
(2006) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 793 of 2004

Ramachander Rao P.

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-03-2006

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 10, 14(1), 2, 3

Citation : (2006) 1 ALD(Cri) 883 : (2006) 2 ALT(Cri) 271 : (2006) 2 APLJ 224 : (2006) 3 LLJ 621

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : B.G. Ravinder Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This Criminal Petition is filed against the registering of C.C. No. 110 of 2003 on the file of the Judicial First Class Magistrate, Peddapally, Karimnagar District, u/s 3 of the Child Labour (Prohibition and Regulation) Act, 1986 (for short "the Act") alleging that the petitioner herein had employed one Chennamma, daughter of Sri Balaswamy, aged 12 years, as a child labour in his work spot in violation of Section 3 of the Act.

2. A complaint is filed by the Inspector, under Child Labour (Prohibition & Regulation) Act, 1986 and Assistant Labour Officer, Peddapally, u/s 3 of the Act. The petitioner is a contractor of the works taken over by M/s. Teja Constructions at Peddakalvala Village, Peddapally Mandal, Karimnagar, carrying on the construction of Canal. The process of construction is declared as hazardous process as notified by the Government of India, vide Entry No. 11 of Schedule Part-B of the Act. On August 1, 2002 at about 12.45 p.m. the Inspector, Karimnagar, on an inspection of the work spot of the accused, found that a child, by name Chennamma, daughter of Sri Balaswamy, aged 12 years, had been engaged by the accused and found to be working in the work spot of the accused

in violation of Section 3 of the Act. The accused was not present at the time of inspection in the work spot. The Inspector drafted an inspection report on the spot and sent to the District Labour Officer, Karimnagar for taking further action. A demand notice was issued to the accused, by the Labour Officer, Karimnagar, under a copy to the Superintending Engineer, Godavari Valley Circle No. 2, Sriram Sagar Project, Jagiryal, with a direction to deposit Rs. 20,000/- through a demand draft in favour of Child Labour Rehabilitation-cum-Welfare Fund of Karimnagar District, within seven days, from the date of receipt of notice issued on August 2, 2002. The notice was served on the accused by registered post with acknowledgement due on September 2, 2002. In reply to the notice, the accused submitted his reply dated September 16, 2002 contending that the child labour identified by the Inspector was having 15 years of age. But the Labour Officer was not convinced with the age, therefore, requested the accused to produce the child labour along with documentary evidence in his office on November 8, 2002 at 11 a.m. to conduct an enquiry in the matter and marked a copy of the notice to the Superintending Engineer. The Superintending Engineer also requested the accused to take action on the notice issued by the Labour Officer, Karimnagar, through his letter dated November 13, 2002 . In continuation of his-reply, the accused submitted a xerox copy of the paper clipping and requested to ponder the issue and advise him for necessary disposal. As the accused was not present at the time of inspection in the work spot and not responded-to the notice issued, a show cause notice was issued to the accused for violation of Section 3 of the Act in October 2002 with a direction to show cause in writing as to why the penal action should not be taken against him. The notice was served on January 22, 2003 and no reply was received from the accused after lapse of the time mentioned in the show cause notice and no one came forward to take responsibility of violation taken place in the work spot, the contractor held responsible for the violation. The accused having failed to deposit the welfare fund as per demand notice issued, in pursuance of the direction of the Supreme Court, rendered himself liable to pay an amount of Rs. 20,000/- to the said Child Labour Rehabilitation-cum-Welfare Fund. The complainant, therefore, prays that the accused may be tried and dealt with according to law for contravention of Section 3 of the Act and rendered himself liable for punishment u/s 14(1) of the Act and also prays that an amount of Rs. 20,000/- towards Child Labour Rehabilitation-cum-Welfare Fund may be recovered from the accused according to the direction of the Supreme Court in W.P. (C) No. 465 of 1996 in M.C. Mehata and Government of Tamil Nadu and others.

3. The trial Court took cognizance of the offence and being aggrieved by the taking cognizance of the offence, the accused filed the present Criminal Petition challenging the validity of the prosecution.

4. The learned Public Prosecutor submits that the Inspector on seeing the girl, found her as 12 years old, therefore, he issued a notice to show cause as to why the accused shall not be prosecuted. But, the accused did not respond to the notice and did not make his appearance before the Labour Officer to explain.

Hence, it shall be held that he engaged a girl aged 12 years, which is an offence u/s 3 of the Act. Therefore, he is liable to be prosecuted.

5. The point for consideration is whether the accused committed the offence u/s 3 of the Act and he has rendered himself liable for prosecution.

6. The Child Labour (Prohibition and Regulation) Act was introduced in 1986. There are a number of Acts, which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions. Therefore, the Bill intends to i) ban the employment of children, i.e., those who have not completed their fourteenth year, in specified occupations and processes; ii) lay down a procedure to decide modifications to the Schedule of banned occupations or process; iii) to regulate the conditions of work of children in employments where they are not prohibited from working; iv) lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children; and v) to obtain uniformity in the definition of "child" in the related laws.

7. Child is defined in Section 2(ii) of the Act, which reads as follows;

"Child" means a person who has not completed his fourteenth year of age.

8. u/s 3 of the Act, no child shall be employed or permitted to work in any of the occupations set forth in Part-A of the Schedule or in any workshop wherein any of the process set forth in Part-B of the Schedule is carried on:

Provided that nothing in this Section shall apply to any workshop where in any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from Government.

9. Section 10 of the Act deals with disputes as to age, which reads as follows;

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in any establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

10. Section 14(1) of the Act deals with penalties, which reads as follows:

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.

11. The learned Counsel for the revision petitioner submits that from a reading of Section 10 of the Act, it is clear that whenever there is any dispute regarding the age of the child, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority and in the absence of sending the child to the medical authority for determination of the age, the Inspector or the Labour Officer cannot determine the age. In the absence of any record to show that the child is of a particular age, the complaint that the child of 12 years old is engaged, is without any proof regarding the age, therefore, the prosecution itself cannot be maintained.

12. The learned Public Prosecutor submits that on August 2, 2002 a demand notice was issued directing the accused to pay Rs. 20,000/- towards Child Labour Rehabilitation-cum-Welfare Fund on account of employing a girl by name Chennamma, aged 12 years as child labour. A show cause notice was also issued on January 17, 2003 informing that he employed child labour by name Chennamma, aged 12 years in an establishment covered by hazardous employment and thereby he contravened Section 3 of the Act. Therefore, he was directed to show cause in writing, within seven days, from the date of receipt of this notice as to why the penal action should not be taken against him for violation of the said provision of the Act. The contention is that as he did not give any reply to the show cause notice or failed to attend before the Labour Officer and failed to deposit the amount demanded under the demand notice, the accused is liable to be prosecuted.

13. In para 4 of the complaint, it is mentioned that the notice was served on the accused on September 2, 2002 and he sent a reply to the notice on September 16, 2002 mentioning that the child labour identified by the Inspector is having 15 years of age. But the Labour Officer, instead of sending the child labour to the medical officer for determination of the age, held that the reply of the accused that the child is 15 years of age is not convincing one. Before filing the prosecution, the complainant did not reply on any record to the effect that the child did not complete 14 years. Had the complainant sent the child to the medical officer as required u/s 10 of the Act, the age would have been determined, which would have resolved the issue whether he is liable for prosecution or not. The Inspector and the Labour Officer before filing the complaint failed to follow the procedure prescribed u/s 10 of the Act having admitted that the accused contended that the child is of 15 years age.

14. In the light of the above circumstances and in view of the violation of the procedure prescribed u/s 10 of the Act, the prosecution cannot sustain.

15. Accordingly, the Criminal Petition is allowed and the complaint is dismissed by quashing the proceedings in C.C. No. 110 of 2003 in the Court of Judicial First Class Magistrate, Peddapally.