

(2012) 07 DEL CK 0189
In the Delhi High Court
Case No : Criminal Rev. No. 454 of 2011

State	Vs	APPELLANT
Nayan Ahmad		RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Bonded Labour System Abolition Act, 1976 — Section 6
Child Labour (Prohibition and Regulation) Act, 1986 — Section 3
Constitution of India, 1950 — Article 15, 23(1), 35(a)(ii), 39, 45
Juvenile Justice Act, 1986 — Section 26, 3, 39
Penal Code, 1860 (IPC) — Section 344, 374

Citation : (2012) 3 Crimes 475 : (2012) 191 DLT 343 : (2012) 3 JCC 1813

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajdipa Behura, APP for State, for the Appellant; Rakesh Khanna, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—In the instant case, a girl namely Reshma, who was aged about ten years at the time when the inspection was carried out, was staying with the consent of her grandmother Smt. Tara Bai with the respondent. Keeping in view the child's unfortunate past who had been abandoned by her father and her mother was of an unsound mind, her grandmother thought it would be in the best interest for the granddaughter's future, if she be handed over to the respondent's family. Accordingly, she did. But, bad luck of the child, on the complaint of President, Scientific Welfare Society, IARI, Pusa, New Delhi, a joint operation/inspection was conducted on 24.11.2009 at House No. 19B, First Floor, Scientific Apartment, Pusa Campus, New Delhi wherein the respondent resides alongwith his family and a girl child namely Reshma, who was found to have been working as domestic help for the last 01 years and was immediately rescued from the said house.

2. The said child was produced by Child Welfare Committee, Nirmal Chaaya, Jail

Road, New Delhi on 30.11.2009, and made a statement as under:-

Child Reshma produced by WO Sheweta. The child requested the committee to send her back to her aunty, where she was living as she was missing her. The child shared that she was staying with Mrs. Jasmine Ahmad as her grandmother had sent her there owing poverty and Mrs. Ahmed had for affection of her grandmother offered to rear her. Reshma's father had abandoned her in childhood and her mother is of unsound mind and is not traceable, therefore, her grandmother, who is old, could not look after her. When questioned on salary / payment made to her, she said that all her money that she had was kept with Ms. Jasmine. The child was told that she cannot be given back to aunty. Thus, she wanted to go with her Naani to Kolkata.

3. On perusal of the statement of the child, wherein she categorically stated that she requested the Committee to send her back to her aunty (respondent) where she was living as she was missing her.

4. Ld. Trial Court in Para 15 of the impugned judgment has recorded that child Reshma spoke in volumes about her relation with the respondent family. It is further recorded she was being brought up by respondent and his wife as a child of their own and she was not hired for any money at all. She was given to the respondent's family by her grandmother, who felt it extremely difficult to maintain her, as the father of the child had abandoned in her childhood and her mother was not traceable being of an unsound mind.

5. Ld. Trial Judge has also recorded that a little girl when she was in custody of the Child Welfare Committee for about six days, i.e. when there was no chance of her being influenced or contacted by respondent and his family.

6. The said child was handed over to Smt. Tara Bai. At the time of receiving back the child from the aforesaid Committee witnessed by Sh. Ali-Ul-Islam, who is the father-in-law of the respondent. Thus the said child Reshma would be staying with the grandmother in the house of the respondents.

7. It is further recorded that the statement of Smt. Tara Bai was recorded by the police on 30.11.2009, wherein she has reiterated what Reshma had told in her statement to Child Welfare Committee as mentioned above. She also stated that she was living in a house of Islam Sahib, father-in-law of the respondent in West Bengal for the past 10-12 years and she had sent a girl child Reshma to the house of Jasmine (daughter of Islam Saheb) and wife of the respondent with the instruction to give her proper education and also to arrange for her marriage.

8. Ld. APP for appellant submits that by keeping the said child the respondent has violated Section 26 of the Juvenile Act, Section 3 of Child Labour Act, Section 6 of Bonded Labour Act and Section 344 and 374 of IPC.

9. She further submits as per the report of the Committee, the said child was found in the house of the respondent while working as a labourer.

10. Vide order dated 14.10.2011, Mr. Rakesh Khanna, Senior Advocate present in the Court was requested to assist the court on this issue. He has argued that the Juvenile Act came into force with effect from 30.12.2000 (56 of 2000) to achieve the Statement Of Objects and Reasons which are as under:

A review of the working of the Juvenile Act, 1986 (53 of 1986) would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available for adults is not considered suitable or being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers, or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organizations and community.

2. In this context, the following further proposals have been made-

- (i) to lay down the basic principles for administering justice to a juvenile or the child in the Bill;
- (ii) to make the juvenile system meant for a juvenile or the child more appreciative of the development needs in comparison to criminal justice system as applicable to adults;
- (iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;
- (iv) to prescribe a uniform age of eighteen years for both boys and girls;
- (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;
- (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;
- (vii) to create special juvenile police units with a humane approach through sensitisation and training of police personnel;
- (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;
- (ix) to minimise the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts - one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;
- (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

3. The Bill seeks to repeal and re-enact the Juvenile Justice Act, 1986 with a view to achieving the above objects.

11. Learned senior advocate has further submitted that to consolidate and amend the law relating to juvenile in conformity with law and children in the need of care and protection, by providing for proper care, protection and treatment by catering to their development need, and by adopting a child friendly approach for the adjudication and dispensation of matters in the best interest of children and for their ultimate rehabilitation, the Constitution has, in every provision, including Clause (3) of Article 15, clauses (e) and (f) of article 39, articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

12. He further submitted that the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989. The said Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all the State parties in securing the best interests of the child. As per the Convention on the Rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings.

13. Therefore, the Government of India has ratified the Convention on the 11th December, 1992. He further submitted that it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standards Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments.

14. Learned senior counsel has referred to Section 26 of this Act whereby it is contended that whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

15. For this purpose, The State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act. The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children. The said Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

16. Therefore, the State Government had been empowered to constitute in every district or group of districts one or more Child Welfare Committees for exercising the powers and discharging the duties in relation to child in need of care and protection under the Act.

17. Mr. Khanna has further referred to Section 39 of the Act wherein it is provided that restoration of and protection to a child shall be the prime objective of any children's home or the shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be. The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

18. In Explanation of Section 39, referred above, "restoration of and protection of a child" means restoration to-

- (a) parents;
- (b) adopted parents;
- (c) foster parents;
- (d) guardian;
- (e) fit person;
- (f) fit institution.

19. Learned senior counsel has drawn this Court's attention towards National Charter for Children, 2003 which was adopted by the Government of India vide Resolution No. 6-15-98-C.W. dated 9.2.2004, issued by the Ministry of Human Resources Development for considering the question of adopting a National Charter for Children to reiterate its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick. After the consideration, it has been decided to adopt the National Charter for Children enunciated by making special provisions for children and State shall provide free and compulsory education to all children of the age of six to fourteen years. No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment. The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.

20. Mr. Khanna, learned senior counsel has referred to Child Labour (Prohibition & Regulation) Act, 1986 whereby the statement of objects and reasons were intended to:

- (a) ban the employment of children, i.e. those who have not completed their 14th year, in specified occupation and processes;
- (b) lay down a procedure to decide modifications to the schedule of banned occupations or processes;
- (c) regulate the conditions of work of children in employments where they are not prohibited from working;
- (d) 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;
- (e) to obtain uniformity in the definition of "child" in the related laws.

21. Further, he has referred to Section 3 Prohibition of employment of Children in certain occupations and processes that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or any workshop wherein any the processes set forth in Part-B of the Schedule is carried out provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family to any school established by, or receiving assistance or recognition from the Government.

22. Learned senior counsel asserted that the present rescued child was not in a situation as was the purpose of this Act.

23. He further referred to The Bonded Labour System (Abolition) Act, 1976 which came into force on 9.2.1976. The object and reasons of the same were as under:

Article 23(1) of the Constitution prohibits "begar" and other similar forms of forced labour and it provides that any contravention of the said prohibition shall be an offence. But inspite of this provision a system of usuary under which the debtor or his decendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt, existed in many parts of the country. It has been found that several generations work under bondage for the repayment of a small sum which had been taken by some remote ancestor. This system of bondage implies the infringement of basic human rights and destruction of the dignity of human labour. The evils of bonded labour, having been recognised by many voluntary organisations, were highlighted by them. Many voluntary organisations raised their heads against such a system. Accordingly the Bonded Labour System (Abolition) Ordinance, 1975 was promulgated by the President on 24th October, 1975. To replace the said Ordinance the Bonded Labour System (Abolition) Bill, 1976 was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

There still exists in different parts of the country a system of usuary under which the debtor or his decendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times, several generations work under bondage for the repayment of a paltry sum

which had been taken by some remote ancestor. The interest rates are exorbitant and such bondage Can not be interpreted as the result of any legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour.

2. Article 23(1) of the Constitution prohibits "begar" and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law, Article 35(a)(ii) of the Constitution not only confers the power on Parliament to provide for punishment for the contravention of the said provisions of Article 23(1) but expressly takes away the power of the State Legislature to make any legislation with regard to the said matter. Accordingly, the Bonded Labour System (Abolition) Ordinance, 1975, was promulgated by the President on the 24th October, 1975. By the said Ordinance, the bonded labour system was abolished and the bonded labourers were freed and discharged from any obligation to render any bonded labour and their bonded debts were also extinguished. The Ordinance further affords protection to the freed bonded labourers from eviction from their homestead. Contraventions of the provisions of the Ordinance have been made offences punishable in accordance with law. Provisions for the follow-up measures and economic rehabilitation of the freed bonded labourers have also been made in the Ordinance.

24. Mr. Khanna has argued that if a child is rescued, in that eventuality, firstly that parent or person has to be referred to the Committee, and if thereafter Committee after due deliberations found the person was at fault, then that committee recommend the case to the concerned Police Station to lodge an FIR against the culprit.

25. It is pertinent to mention here that vide order dated December 08, 2011, learned APP for the State was directed to file the status report of the Children Home in detail by specifying whether any child from children homes have been educated up to the level of graduation. To this effect, Ms. Sapna Goyal, Superintendent, After Care Home, Jail Road, New Delhi filed affidavit on 24.01.2012 stating as under:

Details of After Care Home for Women attending to education classes:

In the year of 2009-2010

Total

School Going Girls

19

Nursery Primary Teacher Training Girls

1

ITI Training Girls

2

Driving Training Girls

3

Handicraft Training Girls

4

Girls studying in Shubhakshika Educational Society

10

Nursing Training Girls

1

Under Graduate Girls

10

Graduate Girls

3

Girls who are doing job

14

In the year of 2010-2011

Total

School Going Girls

19

Nursery Primary Teacher Training Girls

1

ITI Training Girls

2

Girls studying in Shubhakshika Educational Society

10

MBA studying girls

1

BSW (Bachelor of Social Work) studying girls

1

Nursing Training girls

2

Deaf & Dump girls who studying special education

5

Under Graduate girls

13

Girls who are doing job

19

26. Ms. Inderpreet Pathak, Superintendent, Children Home for Girls, Jail Road, New Delhi has also filed the affidavit stating as under:

Details of children home for girls-I(CHG) attending to educational and vocational classes :

2009-2010

2010-2011

No. of children figured during the year (April-March, 2010)

684

803

Children restored with family

37

100

Children attending to Non-formal Education

84

116

Children attending to regular schooling

66

52

Children attending Cutting and Tailoring

467

464

Children attending Beauty Culture

20

43

Children attending Art & Craft Class

13

28

Details of children home for girls-I(CHG) attending to educational and vocational classes :

2009-2010

2010-2011

No. of children figured during the year (April-March, 2010)

297

416

Children restored with family

110

81

Children attending to Non-formal Education

20

167

Children attending to regular schooling

26

36

Children below 5 years of age.

107

102

Children attending Art & Craft Class

34

30

27. On perusal of both the affidavits, I find that from the years 2009 to 2011 not even a single child has been graduated through these children homes. It is a matter of concern. However, best part is that through these children homes at least 49 women were doing jobs in the year 2009-2010 and 19 women in the year 2010-2011.

28. The purpose and intent of the Act is that no child should be like a bonded labour, uneducated and unemployed. Therefore, the prime duty of the State is to put such children either in educational institutions or engaged in some technical work so that they would be able to earn their livelihood and can easily be brought up there and prepare them to serve the nation as a good citizen.

29. As the case in hand is concerned, rescued child was sent by her grandmother with the respondent in compelling circumstances when she was staying with her grandmother and due to their owing poverty her father had abandoned her in childhood and her mother is of unsound mind and not traceable, due to said reason, her grandmother, who is an old lady, could not look after her, in the compelling circumstances, the child was found with the respondent.

30. I note, when the rescued child produced by the W.O. before the Committee, the said child requested the Committee to send her back to her aunty (respondent) where she was living as she was missing her. It seems that said child was happy with the respondent. She was neither like a servant nor bonded labour.

31. The Committee told the child that she cannot be given back to respondent. In that eventuality, she further stated that she wanted to go with her nani to Kolkata. If the child had comfortable place with any of the relation, there was no point to bring her to Delhi.

32. Though the Juvenile Act and Child Labour (Prohibition and Regulation Act, 1986) are meant to help the children who found working as domestic help or as a child bonded labour, but in the instant case after looking at the poverty and circumstances of the child, in my considered opinion, the Committee should either to have taken care of her through children home or would have made better arrangements so that her childhood would have been taken care of in a better sense.

33. In the process, the child was sent back to the same situation which frustrated the object of Juvenile Act and Child Labour Act. Therefore, I have no hesitation to say that, as stated by the child, the respondent was a better option, who was properly taking care of her and keeping her as own child.

34. In such a situation, I apprehend, a person who is in a position to give shelter to such type of children would definitely keep themselves away. The fact remains that presently the State Governments or the Central Government has no infrastructure to provide shelter and prepare them as a good citizen who can thereafter earn their livelihood and live with dignity. Therefore, in absence of infrastructure, such type of law seems to be misplaced sympathy.

35. The ground reality of the country like India is that 80% of population living in rural areas. More than 60% of that having no proper livelihood. Such people of the country are struggling for their survival only. In such a situation, they migrate to cities and earn their livelihood. The education and career is not their

moto. Each and every family member jointly earn and survive. They do not have basic facilities, therefore, they do not think for education. India is second largest populated country after China. The Government machinery do not have sufficient funds and moreover no attention towards such type of people. Laws have been made and enforced, but without infrastructure and proper planning.

36. In rural India, majority of population depend on the agriculture. They work as labourer in the agriculture. Some time due to natural calamity the crops are destroyed. The farmers get compensation from the State / Central Government and they survive. But the labourer engaged in the agricultural field gets no share from the compensation received by the farmers from the Government. This type of situation invariably they face. In that eventuality they migrate to cities to earn livelihood and survive only. More than that, they cannot think. I only can hope that the Government of India will think and act upon.

37. In the circumstances and keeping in view the discussion above, I consider that the child found in the situation, as in the present case, does not cover u/s 26 of the Juvenile Act, section 3 of the Child Labour Act and Section 6 of the Bonded Labour System (Abolition) Act, 1976.

38. Therefore I am of the considered opinion that there is no merits in the instant revision petition filed by the State. Therefore, the same is dismissed without there being any orders as to costs.