

(2016) 12 GUJ CK 0007

In the Gujarat High Court

Case No : Criminal Misc. Application (For quashing and set aside Fir/order) No. 20845 of 2015

Dipakbhai Dineshbhai Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 26

Citation : (2017) 1 GujLH 304

Hon'ble Judges : Mr. J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr. Maulik Nanavati, Advocate for Nanavati and Co., Advocate, for the Applicant No. 1; Ms. Nisha Thakore, APP, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. J.B. Pardiwala, J. (Oral)—Rule returnable forthwith. Ms. Thakore waives service of notice of rule for and on behalf of the respondents.

2. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant - original accused seeks to invoke the inherent powers of this Court, praying for quashing of the First Information Report dated 13th October, 2015 registered with the Satellite Police Station, Ahmedabad bearing C.R. No. II-3130 of 2015 for the offence punishable under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. The case of the prosecution may be summarised as under :

3.1. The applicant is alleged to have been procured a boy aged 15 years, namely, Sangramsing Kansing Chauhan to perform the household work. Sangramsing is a Rajasthani, but for the purpose of employment, migrated to Gujarat. One day, Sangramsing is said to have committed theft in the house of the applicant. The applicant lodged a First Information report on 5th October, 2015 with the

Satellite Police Station, Ahmedabad bearing IC. R. No.169 of 2015 for the offence punishable under Sections 454, 457 and 380 of the Indian Penal Code. In the course of the investigation of the F.I.R. lodged by the applicant herein, the Police Inspector of the Satellite Police Station questioned the applicant as to how come, he could have procured a fifteen years old boy at his house for performing the household work. It also appears that the applicant used to pay Rs. 7,000/- per month towards salary to Sangramsing. The Police Inspector recorded the statement of Sangramsing as well as his father, namely, Kansing Chauhan. In such circumstances, the senior Police Inspector of the Satellite Police Station thought fit to himself lodge a First Information Report for the offence punishable under Section 26 of the Act, 2000, which is the subject of challenge in this application.

4. Mr. Maulik Nanavati, the learned counsel appearing for the applicant vehemently submitted that even if the entire case put up by the prosecution is accepted as true, none of the ingredients to constitute the offence punishable under Section 26 of the Act, 2000 are spelt out. He would submit that Section 26 of the Act, 2000 speaks of hazardous employment. Doing household work by any stretch of imagination cannot be termed as hazardous employment. He would further submit that procuring a fifteen years old boy for doing household work by paying him salary of Rs. 7,000/- per month cannot be termed as one of the forms of forced labour. Mr. Nanavati further submitted that a child or juvenile above the age of fourteen years at any rate cannot be prevented or restrained from getting employment in any work which is not of a hazardous nature, for remuneration, to earn his livelihood or that of his family.

5. In such circumstances referred to above, Mr. Nanavati prays that there being merit in this application, the same may be allowed and the F.I.R. be quashed.

6. On the other hand, Ms. Thakore, the learned A.P.P. appearing for the State has vehemently opposed this application. The learned A.P.P. would submit that the plain reading of the F.I.R., prima facie, discloses an offence punishable under Section 26 of the Act, 2000. According to the learned A.P.P., procuring a fifteen years old boy for doing household work amounts to forced labour. It amounts to an abuse of the children of the tender age. She would submit that since the investigation is in progress, this application should not be entertained and may be rejected.

7. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the F.I.R. discloses commission of any offence punishable under Section 26 of the Act, 2000.

8. Before adverting to the rival submissions canvassed on either side, the provisions of Section 26 of the Act, 2000 should be looked into. Section 26 of the Act, 2000 reads thus:

"26. Exploitation of juvenile or child employee :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 earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also liable to fine."

9. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted to protect the interest of juvenile or child, which require care and protection and also to reform the juvenile, who is in conflict with law. The Act, 2000 is a Comprehensive legislation to provide justice and opportunities to children of India for their growth and development. The Act is based upon the provisions of the Constitution of India and four broad rights of the U.N. Convention on the Rights of the Child including right to survival, Protection, Development and Participation. In this Act two categories of children are the main theme i.e., "Juvenile in conflict with law" and "Children in need of care and protection." The former category consists of the children who have committed an offence and the latter refers to these children who are neglected. "Neglected" is a wide term which inter alia, includes children without shelter and without any ostensible means of subsistence. The Act, basically deals with two aspects i.e., those situations which can drive the child towards the tendency which is in conflict with law and the situation when the child has already reached the confinement of conflict with law.

10. The plain reading of the Section 26 clearly spells out that the employment of a juvenile or child to constitute an offence must be one which by its very nature is hazardous. Over and above the nature of hazardous employment, the section also contemplates of keeping the juvenile or child in bondage and withholding his earnings or using of such earnings by his employer.

11. The aforesaid Section is analogous to Section 44 of the Juvenile Justice Act, 1986, which reads thus :

"44 : Exploitation of Juvenile employees : Whoever ostensibly procures a juvenile for the purpose of any employment and withholds the earnings of the juvenile or uses such earnings 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."

12. The changes brought about under Section 26 of the new Act by additions, qualifying or restricting the applicability of exploitation to "hazardous" employment with the addition "keeping in bondage", which was not there in Section 44 of the Juvenile Justice Act, 1986, definitely have some significance. The aforesaid expressions newly added in the section, no doubt, are the extension of the reflection and in fact imbibing of the spirit of the principles enunciated under Articles 23 and 24 of the Constitution of India. Article 23 prohibits traffic in human beings and forced labour. Every form of forced labour, beggar or otherwise, is within the inhibition of Article 23 of the Constitution of India, with the sole exception in the case of State imposing compulsory service for public purposes. Otherwise in the case of the State extracting compulsory

labour for public purposes from the citizen of the performance of its supreme and noble duty of contributing to the defence of the rights and honour of the Nation, all other forms of forced labour comes within the sweep of inhibition under the above Article. It makes no difference, whether the person who is forced to give such labour or services is remunerated or not.

13. The Supreme Court in *Peoples Union for Democratic Rights v. Union of India* [AIR 1982 SC 1473] has considered the scope and ambit of Article 23 in detail, and it again came up for consideration in *Bandhua Mukti Morcha v. Union of India* [AIR 1983 SC 1155]. Whereas Article 23 prohibits all forms of forced labour, Article 24 speaks of prohibition of employment of children in factories, mines or in any hazardous occupation. Similarly, provisions under Article 39(e) and (f) of the Constitution enunciate the directive principles that health and strength of the workers, men and women, and the tender age of the children are not to be abused and that childhood and youth are to be protected against exploitation and against moral and material abandonment. Section 26 of the Act, which in effect reflects and imbibes the spirit of Articles 23, 24 and Section 39(e) and (f) imposes punishment extending a term of three years and also fine to any person who procures any juvenile or child for the purpose of any hazardous employment, keeps him in bondage and withholds his earnings or uses such earning for his own purposes.

14. Section 2(k) of the Act defines a "juvenile" or "child" as a person who has not completed 18 years of age. "Juvenile" and "child" are not separately defined under the Act. So, in relation to the applicability of the Act, having regard to the definition, as indicated above, all human beings below the age of 18 years come within the sweep of children/juvenile. Article 24 of the Constitution, it has to be taken note of, restricts or prohibits employment of children below the age of 14 years in any factory or mine or engagement in any other hazardous employment. Necessarily, the scope and applicability of Section 26 of the Act has to be examined with reference to the prohibition covered by Article 24 of the Constitution. A child or juvenile above the age of 14 years at any rate cannot be prevented or restrained from getting employment in any work which is not of a hazardous nature, for remuneration, to eke out his livelihood or that of his family. His right to such employment is insulated under the Constitution, and when that be so, the question has to be examined whether an employer, who provided employment, which is not of a hazardous nature, to a child or juvenile above the age of 14 years is liable to be prosecuted, for that reason alone, under Section 26 of the Act. When there is no statutory inhibition in employment of children above the age of 14 years, which is not a hazardous nature, the answer can be only in the negative. Perhaps in the employment of children below the age of 14 years, the question of employment of such children may require further scrutiny even if it is not so an offence under Section 26 of the Act, but, with reference to prescriptions under different Statutes, as may be applicable. I say so since the statutory interdictions as under Section 67 of the Factories Act, 1948 Section 45 of the Mines Act, 1952 etc. have significance only in relation to

the employment of children in hazardous activities. Whereas Section 67 of the Factories Act prohibits employment of a child who has not completed 14 years in any factory, it is seen, Section 45 of the Mines Act, there is an interdiction even in allowing the presence of any child below the age of 18 years in any place where any operation connected with or incidental to any mining operation is being carried of, but, subject to the exception provided under subsection (2) of Section 40 of the Mines Act which permits of engaging of children as apprentices and other trainees not below the age of 16 years to work in any mining area under the proper supervision by the manager. Even in respect of engaging of children or juvenile in operation of mines which is, no doubt, hazardous activity, what is noticed is that the children above the age of 16 years could be engaged as apprentices or trainees under the supervision of a manager of the mine as per the statutory provisions covered by the Mines Act. Though the Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), which came into force on 26th May, 1993, to prohibit the children in certain employments and to regulate the conditions of work in certain other employments, yet it is noticed the "child" to whom such Act is applicable is defined thereunder as a person who has not completed his 14 years of age. So, the prohibition in engaging of children above the age of 14 years in areas other than involving hazardous activities, providing them remuneration for their work, for the time being, cannot be viewed as infringing the protection and rights afforded to such children. In the context, it is also to be noticed that the amendments proposed in the existing law against child labour are still to be enacted. A new Act titled as "Child and Adolescent Labour Prohibition Act" which contemplates of total ban of all forms of child labour under the age of 14 years is yet to be passed by the Parliament though it is stated to have received the approval of the Union Cabinet. (See "The Hindu" dated September, 10, 2012 "Getting ready for the new law against child labour" an article written by Kailash Satyarthi). A mere allegation that a juvenile, aged 15 years, has been employed in a house as a servant does not necessarily follow that such employment constituted any threat or hazard to that juvenile. Engaging a juvenile as a servant in a house cannot be viewed as one putting him to a hazardous employment. [See: Vinod S. Panicker v. Sub Inspector of Police and another, 2012 (4) Kerala Law Journal 384].

15. In Joseph v. State of Kerala [2014 (2) KLT 91] : (2014 Cri. L.J. 2324 (Ker)], it was held by a single Judge of the Kerala Court that, if a juvenile over the age of 14 years voluntarily takes up work in an establishment and when the prosecution case did not disclose the ingredients of the offence under Section 23 of the Act, the Court would be justified in invoking the powers under Section 482 to bring the criminal proceedings to a termination. Similar views have been taken in the judgment dated 12th March, 2013 passed in the Cri.M.C. 1118 of 2013 and also in the judgment dated 18th December, 2014 in the Cri.M.C. 5057 of 2014.

16. Neither in the statement of the juvenile nor in the statement of his father,

there is any allegation that the applicant herein has committed any of the objectionable acts as is detailed in Section 23 of the Act. Section 23 of the Act reads as follows:

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

17. In order to attract Section 23 of the Act, there should be specific allegation that the applicant was having actual charge or control over the juvenile and that he had assaulted, abandoned, exposed or wilfully neglected the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause the said juvenile or the child unnecessary mental or physical suffering. The statements of the witnesses do not reveal the ingredients of the offence.

18. I am also not impressed with the submission of the learned A.P.P. that the case in hand is also one of bondage labour. In the F.I.R., there is not a word or whisper about any offence alleged to have been committed under the provisions of the Bonded Labour System (Abolition) Act, 1976. However, according to the learned A.P.P., at the end of the investigation, the police perhaps may file the charge-sheet even for the offence under the Act, 1976. Sections 16 and 18 of the Bonded Labour System (Abolition) Act should be looked into to appreciate the contentions canvassed by the learned A.P.P. In my view, none of the offences get attracted from the allegations made against the applicant even if those allegations are taken to be true.

19. The application of the aforesaid provisions gets attracted only when one takes the work from anyone under the Bonded Labour System. The Bonded Labour System has been defined under Section 2(g) of the Act, which reads as follows:

"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 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 the 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 way 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 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 about 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."

20. For prosecuting one under the provisions of the said Act, the prosecution needs to establish any of the conditions which are there in clause (g) of Section 2 defining Bonded Labour System.

21. It is not the case of the first informant that work was taken from the juvenile on account of any of the reasons mentioned in Section 2(g) of the Act, and therefore, the offence under Sections 16 and 18 of the Bonded Labour System (Abolition) Act never gets attracted.

22. In my view, the prosecution has not been able to make out any case worth the name to bring the case withing the ambit of Section 26 of the Act, 2000. It cannot be said that the juvenile was ostensibly procured for the purpose of any hazardous employment or that he was kept in bondage or that his earnings were withheld or that his earning were used for the applicant's purpose to bring the act of the applicant within the ambit of Section 26 of the Act, 2000.

23. The parameters where exercise of inherent power under Section 482 of the Code can be exercised either on proof of abuse of process of any Court or otherwise to secure the ends of justice have been highlighted in several cases. In *State of Haryana and Ors. v. Bhajan Lal and Ors.* [1992 SCC (Cri.) 426], it was held that though it will not be possible to lay down any precise, clearly defined sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised, certain illustrative cases were indicated. They are as follows :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

24. The case at hand falls within the category I of the illustrations given in Bhajan Lal's case (supra).

25. In the above view of the matter, this Court will be justified in quashing the First Information Report against the applicant by invoking the extraordinary powers under Section 482 of the Code.

26. In the result, this application is allowed. The First Information Report bearing C.R. No. II-3130 of 2015 lodged with the Satellite Police Station, Ahmedabad for the offence punishable under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby ordered to be quashed. Direct service is permitted.