

Orissa High Court

K. Ramamurty Patro And Ors. vs Sub-Divisional Officer And Ors. on 14 September, 1988

Equivalent citations: 1989 CriLJ 1036

Author: G Patnaik

Bench: G Patnaik

ORDER G.B. Patnaik, J.

1. The petitioners have prayed for quashing the proceeding initiated against them in B.L. Case No. 1/86 under the provisions of Bonded Labour System (Abolition) Act, 1976 (Act 19 of 1976) (hereinafter referred to as the 'Act'), invoking inherent jurisdiction of this Court, inter alia, on the ground that the entire allegations against the petitioners do not make out the offence in question.

2. One Mangulu Ghadei, opposite party 2 filed a petition on 16-1-86 alleging therein that his son, opposite party 3 was working as a labourer in the house of petitioner 5 on a monthly remuneration of Rs. 60/- apart from food and clothings from 1959 to 1979. During this period, the father of the petitioner took Rs. 500/- for his daughter's marriage and no further money has been received and according to the allegation said opposite party 2 is entitled to receive the balance salary of Rs. 990/-. It was further alleged that opposite party 4 who is the other son was also working in the house of petitioner 4 on a monthly remuneration of Rs. 60/- and he worked there for about twelve years, but he was driven out without giving the arrear salary. In 1969, opposite party 2 himself went and served under petitioner 1 for a monthly wage of Rs. 60/-, but after one year of his service he was driven out without payment of salary. On receiving the aforesaid application of Mangulu Ghadei, the Sub-Divisional Magistrate came to hold that an offence under the Act has been committed and accordingly summoned the petitioners. The petitioners pursuant to the summons appeared before opposite party 1 and they were examined and they denied the entire allegations made in the application filed by opposite party 2. Opposite Parties 2 and 3 were also examined. Ultimately the learned Magistrate on 28-6-86 held that a case exists under Section 2(g)(iv) of the Act and accordingly directed to start separate case records for the opposite parties and directed issuance of notice. As a result of such order, Bonded Labour Cases Nos. 2/86 and 3/86 have been initiated against petitioners 5 and 4 respectively. The petitioners have, therefore, approached this Court for quashing the entire proceedings.

3. Mr. Ratho, the learned Counsel for the petitioners contends that the entire allegations made by the complainant Mangulu Ghadei as well as the statements recorded by the Magistrate do not constitute the offence in question and, therefore, the entire proceeding is wholly misconceived. He further contends that out of the incidents referred, two of the incidents were even prior to the enforcement of the Act,

4. The objects and reasons of the Act indicate that in certain parts of the country a system existed under which the debtor or his descendants or dependants have to work for the creditor without reasonable wage or with no wage in order to extinguish the debt. Sometimes people work for generations under Bonded Labour System for the repayment of a paltry sum which had been taken by some of their remote ancestors. As it was found that the system implies infringement of the basic human rights and destruction of the dignity of human labour and apparently repugnant to Article

23(1) of the Constitution, the legislation was enacted to provide for the abolition of the Bonded Labour System, which in turn would prevent academic and physical exploitation of the worker sections of the people. Section 2(g) of the Act defines the Bonded labour system to mean:

Section 2(g) "Bonded labour system" means the system of forced, or partly forced labour under which a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that -

(1) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, He would -

(i) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor for a specified period or for an unspecified period, either without wages or for nominal wages, or (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or (3) forfeit the right to move freely throughout the territory of India, or (4) forfeit the right to appropriate or sell at ' market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

and Section 2(e) defines "bonded labour" to mean any labour or service rendered under the bonded labour system. Section 4 provides that on the commencement of the Act, the bonded labour system shall stand abolished. Section 16 provides for punishment for enforcement of bonded labour and Section 21 is the power of the Magistrate to try the offence. Section 22 makes the offence cognizable. Thus in order to attract the provisions of this Act, it must first be established that there was a "bonded labour system". If the allegations in the complaint petition filed do not satisfy the existence of a bonded labour system, then the question of initiating a criminal proceeding for commission of any offence under the Act does not arise. The entire allegations of the opposite party 2 as well as the statements of opposite parties 2, 3 and 4 merely reveal that during the past some of them had worked as domestic servants in the house of the petitioners and their entire salary has not been paid. It is not the case that there was a relationship of creditor or debtor between the petitioner and opposite party 2 and for discharging the said debt, the other opposite parties had been engaged to

work either free or on a paltry sum. Then again the period for which they had worked was also prior to the enforcement of the Act. It is not the case that subsequent to the Act coming into force, any of the opposite parties is still continuing to work under any of the petitioners. In this view of the matter, I really fail to understand how it can be said that an offence under the Act can be stated to have been committed by any of the petitioners. Since no offence can be said to have been committed by any of the petitioners, even accepting the entire allegations of opposite party 2, as well as the statements of opposite parties 3 and 4, the initiation of a proceeding under the said Act is wholly misconceived and continuance of such a proceeding would be a gross abuse of the process of law. In that view of the matter, this is a fit case where, the proceeding must be quashed invoking the inherent jurisdiction of this Court. I would accordingly direct that the order of the Magistrate dt. 16-1-86 passed in B. L. Case No. 1/86 and all subsequent orders including the order dt. 28-6-86 are hereby quashed and the criminal proceedings under the Act before the Sub-Divisional Officer-cum-Judicial Magistrate, First Class, Baliguda are also hereby quashed.

This application is accordingly allowed.