are made out in the impugned final report. The fact as to whether the offences are made out or not has to be adjudicated only



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before the trial Court and hence, prayed for dismissal for dismissal of the quash petition.

6. “Bonded Labour System” is defined in Section 2(g) of the Act and the same is extracted hereunder for better understanding:

*“2. Definitions. - In this Act, unless the context otherwise requires, --*

*(g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,--*

*(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, on such advance, or*

*(ii) in pursuance of any customary or social obligation, or*

*(iii) in pursuance of an obligation devolving on him by succession, or*

*(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or*

*(v) by reason of his birth in any particular caste or community, he would--*

*(1) render, by himself or through any member of his*



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*family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or*

*(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or*

*(3) forfeit the right to move freely throughout the territory of India, or*

*(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under 3 which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;*

*Explanation.-- For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an inter-State migrant workman as defined in clause (e) of sub-section*



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*(1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is "bonded labour system" within the meaning of this clause."*

7. There is no allegation in the impugned final report to show that there was an agreement between the creditor and the debtor and the debtor accordingly had rendered by himself or through any of the family member service or labour for the benefit of the creditor or forfeited the freedom of employment of other means of livelihood for a specific period as mentioned in sub-clauses (1), (2), (3) and (4) of Section 2(g) of the Act. In the absence of the said ingredients, it cannot be said that the petitioners are liable for the offences under the Bonded Labour System Act.

8. It is seen that it is the case of a prosecution witness LW-3 that the salary was paid and sent to the family members of the victims. In such circumstances, it cannot be said that there was any exploitation of the victims and thus, the offence under Section 370 IPC is not made out.



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As regards, Section 374 IPC there is nothing in the impugned final report to show that the victims were compelled to work under the establishment of the petitioners. As regards, Section 344 IPC, it cannot be said that there was any wrongful restraint on the part of the petitioners. Even as per the statement of the victims, they were allowed to take one day off and they were allowed to go out of the establishment. This cannot be said as wrongful restraint under Section 344 IPC.

9.For all the above reasons, this Court is of the view that the impugned proceedings as against the petitioners are liable to be quashed. Accordingly, P.R.C.No.40 of 2018 on the file of the Judicial Magistrate No.II, Dharmapuri, is quashed and the Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

19.06.2023

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

1.The Inspector of Police,



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Adhiyaman Kottai Police Station,  
Dharmapuri District.

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2.The Judicial Magistrate No.II, Dharmapuri.

3.The Public Prosecutor,  
High Court of Madras.

**SUNDER MOHAN,J.**  
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