



CRL.O.P.No.16304 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM:

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.16304 of 2021
and Crl.M.P.Nos.8852 and 8855 of 2021

1.K.I.Junaaid Ahmed
2.Akbar Basha
3.Khaleelullah Shereef

... Petitioners/Accused

Vs.

1. The State Represented by its
The Deputy Superintendent of Police,
Vellore Sub – Division,
Vellagoundampatty Police Station,
Namakkal District, Tamil Nadu.

2.Inspector of Police
Vellagoundampatty Police Station,
Vellore Sub – Division,
Namakkal District, Tamil Nadu
(Crime No.222 of 2013)

3.C.Ulaganidhi

... Respondents



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PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in P.R.C.No.19 of 2015 pending trial on the file of the Hon'ble Judicial Magistrate No-1, Namakkal and to quash the charges leveled against the petitioners/accused.

For Petitioners : M/s.M.Velmurugan

For Respondents : Mr. A.Damodaran
Additional Public Prosecutor for
R1 and R2
No Appearance for
R3

ORDER

The petition is to quash the final report for the alleged offences under Sections 9, 16, 17, 18 and 20 of the Bonded Labour System (Abolition) Act, 1976 r/w Section 3(1) (vi) & (xv) of the Scheduled Castes /Scheduled Tribes (POA) Act, 1989 and Sections 370 and 374 of the Indian Penal Code.

2. It is alleged in the final report that the petitioners had employed bonded labourers during the period from June and August, 2013 and the said bonded labours were residents of Villages in Chhattisgarh State and



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belonged to the Scheduled Tribe notified community. The petitioners being the Partner, Manager and Supervisor of the company by the name “The Gems Agro Exports” had employed these bonded labours and that the said labours were compelled to remain in the company premises and the petitioners forcibly prevented them from leaving the place till 18.11.2013.

3. Mr.M.Velmurugan, the learned counsel for the petitioners would submit that the provisions of the Bonded Labour System (Abolition) Act, 1976 are not applicable, even if the entire allegations are accepted to be true; that the prosecution is misconceived and has been initiated on an erroneous appreciations of the Provisions of the Bonded Labour System (Abolition) Act, 1976; that the Penal Provisions alleged against the petitioners namely Sections 9, 16, 17, 18 and 20 of the Bonded Labour System (Abolition) Act, 1976 are based on the fact that the petitioners had adopted the system called the Bonded Labours System which is defined under Section 2 (g) of the Bonded Labour System (Abolition) Act, 1976; that in order to bring a particular employment within the said



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system, the labourers must be forced pursuant to an Agreement between a debtor and a creditor for the consideration mentioned therein; that in the instant case, there is nothing in the impugned final report to suggest that there was any forced labour, pursuant to an Agreement between the creditor and debtor in terms of the Section 2(g) of the Bonded Labour System (Abolition) Act, 1976 . Hence, he prayed for quashing of the final report.

4. Mr. A. Damodaran, the learned Additional Public Prosecutor for the first and second respondents submitted that there are allegations in the impugned final report to suggest that the persons were from different Villages in Chhattisgarh State and were compelled to work in the company run by the petitioners; that they were not paid due salary and that they were not allowed to move about freely. Hence, he prayed for dismissal of the quash petition.

5. The impugned final report had been filed alleging that the petitioners have committed offences under Sections 9, 16, 17, 18 and 20



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of the Bonded Labour System (Abolition) Act, 1976 r/w Section 3 (1) (vi) & (xv) of the Scheduled Castes /Scheduled Tribes (POA) Act, 1989 and Sections 370 and 374 of the Indian Penal Code. The Bonded labour System is defined under Section 2(g) of the Bonded Labour System (Abolition) Act, 1976. In the final report, there is nothing to suggest that the victims were employed under the petitioners pursuant to an Agreement between a creditor and debtor or since they were born in any particular caste or community. In order to attract the offence under the Bonded Labour System, there must first be an agreement between a debtor and a creditor as stated in Section 2(g) of the Bonded Labour System (Abolition) Act, 1976. Further, the labourers must be made to work without wages or must be compelled to forfeit their freedom of work and right to move freely throughout the territory of India.

6. In the instant case, there is no such allegation. Hence, the offences alleged under the Bonded Labour System (Abolition) Act, 1976 are not made out.



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7. The allegations at best only suggest that the victims had paid money to get employment in the company run by the petitioners and the agent who had brought them had not paid them as per the understanding. This allegation would not attract the offences under the Bonded labour system Act. The other offences under Sections 370 and 374 of the Indian Penal Code are also not made out in the aforesaid case. Section 370 (1) of IPC reads as follows:

370. Trafficking of person.-

*(1) Whoever, for the purpose exploitation
(a) recruits, (b) transports, (c) harbours,
(d) transfers, or (e) receives a person or
persons, by*

First - using threats, or

*Secondly - using force, or any other
form of coercion, or*

Thirdly.- by abduction, or

*Fourthly - by practising fraud, or
deception, or*

Fifthly. - by abuse of power, or



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Sixthly - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. - The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. - The consent of the victim is immaterial in determination of offence of trafficking.

Explanation 1 states that the “exploitation” shall include physical exploitation of any form, slavery etc.

8. The impugned prosecution does not suggest that they were recruited for the purpose of exploitation. A mere dispute with regard to payment of salary would not amount to exploitation for the purpose of



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invoking Section 370 of IPC. Section 374 of IPC provides for punishment for unlawful compulsory labour. The said offence also would not be attracted since admittedly the victims had volunteered to work in the petitioners' company.

9. There is nothing in the impugned final report to suggest that the petitioners compelled the victims who were said to be members of the Scheduled Caste Community. Section 3 - *Punishments for offences of atrocities* (vi) of Scheduled Caste and Scheduled Tribes Act, 1989, prior to the amendment in the Year 2015. The said provision reads as follows:

3...(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do "begar" or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government."

10. Even as per the statements recorded by the respondent police, there is nothing to suggest that the victims were compelled or forced to leave their place of residence or to work compulsorily in the company run by the petitioners

11. This Court is of the view that the impugned final report is



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therefore, liable to be quashed as against the petitioners alone. Hence,
quashed.

12. With the above observations, the Criminal Original Petition is
allowed. Consequently, the connected Miscellaneous Petitions are closed.

19.06.2023

Index : Yes/No

NCC : Yes/No

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To

1.The Sessions Judge, (Special Judge for SC/ST cases)
Villupuram,
Villupuram District.

2.The Deputy Superintendent of Police
Thirukovilur Sub-Division,
Villupuram District.

3.The Inspector of Police
Thirukovilur Police Station
Villupuram District.

4.The Public Prosecutor
High Court of Madras
Chennai – 600 104.

SUNDER MOHAN,J.



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