

(2001) 12 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Revision No. 2459 of 2001

Subhash Chandra Jaiswal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

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

Citation : (2002) CriLJ 1223 : (2002) 92 FLR 208 : (2002) 4 LLJ 59 : (2002) 1 RCR(Criminal) 628

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

Bench : Single Bench

Final Decision : Allowed

Judgement

U.S. Tripathi, J.—This revision has been directed against the Judgment and order dated November 6, 2001 passed by Additional Sessions Judge, Court No. 14. Varanasi, in Criminal Appeal No. 145 of 2000, dismissing the appeal of the applicant against the judgment and order dated June 19, 2001, passed by the IV Additional Chief Judicial Magistrate, Varanasi, in Criminal Case No. 380 of 2000, convicting the applicant u/s 14(1) of Child Labour (Prohibition and Regulation) Act, 1986 and sentencing him to undergo R.I. for a period of three months.

2. The prosecution story, briefly stated, was that on January 25, 1994 at about 3 P.M. Sri Rampreet Ram, Labour Enforcement Officer under Child Labour (Prevention and Regulation) Act, 1986, hereinafter called the Act, visited the establishment of applicant and found that one Ashok Prajapati aged about 11 years of village, Kawal, P.S. Gyanpur, was employed as labourer to work in the said establishment. The above act of the applicant was against the provisions of Section 3 of the Act. He prepared spot note and obtained signature of the child labour on it. The applicant was not present at the time of inspection and his nephew Vinod Kumar was supervising the work. A copy of the inspection note was handed over to Vinod Kumar. No objection was raised by the applicant and therefore a complaint was filed by Sri O.P. Gupta. Inspector under the Act against

the applicant. The applicant was tried for violation of Section 3 of the Act punishable u/s 14(1) of the Act. He pleaded not guilty.

3. The prosecution examined Rampreet Ram (P.W.1) and Sri O.P. Gupta (P.W.2). The applicant examined Sri Narain Misra (D. W. 1) and Ramhinch (D.W.2).

4. The learned Magistrate on considering the evidence of the parties held that the applicant had employed a child labour aged about 11 years, below 14 years of age. In his installation in violation of provisions of Section 3 of the Act, therefore, committed an offence punishable u/s 14(1) of the said Act. Accordingly, he convicted him under said Section and sentenced to undergo R.I. for a period of three months.

5. Aggrieved with his above conviction and sentence, the applicant preferred criminal Appeal No. 145 of 2000, the Appellate Court concurring with the findings recorded by the trial Court dismissed the appeal and confirmed conviction and sentence of the applicant.

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 carpet 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 carpet 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 carpet 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 Ashok Prajapati, who was allegedly found working on the carpet loom was a child as defined in the Act.

9. Sub-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.

10. "Child" as defined in Section 2(ii) means a person, who has not completed his 14 years of age.

11. In the instant case, Sri Rampreet Ram, the Labour Enforcement Officer has stated that child labourer, who was found working at the loom of the applicant named Ashok son of Bansdeo was aged about 11 years. He has not stated as on what basis he ascertained the age of the said person. The record shows that neither any documents nor any medical certificate regarding age of the alleged

child was produced. There is also nothing on record to show that the applicant had admitted the age of above person.

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 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.

13. As mentioned above in this case, there is no reference that there was any certificate as to the age of such child granted by prescribed medical authority. There was also no other document showing his age. As mentioned above it is also clear from the judgment that the applicant had not admitted the age of the child alleged by the Enforcement Officer. Therefore, in these circumstances, the Inspector ought to have obtained a certificate of prescribed medical authority. But it was not done in this case and the trial Court as well as Appellate Court blindly accepted the age stated by the Enforcement Officer, which was not on the basis of any document or medical certificate. As such, there was no proper ascertainment of the age of the alleged child and in the absence of age, it cannot be said that he was a child as defined in Section 2(ii) of the Act. In the absence of such evidence, the applicants could not be convicted. Thus, the revision succeeds.

14. 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.