

(2019) 11 KAR CK 0018

In the Karnataka High Court

Case No : Criminal Revision Petition No. 220 Of 2011

A M Samiulla

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Karnataka Shops And Commercial Establishments Act, 1961 — Section 4(1), 6A, 12(1), 24
Code Of Criminal Procedure, 1973 — Section 313
Karnataka Shops And Commercial Establishments Rules, 1963 — 3, 24A,

Citation : (2019) 11 KAR CK 0018

Hon'ble Judges : K.Somashekar, J

Bench : Single Bench

Advocate : M S Aswatha Reddy, G M Ananda

Final Decision : Allowed

Judgement

This petition is directed against the judgment dated 04.11.2010 passed by the Appellate Court in CrI.A.No.535/2010 dismissing the appeal by confirming the judgment of conviction and sentence passed by the Trial Court in C.C.No.1272/2006 convicting the accused - petitioner herein for the offence under Section 4(1) Rule 3, and Sections 6-A, 12(1) and Rule 24A of the Karnataka Shops and Commercial Establishments Act, 1961 and Rules 1963. Further, he was sentenced to pay a fine of Rs.15,000/- for the offence under Section 24, to pay fine of Rs.1,000/- for the offence under Section 4(1), to pay fine of Rs.1,000/- for the offence under Section 12(1), to pay fine of Rs.1,000/- for the offence under Section 6A and to pay fine of Rs.250/- for the offence under Rule 24-A of the Karnataka Shops and Commercial Establishments Act, 1961 and Rules 1963 and imposing default clauses in respect of each of the offences in case the appellant committed default.

The learned counsel for the petitioner is absent. However, heard Shri G.M. Ananda, learned counsel who has been appointed as Amicus Curiae in this case

as well as Shri Thejesh P., learned HCGP for the respondent.

The factual matrix of the petition is as under:

The respondent - complainant who was the Senior Labour Inspector had lodged a complaint against the petitioner - accused alleging that when he along with other officers had inspected the 'Gents Select Tailors' Shop' at Hotel Brindavan Building, Gandhinagar owned by the petitioner, as on 27.01.2006 at 12.45 noon, they found that two child labourers namely Master Anand Raj, aged 12 years and Master Narendra, aged 13 years were employed by the petitioner in the said Tailor shop. They had found the two children working as helpers in the said shop and when questioned, the petitioner was unable to give the age proof of the said child labourers. Hence, the said children were subjected to examination by a Doctor on the spot, who opined that the children were below 14 years of age. The petitioner was also unable to explain to the authorities the reason for appointing child labourers. Hence the inspection report was also prepared at the spot and served on the persons found at the time of inspection and statements of the child labourers were also recorded. It is thereafter that the complainant filed a complaint against the present petitioner for offences punishable under Section 4(1) Rule 3 and Section 6-A, Section 12(1) and Rule 24-A of the Karnataka Shops and Commercial Establishments Act, 1961 and Rules 1963.

The Trial Court then took cognizance and recorded the sworn statement of the complainant and witnesses and registered the case against the petitioner and issued summons to the petitioner, who appeared and pleaded not guilty. Then the prosecution examined four witnesses as PWs.1 to 4 and got marked documents at Exhibits P1 to P9 and the statement of the accused under Section 313 Cr.P.C. was recorded. However, no defence evidence was led. Thereafter, the Trial Court, after hearing the arguments of both sides, proceeded to convict the accused - petitioner for the alleged offences and impose sentence as aforesaid.

The said judgment passed by the Trial Court was taken up in appeal before the Appellate Court in CrI.A.No.535/2010. The Appellate Court after hearing the learned counsel for the parties, framed the points for consideration and answered the same in the negative and thereby dismissed the appeal and confirmed the judgment of conviction and sentence passed by the Trial Court. It is these judgments which are under challenge by the petitioner - accused in this revision petition urging various grounds.

The learned Amicus Curiae appearing for the petitioner - accused contends that the case filed against the petitioner has no basis and the same has been lodged only for statistical purpose, since the complaint Exhibit P7 lodged before the court is dated 27.03.2005. However, the inspection was conducted on 27.01.2006 at 12.45 noon and there is no explanation forthcoming as to how a complaint could be lodged even prior to the inspection having been conducted.

It is the further contention of the learned counsel that at Exhibit P7 complaint, the place of the offence said to have been committed is mentioned as 'Gents

Select Tailors' in the Cellar floor of Hotel Brundavan Building which has also been deposed by the complainant PW-1 in his examination-in-chief. However, in Exhibit P1 being the alleged statement of the child labourer Master Anand Raj, the place of offence is stated as in front of Jinnagaramma Temple. Further in Exhibit P2 being the alleged statement of the child labourer Master Narendra, the place of offence is stated to be below the basement floor of Tribhuvan Hotel. In Exhibit P3 Inspection report, it is stated as Cellar floor of Brundavan Building. Further in Exhibit P4 it is stated as Opposite to Tribhuvan Theatre, 5th Main Road. In Exhibit P6 again it is mentioned as Cellar floor of Brundavan Building. It is the contention of the learned counsel that the Brundavan lodge building, Jinnagaramma Temple, Tribhuvan Lodge Building are all at different places in Gandhinagar and there is inconsistency regarding the place where the Gents Select Tailors is located and hence the prosecution has not been able to remove this serious doubt as regards the place of the offence.

It is the further contention of the learned counsel that the prosecution has not collected any evidence regarding whether 'Gents Select Tailors' was owned by the petitioner or whether he was a tenant of the premises, since there is no copy of the lease agreement or sale deed produced by the prosecution to prove the fact that the petitioner was indeed running the said tailor shop in the alleged premises in the capacity of an owner or a tenant or a lessee. Even PW-1 has admitted in his cross-examination that no document is obtained or marked to demonstrate that the petitioner is the owner of the said tailor shop.

It is the further contention of the learned counsel that the petitioner is not the employer of the alleged child labourers. Even the parents of the said child labourers have not been examined by the prosecution to prove that they were indeed employed by the petitioner. Further, even the neighbouring shop owners or the owner of the building or any independent witnesses have not been examined to prove that the petitioner was the owner of the Gents Select Tailors and that he was the employer of the alleged child labourers.

It is the further contention of the learned counsel that though a Medical Officer has examined the child labourers and had certified on seeing that the children were below 14 years, the same has not been proved by the prosecution by subjecting the children to Ossification Test to find out their exact age. Even no efforts have been made by the prosecution to collect their birth certificates.

Further, the witnesses examined in the case are a team of Labour Inspectors of different circles and a Doctor of ESI Hospital. Hence, all these witnesses examined in the case are only interested witnesses and not even a single independent witness has been examined in the case. Thus, the learned Amicus Curiae appearing for the petitioner - accused contends that the entire case of the prosecution is based on presumption and surmises and hence adverse inference ought to be drawn in favour of the prosecution since the prosecution has failed to prove the case beyond all reasonable doubt. In spite of the same, the Trial Court as well as the Appellate Court have committed grave error in convicting the

petitioner without any evidence against him, which is opposed to law and hence he prays that this Revision Petition be allowed and the judgment passed by the Trial Court which has been affirmed by the Appellate Court be set aside.

Per contra, learned HCGP for the State contends that the court below has noticed the fact that there is an inadvertent error in mentioning the year of the complaint, which has been rightly brushed aside by the Appellate Court, the same not being a material irregularity. Further, though there is some discrepancy which stating the correct address of the tailoring shop of the petitioner by the witnesses who were examined, the Appellate Court has observed that the said discrepancy would not go to the root of the case. Further, the learned HCGP contends that there are not hard and fast rules that the complainant ought to have recorded the statements of the parents of the child labourers in order to prove the age of the said children, in view of the fact that the evidence of PW-4 Medical Officer proved the fact that the boys were below 14 years of age. He further contends that the inconsistencies in the statements of witnesses being minor in nature, the Trial Court has brushed aside these discrepancies and has rightly convicted the accused - petitioner, which has also been affirmed by the Appellate Court, which judgments does not call for any interference in this petition. Hence, he prays that the petition be dismissed.

On a careful consideration of the contentions urged by the learned counsel for the parties and on a perusal of the material on record, it is seen that on 27.01.2006 when the complainant - Senior Labour Inspector, 7th Circle along with Labour Inspectors of 9th Circle, 16th Circle and 20th Circle of Bangalore City along with Dr. Pundareekaksha of ESI Hospital and one Sri. Munibyanna of Education Department had inspected the petitioner's 'Gents Select Tailors' shop, they found two child labourers namely Master Anand Raj, aged 12 years and Master Narendra, aged 13 years working in the said shop. Since the petitioner was unable to give any proof of age of the said child labourers employed, the Doctor had examined the children at the spot and certified that they were below

14 years and thereafter complaint was lodged as per Exhibit P7 alleging the offences as aforesaid and the case was proceeded against the petitioner. After investigation, the Trial Court has convicted the petitioner which judgment has as well been affirmed by the Appellate court.

On a perusal of the material on record, I find that the Trial Court as well as the Appellate Court has proceeded on the basis of surmises and conjectures. As contended by the learned Amicus Curiae for the petitioner, I find that there are many inconsistencies in the statement of witnesses. In that, at Exhibit P7 complaint, the place of the offence is mentioned as 'Gents Select Tailors' in the Cellar floor of Hotel Brundavan Building which has also been deposed by the complainant PW-1 in his examination-in-chief. However, in Exhibit P1 being the alleged statement of the child labourer Master Anand Raj, the place of offence is stated as in front of Jinnagaramma Temple. Further in Exhibit P2 being the alleged statement of the child labourer Master Narendra, the place of offence is

stated to be below the basement floor of Tribhuvan Hotel. In Exhibit P3 Inspection report, it is stated as Cellar floor of Brundavan Building. Further in Exhibit P4 it is stated as Opposite to Tribuvan Theatre, 5th Main Road. In Exhibit P6 again it is mentioned as Cellar floor of Brundavan Building. It is seen that the buildings stated by the witnesses are all at different places in Gandhinagar and there is inconsistency regarding the place where the Gents Select Tailors is located and hence I am of the opinion that the prosecution has not been able to remove this serious doubt as regards the place of occurrence of the offence.

Further, no material has been produced by the prosecution to prove whether the petitioner was the owner or tenant or lessee of the 'Gents Select Tailors'. Further, the prosecution has utterly failed to prove whether the so-called child labourers were indeed employed by the petitioner. The prosecution ought to have at least made an effort to have examined the parents of the said child labourers alleged to be employed by the petitioner, which has not been done. In view of the inconsistencies in the statements of the witnesses, doubt arises in the mind of this court whether the case against the petitioner was registered for statistical purpose as contended by the learned Amicus Curiae.

Hence, I am of the opinion that the judgment of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court requires to be set aside. Accordingly, I pass the following:

ORDER

This Criminal Revision Petition is allowed. The judgment of conviction and order of sentence passed by the Trial Court in C.C.No.1272/2006 dated 03.07.2010 affirmed by the Appellate Court in CrI.A.No.535/2010 dated 04.11.2010 is hereby set aside. The petitioner - accused is acquitted of the offences leveled against him. The fine amount if any paid by the petitioner - accused shall be refunded to him, on proper identification.

The fee of the Amicus Curiae is fixed at Rs.10,000/- which shall be payable by the State, in accordance with law.