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

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Reserved on:21.03.2023
Pronounced on:05.04.2023

+ **CRL.M.C. 481/2023 & CRL.M.A. 2967/2023, 2974-75/2023**

NEELAM AGNIHOTRI

..... Petitioner

Through: Ms. Ruchi Kohli, Mr. Yash
Mishra, Mr. Anuj Rathee and
Ms. Srishti Mishra, Advocates

versus

STATE

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Kuldeep Singh,
P.S. V.K. North

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking quashing of FIR bearing no. 496/2016, registered at Police Station Vasant Kunj North, South Delhi for offences punishable under Section 75 of Juvenile Justice (Care and Protection of Child) Act, 2015 ('JJ Act') and all subsequent proceedings emanating therefrom.

2. Briefly stated, the facts of the present case are that an FIR was registered on the allegations that petitioner, who is 71 years of age

and lives with her daughter in Vasant Kunj, had employed a domestic help who was a minor at the time of alleged employment. On 29.09.2016, a complaint was received from the concerned Magistrate under Section 27(9) of the JJ Act, Kasturba Niketan, Child Welfare Committee ('CWC'), Lajpat Nagar-11, District South, New Delhi, directing the SHO concerned to take legal action on the present complaint. It was alleged in the complaint that child 'X' at the time of lodging of complaint was 18 years of age i.e., on 31.08.2016, while she had been produced before CWC, Lajpat Nagar by Judith Neihojkhim, Social Worker. As per ossification test report, the victim was found to be between 18-20 years of age as on 31.08.2016. As per JJ Act, the age at lower side i.e. 18 years on 31.08.2016 is to be considered. It was, therefore, argued that the child 'X' who had been doing domestic work at two places before 31.08.2016 at the relevant time was a minor. The child had informed that she had worked as domestic help for one year at the house of Ms. Bhawna at Preet Vihar, New Delhi and the present petitioner i.e., Ms. Neelam for 2 ½ months in the year 2016. During investigation they had been informed that Shiv Kumar who runs an agency 'Moirya Maid Consultant' had engaged the child at both the above places and Mr. Kapito was the person who had brought the children for work. Both the employers and Shiv Kumar were produced by the Investigating Officer along with documents available regarding engagement of children for work. Thereafter, directions were issued to take legal action against employers as per law on or before 31.10.2016. After registration of the case, the child was produced

before CWC by the NGO concerned and the child was restored to her elder sister Ms. Sushila. After completion of investigation, chargesheet was filed. During trial, charges under Section 75 JJ Act were framed against the petitioner herein by the concerned Magistrate.

3. Learned counsel for the petitioner stated that the petitioner is law abiding citizen of 71 years of age and was shocked to receive the summons from the learned Magistrate as child 'X' had worked with her barely for 2½ months and she did not know that she was a minor as she had hired the domestic help through maid providing agency after due verification of documents provided by them, which clearly indicated that she was above 18 years of age. It is stated that as per ossification test report, she was found to be between 18-20 years of age and therefore, no offence is made out against the present petitioner.

4. Learned counsel for the petitioner further submits that the petitioner was served summons after six years of filing of the FIR. It is stated that since the victim was hired through Shiv Kumar, Moirya Maid Consultant Private Limited, they had provided the Village Council Development Committee Kashitra document as proof of age of the victim and only thereafter she was hired for domestic help. It is also stated that since the alleged victim in this case was involved with a neighbour's driver and had created ruckus on 15.08.2016 when the driver had refused to marry her, the petitioner had herself called the police who had taken her to the police station. The petitioner had also informed Shiv Kumar about the incident and that

the services of the child were not required. They had also come to know later on, that an FIR under Section 376 of IPC was registered against the driver mentioned above. However, later on, the allegations were found to be false and the driver was acquitted.

5. Learned counsel for the petitioner vehemently submits that the CWC had also raised dispute and made an issue regarding the wages to be paid to the minor but, the petitioner had already made advance payment of wages of Rs. 35,000/- to the maid providing agency which included commission of accused Shiv Kumar and the salary of domestic help for the period of 2½ months. She had also paid a further sum of Rs. 23,514/- through demand draft at the instance of CWC though they were not due. It is therefore, stated that the FIR be quashed as it does not disclose commission of any offence as it is clear that the girl was not a minor at the time of employment which is clearly reflected in the certificate of Office of Village Council Development Committee. It is stated that the provisions of JJ Act are not applicable in the facts and circumstances of the case since there are no specific allegations against the petitioner and there is no evidence on record that she was a minor at the time of employment. It is stated that as per judgment of *State of Haryana v. Ch. Bhajan Lal 1992 Supp (1) SCC 335*, it is a fit case for quashing of the FIR and all proceedings emanating therefrom.

6. Learned APP for the State, on the other hand, argues that it was the duty of the petitioner to have verified the age of the victim and it is a question of trial as to whether the certificate of age was shown to the accused or not.

7. The arguments of both the sides have been heard by this Court and material on record has been perused.

8. Before getting into the merits of the case, it is necessary to take note of Section 75 of the JJ Act, 2015 which is reproduced as under:

“Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees”.

9. To invoke the aforementioned offence, it is imperative that the child was subjected to assault, abuse, or exposure by an individual who had actual charge and control over the child. However, the available evidence in the present case fails to substantiate any such allegations that would attract the

aforementioned offence. Furthermore, there is a dearth of evidence, including medical reports, to corroborate any physical harm inflicted upon the child or their exposure to assault.

10. It is to be noted that the Hon'ble Supreme Court has laid the guidelines for quashing the FIR in *State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.* 1992 SCC (Cri) 426:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no

investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. It is to be noted that in *Bhajan Lal (supra)*, the Hon'ble Supreme Court has cautioned that the High Court, in exercise of powers under Article 226 or Section 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the end of justice, but such power should be exercised sparingly and that too in the rarest of rare cases.

12. Considering the facts and circumstances of the present case, this Court finds that the present case is covered under the decision of *Bhajan Lal (supra)*. The alleged victim 'X' in this case was employed through a domestic help providing agency through accused no. 3. It is a matter of record that the alleged child 'X' had worked at the house of the present petitioner for 2 ½ months and the petitioner herself had called accused no. 3, through whom the domestic help had been

employed, that her services were not needed since on 15.08.2016 she had created ruckus that the driver living in their neighborhood with whom she had friendly terms had refused to marry her. It is also matter of record that FIR had been registered under Section 376 of IPC at the victim's complaint against the accused who was later on acquitted as the charges were found false. The ossification test report conducted on 31.08.2016 opines that the alleged victim child was between 18-20 of age, which shows that she was not a child as per definition of JJ Act. Prima facie, therefore, there is no evidence to corroborate the complaint but is contrary to the same. Learned counsel for the petitioner also stated that this case is an example of the prevalent menace of the domestic help providing agencies being hand in glove with such alleged victims for extorting money on false allegations.

13. In view of the aforesaid discussion, the present petition stands allowed and FIR bearing No. 496/2016, registered at Police Station Vasant Kunj North, South Delhi and all subsequent proceedings emanating therefrom stand quashed *qua* the petitioner herein.

14. Accordingly, the present petition stands disposed of in above terms. Pending applications also stands disposed of.

15. Copy of the judgment be also sent to the learned Trial Court.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 05, 2022/zp