

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1021 OF 2001**

The State of Maharashtra. ..Appellant.

V/s.

Yalappa Basappa Khot
Ganeshnagar Galli No. 3,
Ichalkaranji, Dist. Kolhapur.

..Respondent.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JUNE 4, 2019.

JUDGMENT :

1 The State has filed this appeal for enhancement of sentence by challenging the Judgment and Order dated 15th October, 2001 for insufficiency of the fine amount imposed upon the respondent by the Judicial Magistrate First Class, Ichalkaranjee in Child Labour Summary Case No. 16474 of 1997.

2 The complainant Mr. Bargaje who was officiating as Government Labour Officer has filed a complaint before the Judicial Magistrate First Class on 27/11/1997 submitting therein that as per the directions of the Supreme Court he had conducted survey work on child labour in the area and during

Talwalkar

the course of survey he had found Mahesh Malkari, a boy aged about 12 years working in the weaving process in the factory of the respondent occupier and therefore, he had arrived at a conclusion that the occupier had committed an offence by contravening section 3 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, which is punishable under section 14(1) of the said Act.

3 At the trial, the accused/respondent pleaded guilty and hence, the learned Judicial Magistrate has convicted the accused on pleading guilty for the alleged offence and sentenced him to pay a fine of Rs. 1200/-. The fine amount is paid. Hence, this appeal is filed by the State.

4 The sentence is contemplated under section 14 of the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 for contravention of the provisions of section 3 of the Act. Section 14 of the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 reads as under :

14. Penalties. - [(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:
Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Talwalkar

(1A) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

(1B) Notwithstanding anything contained in sub-sections (1) and (1A) the parents or guardians of any child or adolescent referred to in section 3 or section 3A, shall not be liable for punishment, in case of the first offense.

(2) Whoever, having been convicted of an offense under section 3 or section 3A commits a like offense afterwards, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

(2A) Notwithstanding anything contained in sub-section (2), the parents or guardian having been convicted of an offense under section 3 or section 3A, commits a like offense afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.]

(3) Whoever-

(a) fails to give notice as required by section 9; or

(b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of section 3 and this section as required by section 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

5 It is the contention of the learned APP that the learned Magistrate has failed to impose minimum fine contemplated by section 14 of the said Act and therefore, the State was constrained to file an appeal for enhancement.

6 In the present case, the occupier has pleaded guilty and therefore, the learned Judge had imposed a fine of Rs.

Talwalkar

1200/- only. It is true that the complainant has not mentioned the particulars in the complaint. However, the said complaint was filed in consonance with section 16 of the said Act, more particularly, Form-A of Rule 16. It is pertinent to note that the occupier i.e. the respondent has admitted that he had engaged in child labour and thereafter, is sentenced to less than minimum without assigning any special reasons. The language of part IV of Section 14 of the said Act would show that the word used is "shall not be less than Rs. 20,000/-, but it may extend to Rs. 50,000/-". There is no reason to award less than minimum of the said fine imposed upon the respondent and hence, the order deserves to be quashed and set aside. Although the accused has pleaded guilty, there is no reason for showing leniency, that the courts are not empowered to award less than minimum sentence only on the ground of the accused pleading guilty. It is for the Court to impose an appropriate punishment which would not be less than minimum, against the mandate of Legislature as contemplated under section 14 of the Act. The appeal therefore, deserves to be allowed. The respondent shall deposit an amount of Rs. 18,800/- towards fine amount.

7 Hence, following order is passed :

Talwalkar

ORDER

- (i) The appeal for enhancement of sentence is allowed.
- (ii) The Judgment and Order dated 15th October, 2001 passed by the Judicial Magistrate First Class, Ichalkaranjee in Child Labour Summary Case No. 16474 of 1997 is hereby quashed and set aside.
- (iii) The appellant is convicted for the alleged offence and sentenced to pay fine of Rs. 20,000/- l.d. to undergo S.I. for 2 months. Since the appellant has already deposited Rs. 1,200/-, he shall deposit Rs. 18,800/- towards enhanced fine amount in the Court of Judicial Magistrate First Class, Ichalkaranjee within 4 weeks from the intimation received from the Registry.
- (iv) The writ be expedited.
- 8 The appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Talwalkar