

2022 LiveLaw (SC) 786

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
A.S. BOPANNA; J., PAMIDIGHANTAM SRI NARASIMHA; J.
SEPTEMBER 19, 2022

CRIMINAL APPEAL NOS. 1603 - 1604 OF 2022 ARISING OUT OF SLP (CRL) NOS. 8683-8684 OF 2019
SELVAKUMAR versus MANJULA & ANR.

Bonded Labour System (Abolition) Act, 1976; Sections 16-17- For attracting the provision of Section 16 of the Act, the prosecution must establish that an accused has forced and compelled the victim to render bonded labour. This force and compulsion must be at the instance of the accused and the prosecution must establish the same beyond reasonable doubt. Similarly, under Section 17 of the Act, there is an obligation on the prosecution to establish that the accused has advanced a bonded debt to the victim. (Para 11)

(Arising out of impugned final judgments and orders dated 22.08.2019 and 27-08-2019 in CRLA No.335/2013 passed by the High Court of Judicature at Madras)

For Appellant(s) Mr. M.N. Rao, Sr. Adv. Ms. Promila Thananjayan, Adv. Ms. Jaswanthi Anbuselvan, Adv. Ms. Aaina Verma, Adv. Mr. S. Thananjayan, AOR

For Respondent(s) Mr. David Sundar Singh, Adv. Shri. Gaichangpou Gangmei, AOR Dr. Joseph Aristotle S., AOR Mr. Nupur Sharma, Adv. Mr. Shobhit Dwivedi, Adv. Mr. Sanjeev Kumar Mahara, Adv.

J U D G M E N T

1. Leave granted.

2. This appeal by Accused No. 2 is against the judgment and order of the High Court of Judicature at Madras¹ convicting him under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976². By the said judgment, the High Court reversed the decision of the Principal Sessions Judge³, Kancheepuram at Chengalpattu, by which the Appellant was acquitted under the Act as well under the Scheduled Castes and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 1989 Act).

3. The Appellant/Accused No. 2 is the son of Accused No. 1 who expired during the pendency of the matter before the Trial Court itself. The case of the prosecution is that upon a complaint received at his office on 03.03.2006, the District Revenue Officer, Chengalpattu (hereinafter referred to as PW-8), raided M/s Murugesu Naicker Selvakumar Rice Mill, Paramasivam Nagar, Thirukazhukundram, Tamil Nadu, along with other officers and found PW's 1 to 6 working in the Rice Mill as bonded labourers. He issued necessary order under exhibit P-4 to P-10 to release the labourers. Following the raid, an FIR came to be filed on 16.03.2006 against Accused No. 1, the father of the Appellant herein, and also against the Appellant as Accused No. 2.

4. After completing the formalities, the Sessions Judge framed charges against Accused Nos. 1 and 2 for offences under Section 16 and 17 of the Act and also under

¹ In CrI. Appeal No. 335 of 2013 dated 22.08.2019 and 27.08.2019

² hereinafter referred to as 'the Act'.

³ In Sessions Case No. 51 of 2007 dated 30.07.2012

Section 3(1)(x) of the 1989 Act. During the trial, the prosecution examined PW-1 to PW-13 and marked documents being Ex. P-1 to P-12.

5. Prosecution against Accused No. 1 having abated due to his death during Trial, the Sessions Court proceeded against the Appellant. At the outset, the Sessions Court held that the prosecution could not prove that the victims were members of any Schedule Caste or Schedule Tribe and therefore, charge under the 1989 Act did not lie. In so far as the prosecution under the Act is concerned, the Trial Court held that the prosecution could not prove the case against the Appellant for having committed the crime under Section 16 of the Act. The Sessions Court held that there is no evidence to link the Appellant to the Rice Mill business run by his deceased father. The relevant portion of the order is as under: -

“... The Defence Counsel denied that there is no connection between the A2 and the Rice Mill and A2 Selvakumar is residing at Chengalpattu. In this regard, while perusing the evidence of PW 13 Investigating Officer, he has clearly deposed that he has not examined whether the A2 was residing along with his father at Thirukazhukundram or whether A2 is residing at Chengalpattu. Hence without proper investigation and proof A2 has been implicated as accused in this case. If we peruse Ex. P4 to Ex. P10 Release Certificates issued by PW 8 Tmt. Karthika Revenue Divisional Officer, Chengalpattu it is stated specially that Murugesu Naicker is the owner of the above Rice Mill and not A2 Selvakumar. Hence the evidence adduced by the prosecution is not sufficient to link A2 with the functioning of Rice Mill and the participation of A2 in the day today affairs of the Rice Mill. Under such circumstances it cannot be believed that the A2 gave Rs. 3000/- as advance to PW1 and A2 and compelled to work and PW1 Mani, PW3 Kuppan, PW4 Ramesh, PW5 Anbu, PW6 Manjula, Vanitha, Kumaresan without giving sufficient wages and they have been treated as bonded labours.”

6. In view of the above referred finding of the Sessions Court, that there is no evidence connecting the Appellant to the Rice Mill, the Sessions Court acquitted him of all the charges.

7. There is no appeal by the State against the judgment of acquittal by the Sessions Court. However, Mrs. Manjula (PW-6) preferred an appeal to the High Court being Crl. Appeal No. 335 of 2013. As stated earlier, the High Court reversed the judgment of the Principal Sessions Judge and convicted the Appellant under Sections 16 and 17 of the Act and sentenced him to undergo rigorous imprisonment for a period of 3 years and also directed him to pay compensation of Rs. 50,000/to each of the victims.

8. The High Court came to the conclusion that there is sufficient evidence that ‘Bonded Labourers’ were working at the Rice Mill and also that, they have been denied their due wages. The High Court also concluded that the ‘Bonded Labourers’ were ill-treated and prohibited from seeking alternative employment by use of force. As regards the contention of the Appellant that he is not connected with the running of the Mill, the High Court rejected this submission and held as under:-

“15. On a reading the evidence of P.Ws. 1 to 6, they have clearly stated that they were working as bonded labourers in the 1st respondent Rice Mill. Though the 1st respondent denied that he is not owner of the Mill and he is no way connected with the said Mill and the Mill is not under his management, but the evidence of P.Ws.1 to 6 clearly shows that they were working in the Rice Mill belong to the 1st respondent. The name of the Rice Mill itself shows that M/s Selvakumar Rice Mill. He has not denied the fact that he is not the son of A1 and he admitted the name of the Mill that it is M/s Selvakumar Rice Mill.....”

9.1 Shri M.N Rao, learned senior counsel assisted by Ms. Promila, Advocate and Shri S. Thananjayan, AOR, submitted that the High Court simply presumed that the Appellant

was the employer and that he was in control of the workmen. He further submitted that there is no evidence establishing that the Appellant had compelled any person to render any bonded labour. He has taken us through the evidences of witnesses including that of the Investigation officer and the District Revenue Officer.

9.2 We have heard Shri Aristotle, standing counsel for the State of Tamil Nadu as well as Shri David Sundar Singh, Advocate and Shri Gaichangpou Gangmei, AOR appearing on behalf of Respondent No. 1.

10. The only question for consideration is whether there was any involvement of the Appellant in the commission of the offences under Sections 16 and 17 of the Act.

“16. Punishment for enforcement of bonded labour- *Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.*

17. Punishment for advancement of bonded debt- *Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.”*

11. For attracting the provision of Section 16 of the Act, the prosecution must establish that an accused has forced and compelled the victim to render bonded labour. This force and compulsion must be at the instance of the accused and the prosecution must establish the same beyond reasonable doubt. Similarly, under Section 17 of the Act, there is an obligation on the prosecution to establish that the accused has advanced a bonded debt to the victim.

12. We will now examine the FIR as well as other documentary evidences coupled with the oral evidence produced by the prosecution to examine if there is any relationship between the Appellant and the victims to either *enforce bonded labour*, or if he had *advanced any bonded debt*.

13. In the FIR, though the name of the Appellant is shown as the second accused, with the first accused being his deceased father, there is nothing as to how and in what manner the Appellant is involved in the commission of the offence. All the allegations in the FIR are relatable to the Appellant's father and there is no allegation towards the Appellant compelling any person to render any bonded labour or having advanced any bonded debt. In fact, nothing is attributed to the Appellant except for mentioning his name in the list of accused. The absence of any allegations against him must be seen in the context of his submission from the very beginning that he is not residing with his father. It is his case that he is residing at Chengalpattu.

14. We proceeded further and examined the evidence of PW-1, the Complainant. This witness made specific allegations against the father of the Appellant for his abusive behaviour. Here again, there is no reference to the Appellant for having compelled bonded labour or advanced any bonded debt. PW-3, Kuppan made a general observation that the Rice Mill belongs to the Appellant and his father. We will shortly be dealing with the evidence of the Investigating Officer in this regard in the context of his obligation to establish the co-ownership of the Appellant. Before that, we may note that PW-3 also, fails to mention as to when the Appellant compelled him to render bonded labour or any such forceful labour. The witness makes general allegations and uses the expression 'they', which is an ominous reference. At one place, the witness also stated

that the Appellant beat his father-in-law, PW-1, with a stick. The other witnesses do not corroborate the same, neither have they levelled any other allegation against him.

15. So far as the District Revenue Officer examined as PW-8 is concerned, he only mentions the raid conducted at the Rice Mill on the basis of a complaint, but does not mention anything about the Appellant. Even the Investigation Officer examined as PW-13 has nothing to say against the Appellant.

16. The reasoning adopted by the High Court that the Rice Mill belongs to the Appellant's father and also that it also bears the name of Appellant by itself cannot be the basis for convicting the Appellant for commission of the offence under Sections 16 and 17 of the Act. The conviction is a *non sequitur* and the name of his Rice Mill certainly cannot be a proof beyond reasonable doubt to convict and sentence him for three years. The High Court was examining an appeal against the acquittal. The principles governing consideration in cases of appeals against acquittals is well entrenched in our criminal jurisprudence⁴.

17. For the reason stated above, we are of the opinion that the High Court is not justified in reversing the judgment of acquittal of the Appellant and convicting and sentencing him under Sections 16 and 17 of the Act.

18. We have no doubt concluded that there is no evidence to establish the culpability of the Appellant so as to find him guilty. But regarding the incident having occurred in the factory owned by the deceased Accused No. 1, there is certain evidence to show that the incident has in fact occurred. The evidence of PW-7 and PW-8 indicates that the labourers concerned were working in the factory. Unfortunately, Accused No. 1 father of the Appellant is no more, to that extent the offence alleged against him has abated and therefore the finding recorded about his culpability cannot be examined. Though culpability of this Appellant in the offence alleged has not been established and he cannot be held guilty in a criminal proceeding merely for being the son of the deceased Accused No.1, there is however another dimension to this matter in this peculiar circumstance.

19. The allegation is that the labourers concerned were employed in the Rice Mill and the liability of fine under Sections 16 and 17 of the Act must be attached to the estate (the Rice Mill). Notwithstanding the Appellant not being culpable, he being the son of Accused No. 1, has succeeded to the business. Hence, he can be burdened with the financial liability even though the concept of vicarious liability does not arise in criminal prosecution and even if it be dehors the requirement of Section 357 of Cr.P.C. Accused No. 1 though not available at this juncture, had in the course of the trial taken the defence that there was no restraint on the workers, moving out to the market etc. so as to contend that they were not bonded labourers. Therefore, what becomes evident according to deceased Accused No. 1 is that the said workers had worked in the factory but not as bonded labourers. However, neither has Accused No. 1 placed any material to show that the notified wages were paid nor has he disproved the existence of the bonded debt of Rs. 3000/-.

20. Further, the enactment under which the proceedings were initiated being a social welfare legislation and in view of the peculiar facts and to meet the ends of justice, we

⁴ Sheo Swarup v. King Emperor, AIR 1934 PC 227; Anwar Ali and Anr. vs. State of Himachal Pradesh (2020) 10 SCC 166; Dhanapal vs. State by Public Prosecutor, Madras, (2009) 10 SCC 401; Chandrappa and Ors. vs. State of Karnataka, (2007) 4 SCC 415.

deem it appropriate not to interfere with the direction given to the Appellant by the High Court to pay a compensation of Rs. 50,000/- to each of the workmen. This direction shall remain payable notwithstanding the acquittal of the Appellant for the conviction under Sections 16 and 17 of the Act.

21. For the reasons stated above: -

(a) Criminal Appeals arising out of SLP (Crl.) Nos. 8683-8684 of 2019 are hereby allowed and the judgment and order of the High Court of Judicature at Madras in Crl. Appeal No. 335 of 2013 dated 22.08.2019 and 27.08.2019 are hereby set aside. The Appellant is acquitted of all the charges, bail bonds if any stand discharged,

(b) We direct the Appellant to pay an amount of Rs. 50,000/- to each of the workmen within a period of three months from today.

(c) Parties shall bear their own costs.

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