

**Dhanurjaya Putel and anr. Vs. State of Orissa**

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**SooperKanoon Citation : [sooperkanoon.com/537038](http://sooperkanoon.com/537038)**

**Court : Orissa**

**Decided On : Aug-21-2002**

**Reported in : 2002(II)OLR412**

**Judge : P.K. Tripathy, J.**

**Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#); [Indian Penal Code \(IPC\), 1860](#) - Sections 362 and 367; ;Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979 - Sections 25**

**Appeal No. : Criminal Misc. Case No. 5187 of 2001**

**Appellant : Dhanurjaya Putel and anr.**

**Respondent : State of Orissa**

**Advocate for Def. : A.K. Misra, Standing Counsel**

**Advocate for Pet/Ap. : D.P. Dhal, P. Kumar, D.K. Pattanayak, S.S. Ghosh, P.K. Routray and S.K. Tripathy**

**Disposition : Application dismissed**

**Judgement :**

**P.K. Tripathy, J.**

1. Both the petitioners are the accused persons in G. R. Case No. 94 of 1998 of the Court of J, M. F. C., Kantabanji. In that case learned Magistrate took cognizance of the offence under Section 367, I.P.C. read with Section 25 of the Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979 (in short 'the Act 1979'). Petitioners moved an application in the Court below to recall that order of cognizance on the ground of absence of prima, facie case. That application having been rejected by learned J.M.F.C. as per the impugned order dated 21.3.2001 petitioners have moved this application under Section 482, Cr.P.C.

2. At the stage of argument, Mr. D. P. Dhal, learned counsel for the petitioner has confined his prayer to quash the order of cognizance with respect to the offences under Section 367, I.P.C. He argues that though the offence under Section 25 of the Act, 1979 is also not absolutely made out but there being an arguable point, petitioners shall raise such issue in the trial Court at the time of trial. He argues that so far as the offence under Section 367, I.P.C. is concerned, a case of kidnapping or abduction for slavery having not been made out from the statements of the victims, therefore, cognizance of the offence under Section 367, I.P.C. is legally not sustainable. Mr. Aswini Kumar Mishra, learned Standing Counsel on the other hand counters that argument by arguing that the terms 'slave' and 'slavery' having not been defined in the Penal Code, the dictionary meaning has to be followed and even if the prosecution allegation does not amount to using the victims as slaves as per the meaning attributed to the same in the Abolition of Slavery Act, then also the dictionary meaning makes it arguable whether the alleged conduct of the petitioners in inducing and abducting the labourers outside the State for exploitation with no right and liberty amounts to slavery and therefore, while in seisin of the matter under Section 482, Cr.P.C. the prosecution case should not be throttled at its threshold with respect to the offence under Section 367, I.P.C.

3. Position of law is well settled that an order of cognizance is subject to interference by superior Courts when it finds lack of prima facie case to constitute the ingredients of the offence complained of or any other offence punishable under law. In other words, if the allegations available from the evidence collected during

investigation does not make out a prima facie case satisfying the ingredients of any of the offences complained of or otherwise, then the order of cognizance with respect to such particular offence can be interfered with by the superior Court. On the other hand, if prima facie materials are there or the point is debatable as to whether a particular fact constitute an offence or not and that will be dependent on collection of evidence at the time of trial, then in such case the order of cognizance is not to be interfered with. Keeping in view that settled position of law, this Court has to analyse and adjudicate the contention of the parties.

4. Section 367, I.P.C. provides for punishment for offence of kidnapping or abducting in order to subject the person to grievous hurt, slavery or for satisfying unnatural lust of any person. The act done facilitating that purpose or knowing it likely that the act done will tend to subject the victims for such purposes then the offence under Section 367, I.P.C. is said to have been committed. Admittedly, in this case the issue between the parties is relating to abduction of the laborers for the purpose of exploitations on payment of meagre amount and without providing them any right or remedy in that respect. Section 370, I.P.C. provides punishment for buying or disposing of any person as a slave and Section 371, I.P.C. provides punishment in case of habitual dealings in slaves.

5. The term 'abduction has been defined in Section 362, I.P.C. and it reads as hereunder :

'362. Abduction - Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.'

Interpreting the said provision while learned counsel for the petitioners argues that by making payment of advance money to the, labourers, i.e. the victims and taking them to another State for employment and realising the advance money from such amount earned through such labourers does not qualify to the term abduction, i.e., employment by adopting deceitful means with inducement and therefore, the offence under Section 367, I.P.C. is not made out. Learned Standing Counsel, on the other hand, states that the victims being penniless persons, taking advantage of that situation petitioners made payment of good amount of Rs. 4,500/- or such sum to each of the victims with an inducement to go outside the State and to work

by making 1500 bricks per day on payment of Rs. 30/- till the date of repayment of the advance amount and thereafter @ Rs. 30/- for making 1000 bricks per day makes it clear that the ingredients of inducement with the purpose of abduction for slavery is clearly made out and petitioners should not get rid of the trial of such offence on the pretext that such conduct of the petitioners may be inhuman or cruel or torturous but does not amount to utilising the victims as slaves.

6. On a careful consideration of the aforesaid argument and analysis of the provision in Section 362, I.P.C. this Court finds that provision of law relating to abduction is made out if it is proved on record that there was inducement in one form or other to go from any place and in that respect a deceitful means is applied, i.e., the mode of compulsion with deceitful means. 'Deceit' means cheating or misleading and one of the ingredients of cheating, as in Section 415, I.P.C. is intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Therefore, when prosecution allegation is to the effect that the victims were induced to leave for another State and asked to prepare 1500 bricks per day on a fixed payment of Rs. 30/- till adjustment of the advance amount paid to them by the petitioners and thereafter to prepare 1000 bricks per day by taking a labour charge of Rs. 30/- a factual finding has to be recorded what is the amount of labour required for a person to prepare 1000 bricks or 1500 bricks per day and what could have been the proper or adequate wage for that amount of labour. On the face of the allegation it appears that it may not be humanly possible, for a single person to prepare 1000 bricks or 1500 bricks by devoting a legitimate eight working hours a day for which, according to the Minimum Wages Act he has to receive a payment of not less than Rs. 50/- This observation is on the basis of common experience and it is subject to variation according to the evidence of the witnesses. The aforesaid inference is plausible and therefore it is made for the sake of discussion only to show that it is not a case of absence of deception, as argued by the petitioners. Exploitations in certain form, as in the present case, may also amount to deception and therefore, for the purpose of prima facie appreciation of the prosecution case the term 'deceitful means' has been made. In other words, as per the above noted allegation when the inducement is made by

making payment of money in advance to a needy person and exploiting him in the aforesaid manner with the thrust of compulsion to leave his home and to go outside the State in the alleged manner for making bricks, this Court finds that a prima facie case for abduction, as defined in Section 362, I.P.C. is made out.

7. The aforesaid finding does not relieve this Court of the duty to find out whether existence of a prima facie case of abduction is sufficient to maintain the order of cognizance with respect to offence under Section 367, I.P.C. inasmuch as mere abduction is not punishable under Section 367, I.P.C., but the act of abduction with the purpose and intention to do slavery (in the present context) is punishable under Section 367, I.P.C.

8. It is the admitted position that Indian Penal Code does not define the term 'Slave' or 'Slavery'. As noted above, Sections 370 and 371, I.P.C. also refer to such terms besides Section 367, A good amount of labour was put by learned Counsel appearing for both the parties to find out an acceptable meaning to the said term with reference to the context and they admit that except the dictionary meaning they have no other source in that respect. Learned counsel for the petitioner in his written note of submission has quoted the term from different dictionaries. Learned Standing Counsel as well has done the needful by referring to the Chambers and Oxford Dictionaries. For a better reference, the dictionary meanings are quoted as hereunder :

In Webster's Dictionary 'One who has no freedom of action, a slave is defined as : but whose person and services are wholly under the control of another;'

Century Dictionary : a person who is the chattel or property of another and is wholly subject to his will.'

Wharton's Law Lexicon : 'Slavery' is defined as : 'the civil relation in which one man has absolute power over the liberty of another.'

Oxford's Advance Learner : ' 1. Person who is owned by and has to serve another. 2. Drudge, hard worker. 3. (followed by of to) obsessive devotee (slave of fashion) 4. machine, or part of one, directly controlled by another.'

Chambers 20th Century 'a person held as property; Dictionary an abject; one who is submissive under domination: one who is submissively devoted: one whose will has lost power of resistance : one who works like a slave a drudge: a mechanism controlled by another mechanism, e.g. in computing, by the central processor: a master-slave manipulator.'

Black's Law Dictionary : 'Slave. A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another. One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labour, without his being able to do anything, have anything, or acquire anything, but what must belong to his master.'

P. Ramanath Aiyar's 'Slave. One over whose life, The Law Lexicon : liberty and property another has unlimited control. Every limitation placed by the law upon the absolute control modifies and to that extent changes the condition of the slave.' 'Slavery' is defined as 'the state of entire subjection of one person to the will of another.'

It appears from all the aforesaid meaning attributed to the term 'slave' and 'slavery' that deprivation of the freedom of movement and right of expression with respect to person or property can be connoted as the meaning to the term 'slave' or 'slavery'. In this case as per the prosecution allegation when a person is allowed to put a labour of about 18 hours a day for a paltry sum of Rs. 30/- may be with the assistance of his family members and yet he shall not have the freedom of expressing his grievance against the exploitation and meagre payment, this Court finds no better example of satisfying the requirement of the term 'slavery' in the context of the present day scenario and the prevailing law. Therefore, the allegation available from the Case Diary makes out a prima facie case satisfying the requirement of the terms 'slave' and 'slavery' too.

9. Learned counsel for the petitioners without being hopeless on the aforesaid position argues that when the alleged offence is punishable under Section 25 of the Act 1979 and the statement and object in the Bonded Labour System (Abolition Act) 1976 (in short 'the Act 1976) also brings the alleged offence under

its fold, therefore charge for the offence under Section 367 is not necessary. Section 25 of the Act 1979 provides punishment on contravention of provisions regarding employment of Inter-State Migrant Workmen Relevant portion from the Statement of Objects and Reasons of the Act, 1976, which learned counsel for the petitioners refers to reads as hereunder :

'There still exists in different parts of the country a system of usury under which the debtor or his dependants 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 cannot 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.'

It is interesting to hear such an argument but not to be swayed away by that in view of the fact that a crime committed has several facets and each aspect may be punishable by different provisions of law and the act conjointly may be punishable by another law. Therefore, at the stage of taking cognizance the Court cannot go on adopting the principle of exclusion but it has to adopt the principle of inclusion to take into gamut all the possible offences which are made out on prima facie appreciation of materials on record. Under such circumstances, even if the aforesaid Act, 1979 and 1976 take care of some aspect of the complained act yet that facade does not render non-existence of a prima facie case for the offence punishable under Section 367, I.P.C. Thus, that argument of the petitioners is also not accepted.

10. What has been argued by the petitioners, that has been discussed just to adjudicate the dispute with respect to whether the order of cognizance under Section 367, I.P.C. is liable to be interfered with at its threshold of the criminal proceeding. Therefore, the above discussions shall have no bearing at the stage of trial of the case unless there will be adequate evidence on record to substantiate the charge. In other words, trial Court is not to be totally guided by this finding while deciding the case but that Court shall decide the case on the

basis of evidence on record and the provision of law.

11. In the result, the application under Section 482, Cr.P.C. stands dismissed. Send a copy of this order along with the LCR to the Court below.

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