

(2015) 09 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. Nos. M-27900, M-27904, M-27911, M-27915, 27916, M-27920 and M-27928 of 2014

Shyam Setia

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 10, 11, 12, 14, 16
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Citation : (2015) 147 FLR 578

Hon'ble Judges : Sabina, J.

Bench : Single Bench

Advocate : N.C. Kinra, for the Appellant; Dimple Jain, AAG, for the Respondent

Final Decision : Allowed

Judgement

Sabina, J.—Vide this order, above mentioned petitions would be disposed of as the controversy involved in all the cases is the same.

Respondent No. 2 has filed the complaints in question against the petitioner under section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 ("Act for short). Case of the complainant is that when he inspected the factory of the petitioner, it was found that the children aged less than 14 years were working in the factory.

Learned Counsel for the petitioner has submitted that as per section 10 of the Act, in case any dispute arises qua the age of the child employed in an establishment, the matter can be referred for decision to the prescribed medical authority. As per section 16 of the Act, the opinion of the medical authority would be conclusive evidence qua the age of the child to whom it relates. The children in question were examined by the Medical Board and as per the opinion of the Board, the age of the children was more than 14 years. As per section 2(ii) of the Act, child means a person who has not completed his 14 year of age. Since the

children, who were working in the factory of the petitioner were more than 14 years of age, no offence could be said to have been committed by the petitioner under section 14 of the Act.

2. Learned State Counsel, on the other hand, has opposed the petitions.

In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Apex Court has held as under:--

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under section 482 , Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kits of cases wherein such power should be exercised:--

(1) Where the allegations made in the First Information Report or the complainant/respondent No. 2, 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 cognizable 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 cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings are 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

3. In the present case, at the time of inspection of the factory of the petitioner, it was found by respondent No. 2 that seven children were working in the factory. Seven complaints have been filed by respondent No. 2 qua each child against the petitioner on the allegations that the children in question were aged less than 14 years.

Section 2(ii) of the Act reads as under:--

"child" means a person who has not completed his fourteenth year of age;

Section 10 of the Act reads as under:--

Disputes as to age.--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 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;

Section 14 of the Act reads as under:--

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.

(2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever-

(a) fails to give notice as required by section 9 ; or

(b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of section 3 and this section as required by section 12 ; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder.

shall be punishable with simple imprisonment, which may extend to one month or with fine, which may extend to ten thousand rupees or with both.

Section 16 of the Act reads as under:--

Procedure relating to offences.--(1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.

(2) 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.

(3) No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

4. Thus, as per the above provisions, whoever employs a child aged less than 14 years for working in his establishment, is liable for punishment. Raja, Jitu, Avinash, Adesh, Saheb alias Shahid, Ramji and Kuldeep were examined by the Medical Board to ascertain their age. As per the certificates of the medical authority, placed on record as Annexures P-3 to P-9, it is evident that the children in question were aged more than 14 years. Therefore, the petitioner" cannot be said to have committed any offence under the Act. Hence, continuation of criminal proceedings against the petitioner would be nothing but an abuse of process of law. Accordingly, all these petitions are allowed. Complaint Nos. 392, 386, 387, 388, 389, 390, and 391 dated 29.4.2014 under section 14 of the Act, and all the consequential proceedings, arising therefrom, are quashed.