

(2017) 05 KL CK 0037
In the High Court Of Kerala
Case No : 588 of 2017 ()

A NIZAMUDHIN

APPELLANT

Vs

THE STATION HOUSE OFFICER & Anr

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

Constitution of India, Article 23, Article 24 - Prohibition of traffic in human beings and forced labour - Prohibition of employment of children in factories, etc
Code of Cri

Citation : (2017) 05 KL CK 0037

Hon'ble Judges : B.Sudheendra Kumar

Bench : SINGLE BENCH

Advocate : K.R.AVINASH, ABDUL RAOOF PALLIPATH, PRAJIT RATNAKARAN, M.K. PUSHPALATHA

Judgement

1. The petitioner is the first accused in C.P. No. 67 of 2016 on the files of the court of the Judicial Magistrate of First Class-I, Kannur.
2. The prosecution allegation is that on 29-6-2016, a minor child aged 14 years was found engaged in the domestic work in the house of the petitioner by the Child Line people. The matter was reported to the police. The police came to the spot and questioned the victim. Thereafter, the crime was registered. After completing the investigation, final report was filed before the Court under Sections 75 and 79 of the Juvenile Justice (Care and Protection of Children) Act, 2015, (for short "the Act").
3. In this Crl.M.C., the prayer of the petitioner is to quash the final report and further proceedings against the petitioner in the above said case.
4. Heard both sides.
5. The learned counsel for the petitioner has argued that since there is no allegation that the minor victim girl was employed by the petitioner in bondage,

the offence under Section 79 of the Act is not attracted.

6. In this connection, it will be beneficial to read Section 79 of the Act, which is extracted hereunder:- "Exploitation of a child employee: Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Explanation:- For the purposes of this section, the term "employment" shall also include selling goods and services, and entertainment in public places for economic gain".

7. A reading of Section 79 of the Act makes it clear that in order to attract Section 79 of the Act, the accused has to engage a child and keeps him in bondage for the purpose of employment or withhold his earnings or use such earning for the purpose of the accused.

8. The term bondage is not defined in the Act. In Chambers 20th Century Dictionary, (New Edition), "bondage" means "captivity" or "slavery" (the state of being a slave). In Merriam -Webster's Advanced Learner's English Dictionary, "bondage" means "Slavery". In Oxford Advanced Learner's Dictionary - 95th Edition, the meaning of the word "bondage" is the state of being a slave or prisoner and the synonym of the word "bondage" is "Slavery".

9. Section 2(61) of the Act provides that all words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.

10. The learned counsel for the parties or the learned Public Prosecutor could not bring to the notice of this Court with regard to the definition of bondage in any other Act.

11. The term "bonded labour" is defined in Section 2 (e) of the Bonded Labour System (Abolition) Act, 1976, which provides that "bonded labour" means any labour or service rendered under the bonded labour system. Sec. 2 (g) of the Act provides that "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 depended 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 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".

12. The slavery convention was signed at Geneva on 25th September 1926. This convention of 1926 was designed to secure the abolition of slavery and the slave trade. Article 1 of the above convention defined slavery as "the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised". The preamble to the UN Supplementary Convention of 1956 defined debt bondage as "the status or condition arising from a pledge by his debtor of his personal services or of those of a person under his control as security for a debt if the value of those services, as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined". From the above definition of debt bondage, it appears that the debt bondage is a kind of slavery or bonded labour.

13. The words "keeps in bondage" in the Act have some significance. The object of adding these words was clearly to expand the reach and content of Article 23 of the Constitution of India which prohibits traffic in human beings and beggar and other similar forms of forced labour.

14. The upshot of the above discussion is that bondage is synonymous to slavery, forced labour, bonded labour or compulsory labour. Therefore, in order to attract the offence under Section 79 of the Act, there must be allegation and materials to the effect that the child was engaged and kept him in bondage for the purpose of employment. The words "engages a child" and "keeps him in bondage" have to be read in conjuncture. Thus, it is clear from Section 79 of the Act that engaging a child for the purpose of employment as such is not prohibited under Section 79 of the Act, if the engaging of the child for the employment is not by keeping the child in bondage. The employment of a child for the purpose of begging is prohibited under Section 76 of the Act. The using of

a child for vending, peddling, carrying supplying or smuggling or any intoxicating liquor, narcotic drug or psychotropic substance is also made an offence under Section 78 of the Act. This also makes it clear that the employment of a child as such is not prohibited under Section 79 of the Act. What is prohibited under Section 79 of the Act is the employment of a child in bondage or employment of the child withholding the earnings of the child or utilizing the earnings of the child for the purpose of the employer.

15. The system of bondage implies the infringement of basic human rights and destruction of the dignity of human labour. In slavery or in forced labour, or bonded labour, the labourer is not having the liberty to leave the employment without the permission of the employer. Therefore, if the labourer is having the liberty to leave the employment without the permission of the employer, the said employment cannot be said to be an employment in bondage. Therefore, the cardinal distinction between the employment in bondage and the employment without any bondage is that the labourer will not have the liberty to leave the employment without the permission of the employer in the former whereas the labourer will be having the liberty to leave the employment without the permission of the employer in the latter.

16. The statement of the child and her mother appended to the final report in this case would show that the child was being treated just like the daughter of the petitioner in the house of the petitioner. The father of the child expired and in order to meet both ends, the mother of the child is doing the work of selling fish. She also used to come to the house of the petitioner for doing the work as a domestic servant. The victim stated that everybody in the house of the petitioner used to treat her with love and affection. The victim was never mentally or physically harassed by the petitioner or other inmates in the house. The victim stated that the victim likes continuing residence with the petitioner and his family. The mother of the victim collects Rs. 3000/- per month for the work done by the victim. The victim is aged above 14 years. She studied up to VIII standard in Tamil Nadu. After the death of the father of the girl, her mother had to come to Kerala for doing domestic work and the business of selling fish for the purpose of looking after the girl. In the said circumstances, the mother of the victim left her daughter in the house of the petitioner. It is true that she occasionally used to clean vessels and broom the floors of the house. There is absolutely no allegation that the child was under bondage or she was doing forced labour in the house of the petitioner. The materials produced by the prosecution before the court also do not support the prosecution case.

17. Having gone through the entire materials collected by the prosecution, I am satisfied that there is absolutely no allegation or material before the court to indicate that the child was kept in bondage by the petitioner for the purpose of employment. There is also no material or allegation to the effect that the petitioner withheld the earnings of the child or used her earnings for his own purpose. In the said circumstances, merely because there is allegation that the

victim was engaged in the house of the petitioner as a maid servant, it cannot be said that there are ingredients to constitute the offence under Section 79 of the Act, particularly when the victim is aged above 14 years. It may also be noted that Article 24 of the Constitution of India does not prohibit the employment of children above the age of 14 years.

18. Now coming to Section 75 of the Act, there is absolutely no allegation or material to the effect that the petitioner assaulted or abandoned or abused or exposed or wilfully neglected the victim or caused or procured the victim to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause the victim unnecessary mental or physical suffering. In the said circumstances, there is no ingredient to constitute the offence under Section 75 of the Act. Consequently, the offence under Section 75 of the Act is also not attracted against the petitioner.

19. In view of the above reasons, no successful prosecution can be sustained against the petitioner. In the said circumstances, no purpose will be served even if the prosecution against the petitioner is permitted to be continued. Consequently, I am inclined to quash Annexure-1 final report and further proceedings against the petitioner in C.P. No. 67 of 2016 on the files of the court below, in exercise of the inherent power under Section 482 Cr.P.C. to meet the ends of justice and accordingly, I order so. In the result, this CrI.M.C. stands allowed.