
(2022) 10 TEL CK 0014
In the Telangana High Court
Case No : Criminal Petition No. 7148 Of 2020

Naresh Thapar

APPELLANT

Vs

Ch. Sailu

RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 370, 370(5), 374, 420
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 79
Child Labour (Prohibition and Regulation) Act, 1986 — Section 14(1)
Bonded Labour System (Abolition) Act, 1976 — Section 16(23)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 10 TEL CK 0014

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Advocate : T S Anirudh Reddy

Final Decision : Dismissed

Judgement

1. This petition is filed to quash the proceedings in SC No.354 of 2019 on the file of V Additional District and Sessions Judge, Bhongir.

2. The petitioner is A1, who is the Director of SPS Yarns Private Limited, situated at Jalalpur Village, Pochampally Mandal. On 09.01.2018, police received reliable information that the management of SPS Yarns Private Limited procured children from other States with the help of contractors who are all minors and employed them as labourers without providing basic amenities. Accordingly, the team consisting of Sub-Inspector of Police, Choutuppal and others went to the factory and found 11 children, who are all minors working as labourers in the factory. It was also found that the petitioner with the help of A3 and A4 was procuring child labourers from other States. The 11 children who were rescued were produced before the Child Welfare Officer at Nalgonda. Investigation was undertaken and during the course of investigation, it was revealed that the petitioner was the Managing Director of SPS Yarns Private Limited and A2 was part of Management staff, A3 and A4 were labour contractors and agents, who procured labour

including child labour to the company from various places.

3. Learned counsel for the petitioner submits that the company SPS Yarns Private Limited is not made as an accused, for which reason, the prosecution is bad in law and the proceedings against the petitioner, who is the Managing Director has to be quashed. Further, even according to the investigation, it was A3 and A4, who had procured the child labour, as such, the petitioner cannot be prosecuted for the offences under Sections 370(5), 374 of IPC, Section 79 of Juvenile Justice Act and Section 14(1) of Child Labour Act, 1986 and Section 16(23) of the Bonded Labour System (Abolition) Act, 1976. In support of his contentions, he relied on the judgments in the cases of; i) Sharad Kumar Sanghi v. Sangita Rane (2015) 12 Supreme Court Cases 781 and argued that in the absence of the company being arrayed as an accused, the proceedings have to be quashed; ii) Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 Supreme Court Cases 609 and argued that unless there is incriminating evidence against the Directors, they cannot be roped in as accused; iii) Order in Criminal Petition No.315 of 2021, dated 22.03.2022 of the High Court of Andhra Pradesh, wherein the learned Judge while relying upon the judgment of Hon'ble Apex Court in Sharad Kumar Sanghi v. Sangita Rane (supra) held that the company being a legal entity and unless the company is made as a co-accused, complaint cannot be maintained and consequently quashed the proceedings under Section 420 of IPC.

4. On the other hand, learned Public Prosecutor submits that the police has formed into a team and on reliable information raided the premises of the company SPS Yarns Private Limited and found that child labour were engaged and they were not even given basic amenities. In the said circumstances, the prosecution of this petitioner and others is in accordance with law.

5. The main ground urged by Sri Pradyumna Kumar Reddy, learned Senior Counsel appearing for the petitioner is that SPS Yarns Private Limited was not made as an accused, for which reason, prosecution against the petitioner has to be quashed. The judgments relied upon by the learned Senior Counsel are not applicable to the facts of the present case. In the present prosecution, it is not the case of the police that the company has committed acts which attract penal consequences and the petitioner being the Managing Director is made vicariously liable. It is the specific case of the prosecution that this petitioner had instructed A3 and A4 labour contractors to get the labourers for working in the company. It is further alleged that this petitioner and A2 have exploited the children, without giving basic amenities and treated them as bonded labour.

6. As seen from the charge sheet, this petitioner had actively participated in the process of securing the child labour with the help of A3 and A4. In the said circumstances, it cannot be said that the SPS Yarns Private Limited is guilty of any of the offences alleged and the petitioner was made vicariously liable. In fact the Company is aggrieved by the acts of this petitioner for engaging child labour. Though the child labour were made to work in the company, the said procuring of

the child labour was done at the instance of this petitioner according to the charge sheet.

7. Under Section 370 of IPC, who ever recruits for the purpose of exploitation is said to have involved in trafficking a person. In the present case, prima facie, it is alleged in the charge sheet that A1 had procured the child labour and recruited them for the purpose of working in the company.

8. The allied offences of child labour and exploiting children and engaging them as labour are also punishable under the provisions of Section 79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 14 (1) of Child Labour (Prohibition and Regulation) Act, 1986 which are extracted here under:

"79.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."

"14 Penalties. —

(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both."

9. Further, the allegations made also attract offence under the provisions of Bonded Labour System (Abolition) Act. The High Court in exercise of its inherent powers can only quash the proceedings in rare cases where on the face of record there appears that no case is made out and none of the ingredients of the offences alleged are attracted in a given case. Further in the event of not following any mandatory procedures prescribed for launching prosecution, this Court can exercise the inherent powers under section 482 CRPC to prevent abuse of process of Court.

10. Non-inclusion of the company will not in any manner affect the case of the prosecution in the present facts and circumstances wherein the petitioner was actively involved in procuring the children to work as labourers, according to the charge sheet. The defence of the petitioner is left open to be agitated before the trial Court. The concerned trial Court shall proceed with the trial without being influenced by any of the findings/observations made in this application, since the said observations/findings are made at the stage when petitioner is seeking quashing of the proceedings.

11. All the facts and circumstances which come to the notice of the trial Court

during trial shall be considered while adjudicating upon the case.

12. In the result, the Criminal Petition is dismissed. However, the attendance of the petitioner is dispensed in the trial Court. But, the petitioner/A1 shall appear as and when the trial Court directs him to appear. The petitioner shall not take adjournments and delay the proceedings in the trial Court by virtue of this order.