



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: February 03, 2025

Pronounced on: April 30, 2025

+ **CRL.M.C.671/2017&CRL.M.A.2850/2017,CRL.M.A. 29604/2018**

YOGESH GUPTA

.....Petitioner

Through: Mr. Sunil K. Kalra, Mr. Mradul
Sharma, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Shoaib Haider, APP for the State
with SI Mahendra Patil, PS Narela.
Ms. Kamna Vohra, Advocate for
Intervenor/BBA.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) read with Article 227 of Constitution of India, for quashing/setting aside the impugned Order dated 26.11.2016, of Additional Sessions Judge (ASJ), Delhi, upholding the Order dated 14.10.2015 of Ld. MM *vide* which cognizance was taken and Order dated 06.08.2016 *vide* which Charges were framed under Section 23 *Juvenile Justice Care and Protection of Children Act 2000* (*hereinafter referred to as 'JJ Act'*) and Section 3/7/14 of the Child Labour (Prohibition and Regulation) Act 1986.



2. **Briefly stated**, in a raid conducted on 18.09.2013 at 11:30 AM, under the supervision of SDM Narela in collaboration with NGO, Bachpan Bachao Andolan, (who are also the interveners) at the Slippers factory of the Petitioner, at 1577 DSIDC, Narela, Delhi, two children aged about 16 years and 13 years, were found working in the Factory. They were rescued and handed over by the SHO, PS Narela to the Child Welfare Committee.
3. SDM made a Complaint dated 18.09.2013 on which FIR 625/2013 under Section 23/26 J.J. Act and Section 3/7/14 of the Child Labour (Prohibition and Regulation) Act 1986, was registered.
4. Charge Sheet was filed on 13.08.2014 on which cognizance was taken by the Ld. M.M. on 14.10.2015. Charges were directed to be framed *vide* Order dated 24.06.2016, under *Section 23 JJ Act and Section 3/7/14 Child Labour (Prohibition and Regulation) Act 1986*, but the petitioner was discharged of offence under Section 26 JJ Act by observing that factory where the children were employed, was not an *Hazardous industry*. The formal Charges were framed on 06.08.2016.
5. The Petitioner challenged the Order of Cognizance dated 14.10.2015, as well as Order on Charge dated 06.08.2016 before the Ld. ASJ, but the aforesaid Orders of the Ld. M.M were upheld and the Revision was dismissed. Aggrieved, the Petitioner has filed the present Petition.
6. The ***grounds of challenge*** essentially are that the learned ASJ fell in error in treating the Police Report as a Complaint under Section 2(d) Cr.P.C., which is postulated under law only for *non-cognizable offences*. It has been overlooked that the cognizance had been taken under Section



190(1)(b) Cr.P.C and not under Section 190(1)(a) Cr.P.C. On this ground itself, the impugned Order of cognizance is liable to be set aside.

7. Furthermore, the offence under Section 26 JJ Act was added in the FIR only to camouflage the actions and to cause prejudice to the Petitioner. It has not been considered that the ingredients of an offence had to be satisfied on the date of commission of offence or on the date of knowledge, which is totally missing from the impugned Orders. Admittedly, the children were not employed in a factory which was *hazardous*, as defined under law.

8. It is further contended that no cognizance of the offence could have been taken by treating it as a Warrant case inasmuch as, no offence under Section 26 JJ Act was made out, and the learned M.M has rightly discharged the Petitioner under Section 26 JJ Act in the Order on Charge dated 24.06.2016.

9. Furthermore, the Police Report along with the complete documents under Section 173(5) Cr.P.C. ,at best, make out a case triable by learned M.M as a Summons case, for which the investigation was required to be completed within six months i.e. by 18.03.2014 in terms of Section 167(5) of Cr.P.C. However, the Charge Sheet was filed in the Court on 13.08.2014 i.e. with an unexplained delay of fifteen months. The investigations conducted by the I.O without seeking permission of the Court after six months of the commission of the offence and the date of arrest, is bad in law, which should have been ignored by learned ASJ while taking cognizance on the Chargesheet.

10. The cognizance, therefore, taken *vide* Order dated 14.10.2015 is against Section 167(5) Cr.P.C. and is also barred by Limitation under



Section 468 Cr.P.C. Therefore, the impugned Orders of Cognizance and Charge are liable to be set aside.

11. The **Respondent in its Status Report** explained that there were five children in all who had been rescued from the Petitioner's factory No. D-1577, DSIDC Narela, out of which only two rescued children were aged 16 years and 13 years. The Complaint was accordingly made under the relevant Sections by the SDM, Narela on the basis of which FIR No.625/2013 was recorded.

12. It was further detailed that after taking cognizance on the Chargesheet on 14.10.2015, the learned M.M directed framing of Charges under Section 23 JJ Act and Section 3, 7 and 14 of Child Labour Act *vide* Order dated 24.06.2016.

13. The *Respondent had also filed an Affidavit of DCP Rishi Pal, Rohini District*, who also narrated about having conducted the raid and recovery of two children aged 16 and 13 years respectively. It is further stated that the FIR had also been registered under Section 26 JJ Act which deals with exploitation of juvenile or child employees by employing them in a *Hazardous Factory* which is punishable with sentence which may extend up to three years and also fine. In terms of Section 468 Cr.P.C, the limitation for filing the Chargesheet is three years if the offence is punishable with imprisonment for a term exceeding one year but not three years. It is, therefore, submitted that the Chargesheet has been filed within the period of limitation.

14. **Submissions heard and record perused.**



15. The *main contention* of the Petitioner is that in fact, no offence under Section 26 JJ Act was made out as is also evident from the Order dated 24.06.2016 by which the Petitioner has been discharged under this Section. It is asserted that Section 26 JJ Act was added by the Respondent only to justify that the Charge-Sheet was filed within the limitation period.

16. Sub-Clause 3 of Section 468 Cr.P.C. provides that the limitation shall be determined with reference to the offence, which is punishable with the most severe punishment. The FIR was registered under offences 23/26 JJ Act and 3/7/14 of (Child Labour Prohibition and Regulation) Act 1986, out of which most severe punishment prescribed is for the offence under Section 26 of JJ Act, which is punishable by a maximum sentence of three years.

17. In the case of the State *of H.P. vs. Tara Dutt*, (2000) 1 SCC 230 the Apex Court observed that the language of Sub-section (3) of Section 468 Cr.P.C makes it imperative that the limitation for taking cognizance in Section 468 *is in respect of the offence charged and not in respect of offence finally proved.*

18. From the aforesaid Sections and proposition as explained in the case of *Tara Dutt* (supra), it is abundantly explicit that it is the offences under which the Charge-Sheet is filed, in reference to which the period of limitation has to be ascertained. The FIR may be registered under various Sections, but it is only those Sections under which the offences are established in the Charge-Sheet, that are significant for the purpose of calculation of limitation. Therefore, there is no bar of limitation for filing the Charge-Sheet.



19. The connected *argument* raised by the Petitioner is that the *Chargesheet was filed beyond the period of limitation* as prescribed under Section 468 Cr.P.C. Section 468 Clause (3) Cr.P.C. provides as under :

“Section 468 (3) - For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

20. *The offence under Section 26 of the JJ Act is punishable with a sentence which may extend up to three years and/or fine.* The offence under Section 23 JJ Act is punishable with a sentence which may extend up to six months or fine or both. Section 3 of Child Labour Act gives a sentence not less than three months which may extend upto one year or with fine which shall not be less than Rs.10,000/- and Section 4 of the Child Labour Act provides for punishment of Simple Imprisonment which may extend to one year or with fine which may extend to Rs.5,000/- or with both.

21. It is, therefore, evident that the Charge Sheet was filed under Section 26 of the Juvenile Justice Act, which could have been filed within a period of three years. The Complaint was made by the SDM on 18.09.2013, on the basis of which the FIR got registered on the same date. The Chargesheet has been filed on 13.08.2014 i.e. within a period of two years, which is within the period of limitation.

22. The contention of the Petitioners that the Chargesheet had been filed beyond the period of limitation in terms of Section 468 Cr.P.C. is not tenable.



23. The *second contention* of the Petitioner is that S.26 JJ Act, in the first instance was added to get the extended period of three years for concluding the investigations. In order to appreciate this contention of the Petitioner, it would be pertinent to note that the FIR was registered under Section 26 and 23 of JJ Act and Section 3, 7 and 14 of Child Labour Prohibition and Regulation Act 1986 and the Chargesheet was also filed under the same offences. During the investigations, the Statement of the factory owner Yogesh Gupta was recorded who had stated that in his factory EVA plastic slippers were being manufactured. The machines are run and because the labour charges are very high, he had employed the children who were willing to work at a lesser wage.

24. In this context, considering that the factory was for manufacture of plastic slippers and plastic fumes came out in the process, it would be relevant to refer to *Section 2 (cb) of the Factories Act 1986* which defines ‘hazardous process’ as under :

“hazardous process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or*
- (ii) result in the pollution or the general environment:*

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.”

25. The children in their statements disclosed that while the plastic slippers are being made, there are fumes which come out and there was a smell of plastic in the factory. The Investigating Agency thus, was not



unjustified in adding Section 26 JJ Act presuming the plastic factory to be inherently *hazardous for the children*. Further, in view of the statement of the children about the plastic smell being present in the factory, it was noted Section 3 Child Labour Act was also applicable. Therefore, the Chargesheet was also filed under Section 3/7/14 of the Child Labour Act as well as Section 23/26 JJ Act.

26. It cannot be said in the aforesaid circumstances that Section 26 had been added with any malafide intent only to get an extended period for investigation.

27. The *last contention* raised on behalf of the Petitioners is that aside from the offence under Section 26 JJ Act, for which Petitioner was rightly discharged *vide* Order dated 24.06.2016, all other offences have a punishment of less than two years. Therefore, a Summons case was made out in FIR for which the investigations should have been concluded within a period of six months as per Section 167(5) Cr.P.C.; the investigations thereafter, could have been continued only with the permission of learned M.M on satisfaction of special reasons. However, neither any special circumstances have been explained nor any such permission was taken for continuation of investigations beyond six months. Therefore, such investigations conducted beyond six months, could not have been considered while taking cognizance of the offences on the Chargesheet filed on 13.08.2014 for an offence committed on 18.09.2013.

28. The Apex court in the case of *Sailendra Nath v. State of Bihar* AIR 1968 SC 1292 has held that when no prejudice was pleaded, much less established, an illegality committed in the course of investigation does not



affect the competence and jurisdiction of the Court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

29. It was also observed by the Apex court that irrespective of whether it is a *Summons or warrant case*, adoption of procedure prescribed for Warrant cases in case of offences triable as Summons cases, constituted a mere irregularity and not an illegality though it involved the breach of the mandatory provision contained in Section 241 Code of Criminal Procedure.

30. Similarly, in the case of **Mohanlal Nandlal Sharma And Anr.v State** AIR 1962 GUJARAT 231 it was held as under:

“Now it is no doubt true that in the- case before the Supreme Court the procedure prescribed for a warrant case was adopted in case of an offence triable as a summons case but the principle of the judgment must apply equally to a case where the procedure prescribed for a summons case is followed in case of an offence triable as a Warrant, case. In both cases the adoption of the wrong procedure would be a mere irregularity and the Court would have to see whether such irregularity has occasioned any failure of justice. It must be remembered that the breach of every mandatory provision of the Code of Criminal Procedure does not render the trial of an accused person illegal however regrettable it may appear that the breach should have



occurred. There is a distinction between provisions which prescribe the mode or manner of a trial and provisions which provide for the conduct of the trial. An infringement of a provision as to the mode or manner of a trial constitutes an illegality which vitiates the whole trial and cannot be cured by Section 537 of the Code of Criminal Procedure, but an infringement of a provision which prescribes even mandatory a matter relating to the conduct or a trial constitutes a mere irregularity which can be cured by Section 537 of the Code of Criminal Procedure, if there be no prejudice caused to the accused (vide Umer Saheb v. State, 1960 Cri LJ 573; (AIR 1960 Bom 205)). The test, therefore, for the purpose of determining whether the breach of any particular provision of the Code of Criminal Procedure constitutes an illegality or a mere irregularity is to see whether the provision prescribes the mode or manner of the trial or provides merely for the conduct of the trial.

*Now Section 241 of the Code of Criminal Procedure prescribes that the procedure set out in Chapter XX shall be observed in the trial of summons cases and Section 251 prescribes that the procedure set out in Chapter XXI shall be followed in the trial of warrant cases. The Supreme Court in the judgment mentioned above held that the adoption of **the procedure prescribed for***



warrant cases in case of offences, triable as summons cases constituted a mere irregularity and not an illegality though it involved the breach of the mandatory provision contained in Section 241; of the Code of Criminal Procedure. This would mean that according to the Supreme Court, Section 241 of the Code of Criminal procedure which requires that the procedure prescribed for summons cases shall be followed in summons cases was a provision which did not prescribe the manner or mode of the trial but provided merely for the conduct of the trial, for if that Section had been regarded by the Supreme Court as containing a provision prescribing the manner or mode of the trial, the Supreme Court would have held the breach of the mandatory provision contained in that Section to be an illegality and not a mere irregularity. If Section 241 of the Code of Criminal Procedure is a provision which does not prescribe the manner or mode of the trial but merely provides for the conduct of the trial, the breach of which would not constitute an illegality, it must follow that Section 251 of the Code of Criminal Procedure is also equally a provision which does not prescribe the manner or mode of the trial but merely provides for the conduct of the trial, the breach of which cannot amount to an illegality. The nature of both the provisions being the same, if the



breach of one provision constitutes a mere irregularity and not an illegality, the breach of the other provision must also equally constitute an irregularity and not an illegality. The adoption of the procedure Prescribed for summons cases in case of offences triable as warrant cases must, therefore, stand on the same footing as the adoption of the procedure prescribed for warrant cases' in case of offences triable as summons cases and in both cases the consequence must be a mere irregularity and not an illegality.”

31. Even if for the sake of arguments the contention of the Petitioner though not tenable, it is accepted that the offences essentially made out in the FIR constituted a Summons case and that no investigations could have been carried out beyond a period of six months, in the light of the aforesaid judgments, it is evident that while investigations carried out beyond the period of six months may be mere irregularity, but would not amount to illegality vitiating the entire investigations undertaken after the period of six months or that the Chargesheet is liable to quashed on this ground.

32. Furthermore, as observed in Mohanlal Nandlal Sharma And Anr. (Supra) that investigations conducted beyond the period of six months may be in breach of mandatory provision under Section 241 Cr.P.C., but it merely provides for the conduct of the trial and does not prescribe the manner or mode of the trial. Breach of this mandatory provision does not amount to an illegality vitiating the entire proceedings. *Therefore, the*



contention on behalf of the Petitioner that the investigations carried out beyond the period of six months of arrest of the Petitioner i.e. on 18.09.2013, is without any merit and this contention has been rightly rejected by the learned ASJ.

Conclusion:

33. In view of the above facts and law, it is held there is no merit in the present Petition which is hereby dismissed along with pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2025/rk