

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.9020 OF 2022

Between:

Kothakonda Aishwarya @
Kottakonda Aishwarya.

... Petitioner

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 05.01.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 9020 of 2022

% Dated 05.01.023

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...Petitioners

And

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rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another

... Respondents

! **Counsel for the Petitioner:** Sri Baglekar Akash Kumar.

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

>**HEAD NOTE:**

? **Cases referred**

¹ 2013 SCC OnLine Jhar 766

² 2011 SCC OnLine Guj 5030

³ 2014 SCC OnLine Ker 1801

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.9020 OF 2022

ORDER:

1. This Criminal Petition is filed to quash the proceedings in C.C.No.2205 of 2021 on the file of II Additional Junior Civil Judge-cum-XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri for the offences under Sections 75 and 79 of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') against the petitioner/A1.

2. The facts of the case are that the 2nd respondent, who is the volunteer in District Child Protection Unit, Medchal District, conducts operations along with others to save child labour in pursuance of Operation Muskan. On credible information, the 2nd respondent along with team deployed for Operation Muskan, conducted search for rescuing the children employed as laborers. On 09.07.2021, the rescue team went to Everbest Foods Company, Subhash Chandra Nagar, Kushaiguda and found girls working in the company. On enquiry, four girls disclosed that they are aged 17 years, one girl 16 years and another girl 14 years.

3. The police, having investigated the case, filed charge sheet for the offences under Sections 75 and 79 of the Act.

4. Learned counsel for the petitioner would submit that the provisions under Sections 75 and 79 of the Act are not maintainable. The statements of the six witnesses, who are children, stated that they were working due to financial problems and unable to go to school due to Carona pandemic. They were working as sales girls in Kushaiguda Market, where Everbest Foods Company is situated. The company personnel pick up the girls in a van, give Masalas and they get down in one area and move from house to house and Kirana shops selling those Masalas as sales girls. In support of his contentions, he relied on the judgments reported in the cases of; i) **Vikram Sinha v. State of Jharkhand**¹; ii) **Virendra K.Malik v. State of Gujarat**²; iii) **Ramla Chalil and others v. The Sub-Inspector of Police, Kunnathunadu**³

¹ 2013 SCC OnLine Jhar 766

² 2011 SCC OnLine Guj 5030

³ 2014 SCC OnLine Ker 1801

5. For the sake of convenience, Sections 75 and 79 of the Act are extracted hereunder:

“75.Punishment for cruelty to child:- Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not willful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.”

79.Exploitation of a child employee: Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees. Explanation.— For the purposes of this section, the term “employment” shall also include selling goods and services, and entertainment in public places for economic gain.”

6. In the present case, on the basis of the complaint, crime was registered. Even according to the witnesses, who formed the team ‘Operation Muskan’ also stated that when they went to the premises, they found six girls and they

have not revealed the details. However, according to the Team, they were employed in the company. The children who were examined as LW's 9 to 14, stated that due to Corona pandemic, they were working for the company as sales girls to make ends meet. Further they stated that they went from door to door selling masalas.

7. Section 75 of the Act provides for punishment, if any person having control over a child, assaults, abandons, abuses, exposes or willfully neglects the child or procures the child to be assaulted, abandoned, abused, exposed or neglected, resulting in mental or physical suffering of the child. Even according to the Team, none of them state about any such acts as required under Section 75 of the Act. The witnesses did not speak about any assault by the accused or abandoning or they the children were abused or neglected in any manner causing physical or mental suffering. When none of the ingredients of Section 75 of the Act are attracted, the proceedings against the petitioner have to be quashed.

8. Section 79 of the Act prescribes punishment for the acts of ostensibly engaging a child and keeping him in

bondage for the purpose of employment or withholding his earnings or using such earning for one's own purposes. There are no such allegations in the entire set of documents filed under section 207 CRPC before the Trial Court. For the said reasons, the prosecution against the petitioner cannot be maintained for the offence under section 79.

9. In the result, the proceedings against the petitioner/A1 in C.C.No.2205 of 2021 on the file of II Additional Junior Civil Judge-cum-XIX Additional Metropolitan Magistrate, Cyberabad at Malkajgiri for the offences under Sections 75 and 79 of Juvenile Justice (Care and Protection of Children) Act 2015, are hereby quashed.

10. Accordingly, the Criminal Petition is allowed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 05.01.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.9020 OF 2022

Date: 05.01.2023.

kvs

