

Jharkhand High Court
Vikram Sinha vs State Of Jharkhand on 23 April, 2013

In the High Court of Jharkhand at Ranchi

Cr.M.P.No.1129 of 2011

Vikram SinhaPetitioner VERSUS

State of JharkhandOpposite Party CORAM: HON'BLE MR. JUSTICE R.R.PRASAD

For the Petitioner:Mr.Anil Kumar

For the State :A.P.P

6/ 23.4.13. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State.

This application has been filed for quashing of the order dated 15.6.2011 passed by the then Chief Judicial Magistrate, Ranchi in Bariatu P.S. Case no.78 of 2011 whereby and whereunder cognizance of the offences punishable under Sections 370, 374 of the Indian Penal Code and also under Sections 16 and 18 of the Bonded Labour Act which seems to have wrongly recorded in place of Bonded Labour System (Abolition) Act as well as under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has been taken against the petitioner. Mr.Anil Kumar, learned counsel appearing for the petitioner submitted that one Anna Oraon, a girl aged about 18 years was doing domestic work in the house of the petitioner. She unfortunately fell down from the 3rd floor of the house and died on 4.3.2011. Information to that effect was given to the concerned police station, upon which a U.D case was registered. After a week, a regular case was lodged against the petitioner by one Tulsi Prasad, Sub-Inspector, Bariatu Police Station stating therein that one Manoj Kumar, cousin of Anna Oraon did inform that he had brought the deceased to do household work of the father of the petitioner five years before but since last two years she was doing household work of this petitioner at Ranchi, she was not being taken care of properly though work was being taken from her round the clock and that she was not being allowed to go her village home nor she was being paid adequately.

On such allegation, a case was registered as Bariatu P.S. Case no.78 of 2011 under Sections 370, 374 of the Indian Penal Code and also under Sections 16 and 18 of the Bonded Labour Act which be read as Bonded Labour System (Abolition) Act as well as under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The matter was taken up for

investigation. After investigation, charge sheet was submitted, upon which cognizance of the offences punishable under Sections 370, 374 of the Indian Penal Code and also under Sections 16 and 18 of the Bonded Labour Act as well as under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 was taken against the petitioner, vide order dated 15.6.2011 which is under challenge. Mr. Anil Kumar, learned counsel appearing for the petitioner submitted that no case is made out so far the offence under Section 16 and 18 of the Bonded Labour System (Abolition) Act is concerned as the victim, in the face of allegation, cannot be said to have been working under Bonded Labour System and only in case the work is being taken under Bonded Labour System, one can be prosecuted under the provision of the Bonded Labour System (Abolition) Act, 1976.

In this regard it was further submitted that none of the conditions mentioned in Clause (g) of Section 2 defining 'Bonded Labour System' gets fulfilled and therefore, the victim cannot be said to have been working under the Bonded Labour System. None of the witnesses including father of the deceased has said anything so as to attract the offence under the Bonded Labour System (Abolition) Act, 1976.

Further it was submitted that similarly there has been no application of the provision as contained in Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000, as there does not appear to be any allegation that the girl was being forced to work in the house of the petitioner and that at the same time, no allegation is there that the girl had been employed to do hazardous work, rather the material which has been collected by the police would go to show that the girl was doing work voluntarily and the payments were being made to the father of the girl and thereby no offence gets attracted either under Section 23 or under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Further it was submitted that there has been absolutely no allegation so as to attract offence either under Section 370 or 374 of the Indian Penal Code against the petitioner as it has never been the case of the prosecution that the petitioner had indulged himself in any act concerning slavery nor it is the case of taking compulsory labour from the deceased unlawfully, rather the material collected during evidence would go to show otherwise that she was doing household work voluntarily and therefore, no ingredient is there constituting offence either under Section 370 or under Section 374 of the Indian Penal Code and under the circumstances, the order taking cognizance is fit to be quashed.

A counter affidavit has been filed on behalf of the State wherein the fact which is there in the FIR has been reiterated. Having heard learned counsel appearing for the parties and taking into account the materials brought on record, it does appear that on the allegation that work was being taken from the girl namely, Anna Oraon, aged about 18 years who died after falling from

the 3 rd floor of the house, a case was lodged under the aforesaid provisions but none of the offences under which cognizance has been taken gets attracted.

So far the prosecution under Sections 16 and 18 of the Bonded Labour System (Abolition) Act is concerned it is wholly unjustified as none of the offences get attracted from the allegation made against the petitioner even if those allegations are taken to be true. Application of the aforesaid provisions get attracted only when one takes the work from anyone under Bonded Labour System.

Bonded Labour System has been defined under section 2(g) of the Act which reads as follows:

"2(g) Bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with creditor to the effect that-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or (iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by way of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the about of a member of his family or any person

dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have,

entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor."

For prosecuting one under the provisions of the said Act, the prosecution needs to establish any of the conditions which are there in clause (g) of Section 2 defining Bonded Labour System. It is never the case of the prosecution that work was being taken from the girl on account of any of the reasons mentioned in Section 2(g) of the Act and therefore, the offence under Sections 16 and 18 of the Bonded Labour System (Abolition) Act never gets attracted.

Similarly, no offence seems to have been made out either under Section 23 or under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as it has never been the case of the prosecution that the girl was being forced to work in the house of the petitioner, rather the circumstances appearing in the case would go to suggest that the girl was doing household work voluntarily. At the same time, it has never been the case of the prosecution that the girl had been employed to do hazardous work and as such, the offences under the Juvenile Justice (Care and Protection of Children) Act, 2000 never gets attracted.

Similar is the position with respect to the prosecution under Sections 370 and 374 of the Indian Penal Code as none of the ingredients constituting offence either under Section 370 or under Section 374 of the Indian Penal Code gets attracted in the facts and circumstances of the case as the act alleged against the petitioner of taking work from the girl will never fall within the mischief of the provision as contained in Section 370 of the Indian Penal Code. Similarly, no allegation is there that the work was being taken compulsorily from the deceased.

Under the circumstances, the court certainly committed illegality in taking cognizance of the offences as aforesaid, vide order dated 15.6.2011. Accordingly, the order dated 15.6.2011 is hereby quashed. In the result, this application stands allowed.

(R.R.Prasad, J.)

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