



2023/KER/65381

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 26TH DAY OF OCTOBER 2023 / 4TH KARTHIKA, 1945

CRL.MC NO. 980 OF 2023

AGAINST THE ORDER/JUDGMENT CC 2597/2017 OF JUDICIAL MAGISTRATE OF
FIRST CLASS - I, ETTUMANOOR

PETITIONER/S:

K.V.ANILKUMAR



BY ADVS.
S.SHANAVAS KHAN
S.INDU
KALA G.NAMBIAR

RESPONDENT/S:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF
KERALA ERNAKULAM, PIN - 682031

OTHER PRESENT:

M K PUSHPALETHA, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26.10.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CR

K.BABU, J.

CrL. M C No. 980 of 2023

Dated this the 26th day of October, 2023

O R D E R

The petitioner is the accused in C.C.N0. 2597/2017 on the file of the Judicial Magistrate of First class-I, Ettumanoor which arose from Crime No. 48/2013 of Railway Police Station, Kottayam. He faces charge under Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act')

2. The allegation against the petitioner is that he had employed a child aged 14 years, in connection with the construction work of a railway platform, at Ettumanoor Railway Station on 16.07.2013 at 9.30 am. The Police completed the investigation and submitted final report against the petitioner.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that the allegations raised by the



prosecution do not reveal the offence under Sec.26 of the Act. The learned counsel submitted that in the final report there is no mention about any hazardous employment or allegation of keeping the juvenile in bondage or withholding of his earnings. The learned counsel submitted that hazardous employment is different from hard work. It is submitted that the final report only alleges that the juvenile was found on the northern end of the platform at Ettumanoor Railway Station engaged in cutting iron bar. The learned counsel relied on ***Faisal Vs. State of Kerala [2015 (4) KLT 450]***, ***Eliyas Vs. State of Kerala [2018 KHC 841]*** and ***Prakash Vs. State of Kerala [2022 (6) KLT 218]*** in support of his contentions.

5. The learned Public Prosecutor submitted that prosecution allegations reveal the engagement of the child in hazardous employment, which is sufficient to attract the offence under Sec.26 of the Act.

6. Section 26 of the Act reads thus:-

“26. Exploitation of juvenile or child employee.—Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”



7. To attract Sec.26 of the Act, the prosecution has to establish the following:

- i. The employer procured the juvenile or the child for the purpose of hazardous employment.
- ii. The employer kept him in bondage.
- iii. The employer withheld his earnings or used such earning for his own purpose.

The legislature intended to make the acts of procuring a child for hazardous employment, keeping him in bondage and withholding his earnings punishable under Sec.26 of the Act. ***In Alice v State of Kerala, 2014 (2) KHC 106***, this Court considered the meaning of the term "**hazardous**" contained in Sec.26 of the Act and held that the statute intended "**hazardous**" to indicate the risk and heaviness of the job which the age of the child cannot bear.

8. In **Faisal** (Supra) this Court observed that, in order to attract Sec.26 of the Act, the prosecution has to establish that the juvenile is employed for a hazardous job without making proper and adequate payment, wages or salary.

9. In **Eliyas** (Supra), following **Faizal** (Supra), this Court reiterated the legal position. Following



Eliyas and **Faizal** (Supra), this Court in **Prakash** (Supra) held that, to bring home the offence under Sec.26 of the Act, the burden is upon the prosecution to establish that the juvenile was employed by the petitioner for doing some hazardous work without making adequate payment of salary or wages.

In the present case, the prosecution has failed to bring forth those ingredients. The resultant conclusion is that the prosecution failed to make out the offence under Sec.26 of the Act. Therefore, the entire proceedings pursuant to the registration of FIR No. 48/2013 of Railway Police Station, Kottayam, which is now pending before the Judicial Magistrate of First class-I, Ettumanoor as C.C No. 2597/2017, are liable to be quashed. I order so.

The Crl.M.C. is allowed as above.

Sd/-

**K.BABU,
JUDGE**

SM