**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946**

**CRL.MC NO. 8947 OF 2016**

**CRIME NO.189/2011 OF KALADY POLICE STATION, ERNAKULAM**

**AGAINST THE ORDER/JUDGMENT DATED IN CP NO.6 OF 2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY**

**PETITIONER:**

**FR.WILSON VARGHESE**
**AGED 51 YEARS**
**S/O. K.C. GEEVARGHESE, AGED 51 YEARS, KOORAM HOUSE, YORDHAN PURAM, KALADY - 683574**
**BY ADV SRI.ENOCH DAVID SIMON JOEL**

**RESPONDENT:**

**STATE OF KERAL**
**REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM (THROUGH THE SUB INSPECTOR OF POLICE, KALADY POLICE STATION)**
**BY ADV ADDL.DIRECTOR GENERAL OF PROSECUTION**

**OTHER PRESENT:**

**SRI.RENJITH.T.R, SR.PP**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**P.V.KUNHIKRISHNAN, JUDGE**

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**Crl.M.C.No.8947 of 2016**

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**Dated this the 23rd day of July, 2024**

**ORDER**

The petitioner is an accused in C.P.6 of 2015 on the files of the Judicial First Class Magistrate Court, Kalady. The above case is charge sheeted against the petitioner alleging offences punishable under section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 'Act 2000').

2. The prosecution case is that the petitioner employed a girl who is aged below 17 years in his house for doing the job of washing clothes, other home works etc., and hence it is alleged that the accused committed the offence.

3. It is submitted that, even if the entire allegations are accepted in toto, no offence under section 26 of Act 2000 is made out against the petitioner and therefore, this Crl.M.C is filed to quash the proceeding against the petitioner.

4. Heard the learned counsel for the petitioner and learned Public Prosecutor.

5. According to the petitioner, he is a priest attached to the Jacobite Church, and serving as Vicar of St. Mary's Jacobite Church Meekadu, Angamly. Petitioner is residing with his family consisting of his wife and child along with his aged parents. In search of a domestic help, the petitioner received information about a female named Bonitha Uthansigh @ Moneesa, aged 18 years. Above said Moneesa came to the petitioner's house on 06.03.2011 for employment. It is further submitted that, on 10.03.2011 the Inspector of Police, Kalady Police station along with certain officials from Child Welfare Committee (CWC) came to the petitioner's house and enquired about Smt. Moneesa. According to the petitioner, the Police alleged that the Smt. Moneesa was below 18 years of age and therefore she was illegally employed as a domestic help. Moneesa was taken by the Inspector to the Police Station and a crime was registered alleging offence under section 26 of Act 2000 and Annexure-A1 is the FIR.

6. Pursuant to the registration of the FIR, Moneesa was produced before the Child Welfare Committee (CWC), Ernakulam in accordance with the provisions of Act 2000. The CWC registered the matter as O.P.No.850 of 2011 and the girl was thereafter transferred to a Children's Home. On production of the girl before the CWC, the parents of the girl were contacted and they appeared before the Committee on 26.03.2011. It is submitted that on appearance, the mother of the girl along with the cousin of Smt.Moneesa, produced documents to prove that the girl was above 18 years of age. Annexure -A2 is the transfer certificate of the Child in which the date of birth is mentioned as 02.02.1993. It is submitted that, if the date of birth of the girl is 02.02.1993, the girl is above 18 years as on 10.03.2011, when the Police officers inspected the premises of the petitioner. Annexure-A2(a) is the Baptism Certificate of the girl child in which also the date of birth is mentioned as 02.02.1993. Annexure -A2(b) is the certificate issued by the Sarpanch Saramaly Gram Panchayat in which also it is mentioned that the girl is aged 18 years. Annexure

A2(c) is the relevant pages of Students Register maintained at the Suabarngiri UP School, Kandhamal District, Odisha and English translation of Annexure A2(c) is Annexure A2(d). It is submitted that a perusal of Annexure -A2 series of documents reveal that the date of birth of Moneesa is 02.02.1993 and therefore she attained 18 years of age on 02.02.2011.

7. On the basis of Annexure A2 series of documents, the CWC entered upon the finding that Moneesa was aged 18 years and as per Annexure-A3 order, ordered to release the child from the children's Home and permitted her mother to take her. Annexure -A3 is the order of the Child Welfare Committee, Ernakulam. It is submitted by the petitioner that based on Annexure -A2 series and Annexure -A3 the case was closed by the Police. But the Police submitted a final report ignoring Annexure A2–series and Annexure -A3 and filed a final report which is taken on file by the Judicial First Class Magistrate Court, Kalady as C.P.No.6/2015. Annexure A4 is the final report.

8. Two contentions were raised by the petitioner, the first

one is that, in the light of the Annexure -A2 series and Annexure-A3 the prosecution against the petitioner is unsustainable. It is also submitted that, even if the girl child is below 18 years, the offence under section 26 of Act 2000 is not attracted.

9. There is force in the argument of the petitioner on both grounds mentioned above. This Court perused Annexure-A2 series and Annexure-A3. The validity of the same is not disputed by the prosecution. From these documents, it is clear that the girl was above 18 years as on the date on which the Police took her into custody alleging the offence under section 26 of Act 2000. Hence the prosecution against the petitioner in the light of Annexure -A2 series and Annexure -A3 is unsustainable.

10. Moreover, I am of the considered opinion that the facts and circumstances of this case, Section 26 of the Act 2000 is not attracted. Section 26 of the Act 2000 says that whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his

earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

11. There is no evidence or materials produced by the prosecution to show that the employment given to the girl was hazardous in nature. This Court in the order dated 26.10.2023 in Crl.M.C.980 of 2023, considered the ingredients of Section 26 of the Act 2000. it will be better to extract relevant portions of the above judgment.

*"7. To attract Sec.26 of the Act, the prosecution has to establish the following:*

i. *The employer procured the juvenile or the child for the purpose of hazardous employment.*
ii. *The employer kept him in bondage.*
iii. *The employer withheld his earnings or used such earning for his own purpose.*

*The legislature intended to make the acts of procuring a child for hazardous employment, keeping him in bondage and withholding his earnings punishable under Sec.26 of the Act.* ***In Alice v State of Kerala, 2014 (2) KHC 106****, this Court considered the meaning*

*of the term **"hazardous"** contained in Sec.26 of the Act and held that the statute intended "**hazardous"** to indicate the risk and heaviness of the job which the age of the child cannot bear.*

*8. In **Faisal** (Supra) this Court observed that, in order to attract Sec.26 of the Act, the prosecution has to establish that the juvenile is employed for a hazardous job without making proper and adequate payment, wages or salary.*

*9. In **Eliyas** (Supra), following **Faizal** (Supra), this Court reiterated the legal position. Following **Eliyas** and **Faizal** (Supra), this Court in **Prakash** (Supra) held that, to bring home the offence under Sec.26 of the Act, the burden is upon the prosecution to establish that the juvenile was employed by the petitioner for doing some hazardous work without making adequate payment of salary or wages.*

*In the present case, the prosecution has failed to bring forth those ingredients. The resultant conclusion is that the prosecution failed to make out the offence under Sec.26 of the Act. Therefore, the entire proceedings pursuant to the registration of FIR No. 48/2013 of Railway Police Station, Kottayam, which is now pending before the Judicial Magistrate of First class-I, Ettumanoor as C.C No. 2597/2017, are liable to be quashed. I order so.*

*The Crl.M.C. is allowed as above."*

12. In the light of the above principle, I am of the considered opinion that, even if the entire allegations against the petitioner are accepted in Annexure-A4 final report, no offence under Section 26 of the Act 2000 is attracted.

13. The upshot of the above case is that the prosecution against the petitioner is unsustainable.

Therefore this Criminal Miscellaneous Case is allowed. All proceedings against the petitioner in C.P.No.6/2015 on the files of the Judicial First Class Magistrate Court, Kaladi arising from Crime No.189/2011 of the Kalady Police Station are quashed.

**Sd/-**
**P.V.KUNHIKRISHNAN**
**JUDGE**

vnk/-/SPV

**APPENDIX OF CRL.MC 8947/2016**

**PETITIONER'S ANNEXURES:-**

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| **ANNEXURE A1** | **CERTIFIED COPY OF THE FIR DTD. 10.03.2011 IN CRIME NO.189/2011 OF THE KALADY POLICE STATION** |
| **ANNEXURE A2** | **TRUE COPY OF THE TRANSFER CERTIFICATE ISSUED BY THE SUBARNGIRI UP SCHOOL, KANDHAMAL DISTRICT, ODISHA.** |
| **ANNEXURE A2(A)** | **TRUE COPY OF THE BAPTISM CERTIFICATE ISSUED BY THE CATHOLIC CHURCH-SARAMUN, KANDHAMAL** |
| **ANNEXURE A2(B)** | **TRUE COPY OF THE CERTIFICATE ISSUED BY THE SARPANCH, SARAMALY GRAMA PANCHAYAT** |
| **ANNEXURE A2(C)** | **TRUE COPY OF THE RELEVANT PAGE OF THE STUDENTS REGISTER MAINTAINED AT THE SUBARNGIRI UP SCHOOL, KANDHAMAL DISTRICT ODISHA.** |
| **ANNEXURE A2(D)** | **TRUE ENGLISH TRANSLATION OF ANN.A2(C)** |
| **ANNEXURE A3** | **TRUE COPY OF THE ORDER DTD. 26.03.2011 IN O.P. 850/2011 ON THE FILES OF THE CHILD WELFARE COMMITTEE, ERNAKULAM** |
| **ANNEXURE A4** | **CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 189/2011 OF KALADY POLICE STATION NOW PENDING AS C.P. 6/2015 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.** |