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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1062/2018 & CRL.M.As. 3203/2019, 26137/2023**

Date of decision: 17th SEPTEMBER, 2024IN THE MATTER OF:**RASHMI CHHABRA & ANR.**

.....Petitioners

Through: Mr. Rituraj Biswas and Ms. Neeta
Nancy Quadros, Advocates

versus

STATE

.....Respondent

Through: Mr. Aman Usman, APP for the State
SI Manish Kalkal, PS Kirti Nagar**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. The Petitioners have approached this Court challenging an Order dated 18.09.2018 passed by the learned Additional Sessions Judge charging the Petitioners for offences under Section 370(4) IPC read with Section 34 IPC; Section 374 IPC read with Section 34 IPC; Section 342 IPC read with Section 34 IPC; Section 323 IPC read with Section 34 IPC and Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986 read with Section 34 IPC; Section 23 of Juvenile Justice (Care & Protection of Children) Act, 2000 read with Section 34 IPC; and Section 16 of the Bonded Labour System (Abolition) Act, 1976 read with Section 34 IPC.
2. Learned Counsel for the Petitioners has restricted his arguments only to the charges which have been framed under Section 370(4) IPC, Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986 and Section 16 of



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the Bonded Labour System (Abolition) Act, 1976.

3. The facts in brief which are undisputed are that in this particular case, a minor was brought to Delhi from Chhattisgarh by an organization called Yuvati Kalyan Centre, which is run by one Shri Shiva Ram.

4. It is stated that the said organization provides for employment to women. It is stated that the child was staying in Chhattisgarh and she came voluntarily from her village with her *bhabhi* (sister-in-law) and she was enrolled with the organization. The organization gave the child to Petitioners No.1 and 2, who are husband and wife, for the purpose of employment as a domestic maid at their residence to take care of their new born baby.

5. An agreement of employment dated 18.08.2011 was entered into between Petitioners No.1 and 2 and the Yuvati Kalyan Centre wherein the child was the conforming party. The same has been produced in the Court and the said agreement reads as under:-

“Vide this agreement dated 18/08/2011 Shiva Ram operator (agent) of Yuvti Kalyan Centre having the office at 8- 9 IIIrd floor, Surya Swayam Sidha Colony Punjabi Bagh (West) New Delhi – 26 shall hereby be known as the first party.

The legal heir of Smt. Kani Devi - agent shall also be known as the 1st party.

Whereas Karan Chhabra son of late Shri J.P. Chhabra resident of E-64 ground floor, Kirti Nagar New Delhi- 15 shall be known as the 2nd party for its purpose. Any person nominated or ariy agent-legal heir by him shall be known as the 2nd party. Whereas Bimla Kumari daughter of Shri Somra Ram resident of village-Dongi Pani, P.O.Madguri, Tehsil Kusmi, District Sarguja (Chhattisgarh) shall hereinafter be



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known as the conforming party. The conforming party that is the applicant was appointed to do the service of the second party.

Main conditions of the agreement:-

- 1. This agreement shall be valid for the period of 11 months since the date of the agreement.*
- 2. The service charge of rupees 18,000/-, registration fee of rupees 1500/- and the staff fee of Rs. 500/- shall be payable.*
- 3. The monthly salary for the untrained applicant shall be @ rupees 2000-2500/- per month and the monthly salary for the trained applicant shall be @ rupees 3000- 3500/- per month. In case of the patient has to be looked after, then the pay-scale shall be fixed accordingly.*
- 4. In case of due to any reason the applicant has to be' changed, then only one applicant shall be changed subject to availability.*
- 5. In case of the agreement has to be cancelled, then the registration fee and the staff charge shall not be refundable. But the service charge shall be refunded after making deduction proportionately to the work having been done.*
- 6. The monthly salary of the applicant shall be deposited in person by the second party.*
- 7. Second party shall pay the monthly salary @ Rs. 1900/-. It shall be settled between both parties that the second party shall pay salary for one additional month or as the advance for the commission. The advance amount shall be refunded after making deduction in*



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proportionate to the work having been done in case of the applicant having done the work for the period of less than one month. If the applicant has done the work upto one month, then it shall depend upon the discretion of first party either to refund the advance amount not and the amount can be refunded in accordance with the circumstances.

8. For the purpose of verification of the address of the second party it shall be mandatory to deposit two passport sized photo, ration card or driving license or identity card and second party cannot raise any objection to it.

9.If due to any reason the applicant wants to revoke the agreement prior to passing of the period of 11 months, then the applicant shall be responsible to compensate for the same.

10. After the period of 11 months, for the sake of renewal the earlier procedure shall be applicable but there shall be enhancement of salary by 25%.

11. Aforesaid party (conforming party) shall work for the period of three years since the date of the agreement through the first party. No work shall be done during such period without the written consent of the first party. Even there' shall be this understanding that during the period of such three years the aforesaid party can be appointed by the first party for the domestic work subject to same being in the interest of the conforming, party as found by the first party. The second party admits and is bound with this rule that after expiry of the period of the agreement, the applicant shall not be employed without the written consent of the first party and such applicant shall be handed over to the first party. In case of such rule/condition being ignored, then the second party



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shall pay the amount, which shall be two times of registration fee, staff charge for the sake of compensation.

12. During the period of agreement the second party shall be fully liable with respect to aforesaid party, because of living for the period of 24 hours in the house of the employer (second party).

13. Aforesaid party shall be entitled for leave of two days in a month.

14. Second party shall have no right to take the aforesaid applicant outside Delhi without the written consent of the first party.

15. In case of any loss or damage due to happening of any untoward incident or theft having taken place, then the second party shall be the same. Second party shall not claim for the damages in connection with such type of incidents.

16. Second party shall provide safe and proper immunity for living (bathroom/toilet, oil, soap, Colgate, brush, clothes and the food).

17. Second party shall provide proper refreshment and food for the applicant. In case of violation of such condition, then aforesaid applicant can refuse to do the work. Second party shall provide all types of medical facilities to the aforesaid applicant.

18. During such agreement the 2nd applicant shall be liable for the loss or damages to the aforesaid applicant.

19. If the second party goes out of Delhi, then the applicant shall be handed over to the first party and



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also he shall bear the expenses @ rupees 60/-per day, which shall be in addition to the salary of the applicant.

20. The second party shall not allow the relative et cetera to meet with the applicant without the permission of the first party. In case of violation of such rule/condition, then the conforming party shall be removed from the job and he shall be liable to compensate the second party.

21. The applicant hereby confirms that he/she has no commercial record in any manner. Even it is also confirmed that no illegal or immoral work in any manner shall be done during such period of agreement. During the agreement if the conforming party going any illegal activity or immoral work, then the first party shall not be liable in any manner.

22. If during the agreement due to any reason-lack of precaution the loss or damage is done to self or the associate or by associate, then the second party shall be liable.

23. If the applicant is being taken through the address of. Delhi, then the employer shall be fully liable and in case of any untoward occurrence having taken place, then the legal action shall be taken at the place-Delhi.

24. There shall be the concurrence that the verification of second party can be card done by the first party through the police and the second party shall not raise any objection in this respect.

25. In case of there being any dispute between the parties in (connection with the present agreement, then such arbitration shall be referred to Sewa Bharti Society Punjabi Bagh (registered) and the party shall



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be bound with the Award passed by it.”

6. It is stated that the abovementioned agreement was renewed from time to time and the last of the renewal was done on 01.03.2013.
7. On 27.06.2013, an Order of Short-Term Placement Pending Inquiry was passed whereby the child was ordered to be kept in the Child Welfare Homes.
8. Subsequently, FIR No. 226/2013 dated 06.07.2013 was registered at P.S. Kirti Nagar under Sections 323/342/374/34 IPC read with Section 23 of the Juvenile Justice (Care & Protection of Children) Act, 2000 against the Petitioners.
9. The brief facts as mentioned in the FIR are that the child is a resident of Village Dongi Pani, Chhattisgarh and her parents have passed away. Her sister-in-law brought her to Delhi and left her in a placement agency. Thereafter, the child got employed as a domestic maid in the house of the Petitioners herein at a monthly salary of Rs. 2000/-. It is further stated that the child worked there for about 2 years and used to perform all household chores. It was stated that the child was also assaulted by the Petitioners herein daily and was not provided proper food or sleep in the night. It is also stated in the FIR that the child was also assaulted when she used to ask for salary or to go out of the house.
10. Statement of the child was also recorded under Section 164 CrPC and the same has been placed on record.
11. Heard the learned Counsel for the parties and perused the material on record.
12. It is stated by the learned Counsel for the Petitioners that Section 2(ii)



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of the Child Labour (Prohibition & Regulation) Act, 1986 defines 'child' as a person who has not completed the age of 14 years and the 'child' in this case admittedly was born on 08.07.1996 and therefore the date on which the agreement was entered into, i.e., 18.08.2011, she was 15years 1 month and 10 days.

13. Learned Counsel for the Petitioners has also drawn the attention of this Court to Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986 and to Part A of the Schedule to state that any child over the age of 14 years can work as a domestic servant and therefore the Petitioners cannot be proceeded under Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986.

14. Section 2(ii), Section 3 and Entry 14 of Schedule A of the Child Labour (Prohibition & Regulation) Act, 1986 reads as under:-

"2. (ii) "child" means a person who has not completed his fourteenth year of age.

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3. Prohibition of employment of children in certain occupations and processes. – No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

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The Schedule
(See section 3)

Part A

OCCUPATIONS

An occupation connected with-

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(14) Employment of children as domestic workers or servants; ”

15. Learned APP for the State vehemently opposes the contentions of the learned Counsel for the Petitioners and draws attention of this Court to other provisions of the Act.

16. This Court finds force in the submission of the learned Counsel for the Petitioner inasmuch as since the child was over 14 years of age at the time of commission of offence, the provisions of this Act cannot be attracted. Therefore, the Petitioners are discharged for offences under Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986.

17. As far as offences punishable under the Bonded Labour System (Abolition) Act, 1976 are concerned, learned Counsel for the Petitioner draws the attention of this Court to Section 2(f) and Section 2(g) of the Bonded Labour System (Abolition) Act, 1976. He also draws attention of this Court to Section 4 of the Bonded Labour System (Abolition) Act, 1976 and Section 16 of the Bonded Labour System (Abolition) Act, 1976. He thus states that the *sine qua non* for an offence under the Bonded Labour System (Abolition) Act, 1976 is that a person must be forced to work *in lieu of* a debt which has been incurred either by that person or any other person in the family.



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18. Section 2(f), Section 2(g), Section 4 and Section 16 of the Bonded Labour System (Abolition) Act, 1976 of the Bonded Labour Act reads as under:-

“2. (f) “bonded labourer” means a labourer who incurs, or has, or is presumed to have, incurred a bonded debt;

2(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, due 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 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



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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 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 (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;]

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4. Abolition of bonded labour system.—(1) *On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall,*



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on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) After the commencement of this Act, no person shall—

(a) make any advance under, or in pursuance of, the bonded labour system, or

(b) compel any person to render any bonded labour or other form of forced labour.

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16. Punishment for enforcement of bonded labour.—

Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.”

19. This Court finds force in the submissions made by the learned Counsel for the Petitioners. It is not the case of the prosecution that the child was working at the residence of the Petitioners No.1 and 2 *in lieu of* a debt and the child was working only in terms of an agreement was entered into between the Society and Petitioners No.1 and 2 and therefore the offence under the Bonded Labour System (Abolition) Act, 1976 is not made out and hence is set aside.

20. As far as Section 370 IPC is concerned, learned Counsel for the Petitioners states that merely by working in the house of the Petitioners, an offence under Section 370 IPC cannot be not made out. He states that there different ingredients are required to charge the Petitioner for an offence under Section 370 IPC and the Section does not visualize merely working as



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a domestic servant in the house to be a victim of trafficking. This Court is not inclined to accept the submission of the learned Counsel for the Petitioners at this juncture.

21. Section 370(1) IPC and Section 370(4) IPC reads as under:-

“370. Trafficking of person.—

(1) Whoever, for the purpose of 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

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 the offence of



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trafficking.

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(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.”

22. This Court is of the opinion that ingredients under Section 370(1) and Section 370(4) IPC are present for the charges to be framed under these Sections. This Court is not going into the specifics of this case and is also not making any observation as to whether an offence is made out or not at this juncture, but the ingredients of the offence under Section 370 are there for the trial to proceed ahead against the Petitioners.

23. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 17, 2024

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