

(2004) 09 KAR CK 0026

In the Karnataka High Court

Case No : Criminal P. No. 3577 and 3578 of 2002

Sannasomannara Somashekarappa and Others

APPELLANT

Vs

Gorappa Rudraswamy and Others

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Bonded Labour System (Abolition) Act, 1976 — Section 16, 2 (g)
Constitution of India, 1950 — Article 23

Citation : (2005) CriLJ 1 : (2004) ILR (Kar) 4606 : (2004) 7 KarLJ 582 : (2004) 4 KCCR 479 SN : (2005) 1 LLJ 621 : (2005) 2 RCR(Criminal) 390

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : S. Vishwajith Shetty, for the Appellant; C. Ramakrishna, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Since these petitions arise out of common facts and allegations they have been taken up together for common disposal.

2. In these petitions the petitioners have sought for quashing the entire proceedings pending before the Executive Magistrate/ Assistant Commissioner, Davangere for the offence punishable u/s 16 of the Bonded Labour System (Abolition) Act 1976 (for short "the Act") pending in case nos. MAG (2) CR: 22/01-02 and MAG (2) CR: 23/01-02.

3. The brief facts are that the petitioners in these two petitions are said to be accused persons alleged to have committed the offence u/s 16 of the Act. As narrated in Crl. petition no. 3577/02 on 24.9.01 the Deputy Commissioner of Davangere District had freed four children who were alleged to have been working as bonded labourers with the petitioners and directed the Revenue Inspector of Kasaba Hobli, , Davangere Taluk to register a case against the petitioners. As per the said direction, the Revenue Inspector registered a case before the Vidyanagar Police Station, Davangere against the petitioners. On

receiving the complaint, the police recorded sworn statement of the children on 25.9.2001. It is the further case of the prosecution that the petitioners had approached the parents of the children and paid advance to them and in turn, the children had to render service for a period of one year and graze cattle. Food and clothes were provided to the children who were working with the petitioners. Later the children were freed and admitted to Dan Vasco school at Davangere. Thereafter, after investigation case has been filed against the petitioners for the offence u/s 16 of the Act.

4. Similarly in Cr.P. 3578/02 on 20.09.01 the Deputy Commissioner, Davangere rescued 8 children from the petitioners and directed the Revenue Inspector to file a complaint. The Revenue Inspector filed complaint at Vidyanagar Police Station, recorded the statement of the children on 22.9.01 police approached the parents of the children and learnt that they were paid certain amount and in turn the children had to render service for a period of one year and graze cattle; food and clothing was provided to the children by the petitioners who were working with the petitioners. Thereafter, the children were freed and admitted to Dan Vasco School, Davangere. On the charge sheet filed before the S.D.M., Davangere, summons were issued to the petitioners but however, they were granted bail by the Magistrate. Subsequently during the pendency of the proceedings before the S.D.M. in these two petitions, the petitioners have filed these petitions u/s 482 Cr. P.C. on various grounds and sought to quash the proceedings pending before the S.D.M.

5. Heard the learned Counsel appearing for the petitioners and the learned HC GP.

6. It is the submission of the learned Counsel appearing for the petitioners that prosecution u/s 16 of the Act, necessarily requires that it must be covered by the definition as provided u/s 2(g) of the Act. Accordingly, submitted that there is no prima facie case against the petitioners. As such he sought for quashing of the proceedings.

7. In view of the argument advanced by the learned Counsel for the petitioners, the point that arises for consideration is whether the impugned proceedings pending before the Sub-Divisional Magistrate Davangere against the petitioners are liable to be quashed.

8. The very object of the Act was to implement the mandate provided under Article 23 of the Constitution to abolish pernicious practice of bonded labour which is prevailing in this country for centuries. As noted in the directive principles of State Policy; the concentration of wealth in the hands of a few which has resulted in inequality and the exploitation of the poor in the present social scenario requires to be regulated; in that regard and in that background, the Act has been enacted. However to prosecute the offenders there has to be a prima facie case against the persons against whom some allegations have been made so as to proceed against them as provided u/s 16 of the Act. The allegation made against the petitioners must attract the definition of "bonded labour system"

which means the system of forced, or partly forced labour under which debtor enters or has or is presumed to have entered into an agreement with the creditor to the effect that in the event of failure of the debtor to repay the debt obtained by him or by any of his lineal ascendants or descendants for any economic consideration received by him he would render bonded labour on behalf of the debtor.

9. In the instant case, as noted the petitioners are said to have offered to the parents of the children advance of Rs. 1, 000/-, Rs. 2, 000, Rs. 1, 650/- and the like and asked them to send their children to graze cattle. It is the argument of the learned Counsel for the petitioners that the amount so offered was only in the form of wages. As required u/s 2(g) of the Act, already there must be debt or liability incurred by the parents or the persons who have been directed to work as bonded labour and further submitted that it is neither a case of bonded labour nor was there any liability incurred by the ascendants of the boys who had been released. There was no such creditor debtor relationship between the parents of the boys freed and the petitioners. It was only an offering of wages to graze their cattle in advance. Of course, engaging of child labour would be an offence elsewhere, but in my opinion the very act of the petitioners in engaging children for grazing cattle by providing food, clothing etc. would not amount to exploitation of bonded labour and does not constitute bonded labour system. Rather the parents of the boys who had been freed were not being compelled or forced to send their children for grazing cattle in the houses of the petitioners nor were the parents of the children under any obligation to send their children to work as bonded labourers under the petitioners. Prima facie the facts as stated by the witnesses do not attract the definition as provides u/s 2(g) of the Act. Under the circumstances, exploitation of children by the petitioners could be dealt with in accordance with law elsewhere but the provisions of this Act would not apply to these cases. In view of the same, the petitions have to be allowed. Accordingly, the petitions are allowed. The impugned proceedings pending before the Sub-Divisional Magistrate Davangere in CASE Nos. MAG(2) CR.22/2001-02 and MAG(2) Cr. 23/2001-02 against the petitioners are quashed.