



2024:DHC:8933



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

% **Date of order: 12th November, 2024**

+ CRL.M.C. 6230/2018, CRL.M.A. 49159/2018, CRL.M. 19938/2022,
CRL.M.A. 19939/2022 & CRL.M.A. 29666/2023

MR. JAYANT BUDHIRAJAPetitioner
Through: Mr. Shubhankar Sharma and Mr.
Trivesh Mehlawat, Advocates.
versus

STATERespondent
Through: Ms. Richa Dhawan, APP for the State
along with SI Ravi Rana, DIU/SD.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking setting aside of the order dated 29th October 2018 (hereinafter “impugned order”) passed by the Learned ASJ-05, South-East District in S.C. No. 1126/2016, and quashing the Chargesheet filed in the FIR No. 997/2015 registered at Police Station – Kotla Mubarakpur, New Delhi, under Section 370 of the Indian Penal Code, 1860 (hereinafter “IPC”) and Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter “JJ Act”).

Signature Not Verified

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KUMAR BABBAR
Signing Date: 24.11.2024
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2. The brief facts that led to the filing of the instant petition are as follows:

- a. At the behest of the complaint filed by Ms. Mala, mother of the victim, an FIR dated 31st August, 2023 was registered under Section 370 of the IPC and Sections 23 and 26 of the JJ Act at Police Station – Kotla Mubarakpur, New Delhi against the petitioner and several others.
- b. It is stated in the chargesheet that the victim was employed as a domestic help at the petitioner's house and her employment was facilitated by one Mr. Mahavir, who used to ran a placement agency namely M/s Leelawati Placement Agency, operating in the area of the Police Station –Kotla Mubarakpur, Delhi.
- c. During the investigation, on the basis of school certificate, it was discovered that the date of birth of the victim was 18th August, 1997 and as per the ration card, her date of birth was 10th November, 1999. It was further discovered that the victim was sent to the petitioner's house by the aforesaid placement agency on 21st April, 2011, when she was a minor, however, the said placement agency had told the petitioner that the age of the victim was sixteen years.
- d. Thereafter, the petitioner was chargesheeted for the offences under Sections 23 and 26 of the JJ Act. The learned Trial Court *vide* the impugned order dated 29th October 2018 framed charges against the petitioner under Section 23 of the JJ Act.



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- e. Being aggrieved by the aforesaid, the petitioner has approached this Court seeking setting aside of the impugned order and quashing of the chargesheet filed in the abovementioned FIR.
3. Learned Counsel appearing on behalf of the petitioner submitted that the impugned order suffers from legal infirmity and is erroneous as the learned Trial Court has wrongly concluded that there is a *prime facie* case made out against the petitioner under Section 23 of the JJ Act. It is further submitted that the ingredients of the aforesaid offence are not met in the present case as there has never been any complaint or allegation against the petitioner either of assault, abandonment, exposure or willful neglect of the child.
4. It is submitted that the victim was sent to the petitioner's house by Mr. Mahavir, as a domestic help. The agency assured the petitioner that the victim was 16 years old, while the petitioner after meeting the victim realized that she could not be 16 years old and thus, contacted the placement agency thereafter. Further, Mr. Mahavir assured the petitioner that he will replace the victim, but he did not do so, in addition to refusing to give the contact details of victim's parents to the petitioner as he wanted to send the victim back to her parents.
5. It is submitted that the petitioner continued to give proper food and accommodation to the victim during this time. Further, after establishing contact with the victim's mother, the petitioner convinced her to take custody of the victim and covered her travel expenses, in addition to paying salary for the victim's work at the petitioner's house for about 1-1.5 months



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along with clothes for both the victim and her mother, which has been admitted by the victim and her mother during the investigation of the case.

6. It is further submitted that the petitioner's conduct was exemplary throughout which is evident from the pain he took to restore custody of the victim to her mother, therefore, the instant FIR is baseless and misconceived.

7. It is submitted that the petitioner never had the intention to employ an under-age person and that he only did so in bona fide belief that she was more than 16 years of age, and it was only later learnt by the petitioner on perusal of the chargesheet that the victim was less than 14 years of age.

8. It is submitted that there has never been any complaint or allegation of assault, abandonment, exposure, or willful neglect of the juvenile and the learned Trial Court erred in its ruling as there is not even a *prima facie* case made out against the petitioner. Thus, the offence under Section 23 of the JJ Act cannot be made out against the petitioner. Therefore, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

9. *Per Contra*, Mr. Saurabh Kansal, learned Amicus Curiae vehemently opposed the instant petition submitting to the effect that it is well-established that at the stage of charge, only a *prima facie* case has to be made out, and thus, the impugned order has been passed in accordance with the law.

10. It is further submitted that since the victim was aged less than 14 years of age when she was employed, the petitioner is *prima facie* liable to be prosecuted under Section 23 of the JJ Act as the victim was clearly put in a position wherein it was likely that she was caused unnecessary mental or physical suffering.



11. It is submitted that the petitioner's contention that he acted in good faith, as he did not know the age of the victim or that he restored her custody, is his defence that is to be raised in the trial and not at the stage of charge. In any event, not knowing the age does not come to the rescue of the petitioner since ignorance of the law is no excuse under the Indian laws. Thus, the moment petitioner employed a child, he became liable to be prosecuted and cannot be discharged at this stage. Therefore, the instant petition may be dismissed being devoid of any merits.

12. Heard the learned counsel appearing on behalf of the petitioner and the learned *Amicus Curiae*, and perused the material on record.

13. Before advertng to the merits of the instant case, this Court finds it appropriate to discuss the settled position of law with respect to the principles to be followed for quashing of criminal proceedings.

14. In ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547***, the Hon'ble Supreme Court reiterated the jurisprudence *qua* the principles to be followed by the Courts at the stage of framing of charges and observed as under:

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the



accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

15. In ***Supriya Jain v. State of Haryana and Another.***, (2023) 7 SCC 711, the Hon’ble Supreme Court reiterated the jurisprudence *qua* principles to be followed for quashing the proceedings at the stage where the charges are framed and the trial is awaited, and observed as under:

“16. This is a case where the charges have been framed and the accused are awaiting trial. Having regard to the totality of the facts and circumstances, noticed above, we are of the considered opinion that the investigation and the follow-up steps are not so patently and unobtrusively defective or erroneous (except to the extent we propose to mention before concluding our judgment) that allowing the trial to progress might cause a miscarriage of justice. This is also not an appropriate stage to delve deep into the records. It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed



from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it.

17. The principles to be borne in mind with regard to quashing of a charge / proceedings either in exercise of jurisdiction under section 397, Cr. PC or section 482, Cr. PC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarized by this Court succinctly. In Amit Kapoor vs. Ramesh Chandra, this Court laid down the following guiding principles:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.



27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an



offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a fullfledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the



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*charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist. ****

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

16. In terms of the above said judgements, it is observed that if the Court finds strong suspicion against the accused based on the materials placed on record, such that a *prima facie* view can be taken that the accused has committed the offence, it is sufficient to frame charges against the said accused. In such event, the High Court shall not proceed with quashing of the proceedings under Section 482 of the CrPC (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023).

17. In order to establish whether a *prima facie* case is made out against the accused, the Courts must determine whether the allegations as a whole would constitute an offence, or it would lead to an abuse of the process of Court which would ultimately result in injustice. The test to be applied for quashing the charge/proceedings is whether the uncontroverted allegations determined from the record of the case, *prima facie* establish the offence or



not. If the uncontroverted allegations *prima facie* establish the offence, the charge/proceedings against the accused shall not be quashed.

18. At this stage, this Court shall now analyze the observations made by the learned Trial Court in the impugned order. Upon perusal of the same, it is made out that the learned Trial Court held that the charges against the petitioner can be framed under Section 23 of the JJ Act on the ground that he employed the victim when she was less than 14 years of age and was sent to the petitioner's house by one Mr. Mahavir, who has also been chargesheeted under Section 370 of the IPC for the offence of human trafficking.

19. Therefore, the learned Trial Court held that a *prima facie* case is made out against the petitioner pointing to the commission of the offences alleged against him which can conclusively be determined at the stage of trial. The relevant extracts from the impugned order is produced as under:

“Accused Jayant Budhiraja has been chargesheeted for the offence under Section 23 and 26 JJ Act. As per the case of prosecution, accused Mahabir sent Radhika as a domestic help in the house of accused Jayant Budhiraja at Noida on 21.04.2011 and at that time, she was less than 14 years and hence, there is prima facie case against the accused Jayant Budhiraja for the offence under Section 23 JJ Act.”

20. In the instant case, the accused is charged under Section 23 of the JJ Act, which reads as under:-

“Punishment for cruelty to juvenile or child.- Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child



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unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.”

21. The objective of the JJ Act is to ensure proper care and protection of juveniles. It envisages a comprehensive framework to ensure justice for children in any situation of abuse or exploitation. Section 23 of the JJ act, in particular, seeks to protect children from any kind of mental or physical suffering from anyone having charge of or control over such children. Therefore, it is clear that the offence under this provision is serious in nature as it seeks to protect the well-being of children.

22. In the instant case, the petitioner employed the victim as a domestic help in his house when she was less than 14 years of age. Thus, it can be said that he had control over the victim. Further, the victim was sent to the petitioner's house as a domestic help by Mr. Mahavir, who is also charged of the offence of human trafficking under Section 370 of the IPC. Considering the same, this Court finds a strong suspicion that the petitioner may have been engaged in acts that could have caused unnecessary mental and physical suffering, as envisaged under Section 23 of the JJ Act, which can only be conclusively determined during the course of trial.

23. In light of the above, this Court is of the considered view that the learned Trial Court has correctly held that a *prima facie* view can be taken against the petitioner based on the uncontroverted allegations and materials placed on record that he has committed the offence under Section 23 of the JJ Act. Therefore, this Court is not inclined to hold that the proceedings in



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the present case constitute abuse of the process of Court as the essential ingredients of the aforesaid offence are *prima facie* present to point towards the commission of the offence by the petitioner in the present case, and the observations made by the learned Trial Court are, therefore, correct.

24. This Court has meticulously perused the entire material placed on record and is of the considered view that applying the principles enunciated by the Hon'ble Supreme Court, in the instant case, the Court is satisfied that a *prima facie* view can be taken that the petitioner has committed the offence under Section 23 of the JJ Act. Thus, the impugned order has been passed in accordance with the law and this Court does not find any legal infirmity of any kind thereto.

25. Therefore, the interference of this Court is unwarranted and this Court does not deem it fit to exercise its jurisdiction under Article 227 of the Constitution read with Section 482 of CrPC to set aside the impugned order and quash the chargesheet against the petitioner, as prayed for by him in the instant case.

26. In light of the settled position of law as well as the facts of the present case, this Court does not find any cogent reasons for setting aside the impugned order and quashing the chargesheet against the petitioner on merits as no grounds have been made out by the petitioner warranting the same. In view of the same, the impugned order dated 29th October 2018, passed by the learned ASJ-05, South-East District in S.C. No. 1126/2016 is, hereby, upheld.



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27. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

28. It is made clear that the observations made by this Court in the preceding paragraphs are not to be taken as expression of this Court on the merits of the case.

29. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 12, 2024

Rk/av

Click here to check corrigendum, if any