



ESTD - 1979 REGN. NO. : BY-11-7920

INDIAN HOTEL & RESTAURANT ASSOCIATION

B-2, Wadala Shri Ram Industrial Estate, Ground Floor, G. D. Ambekar Marg, Near Wadala Telephone Exchange, Wadala, Mumbai - 400 031.
Tel. : 24171818 Telefax : 24173030 E-mail : aharmumbai@gmail.com Website : www.ahar.in

Ref ahar/ १४ /2015

dated 28th April 2015

To

The Deputy Commissioner of Police,
Zone-VII,
Mulund,
Mumbai

Respected Sir,

Sub: Employment of People Between Age of 14 & 18 Years in Hotels & Restaurants.

Ref: 1.Maharashtra Government GR CLA-2009/(4)/Kam-4 /02.03.2009.

2. Child Labour (Prohibition and Regulation) Act 1986.

3. The Juvenile Justice (Care & Protection of Children) Act 2000.

We sincerely thank you for sparing your valuable time in meeting our delegates on 27th April 2015 in the above reference.

During the discussion you have advised us to submit finding of High Court on the issues of Justice Juvenile Act and other supportive documents.

We are an association of Hotels and Restaurants of Mumbai, having more than 8000 members. We keep on taking up various issues with government and semi government bodies to effectively resolve the issues, related to our industry and trade, so that our members can do their business with dignity and remain on the right side of the law. In short, to fulfill the wishes of the present day government of "*Ease of Doing Business*".

We would like to request to allow us to bring to your honour's kind notice a small but very important issue which creates dilemma very often and also is causing lot of anxieties amongst our member hoteliers.



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We would like to inform Maharashtra Government issued the above referred GR on 2nd March 2009 (copy annexed herewith, and marked as Annexure "A"); after observation of Aurangabad Bench of Honourable Bombay high court declared GR bearing No. CLA-2006/(299)/Kam-7 dated 25.04.2006 as *ultra vires*. The GR of 2009 allows people aged above 14 to work, but to our surprise and shock actions are being taken by our Police Department on our member who employ people above 14 years of age. Not only this, but our Labour department publishes regular advertises in this regard (copy of such an ad enclosed, Annexure "B") asking citizens "not to employ people aged below 14".

Our members and office bearers met senior Police officials in various zones and most of them agreed and said "It is not a criminal offence to employ people above 14, however employing below that is definitely an offence attracting section 370,374.. etc. of IPC "

However, on discussion with some other Police officials we were told about Juvenile Justice (Care & Protection of Children) Act 2000; in short JJ Act. Our attention was drawn to section 23 and 26 of this act, which reads as follows:

23. Punishment for cruelty to juvenile or child.-

Whoever, having the actual charge of or control over, a juvenile or the child assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

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 earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine.



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We were told by these officials that if one were to employ people between the ages of 14 & 18 these two sections would be attracted and actions would be initiated.

Please permit us to give our submissions:

1) If we read the Preamble of JJ Act 2000; it says "Much greater attention is required to be given to children in conflict with the law or those in need of care and protection". The very purpose of this noble act is to bring juveniles into mainstream who have gone haywire and fallen in criminal and other unwanted and unsocial activities.

2) If one were to see the definitions given in the act; the word hazardous is not defined and therefore it is left to imagination and at the mercy of each officer. Taking definition of any other act or legislation is not permitted (as very clearly spelt out by Aurangabad Bench of Bombay High Court in the matter referred here). Also, it further says that the children to be taken care of under Child Labour Act are different from children to be protected by Juvenile Justice Act.

"6. For the purpose of implementing the provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of the child from a different Enactment. The children to be taken care of under Child Labour Act, are different from than the children to be protected by Juvenile Justice Act. The children contemplated to be protected by Child labour Act are not in conflict with the law, but their employers are acting in breach of law and to that extent protection is granted to children who have not completed age of 14 years. The juvenile Justice Act takes care of a juvenile or child defined as a person not having completed Eighteenth year of age; who is in conflict with law or who is alleged to have committed some offence"

(Rameshkumar Vs. State of Maharashtra & Ors. Bombay High Court, Aurangabad Bench, 6th Feb 2009)



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3) In various Judgments passed by Honourable Kerala High Court, after discussing both these sections i.e section 23 & 26 of JJ Act along with other preceding and succeeding sections, it repeatedly points out

a) Allowing people above 14 to work will not attract any offence under section 23 of the JJ Act

b) Hazardous employment coupled with keeping in bondage and withholding the earnings will only attract section 26 and not just mere employment.

"4. I have already averted to the gist of the allegation against the petitioner as is obvious by Annexure-A2 the very contention of the learned counsel appearing for the petitioner is that there is absolute absence of any allegation in Annexure-A2 to satisfy ingredients to attract an offence punishable under section 23 of the Act. The only accusation against him is Annexure-A2 is that the petitioner had engaged a boy who was then 16 year old in his hotel. There can be little doubt with respect to the position that such a vague allegation cannot and will not attract an offence punishable under section 23 of the Act. In this case another aspect also assumes relevance. It is evident from Annexure-A2 itself that at the relevant point of time the concerned child was aged 16 years. This court in the decision in Vinod S Panicker v. sub inspector of Police and Another reported in 2012 (4) KHC 224 held that there is no statutory inhibition under the Juvenile Justice Act in employment, of the children above the age of 14 years, which is not hazardous in nature. It is further held that therein that engaging children above the age of 14 years and providing them remuneration for their work cannot be viewed as one infringing the protection and rights afforded to such children and, at any rate, such engagement would not attract an offence under the Act

The very essence of the contention of the learned counsel for the petitioner is that a harmonious construction of the provisions under section 26 and 23 of the Act and section 3 of The Child Labour Act would reveal that what is intended to be prohibited and what is actually prohibited is employment of a child or a juvenile below the age of 14 and above the age of 14 in a hazardous employment by keeping him in bondage and by not paying him his wages.



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As already noticed hereinabove a scanning of Annexure-A2 would reveal that there is no such accusation made against the petitioner so as to attract an offence under section 23 of the juvenile Justice Act. When once it is so found the contention of the petitioner that the entire proceedings based in annexure-A2 is liable to be interfered and only to be accepted. In view of the said discussion I am of the considered view that this petition is entitled to succeed.....” (emphasis supplied)

(Abdul Nizar vs State of Kerala, Kerala High Court, Ernakulam Bench, 12th March 2013)

In yet another case which was specifically registered under section 26 of the J J Act; The hon'ble Kerala High Court has observed as under:

” 6. A mere allegation that a juvenile, aged 17 years, has been employed in a bakery, it does not follow that such employment constituted any threat or hazard to that juvenile. Engaging a juvenile as an employee in a bakery cannot be viewed as one putting him to a hazardous employment. I find, charge imputed against the petitioner for having employed a juvenile, aged 17 years, in his bakery for the offence under Section 26 of the Act will not lie.

Criminal proceedings against the petitioner in S.C.No.37 of 2012 on the file of the Sessions Court, Thiruvananthapuram are quashed under Section 482 of the Code of Criminal Procedure.

Petition is allowed.

(Vinod S Panicker vs. sub Inspector of Police and Anr. Kerala High Court; 5th September 2012)

Apart from these there are many other judgments of the Honourable High Courts of Bombay and Kerala echoing the same view points. The copies of them same are annexed hereto for your reference.

We hope and believe that in view of the foregoing your honour would readily agree with us that this issue of punishing hoteliers employing people aged above 14 years with section 23 and 26 of JJ Act requires to be looked into thoroughly so that law abiding business people are not harassed unnecessarily.



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We therefore request your noble self to kindly ask your legal experts to examine the issue threadbare and arrive at a correct and logical conclusion, in line with statutes and the observations of the honourable courts.

In the meanwhile, may we also request your honour to issue suitable directions to all concerned so that the hoteliers are not harassed till the matter is finally disposed by your office.

Please do the needful and oblige.

Requesting to be excused for this trouble, we give you.

With respectful regards,

For Indian Hotel & Restaurant Association,

Sukesh Shetty

Hon.Gen.Secretary

- Encl: 1. Maharashtra Government GR CLA-2009/(4)/Kam-4 /02.03.2009. "A"
2. Copy of the advertisement released by the Labour Dept., Govt. of Maharashtra. "B"
3. Bombay High Court Judgments.
A) Rameshkumar Vs. State of Maharashtra. (Aurangabad Bench)
B) Ramdas S Narayan Vs. State of Maharashtra (Mumbai Bench).
4. Kerala High Court Judgments.
A) Vinod S Panicker Vs. Sub Inspector of Police & Anr.
B) Abdul Nizzar Vs. State of Kerala.
C) Sarath G Nair Vs. State of Kerala.
D) Anuroop Vs. State of Kerala.
E) Ahammed Kutty Hotel Zamzam Vs. Sub Inspector of Police & Anr.

महाराष्ट्र शासन

उद्योग, ऊर्जा व कामगार विभाग

शासन निर्णय क्रमांक: सीएलए-२००९/(४)/काम-४

मंत्रालय, मुंबई -४०० ०३२.

दिनांक: २ मार्च २००९.

- संदर्भ :- १. याचिका क्र. ४६५/१९८६ मधील सर्वोच्च न्यायालयाचा निवाडा,
२. जिल्हास्तरीय बाल कामगार सल्लागार मंडळाची स्थापनेसंदर्भातील शासन
निर्णय क्र. सीएलए-१०९७/सीआर-३०७/काम-११, दि. १२.२.१९९७,
३. दिनांक १८ मे २००५ रोजी स्थापन करण्यात आलेले कृती दल.
४. शासन निर्णय क्रमांक: सीएलए-२००६/(२९९)/काम-७अ, दि. २५.४.२००६.

प्रस्तावना :

भारतीय संविधानाचा अनुच्छेद ३२ अंतर्गत, याचिका क्र. ४६५/१९८६ मध्ये मा. सर्वोच्च न्यायालयाने दिलेल्या निर्णयातील निर्देशानुसार बालमजूरी ही अनिष्ट प्रथा आहे. त्याचे महाराष्ट्र राज्यातून समूळ उच्चाटन करून बालमजूरांना शिक्षणाच्या मूळ प्रवाहात समाविष्ट करून घेणे, त्यांचे व आवश्यकता असल्यास त्यांचे कुटुंबियांचे पुनर्वसन करणे आवश्यक आहे. बालमजूरांची मालकांच्या तावडीतून/छळातून मुक्तता करण्याच्या उद्देशाने, शासन निर्णय क्रमांक: सीएलए-२००६/(२९९)/काम-७अ, दि. २५.४.२००६ अन्वये प्रत्येक जिल्ह्यात, संबंधीत जिल्हादंडाधिकार्यांच्या नियंत्रणाखाली कृतीदल गठीत करण्यांत आले आहे.

तथापि, बाल कामगार (प्रतिबंध व निर्मूलन) अधिनियम १९८६ कायद्यान्वये १४ वर्ष पूर्ण न केलेल्या बालकास सदर अधिनियमाच्या परिशिष्ट अ आणि ब मध्ये नमूद केलेल्या धोकादायक उद्योग आणि प्रक्रियांमध्ये कामावर ठेवण्यास प्रतिबंध करण्यांत आलेला आहे. तसेच इतर अधोकादायक उद्योगांमध्ये बालकामगारांच्या कामाच्या शर्तीचे नियमनांबाबत तरतूद करण्यांत आली आहे. त्या अनुषंगाने दि. २५.४.२००६ च्या शासन निर्णयात सुधारणा करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

महाराष्ट्र राज्यातून बाल मजूरीचे समूळ उच्चाटन करून बालमजूरांना शिक्षणाच्या मूळ प्रवाहात समाविष्ट करण्याच्या उद्देशाने, गठीत करण्यांत आलेल्या कृतीदलाबाबतचा शासन निर्णय क्रमांक : सीएलए-२००६/ (२९९)/ काम-७अ, दि. २५.४.२००६ रद्द करून आता शासनाने खालीलप्रमाणे निर्णय घेतला आहे.

२. धोकादायक उद्योग आणि प्रक्रियातील बालमजूरीचे निर्मूलन करण्यासाठी या शासन निर्णयातील परिच्छेद क्रमांक ३ मध्ये कृतीदल गठीत करण्याबाबतचे सविस्तर विश्लेषण करण्यांत येत आहे. तथापि, अधोकादायक उद्योग व प्रक्रियातील बाल मजूरीचे नियमन करणे आवश्यक आहे. याबाबतची कार्यवाही कामगार आयुक्त कार्यालयांकडून खालीलप्रमाणे करण्यांत येईल.

अ) कुठल्याही बाल कामगाराच्या कामाचा विस्तार सहा तासापेक्षा जास्त असता कामा नये.

ब) तीन तास काम केल्यानंतर एक तासाची विश्रांती देण्यांत यावी .

क) कुठल्याही बाल कामगारास संध्याकाळी ७.०० ते सकाळी ८.०० वाजेपर्यंत कामावर ठेवण्यांत येऊ नये.

ड) कुठल्याही बाल कामगारास अतिकालीन काम देण्यांत येऊ नये.

इ) प्रत्येक बाल कामगारास भरपगारी साप्ताहिक सुट्टी देण्यांत यावी.

ई) कामावर ठेवलेल्या प्रत्येक बालकास किमान वेतन अधिनियमातील तरतूदीप्रमाणे किमान वेतन मिळाले पाहिजे. त्यासाठी किमान वेतन अधिनियमाची कांटेकोरपणे अंमलबजावणी करण्यांत यावी. तसेच बाल

उ) प्रत्येक मालकाने कामावर ठेवलेल्या बाल कामगाराच्या आरोग्याबाबत तसेच शिक्षणाबाबत संपूर्ण काळजी घ्यावी.

ऊ) बाल कामगार (प्रतिबंध आणि नियमन) अधिनियम १९८६ मधील तरतूदी, महाराष्ट्र बाल कामगार (प्रतिबंध आणि नियमन) नियम १९९७ मधील तरतूदी तसेच मा.सर्वोच्च न्यायालयाने याचिका क्र.४६५/१९८६ मध्ये दिलेल्या निर्देशांची काटेकोरपणे अंमलबजावणी करण्यात यावी.

ए) यासंदर्भात शासनाने वेळोवेळी काढलेल्या तसेच यापुढे काढण्यांत येणाऱ्या परिपत्रके, शारान निर्माण, शापन इत्यादींचीदेखिल अंमलबजावणी करण्यात यावी.

३. धोकादायक उद्योग आणि प्रक्रियातील १४ वर्षाखालील बालमजूरांची मालकाच्या छळातून त्वरीत मुक्तता करून, त्यांचा प्राथमिक ताबा घेण्यात यावा याकरिता, शासनाच्या संबंधीत सर्व विभागाच्या खालील अधिकाऱ्यांचे जिल्हानिहाय, जिल्हादंडाधिकार्यांच्या घेट नियंत्रणाखाली कृती दल गठित करण्यांत येत आहे. या कृती दलात खालीलप्रमाणे विविध विभागांचा समन्वये करण्यांत येत आहे.

१. जिल्हादंडाधिकारी	-कृती दल प्रमुख,
२. जिल्हा पोलीस अधिक्षक	-सदस्य
३. मुख्य कार्यकारी अधिकारी, जि.प.	-सदस्य
४. जिल्हा महिला व बालविकास अधिकारी	-सदस्य
५. जिल्हा शिक्षण अधिकारी (प्राथमिक), जि.प.	-सदस्य
६. जिल्हा आरोग्य अधिकारी, जि.प.	-सदस्य
७. निवासी उपजिल्हाधिकारी	-सदस्य
८. महानगर पालिका आयुक्त	-सदस्य
९. जिल्हा समावेशक, होमगार्ड्स	-सदस्य
१०. विभागातील कार्यरत बालकामगारांशी निगडित, इच्छुक स्वयंसेवी संस्था	-सदस्य
११. जिल्ह्यातील उप/सहाय्यक कामगार आयुक्त	-सदस्य सचिव

ज्या जिल्ह्यांमध्ये महानगर पालिका अस्तित्वात नाहीत अशा ठिकाणी महानगरपालिका आयुक्त यांच्या ऐवजी संबंधित नगरपालिकांचे मुख्य अधिकारी यांचा सदस्य म्हणून समावेश करण्यात यावा. तसेच ज्या जिल्ह्यांमध्ये सहाय्यक/उप कामगार आयुक्त हे पद अस्तित्वात नाही अशा ठिकाणी सदस्य सचिव म्हणून सरकारी कामगार अधिकारी यांची नियुक्ती करण्यात यावी.

जिल्हादंडाधिकार्यांनी कृतीदल सतत कार्यरत राहिल व कृतीदलाची बैठक महिन्यातून किमान एकदा होईल ह्याची दक्षता घ्यावी व आपला मासिक अहवाल विभागीय आयुक्त, प्रधान सचिव (महसूल), सचिव (मदत व पुनर्वसन), व प्रधान सचिव (कामगार) यांना पाठवावा.

४. धोकादायक उद्योगातील बाल कामगारांच्या मुक्ततेसाठी परिशिष्ट अ मध्ये नमूद केल्याप्रमाणे कार्यपध्दती (Protocol) तयार करण्यांत आली असून त्याअंतर्गत विविध विभागांसाठी खालीलप्रमाणे जबाबदारी निश्चित करण्यांत आली आहे.

- अ) पोलिस विभाग: संबंधीत पोलिस स्टेशनच्या सहाय्यक पोलिस आयुक्त/जिल्हा पोलीस अधिक्षक यांनी
१. कृती दलास धाडीकरिता मागणीनुसार तातडीने पुरेसा पोलिस बंदोबस्त उपलब्ध करून घ्यावा.
 २. कृती दलाच्या धाडीत प्रत्यक्ष सहभागी व्हावे.
 ३. कृती दलाने मुक्त केलेल्या १४ वर्षाखालील बालमजूरांचा ताबा घ्यावा.

करुन भारतीय दंड संहितेच्या कलम ३३९, ३७०, ३७४ व ३४ अंतर्गत गुन्हा दाखल करावा व पुढील कारवाई करावी.

५. मुक्त केलेल्या बालमजूरांना काळजीपूर्वक सन्मानाने वागवावे व त्यांना सुरक्षितरित्या बालगृहात महिला व बालविकास विभागाच्या अधिकाऱ्यांकडे सुपूर्द करावे.
६. कलम ३२ अंतर्गत बाल कल्याण समितीसमोर बालमजूरांची बाजू कृतीदलाच्या मदतीने मांडावी. बाल कल्याण समितीच्या निर्णयानुसार बालमजूर परराज्यातील असल्यास जापू मार्फत त्यांची सुरक्षित रवानगी त्यांचे पालकांकडे करावी.

ब) कामगार आयुक्त कार्यालयाचे अधिकारी :

१. त्यांचे संबंधीत कार्यक्षेत्रात बालमजूर कार्यरत असण्याची शक्यता असणाऱ्या विभागांवर सातत्याने सर्वेक्षण करावीत.
२. १४ वर्षाखालील बालमजूर कार्यरत असल्याचे आढळताच/ज्ञात होताच, बालकामगारांची संख्या जास्त असल्यास जिल्हादंडाधिकारी व पोलिस अधिकारी यांचेशी समन्वय साधून २४ तासाचे आंत कृतीदलाची धाड आयोजित करावी. बालमजूरांची संख्या कमी असल्यास संहकान्यांच्या आणि पोलिसांच्या मदतीने त्याच दिवशी कारवाई करुन बालमजूरांची मुक्तता करावी.
३. कृतीदलाचा कायमस्वरूपी सदस्य सचिव या नात्याने प्रत्येक धाडसत्राचे नियोजन करावे. धाडीत पुरेसे अधिकारी, दुकाने निरीक्षक उपस्थित ठेवावेत. १४ वर्षाखालील बालमजूरांची मुक्तता करण्यात सक्रिय सहभागी असावे. असे बालमजूर ठेवणाऱ्या मालकांविरुद्ध बाल कामगार अधिनियम १९८६ चे कलम ३ लागू असल्यास त्या अंतर्गत कारवाई करावी. उक्त अधिनियमाचे कलम ३ लागू नसल्यास कलम ७, ८, ९, ११, १२ आणि १३ अंतर्गत कारवाई करावी.
४. मुक्त केलेल्या बालमजूरांचा सोबतच्या विहित परिशिष्ट व मध्ये नमूद केलेला संपूर्ण तपशील बालमजूरांकडून आपुलकीने माहिती मिळवून घ्यावा व त्या तक्त्याची एक प्रत पोलिस विभागास द्यावी. बालमजूर आढळलेल्या मालकांविरुद्ध पोलिसांकडे औपचारिकतेचा भाग व कर्तव्य म्हणून (कृती दलाच्या वतीने) रितसर तक्रार/जबाब नोंदवावा.
५. बालमजूरांकडून माहिती मिळविताना मालकाने सादर बालमजूर कामावर ठेवण्याकरिता बालमजूरांच्या पालकास कोणत्याही प्रकारे आर्थिक सहाय्य, कर्ज, उचल इ. स्वरूपात रक्कम अदा केली आहे का, याबाबतदेखील माहिती घ्यावी आणि अशा उक्त स्वरूपात रक्कम अदा करण्यात आलेली असल्यास, त्यांना वेळीगार कामगार म्हणून घोषित करण्याबाबत त्वरीत थेट अहवाल जिल्हाधिकारी यांना पुढील कारवाईप्रत्यर्थ सादर करावा व त्याची प्रत कामगार आयुक्तांमार्फत शासनास पाठवावी.
६. धाडीत मुक्त केलेल्या बालकांना बालगृहात पाठवण्यांत त्यांची योग्य ती काळजी घ्यावी, जसे की, त्यांना वेळेवर जेवण मिळेल, पाणी मिळेल यासंदर्भातील व्यवस्थेवर नियंत्रण ठेवावे.
७. ज्या मालकांविरुद्ध बालकामगार अधिनियम १९८६ चे कलम ३ अंतर्गत कारवाई करण्यांत आली अशांकडून सर्वोच्च न्यायालयाच्या याचिका क्र.४६५/१९८६ तील निवाडयानुसार रु.वीस हजार फक्त (रु.२०,०००/-) बालकल्याण फंडाकरिता वसूल करावेत.
८. ज्या मालकांकडे १४ वर्षाखालील बाल कामगार आढळले असतील अशाविरुद्ध, लागू असल्यास,
 - अ) मुंबई दुकाने व आस्थापना अधिनियमाचे अंतर्गत,
 - ब) किमान वेतन अधिनियमाचे अंतर्गत,
 - क) मोटार परिवहन कामगार अधिनियमाचे अंतर्गत,

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them abusing the complainant's name and
therefore, no offence is made out under the
provisions of section 7(1)(3) and 3(1)(10) of
the Act. She further submits that, since the
applicant No.7 is no more, the complainant has
only made specific allegations against the
applicant No.7 only. Therefore, she submits
that contention of the investigation in the said
crime would be abuse of process of law,
therefore, the said F.I.R. deserves to be
quashed.

11. The learned A.P.P. submits that
the applicants are named in the F.I.R. However,
the learned A.P.P. fairly conceded that no more
specific allegations are made against the present
applicant Nos.1 to 6.

12. After hearing the learned counsel
for the applicants and learned A.P.P., I am of
the considered view that even the contents of
the F.I.R. are taken as it is, no offence is made
out under sections 7(1)(3) and 3(1)(10) of the
Act. In my considered view, any further
investigation in pursuant to the F.I.R. No.62/
99 would be abuse of process of law.
Moreover, the applicants, who are the
employees of the Maharashtra State Electricity
Board, were discharging their duties and
therefore, in my considered view, when no
specific allegations are made against them that
they have abused the complainant, saying
something about the caste of complainant, the
F.I.R. is required to be quashed.

13. In the result, the application
succeeds. The application is allowed in terms
of prayer clause C of the application and
disposed of.

Application allowed.

THE HIGH COURT OF JUDICATURE AT
BOMBAY

(AURANGABAD BENCH)

N. V. DABHOLKAR &
N. D. DESHPANDE, JJ.

Rameshkumar s/o. Dwarkadas Mundada
Vs.

State of Maharashtra & Ors.

Criminal Writ Petition No.656/2008
6th February, 2009.

Shri. C. R. DESHPANDE, Adv. for Petitioner.
Shri. N. N. JADHAV, A.P.P. for all Respondents.

(A) Child Labour (Prohibition and
Regulation) Act (1986), Ss.2(ii), 3, 14 -
Engagement of children in certain
employment - Prohibition of engagement -
"Child" - A person who has completed 14
years of age, would not be a "Child" for the
purpose of Ss.3 and 14 of the Act. (Para 3).
(B) Child Labour (Prohibition and
Regulation) Act (1986), S.2(ii) - Maharashtra
Government Resolution No.CLA/2006/(299)
KAMA-74 dated 25-4-2006 issued by the
Government through Industries, Energy
and Workers Department, Para 3(B)(8) -
Validity of Clause 8 of Para 3(B) of
Resolution dt.25-4-2006 - Challenge to -
Held, for the purpose of implementing the
provisions of Child Labour Act, 1986, it is
inappropriate to borrow the definition of
'child' from a different enactment -
Therefore, Clause 8 of Para 3(B) of
Government Resolution dt.25-4-2006 which
relies upon definition of the child as
contained in Juvenile Justice Act for the
purpose of implementing the provisions of
Child Labour Act is required to be struck
down, since it is ultravires to the extent it
borrows definition of "Child" from a
different legislation.

For the purpose of implementing the

provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of the child from a different Enactment. The children to be taken care of under Child Labour Act, are different than the children to be protected by Juvenile Justice Act. The children contemplated to be protected by Child Labour Act are not in conflict with law, but their employers are acting in breach of law and to that extent protection is granted to children who have not completed age of 14 years. The Juvenile Justice Act takes care of a juvenile or child, defined as a person not having completed Eighteenth year of age; who is in conflict with law or who is alleged to have committed some offence.

Therefore, Clause 8 of Para 3(B) of Government Resolution dated 25-4-2006 which relies upon definition of the child as contained in Juvenile Justice Act for the purpose of implementing the provisions of Child Labour Act is required to be struck down, since it is ultra-vires to the extent it borrows definition of "child" from a different legislation. If the word "child" is defined in a particular way by Child Labour Act, while implementing the provisions of the Act, same definition ought to be followed.

Impugned Clause 8, therefore, is struck down as ultra vires Section 2(ii) of Child Labour Act and Government may substitute Clause 8 by appropriate Clause in harmony with the definition of "child" as contained in Section 2(ii) of Child Labour Act. (Paras 6, 7 and 8)

N. V. DABHOLKAR, J. :- Petitioner has approached this Court for the purpose of challenging Clause 3(B)(8) as contained in Government Resolution No. CLA/2006/(299)KAMA-74 dated 25-4-2006, issued by the Government through Industries, Energy and Workers Department. According to petitioner, the said Clause is in conflict with the law applicable and also violative of fundamental rights.

Reply is filed on behalf of respondents

as Assistant Commissioner of Labour, Latur, which is taken on record and considered.

2. Rule. Rule made returnable forthwith by mutual consent.

- As is evident from the title of the Government Resolution.

"बाल कामगार या अनिष्ट प्रथेतून महाराष्ट्र राज्य मुक्त करणे बाबत."

i.e. "to free the State from unhealthy practice of child workers". It is evident that these are the directions/guidelines issued by the Government for the purpose of seeking freedom to the child workers wherever they are so employed. We need not refer to all the details in the Resolution. The Clause under challenge reads thus :

"८. घाडसत्रात किशोर न्याय (मुलांची देखरेख तथा संरक्षण) अधिनियम, २००० च्या कलम २(ट) नुसार ज्याने वयाची १८ वर्षे पूर्ण केलेली नाहीत तो बालक अशी बालकाची व्याख्या केलेली असल्याने, १४ वर्षांपुढील किशोरवयची बालमजूर जर घाडसत्रात आढळले तर अशांना देखील मालकाचे तावडीतून मुक्त करून पोलीसांचे स्वाधिन करावे."

Freelance English translation of the same would be as under:

"Because Juvenile Justice (Care and Protection of Children) Act, 2000 defines Juvenile or child by its Section 2(k) as an individual who has not completed age of 18 years, if child workers who have completed 14 years are found in the raid, those child workers also should be freed from the clutches of the employer and they should be handed over to the police authorities."

It appears that the directions/guidelines direct the authorities who are required to act upon those, to ensure freedom also to the child workers between the age group of 14 to 18 years.

3. The exception taken to the said

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"An Act for prohibiting engagement of children in certain employment and to regulate the conditions of working of children in certain other employments."

The phrase "Child" is defined as under:

"2(ii) "Child" means a person who has not completed his 14th year of age."

Thus, it is evident that for the purpose of Enactment, which is enacted to prohibit the engagement of children in certain employment "child" is a person who has not completed age of 14 years. Obviously a person who has completed 14 years of age, would not be a "child" for the purposes of Sections 3 and 14 of the said Act.

4. Learned counsel for the petitioner has not disputed that the petitioner is engaged in the business of ice-cream i.e. he runs Ice-Cream Parlour. He is aggrieved because during the raids, his workers aged between 14 to 18 are also tried to be prohibited from being employed by him. Shri. C. R. Deshpande, Adv. for petitioner concedes that the business of the petitioner would fall in Item 15 of the Schedule to Child Labour (Prohibition and Regulation) Act 1986, which reads as under:

"15. Employment of children in dhabas (road-side eateries), restaurants, hotels, motels, tea-shops, resorts, saps or other recreational centres".

However, he challenges that the Government Resolution which is issued in order to give effect to the spirit of the Child Labour (Prohibition and Regulation) Act 1986 is tried to be implemented by borrowing the definition of "child" from a different Enactment i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000. The said Act in its Section 2(k) defines the "child" as under:

"2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;"

protection by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their rehabilitation keeping in view the developmental needs of the children.

5. The object and reason for which the two legislations are enacted are quite distinct. The Child Labour Act takes care of a child who has not completed age of 14th year of age by prohibiting their being employed in certain types of employments and provides for an action to secure freedom for such "child" from certain types of employments. The Juvenile Justice Act is aimed at helping the juvenile who are in conflict with law or who otherwise need care and protection. Even the child in need of care and protection is specifically defined in Clause (d) of Section 2 of the said Act.

6. For the purpose of implementing the provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of the child from a different Enactment. The children to be taken care of under Child Labour Act, are different than the children to be protected by Juvenile Justice Act. The children contemplated to be protected by Child Labour Act are not in conflict with law, but their employers are acting in breach of law and to that extent protection is granted to children who have not completed age of 14 years. The Juvenile Justice Act takes care of a juvenile or child, defined as a person not having completed Eighteenth year of age; who is in conflict with law or who is alleged to have committed some offence.

7. Therefore, Clause 8 of Para 3(B) of Government Resolution dated 25-4-2006 which relies upon definition of the child as contained in Juvenile Justice Act for the purpose of implementing the provisions of Child Labour Act, is required to be struck down, since it is ultra-vires to the extent it borrows definition of:

"child" is defined in a particular way by Child Labour Act, while implementing the provisions of the Act, same definition ought to be followed.

8. Impugned Clause 8, therefore, is struck down as ultra vires Section 2(ii) of Child Labour Act and Government may substitute Clause 8 by appropriate Clause in harmony with the definition of "child" as contained in Section 2(ii) of Child Labour Act.

9. Rule made absolute accordingly. Writ Petition is disposed of.

Petition allowed.

2009 ALL MR (Cri) 1320

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
(NAGPUR BENCH)

R. C. CHAVAN, J.

Hemant s/o. Omkarnath Thakre

Vs.

State of Maharashtra

Criminal Appeal Nos.64, 66, 67, 72, 89 of 2007
3rd February, 2008.

Shri. S. P. DHARMADHIKARI, Sr. Adv. for Appellant in Criminal Appeal No.64 of 2007.

Ms. SANGEETA GAIKEE, Advocate for Appellants in Criminal Appeal No.66 of 2007 and Criminal Appeal No.89 of 2007.

Shri S. S. /ODITEL, Advocate for Appellant in Criminal Appeal No.67 of 2007.

Shri S. P. GADLING, Advocate for Appellant in Criminal Appeal No.72 of 2007.

Shri S. S. DOIIFODE, Additional Public Prosecutor for Respondent/State.

(A) Criminal P.C. (1973), Ss.154, 173 - Maharashtra Universities Act (1994), S.18(3)(e) - Scope of - Investigation - S.18(3)(e) does not restrict the powers of a Criminal Court to take cognizance upon a

Universities Act are first taken.

Section 18(3)(e) does not restrict the powers of a Criminal Court to take cognizance upon a police report by prescribing that cognizance shall not be taken unless the steps contemplated by the Maharashtra Universities Act are first taken. Therefore, since the relevant provisions of the Maharashtra Universities Act and those under the Code of Criminal Procedure occupy different fields and control different aspects, there is no conflict and, therefore, no implied repeal. Consequently, there is no warrant for holding that the Controller of Examinations was not entitled to approach the police or police was not entitled to investigate or to file a report or that a Magistrate was not entitled to take cognizance on such a report.

When a special law prescribes a special procedure, it eclipses general provisions. However, it has to be noted that the Maharashtra Universities Act does not prescribe any special procedure for carrying out investigation into the complaints about offences concerning the University examinations or for enquiries or trials for offences arising therefrom. Section 18(3)(e) of the Act on which much emphasis has been laid, is only an enabling provision, which would enable the Controller of Examinations to initiate criminal proceedings. Therefore, since there is no special procedure prescribed for investigation or trial of offences relating to examinations and since the procedure prescribed is only in relation to conducting an internal enquiry for the purpose of enabling the University authorities to decide appropriate course of action, it cannot be said that the report could not have been made by the Controller of Examinations. 2007 ALL MR (Cri) 555 - Ref. to. (Para 26)

(B) Maharashtra Universities Act (1994); S.18(3)(e) - Criminal P.C. (1973), Ss.154, 173 - Charge of serious misconduct against

HIGH COURT, BOMBAY

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19-apl-740-2011

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.740 OF 2011

Mr. Ramdas S. Narayan
& Another .. Applicants.
V/s.
The State of Maharashtra .. Respondent.

Mr. M. K. Kocharekar, for the Applicants.
Mr. A. S. Shitole, APP for the Respondent.

CORAM: K.U. CHANDIWAL, J.
DATED : OCTOBER 29, 2012.

P.C.:

Heard the learned Counsel for the parties.

2 The learned APP confirms that there is no other notification baring dated 2nd March, 2009 issued by the Government in respect of Child Labour (Regulation & Abolition) Act, 1986.

3 The record illustrates that on ossification test of the so called four employees/labour, their ages have been determined between 14 to 16 years and two are of 16 to 18 years.

4 The Division Bench of this Court in the matter of *Rameshkumar s/o. Dwarkadas Mundada v/s. State of Maharashtra & Others* reported in *2009 ALL MR (Cri) 1317* on 6th February, 2009 indicated that the provisions of Juvenile Justice Act (Care and Protection of Children) Act, 2000 cannot be

HIGH COURT, BOMBAY

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19-apl-740-2011

applied for the so-called employment of child labour under the age group of 16 to 18 years.

5 Considering the Government Circular referred earlier, prima facie, no offence is made out against the Applicants herein causing infraction of the provisions of the Child Labour ((Regulation & Abolition) Act, 1986.

6 Criminal Application is allowed. Prosecution quashed and set aside.

(K. U.CHANDIWAL J.)

TRUE COPY

[Signature]

5.11.2012

Section Officer

High Court, Appellate Side
Bombay

बाल श्रम

शिक्षण



१४ वर्षांपेक्षा कमी वयाच्या बालकांना
शिक्षण देवणे कौतूह्याची मुन्हा आहे.

कर्मचार विभाग, महाराष्ट्र शासन

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Cri.M.C. No. 5057 of 2014

Ahammed Kutty Hotel v. Sub Inspector of Police

2014 SCC OnLine Ker 27464

(BEFORE ALEXANDER THOMAS, J.)

Ahammed Kutty Hotel Zam Zam, New Bus Stand, Kasaragod

Petitioner/Accused

By Adv. Sri. T.G. Rajendran

v.

1. Sub Inspector of Police Kasaragod 671 121
2. State of Kerala Rep by Public Prosecutor, High Court of Kerala Ernakulam 682 031 Respondent/Complainant & State
R1 & R2 by Public Prosecutor Sri. R. Githesh

Cri.M.C. No. 5057 of 2014

SC 1034/2012 of Sessions Court, Kasaragod

Crime No. 510/2011 of Kasaragod Police Station, Kasargod

Decided on December 18, 2014

ORDER

The petitioner is the accused in Annexure-I FIR in the impugned Crime No. 510/2011 of Kasaragod Police Station for offence under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act'). The police after investigation submitted the impugned Annexure-II Final Report/Charge Sheet in the impugned Annexure-I Crime No. 510/2011 of Kasaragod Police Station which has led to the pendency of S.C. No. 1034/2012 on the file of the Sessions Court, Kasaragod for the above said offence. The gist of the prosecution case is that on 2.6.2011 at about 6:30 a.m. A minor boy was engaged in a Hotel called 'Zam Zam' as a child labour at Kasaragod new bus stand and he was then taken to the Child Welfare Committee by the police. The petitioner submits that the boy was born on 13.2.1995, he was aged more than 16 years as on 2.6.2011, the date of registration of the impugned Annexure-I FIR and that this is evidenced from Annexure-III SSLC Certificate and TC in respect of the boy. It is the case of the petitioner that offence under Sec.23 will not be attracted in this case as the only allegation against the accused is that he had engaged a 16 year boy in his hotel and such a vague allegation cannot and will not attract an offence punishable under Sec.23 of the Act. It is contended by the petitioner that there is no statutory inhibition under the Juvenile Justice Act in employment of the children above the age of 14 years, which is not hazardous in nature. It is submitted that engaging children above the age of 14 years and providing them remuneration for their work cannot be viewed as one infringing the protection and rights afforded to such children and, at any rate, such engagement would not attract an offence under the Act. The petitioner has relied on the final order dated 12.3.2013 of this Court in Cri.M.C. No. 1118/2013 (Annexure-IV) wherein this Court quashed the impugned

criminal proceedings alleging offence under Section 23 of the Act in a similar case. It is in the conspectus of these facts and circumstances, that the petitioner has filed the instant CrI.M.C seeking to quash the impugned Annexure-II Final Report/Charge Sheet in the impugned Crime No. 510/2011 of Kasaragod Police Station which has led to the pendency of S.C. No. 1034/2012 on the file of the Sessions court, Kasaragod and all further proceedings arising there from.

2. It is contended by the petitioner that no offence under Sec.23 of the aforementioned Act is attracted as per the allegation contained in the impugned Annexure-A2 Final Report/Charge Sheet. It is stated that the only allegation against the petitioner contained in the impugned Annexure-A2 Final Report/Charge Sheet is that the petitioner had employed a boy in his hotel and mere employment of the child as defined under that Act will not attract the offence under the said Act. It is further contended that this Court in CrI.M.C. No. 1118/2014 as per order dated 12.3.2013 has considered the question whether engaging a juvenile as an employee in a hotel will constitute the offence under Sec.23 of the Act and it has been held that as already held by this Court in the case *Vinod S. Panicker v. SI of Police* reported in 2012 (4) KHC 224 that there is no statutory inhibition under the Juvenile Justice Act in employment of the children above the age of 14 years, which is not hazardous in nature and that engaging children above the age of 14 years and providing them remuneration for their work cannot be viewed as one infringing the protection and rights afforded to such children and, at any rate, such engagement would not attract an offence under the Act. Accordingly, it was held by this Court in the order dated 12.3.2013 in CrI.M.C. No. 1118/2013 that what is prohibited is employment of a child or a juvenile below the age of 14 and above the age of 14 in a hazardous employment by keeping him in bondage and by not paying him his wages and that since there was no such accusation in the impugned criminal proceedings in that case, this Court held therein that offence under Sec.23 of the Juvenile Justice Act is not attracted and accordingly, quashed the impugned Final Report/Charge Sheet filed in that case which led to the proceedings in the sessions case before the sessions court concerned and all further proceedings therefrom was also quashed. The petitioner also relies on the decision of *Joseph v. State of Kerala* reported in 2014 (2) KHC 48 wherein this Court considered the statement of the victim and has held that if a person working voluntarily it cannot be said that he was put to any hazardous work or exposed to danger and in the absence of any evidence that the victim was assaulted or any force was applied or compelled to to any hard work or subjected to cruelty, no offence under the said Act is attracted. The petitioner also relies on the order dated 5.8.2014 in CrI.M.C. No. 3408/2014 wherein this Court relied on the rulings of this Court in *Joseph v. State of Kerala* reported in 2014 (2) KHC 48 and held that unless it is established by the prosecution that; (a) person having the actual charge or control over a juvenile or child, (b) assaults, abandons, exposes or willfully neglects and juvenile or (c) causes or procures him to be assaulted, abandoned, exposed or neglected, (d) in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering, it cannot be held that the offence under the said provision would be attracted etc.

3. Heard Sri. T.G. Rajendran, learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State of Kerala.

4. Section 23 of the Juvenile Justice Act reads as follows:-

Section 23: Punishment for cruelty to juvenile or child.

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

Section 24 of the said Act reads as follows:

Section 24: Employment of juvenile or child for begging.

(1) Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

Section 26 of the said Act reads as follows:

Section 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.

Section 27 of the said Act reads as follows:

Section 27: Special offences.

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

The only offence alleged against the petitioner as per the impugned Annexure-A2 Final Report/Charge Sheet in the impugned Crime is one under Section 23 of the Juvenile Justice Act. A bare reading of the above said provisions of Sec.23 of the Act makes it clear that following are the ingredients to constitute the criminal offence thereunder, viz,

- (i) person having the actual charge or control over a juvenile or child,
- (ii) such person assaults, abandons, exposes or willfully neglects the juvenile or
- (iii) cause or procures him to be assaulted, abandoned, exposed or neglected, (iv) in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering.

5. It was held by this Court in *Joseph v. State of Kerala* that even assuming that the petitioner was in charge of control of the juvenile or child, the accusation only shows that the accused was only providing shelter to the child and looking after her and she was helping the inmates of the house in the kitchen, voluntarily, it cannot be said that she was put to hazardous work or exposed to danger and further that the

victim has no such case in her statement before the police. According to the petitioner, even if the entire allegations made against the accused was admitted to be true, the allegations will not attract the offence under Section 23 of the Juvenile Justice Act and therefore this Court invoked the power under Section 482 Cr.P.C to quash the impugned proceedings of the offence alleged under Sec.23 of the Juvenile Justice Act.

6. In the instant case, it is not disputed even by the respondents that the age of the boy is about 16 years as evident from the SSLC certificate. From the accusations and charges made in the impugned Annexure-II Final Report/Charge Sheet, it can be seen that there are no allegations therein that the accused had assaulted, abandoned or exposed or willfully neglected the victim or procured him to be assaulted, abandoned, exposed or neglected in any manner likely to cause such victim unnecessary mental or physical suffering within the provisions of Sec.23 of the Juvenile Justice Act. As held by this Court in *Vinod S. Panicker v. SI of Police* reported in 2012 (4) KHC 224 there is no statutory inhibition under the Juvenile Justice Act in employment of the children above the age of 14 years, which is not hazardous in nature. As the only offence alleged against the petitioner in the impugned Final Report is one under Sec.23 of the Juvenile Justice Act, it is clear that none of the vital ingredients for attracting the said offence under Sec.23 is attracted in the facts and circumstances of the case. Therefore, in the light of the decision of this Court in *Joseph v. State of Kerala* reported in 2014 (2) KHC 48, *Vinod S. Panicker v. SI of Police* reported in 2012 (4) KHC 224, order dated 12.3.2013 in CrI.M.C. No. 1118/2013 and order dated 5.8.2014 in CrI.M.C. No. 3408/2014 etc, this Court is of the considered opinion that the offence alleged under Section 23 of the Juvenile Justice Act is not attracted in the facts and circumstances of the present case.

7. In the result, the impugned Annexure-A2 Final Report/Charge Sheet filed in the impugned Annexure-A1 FIR in Crime No. 510/2011 of Kasaragod Police Station which has led to the pendency of S.C. No. 1034/2012 on the file of the Sessions Court, Kasaragod and all further proceedings arising therefrom as against the petitioner in respect of the offence alleged under Sec.23 of the Act stand quashed. The petitioner shall forward certified copies of this order to the Station House Officer, Kasaragod Police Station as well as to the Sessions Court, Kasaragod.

With these observations, this CrI.M.C stands finally disposed of.

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Cri.M.C. No. 3408 of 2014

Sarath G. Nair v. State of Kerala

2014 SCC OnLine Ker 13847

(BEFORE V.K. MOHANAN, J.)

Sarath G. Nair, Aged 40 years, S/o Gopalakrishnan Nair, Surya House, Kallungal Lane, Thottumugham Kara, Aluva East Village Petitioner/Accused
By Adv. Sri. Jaison Joseph

v.

State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Representing Sub Inspector of Police, Aluva East Police Station Respondent/State
By Public Prosecutor Sri. Dhanesh Mathew Manjooran

Cri.M.C. No. 3408 of 2014

CP. No. 12/2014 of Judicial First Class Magistrate Court-I, Aluva
Crime No. 2591/2012 of Aluva Police Station, Ernakulam District
Decided on August 5, 2014

ORDER

Petitioner who is the sole accused in Annexure-A2 charge sheet and in C.P. No. 12 of 2014 on the file of the Judicial First Class Magistrate Court-I, Aluva, preferred the above Cri.M.C under Section 482 of the Code of Criminal Procedure with a prayer to quash Annexure-A2 charge and all further proceedings in C.P. No. 12 of 2014 on the file of the Judicial First Class Magistrate Court-I, Aluva, since the charge against the petitioner is not legally and factually sustainable, in view of the decision of this Court in *Joseph v. State of Kerala* [2014 (2) KHC 48].

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

3. The prosecution allegation against the petitioner is that on 26.09.2012 the petitioner employed a person name Isakkidurai who is aged between 12 and 17 years and who hails from Thirunelveli in the Surya Hotel bearing Door No. XI/43 of Aluva Municipality in KAP commercial centre at Aluva against the provision of Juvenile Justice Act and thereby committed the offence punishable under Section 23 of the Juvenile Justice Act.

4. Learned counsel on the strength of decision in *Joseph v. State of Kerala* [2014 (2) KHC 48] submitted that no offence would be attracted against the petitioner. Learned Public Prosecutor also endorse the same view. In the final report filed before the Court below, the allegation is that the petitioner was found employed one Isakkidurai in Surya Hotel on 26.09.2013, who was at the age between 12 and 17 years.

5. Another learned Judge of this Court in the decision (cited supra) as held in order to attract an offence under Section 23 of the Juvenile Justice Act it must be proved by the prosecution that a person having the actual charge or control over a juvenile or child, assaults, abandons, exposes or wilfully neglects the juvenile or caused or procures him to be assaulted, abandoned, exposed or neglected or in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering. It is also stated in the above decision that in the absence of evidence that the victim was compelled to do any hard work or subjected to cruelty no offence under the Act is attracted. It is also relevant to note that in the statement of the victim recorded by the Police which produced as Annexure-A3 and also in the statement of the uncle of the victim recorded by the Police which produced as Annexure-A4, they volunteered to join at the service of the accused and working in the Surya Hotel and not under any threat or compulsion. The above materials are sufficient to show that the victim voluntarily doing the said work and there is no compulsion. So the facts and circumstances involved in the present case squarely come under the decision (cited supra). That being the position, according to me, there will not be any fruitful turn out if the prosecution is proceeded further against the petitioner rather the same will amount to abuse of process of Court.

In the result, this CrI.M.C is allowed quashing Annexure-A2 charge sheet and all further proceedings pending against the petitioner in C.P. No. 12 of 2014 on the file of the Judicial First Class Magistrate Court-I, Aluva Sd/-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF OCTOBER 2014/9TH KARTHIKA, 1936

Cr1.MC.No.5321 of 2014 (A)

CP 37/2014 of J.M.F.C.-I, ALUVA
CRIME NO.2492/2012 OF ALUVA POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED:

ANUROOP, AGED 37 YEARS
S/O.RAGHAVAN NAIR, VELIYATH HOUSE
FEDERAL BANK JUNCTION, ALUVA.

BY ADV. SRI.JAISON JOSEPH

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING SUB INSPECTOR OF POLICE
ALUVA POLICE STATION.

BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No.5321 of 2014 (A)

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A1: CERTIFIED COPY OF HE FIR ALONG WITH THE REPORT IN
CRIME NO.2492/2012 OF ALUVA POLICE STATION.

ANNEXURE-A2: CERTIFIED COPY OF THE CHARGE SHEET IN C.P.NO.37/2014
ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA.

ANNEXURE-A3: CERTIFIED COPY OF THE 161 STATEMENT OF CW2.

ANNEXURE-A4: CERTIFIED COPY OF THE 161 STATEMENT OF CW5.

RESPONDENT'S EXHIBITS: NIL

// TRUE COPY //

P.A. TO JUDGE.

ALEXANDER THOMAS, J.

CrI.M.C.No.5321 Of 2014

Dated this the 31st day of October, 2014.

O R D E R

The prayer in this Criminal Miscellaneous Case, seeking invocation of the inherent powers conferred on this Court under Sec.482 Cr.P.C, is to quash the impugned Annexure-A2 Final Report/Charge Sheet filed in the impugned Annexure-A1 FIR in Crime No.2492/2012 of Aluva Police Station which has led to the pendency of committal proceedings, C.P.No.37/2014 on the file of the Judicial First Class Magistrate Court-I, Aluva. The petitioner is the sole accused in the above crime registered for offence punishable under Sec.23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act'). The brief of the prosecution case is that while the provisions of child labour prohibition law is in force, the accused, in violation of the aforesaid provisions therein, with intend to earn monetary benefits, had employed witness No.2, a minor below the age of 14 years, who is the son of witness No.5 for three days prior to 19.9.2012 as a helper for cooking in Annapoorna Vegetarian Hotel situated in door No.VIII/326 of Aluva Municipality, which is owned by the

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Cr1.M.C.No.5321 Of 2014

accused situated on the western side of Sreekrishna Swami Temple at Federal Bank Junction. The aforesaid offence was witnessed by witness No.1 on 19.09.2012 at 3.45 p.m.

Annexure-A1 is the copy of the impugned FIR in Crime No.2492/2012 of Aluva Police Station. The police, after investigation, submitted Annexure-A2 Final Report/Charge Sheet in the impugned Annexure-A1 Crime No.2492/2012 of Aluva Police Station which has led to the pendency of C.P.No.37/2013 on the file of the Judicial First Class Magistrate Court-I, Aluva. In the impugned Annexure-A2 Final Report/Charge Sheet it is stated therein as hereunder.

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Cr1.M.C.No.5321 Of 2014

"While the provisions of child labour prohibition law is in force, accused in violation of the aforesaid provision therein with intend to earn monetary benefits, employed witness No.2 a minor below 14 years, who is the son of witness No.5 for three days prior to 19.9.2012 as a helper for cooking, in Annapoorna Vegetarian Hotel which is owned by the accused bearing Door No.VIII/326 of Aluva Municipality on the western side of Sree Krishna Swami Temple at Federal Bank Junction. The aforesaid offence was witnessed by witness No.1 on 19.9.2012 at 3:45 p.m."

2. It is contended by the petitioner that no offence

under Sec.23 of the aforementioned Act is attracted as per the allegation contained in the impugned Annexure-A2 Final Report/Charge Sheet. It is stated that the only allegation against the petitioner contained in the impugned Annexure-A2 Final Report/Charge Sheet is that the petitioner had employed a boy in his hotel and mere employment of the child as defined under that Act will not attract the offence under the said Act. It is further contended that this Court in CrI.M.C.No.1118/2014 as per order dated 12.3.2013 has considered the question whether engaging a juvenile as an employee in a hotel will constitute the offence under Sec.23 of the Act and it has been held that as already held by this Court in the case Vinod S.Panicker v. SI of Police and another reported in 2012 (4) KHC 224 that there is no statutory inhibition under the Juvenile Justice Act in employment of the children above the

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CrI.M.C.No.5321 Of 2014

age of 14 years, which is not hazardous in nature and that engaging children above the age of 14 years and providing them remuneration for their work cannot be viewed as one infringing the protection and rights afforded to such children and, at any rate, such engagement would not attract an offence under the Act. Accordingly, it was held by this Court in the order dated 12.3.2013 in CrI.M.C.No.1118/2013 that what is prohibited is employment of a child or a juvenile below the age of 14 and above the age of 14 in a hazardous employment by keeping him in bondage and by not paying him his wages and that since there was no such accusation in the impugned criminal proceedings in that case, this Court held therein that

offence under Sec.23 of the Juvenile Justice Act is not attracted and accordingly, quashed the impugned Final Report/Charge Sheet filed in that case which led to the proceedings in the sessions case before the sessions court concerned and all further proceedings therefrom was also quashed. The petitioner also relies on the decision of Joseph v. State of Kerala reported in 2014 (2) KHC 48 wherein this Court considered the statement of the victim and has held that

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Crl.M.C.No.5321 Of 2014

if a person working voluntarily it cannot be said that he was put to any hazardous work or exposed to danger and in the absence of any evidence that the victim was assaulted or any force was applied or compelled to to any hard work or subjected to cruelty, no offence under the said Act is attracted. The petitioner also relies on the order dated 5.8.2014 in Crl.M.C.No.3408/2014 wherein this Court relied on the rulings of this Court in Joseph v. State of Kerala reported in 2014 (2) KHC 48 and held that unless it is established by the prosecution that; (a) person having the actual charge or control over a juvenile or child, (b) assaults, abandons, exposes or willfully neglects and juvenile or (c) causes or procures him to be assaulted, abandoned, exposed or neglected, (d) in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering, it cannot be held that the offence under the said provision would be attracted etc.

3. It is submitted by the petitioner that the only evidence that is available for roping the petitioner under the provisions of this Act is the statement given by the victim child

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CrI.M.C.No.5321 Of 2014

under Section 161 of the Cr.P.C. CW2, the victim has given

statement under Section 161 Cr.P.C as per Annexure-A3,

Question No.5 of which reads as follows:

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F'ns\bmlWv.?

Ans AQt\msSm8w s]cp<mhqcnB h6 Rm3 AQ3
tPmen!v t]mIp6 kab/v \mSv ImWm3 Id'n \S!pw.
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sNbvXv `#Ww Ign(v Ipd(v \mD Ignbmsa6v IcpXn
NpdnXncn*mWv Rm3 Beph A6]q@. tlm+enB
tPmenbv!mbn F/nbXv.

Based on that it is submitted by the petitioner that the statement of the victim clearly shows that he had voluntarily joined in the hotel for having food and for money and was working in the Annapoorna Hotel, Aluva. The statement of the victim clearly shows that he was not assaulted or any force has applied to him or he was compelled to do any hard work or for non-compliance he has been subjected to any cruelty by the employer of the hotel etc. It is in the light of these facts and circumstances, the petitioner has filed the instant CrI.M.C with the prayer to quash Annexure-A1 Final Report/Charge Sheet in the impugned Crime and all further proceedings arising therefrom.

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CrI.M.C.No.5321 Of 2014

4. Heard Sri.Jaison Joseph, learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State of Kerala.

5. Section 23 of the Juvenile Justice Act reads as follows:-

Section 23: Punishment for cruelty to juvenile or child

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

Section 24 of the said Act reads as follows:

Section 24: Employment of juvenile or child for begging.

(1) Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

Section 26 of the said Act reads as follows:

Section 26: Exploitation of juvenile or child employee.

Whoever ostensibly procures a juvenile or the child for

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CrI.M.C.No.5321 Of 2014

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.

Section 27 of the said Act proves as follows:

Section 27: Special offences.

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

The only offence alleged against the petitioner as per the impugned Annexure-A2 Final Report/Charge Sheet in the impugned Crime is one under Section 23 of the Juvenile Justice

Act. A bare reading of the above said provisions of Sec.23 of the Act makes it clear that following are the ingredients to constitute the criminal offence thereunder, viz,

- (i) person having the actual charge or control over a juvenile or child,
- (ii) such person assaults, abandons, exposes or willfully neglects the juvenile or
- (iii) cause or procures him to be assaulted, abandoned, exposed or neglected,
- (iv) in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering.

6. It was held by this Court in Joseph v. State of Kerala that even assuming that the petitioner as in charge of control of the juvenile or child, the accusation only shows that

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Crl.M.C.No.5321 Of 2014

the accused was only providing shelter to the child and looking after her and she was helping the inmates of the house in the kitchen, voluntarily, it cannot be said that she was put to hazardous work or exposed to danger and further that the victim has no such case in her statement before the police. According to the petitioner, even if the entire allegations made against the accused was admitted to be true, the allegations will not attract the offence under Section 23 of the Juvenile Justice Act and therefore this Court invoked the power under Section 482 Cr.P.C to quash the impugned proceedings of the offence alleged under Sec.23 of the Juvenile Justice Act.

7. In the instant case, it is clearly stated by CW5, who is the father of the victim boy, in the statement given under Section 161 Cr.P.C before the police produced as Annexure-A4 in this Crl.M.C that the boy was of the age 14. From the accusations and charges made in the impugned Annexure-A2 Final Report/Charge Sheet it can be seen that there are no allegations therein that the accused had assaulted, abandoned

or exposed or willfully neglected the victim or procured him to be assaulted, abandoned, exposed or neglected in any manner

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likely to cause such victim unnecessary mental or physical suffering within the provisions of Sec.23 of the Juvenile Justice Act. As held by this Court in Vinod S.Panicker v. SI of Police and another reported in 2012 (4) KHC 224 there is no statutory inhibition under the Juvenile Justice Act. in employment of the children above the age of 14 years, which is not hazardous in nature. As the only offence alleged against the petitioner in the impugned Final Report is one under Sec.23 of the Juvenile Justice Act, it is clear that none of the vital ingredients for attracting the said offence under Sec.23 is attracted in the facts and circumstances of the case.

Therefore, in the light of the decision of this Court in Joseph v. State of Kerala reported in 2014 (2) KHC 48, Vinod S.Panicker v. SI of Police and another reported in 2012 (4) KHC 224, order dated 12.3.2013 in CrI.M.C.No.1118/2013 and order dated 5.8.2014 in CrI.M.C.No.3408/2014 etc, this Court is of the considered opinion that the offence alleged under Section 23 of the Juvenile Justice Act is not attracted in the facts and circumstances of the case and therefore the impugned Annexure-A2 Final Report/Charge Sheet in the

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impugned Annexure-A1 Crime No.2492/2012 of Aluva Police Station which has led to the pendency of C.P.No.37/2014 on the file of the Judicial First Class Magistrate Court-I, Aluva and

all further proceedings arising therefrom in respect of the offence alleged against the petitioner under Sec.23 of the Juvenile Justice Act stand quashed. The petitioner shall produce certified copies of this order before the Station House Officer, Aluva Police Station as well as before the Judicial First Class Magistrate Court-I, Aluva.

With these observations, the CrI.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.T. RAVIKUMAR

TUESDAY, THE 12TH DAY OF MARCH 2013/21ST PHALGUNA 1934

Cr1.MC.No. 1118 of 2013 ()

CRIME NO. 312/2011 OF VIDYA NAGAR POLICE STATION , KASARGOD

PETITIONER(S)/ACCUSED:

ABDUL NIZAR T.T, AGED 27 YEARS,
S/O.ABDUL RAHIMAN
RESIDING AT THACHAPETTIKKAL HOUSE, CHERUR
MALAPPURAM DISTRICT.

BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI

COMPLAINANT(S)/STATE:

THE STATE OF KERALA THROUGH THE STATION HOUSE OFFICER
VIDYANAGAR POLICE STATION, KASARAGOD DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-03-2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 1118 of 2013 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: THE TRUE COPY OF THE FIR IN CRIME NO.312/2011
OF VIDYANAGAR POLICE STATION.

ANNEXURE A2: THE TRUE COPY OF THE FINAL REPORT IN CRIME
NO.312/2011 OF VIDYANAGAR POLICE STATION.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE.

dlk

C.T.RAVIKUMAR, J.

Crl.M.C.No. 1118 of 2013

Dated this the 12th day of March, 2013

O R D E R

The petitioner is the sole accused in Crime No.312/2011 of Vidyanagar Police Station registered alleging commission of offence punishable under Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act'). Th gist of the allegation against the petitioner is that on 2.6.2011 at about 8 p.m. the petitioner was found engaging a boy by name Lava, S/o. Jaya Naik, aged 16 years in his hotel named Garden Hotel at Cherkala in Chengala Village and thereby committed the offence under Section 23 of the Act. Annexure-A2 is the Final Report laid in the said crime. This petition is filed seeking quashment of Annexure-A2 Final Report and all further proceedings pursuant thereto in S.C.No.498/2012 pending against him before the Court of the Principal Sessions Judge, Kasargod.

2. I have heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. The contention of the learned counsel for the Crl.M.C.No. 1118 of 2013

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petitioner is that in terms of provisions under Section 26 of the

Act a mere employment of a child or a juvenile as defined under the Act by itself will not attract any offence under the Act. In order to attract an offence under the Act the employment of child or juvenile must be for hazardous employment of the child procured by the employer by keeping him in bondage and by not paying him wages. In this case the petitioner is accused of commission of an offence under Section 23 of the Act.

Section 23 of the Act reads thus:-

"Punishment for cruelty to juvenile or child:-

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both."

4. I have already adverted to the gist of the allegation against the petitioner as is obvious by Annexure-A2 the very contention of the learned counsel appearing for the petitioner is that there is absolute absence of any allegation in CrI.M.C.No. 1118 of 2013

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Annexure-A2 to satisfy ingredients to attract an offence punishable under Section 23 of the Act. The only accusation against him in Annexure-A2 is that the petitioner had engaged a boy who was then aged 16 years old in his hotel. There can be little doubt with respect to the position that such a vague allegation can not and will not attract an offence punishable under Section 23 of the Act. In this case another aspect also

assumes relevance. It is evident from Annexure-A2 it self that at the relevant point of time the concerned child was aged 16 years. This Court in the decision in Vinod S Panicker V. Sub Inspector of Police and Another reported in 2012 (4) KHC 224 held that there is no statutory inhibition under the Juvenile Justice Act in employment, of the children above the age of 14 years, which is not hazardous in nature. It is further held therein that engaging children above the age of 14 years and providing them remuneration for their work cannot be viewed as one infringing the protection and rights afforded to such children and, at any rate, such engagement would not attract an offence under the Act. There is no case for the prosecution as can be seen from CrI.M.C.No. 1118 of 2013

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Annexure-A2 that the child in question not above the age of 14 years or that he was engaged in any hazardous employment or that he was kept in bondage or that the petitioner was withholding his earnings or that he used for his own purposes by the petitioner. The very essence of the contention of the learned counsel for the petitioner is that a harmonious construction of the provisions under Section 26 and 23 of the Act and Section 3 of the Child Labour (Prohibition and Regulation Act, 1986) would reveal that what is intended to be prohibited and what is actually prohibited is employment of a child or a juvenile below the age of 14 and above the age of 14 in a hazardous employment by keeping him in bondage and by not paying him his wages. As already noticed hereinbefore a scanning of Annexure-A2 would reveal that there is no such accusation made against the petitioner so as to attract an offence under Section 23 of the Juvenile Justice Act. When once it is so found the contention of

the petitioner that the entire proceedings based in Annexure-A2 is liable to be interfered and only to be accepted. In view of the said discussions I am of the considered view that this petition is

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entitled to succeed. Resultantly, this Criminal M.C. is allowed. Annexure-A2 Final Report and all further proceedings pursuant thereto in S.C.No.498/2012 pending on the files of the Court of the Principal Sessions Judge, Kasargod, as against the petitioner are hereby quashed.

Sd/-

C. T. RAVIKUMAR, JUDGE.

dlk

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5

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Sd/-

C.T.RAVIKUMAR, JUDGE.

dlk

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2012 SCC OnLine Ker 31774 : (2012) 4 KLJ 384 : (2012) 4 KLT 314 : 2013 Cri LJ 833

In the High Court of Kerala
(BEFORE S.S. SATHEESACHANDRAN, J.)

Vinod S. Panicker

Versus

Sub Inspector of Police & Anr.

Cri.MC. No. 2181 of 2012

Decided on September 5, 2012

ORDER

S.S. SATHEESACHANDRAN, J.:— Petitioner is the accused in a pending case on the file of the Sessions Court, Thiruvananthapuram. He is being prosecuted for the offence punishable under Section 26 of the Juvenile Justice (Care & Protection of Children) Act, 2000, for short, 'the Act'.

2. Petitioner is operating a bakery. He employed in that bakery a juvenile, aged 17 years, who hailed from Nepal, is the gist of the accusation to proceed against him for the aforesaid offence, on a report filed by the Sub Inspector of Police, Peroorkada Police Station. During the course of law and order patrol duty, the aforesaid Sub Inspector got information of the employment of a juvenile in the bakery of petitioner. He reached that bakery and, then, found a juvenile employed in that business concern, is the case of the prosecution for registration of the crime and, later, indictment of the petitioner for the offence under Section 26 of the Act. Petitioner has filed the above petition for quashing the criminal proceedings against him contending that none of the ingredients of the

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offence under Section 26 of the Act has been made out to prosecute him. Employment of a juvenile, that too aged 17 years, in a bakery, by itself, is not sufficient to prosecute him for the aforesaid offence, is the challenge projected to quash Annexure 2 final report and; cognizance of the offence taken thereunder by the Sessions Court to proceed against him. I heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. Annexure 2 is the final report filed before the court after conducting investigation in the crime. That report includes some other annexures - statements recorded from the material witnesses during the investigation of the crime. Going through the report and statements, it is evidently clear that the prosecution against the petitioner solely rests on the allegation that he has employed a juvenile aged 17 years in his bakery shop. Whether employment of a juvenile who is stated to be aged 17 years in a bakery shop by itself would constitute an offence under Section 26 of the Act, is the question emerging for consideration.

4. The question to be considered is whether employment of juvenile as such in any activity which is not of a hazardous nature falls within the mischief covered by Section 26 of the Act. 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 earnings 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."

5. A reading of the Section clearly spells out that the employment of juvenile or child to constitute an offence must be one which by its nature is hazardous. Over and above the nature of hazardous employment the section also contemplates of keeping the juvenile or child in bondage and withholding his earnings or using of such earnings by his employer: The aforesaid Section is analogous to Section 44 of the Juvenile Justice Act, 1986, which read thus:

44: Exploitation of Juvenile employees:— Whoever ostensibly procures a juvenile for the purpose of any employment and withholds the earnings of the juvenile or uses such earnings 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.

6. Changes brought about under Section 26 of the new Act by additions, qualifying, or restricting the applicability of exploitation to hazardous employment with the addition 'keeping in bondage', which was not there in Section 44 of the Juvenile Justice Act, 1986 definitely have some significance. The aforesaid expressions newly added in the section, no doubt, are the extension of the reflection and in fact imbibing of the spirit of the principles enunciated under Articles 23 and 24 of the Constitution of India. Article 23 prohibits traffic in human beings and forced labour. Every form of forced labour beggar of otherwise, is within the inhibition of Article 23 of the Constitution of India, with the sole exception in the case of State imposing compulsory service for public purposes: Otherwise in the case of the State exacting compulsory labour for public purposes from the citizen of the performance of his supreme and noble duty of contributing to the defence of the rights and honour of the nation, all other forms of forced labour comes within the sweep of inhibition under the above Article; It makes no difference, whether the person who is forced to give such labour or services is remunerated or not. The Apex Court in *Peoples Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235 : AIR 1982 SC 1473 has considered the scope and ambit of Article 23 in detail, and it again came up for

consideration in *Bandhua Mukti Morcha v. Union of India*, (1983) 4 SCC 645 : AIR 1983 SC 1155. Whereas Article 23 prohibits all forms of forced labour, Article 24 speaks of prohibition of employment of children in factories, mines or in any hazardous occupation. Similarly, provisions under Article 39(e) and (f) of the Constitution enunciate the directive principles that health and strength of the workers, men and women, and the tender age of the children are not to be abused and that childhood and youth are to be protected against exploitation and against moral and material abandonment. Section 26 of the Act, which in effect reflects and imbibes the spirit of Articles 23, 24 and Section 39(e) and (f) imposes punishment extending a term of three years-and also fine to any person who procures any

juvenile or child for the purpose of any hazardous employment, keeps him in bondage and withholds his earnings or uses such earning for his own purposes.

7. Section 2(k) of the Act defines a "juvenile" of "child" as a person who has not completed eighteenth year of age. "Juvenile" and "child" are not separately defined under the Act. So, in relation to the applicability of the Act, having regard to the definition, as indicated above, all human beings below the age of 18 years come within the sweep of children/juvenile. Article 24 of the Constitution, it has to be taken note of, restricts or prohibits employment of children below the age of 14 years in any factory or mine or engagement in any other hazardous employment. Necessarily, the scope and applicability of Section 26 of the Act has to be examined with reference to the prohibition covered by Article 24 of the Constitution; A child or juvenile above the age of 14 years at any rate cannot be prevented or restrained from getting employment in any work which is not of a hazardous nature, for remuneration, to eke out his livelihood or that of his family. His right to such employment is insulated under the Constitution and when that be so, the question has to be examined whether an employer, who provided employment, which is not of a hazardous nature, to a child or juvenile above the age of 14 years is liable to be prosecuted, for that reason alone, under Section 26 of the Act. When there is no statutory inhibition in employment of children above the age of 14 years which is not of a hazardous nature, the answer can be only in the negative. Perhaps in the employment of children below the age of 14 years, the question of employment of such children may require further scrutiny even if it is not so an offence under Section 26 of the Act, but, with reference to prescriptions under different Statutes, as may be applicable. I say so since statutory interdictions as under Section 67 of the Factories Act 1948, Section 45 of the Mines Act, 1952 etc. have significance only in relation to employment of children in hazardous activities. Whereas Section 67 of the Factories Act prohibits employment of a child who has not completed fourteenth year in any factory, it is seen, Section 45 of the Mines Act, there is an interdiction even in allowing the presence of any child below the age of 18 years in any place where any operation connected with or incidental to any mining operation is being carried of, but, subject to the exception provided under sub section (2) of Section 40 of the Mines Act which permits, of engaging of children as apprentices and other trainees not below the age of 16 years to work in any mining area under proper supervision by the manager. Even in respect of engaging of children or juvenile in operation of mines which is, no doubt, hazardous activity, what is noticed is that children above the age of 16 years could be engaged as apprentices or trainees under the supervision of a manager of the mine as per the statutory provisions covered by the Mines Act. Though the Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), which came into force on 26.05.1993, to prohibit the children in certain employments and to regulate the conditions of work in certain other employments it is noticed the "child" to whom such Act is applicable is defined thereunder as a person who has not completed his fourteenth year of age. So, the

prohibition in engaging of children above the age of 14 years in areas other than involving hazardous activities, providing them remuneration for their work, for the time being, cannot be viewed as infringing the protection and rights afforded to such children. In the context, it is also to be noticed, that the amendments proposed in

the existing law against child labour are still to be enacted. A new Act titled as "Child and Adolescent Labour Prohibition Act" which Contemplates of total ban of all forms of child labour under the age of 14 years and the employment of children in the 14-18 age group in hazardous activities prohibited and engagement of any child in such age group contrary thereto a cognizable offence, is yet to be passed by the Parliament though it is stated to have received the approval of the Union Cabinet. (See "The Hindu" dated September, 10, 2012 - 'Getting ready for the new law against child labour' - an article, written by Kailash Satyarthi).

8. A mere allegation that a juvenile, aged 17 years, has been employed in a bakery, it does not follow that such employment constituted any threat or hazard to that juvenile. Engaging a juvenile as an employee in a bakery cannot be viewed as one putting him to a hazardous employment. I find, charge imputed against the petitioner for having employed a juvenile, aged 17 years, in his bakery for the offence under Section 26 of the Act will not lie Criminal proceedings against the petitioner in S.C. No. 37 of 2012 on the file of the Sessions Court, Thiruvananthapuram are quashed under Section 482 of the Code" of Criminal Procedure.

9. Petition is allowed.;