
(2001) 12 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Revision No. 2324 of 2001

Ramchander

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 10, 14(1), 16, 2

Citation : (2002) CriLJ 1253 : (2002) 1 LLJ 907

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : Shiv Chander, for the Appellant; D.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

U.S. Tripathi, J.—This revision has been directed against the judgment and order dated November 16, 2000 passed by Additional Sessions Judge, Varanasi, Court No. 14 in Criminal Appeal No. 297 of 2000 dismissing the appeal and confirming the conviction of the applicant u/s 14(1) of Child Labour (Prohibition and Regulation) Act, 1986 and sentence of three months R.I. recorded by IV Additional Chief Judicial Magistrate, Varanasi in Criminal Case No. 722 of 2000, vide order dated November 16, 2000.

2. The prosecution story, briefly stated, was that on March 26, 1995 at about 4.45 A.M. Sri O.P. Gupta, Labour Enforcement Officer, Varanasi, along with Sri S.K. Srivastava inspected the Carpet loom of applicant situated at Dhaurpur, P.S. Rohania, District Varanasi and found that a boy named Chaturi S/o Bachau aged about 11 years was working at the said establishment. The Enforcement Officer prepared spot note and filed complaint against the applicant for the offence punishable u/s 14(1) of Child Labour (Prohibition and Regulation) Act, 1986, hereinafter called the Act. During trial the prosecution examined Hira Lal Sharma (P.W.I), S.K. Srivastava (P.W.2) and Sri O.P. Gupta (P.W.3). The applicant, examined Shiv Nath (D.W.1), Bachau (D.W.2) and Chaturi (D.W.3) and also filed extract of kutumb register, pass book of U.P. Electricity Board and age certificate

of the child. Learned Magistrate on considering the evidence of the parties held that applicant had employed Chaturi a boy aged about 11 years and had committed an offence punishable u/s 14(1) of the Act.

3. With these findings he convicted him in said section and sentenced to undergo R.I. for a period of three months.

4. Aggrieved with his above conviction and sentence, the applicant filed Criminal Appeal No. 297 of 2000. The Appellate Court concurred with the findings of the Trial Court, dismissed the appeal and confirmed the conviction and sentence of the applicant under said section.

5. The above order has been challenged in this revision.

6. Heard the learned counsel for the applicant and the learned A.G.A. and perused the record.

7. The first point raised by learned counsel for the applicant was that it was not proved that applicant was running a power loom. But on this point there is specific finding of the Magistrate as well as the Appellate Court that when the Enforcement Officer inspected the power loom of the applicant, he found it in operation. Both the Courts have also discussed the certificate given by Pradhan and the Block Development Officer and have recorded a finding of fact that the applicant was running a power loom as such there is no ground to interfere with the above finding of fact in this revision.

8. The next point raised by learned counsel for the applicant was that there was no evidence that Chaturi Prajapati, who was allegedly found working on the power loom was a child as defined in the Act.

9. Section 14(1) of the Act, which provides penalty for taking work from child says that 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. "Child" as defined in Section 2(ii) means a person, who has not completed his 14 years of age.

10. In this case, the case of the prosecution was that Chaturi, who was found working at the establishment of the applicant was aged about 11 years. Contrary to it, the applicant contended that age of Chaturi was about 18 years. He had also filed certain documents regarding his age, such as extract of kutumb register attested by Pradhan of the village as well as medical certificate based on extract of kutumb register and certificate of the Pradhan. The learned Magistrate has observed that the medical certificate filed by the applicant was not in accordance with Section 16(2) of the Act and therefore, it cannot be relied on in evidence. The Appellate Court has observed that in case the occupier of the establishment did not agree with the age given in the inspection note of the

Inspector, he should have moved an application prior to statement of the Inspector regarding certificate of the age of the child to be obtained by the prescribed medical authority. In case, the Trial Court had rejected the above application, he would have filed revision. But since applicant had not done so, the medical certificate filed by him cannot be accepted.

11. It means that the Trial Court as well as the Appellate Court have cast burden of proof of the age of the child on the accused applicant. As required by Section 14(1) the initial burden is of the prosecution to prove that the applicant had employed a person below 14 years of age and only then the ingredients of Section 14(1) can be said to have been proved by the prosecution. The burden of proving negative fact that the boy, who was found working was not below 14 years of age cannot be shifted on the accused.

12. Section 10 of the Act says that 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 an establishment, the question shall, in the absence of 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.

13. Section 16(2) of the Act says that every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

14. In this case, admittedly, there was no certificate of the prescribed medical authority. It is true that the medical certificate relied on by the applicant was also not issued by a prescribed medical authority. But it was the duty of the prosecution to file such certificate to prove the age of child specially when the applicant had not admitted the age of the child given by the Enforcement Officer in the inspection note.

15. The Appellate Authority had adopted a novel method that it was the duty of the applicant accused to move application prior to statement of the Inspector for obtaining medical certificate by a prescribed medical authority. In case, the prosecution itself could not prove the age of the child as required by the Act, the applicant cannot be compelled to fill up the lacuna of the prosecution.

16. Therefore, in this case, the basis ingredients of Section 14(1) of the Act, that the applicant had employed a child at his establishment has not been proved, as required by the Act and therefore, the applicant could not be convicted and sentenced under said section. The revision thus succeeds.

17. The revision is, accordingly, allowed and conviction and sentence of the applicant u/s 14(1) of the Act is quashed and he is acquitted of the said offence. The applicant is in custody and shall be released forthwith unless wanted to be detained in some other case.