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Court : Kerala

Decided On : Oct-15-2015

Judge : P. Ubaid

Appeal No. : Crl. MC. No. 5941 of 2015

Appellant : Faisal

Respondent : State of Kerala rep. by Public Prosecutor Through Station House Officer N. Paravur Police Station

Judgement :

1. A prosecution involving the offence under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 is sought to be quashed. The petitioner herein is the sole accused in the said case, pending as S.C No.4/2015 before the Special Court for the trial of offence against women and children, Ernakulam. The police registered the crime against the petitioner suomotu on the basis of the report of a police constable that a juvenile aged 16 years was found employed in a petrol pump run by the petitioner herein. After investigation the police submitted final report under Section 23 of the Juvenile Justice Act. Annexure A is copy of the said final report. However, the trial court has framed a charge against the petitioner under Section 26 of the Juvenile Justice Act, it is submitted.

2. On hearing both sides, I find that the prosecution is liable to be quashed. It is not known how merely employing a juvenile aged 16 years will come under Section 23 of the Juvenile Justice Act, or under Section 26 of the Juvenile Justice Act. To come under Section 23 of the Juvenile Justice Act, the alleged offence must have been committed by a person having actual charge or control over the juvenile, and the juvenile must have been subjected to mental or physical harassment. Anyway, the Court has now framed a charge against him under Section 26 of the Juvenile Justice Act. Even to come under Section 26 of the Juvenile Justice Act, the prosecution must have a case that the juvenile was employed by the accused for some hazardous job, without making adequate payment of salary or wages. Practically what is made punishable is exploitation of a juvenile by employing him for some hazardous job. In *Vinod S. Panicker v. Sub Inspector of Police* (2012 (4) KLT 314), this Court held that engaging a juvenile as an employee in a bakery cannot be viewed as one putting him to a hazardous employment. In *Alice v. State of Kerala* (2014(2) KLT 175), this Court held the term hazardous under Section 26 of the Juvenile Justice Act indicates the risk and heaviness of the job which the age of the child cannot bear. Anyway, it is now settled that a prosecution under Section 26 of the Juvenile Justice Act is possible only when a juvenile is employed for some hazardous job without making proper and adequate payment of wages, or salary. In this case, the prosecution does not have any such allegation.

3. The FIR or the final report does not contain anything regarding the hazardous nature of the job. It appears that the Sub Inspector of Police had the Child Labour (Prohibition and Regulation) Act in his mind when he registered the FIR. The Sub Inspector had some confusion regarding the said Act and the Juvenile Justice Act. The very fact of employing a child below 14 years, for some job enumerated in the schedule to the said Act will constitute an offence under the Child Labour (Prohibition and Regulation) Act. But to come under Section 26 of the Juvenile Justice Act, something more is required. What is made punishable is employing a juvenile aged below 18 years for some hazardous job without making payment of adequate wages or salary. The nature of the job is very important under Section 26 of the Juvenile Justice Act. This Court has explained that the said job must be hazardous in nature. Here, the prosecution has no case anywhere in the

prosecution records that the juvenile was employed for any hazardous job, or that he was not given proper and adequate wages or salary. Merely employing a child will constitute an offence only under the Child Labor (Prohibition and Regulation) Act, provided the age of the child below 14 years. If the child is aged above 14 years the said Act will have no application. Thus I find that the prosecution is liable to be quashed because it is legally unsustainable.

In the result, this petition is allowed. The prosecution against the petitioner herein in S.C No.4/2015 before the Special Sessions Court (Addl. Sessions Court for the trial of offence against women and children), Ernakulam will stand quashed under Section 482 of the Code of Criminal Procedure.

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