P L D 1997 Lahore 428

Before Muhammad Aqil Mina, J .

MUHAMMAD SIDDIQUE --- Petitioner

versus
MANSHA and others---Respondents

Criminal Miscellaneous No.235-H of 1997, decided on 13th March, 1997.

Criminal Procedure Code (V of 1898)---

----S. 491---Constitution of .Pakistan (1973), Art.ll---Penal Code (XLV of 1860), Ss. 371 & 374---Bonded Labour System (Abolition) Act (III of 1992), Ss. l l & 12---Habeas corpus petition---Police could not recover and produce the detenues in Court---Women and children of the potitioner's family, prima facie, had been made victims of forced labour under the bonded labour system with his connivance---Brick-kiln owner could not engage labour after making advance payments under the bonded labour system which was not only in negation of the fundamental right guaranteed under Art. 11 of the Constitution but was an offence under Ss. l l & 12 of the Bonded Labour System (Abolition) Act, 1992 as well as under Ss.371 & 374, P.P.C. in appropriate cases.---Police was consequently directed to register a case against the petitioner and the brick-kiln owner who had been dealing the detenues under the bonded labour system-- Police was also directed to recover the detenues and set them at liberty.
C.M. Latif Rawn for Petitioner.
Noor Muhammad for Respondent No. 5.
. .
Respondent No.9 in person.

ORDER

This habeas corpus petition under section 491, Cr.P.C. has been filed for the recovery of seven persons who include the two sons, daughter-in-law and grandchildren of the petitioner.

2. The facts as stated *in* the petitioner are that the petitioner *arid* the detenues were employed on the brick-kiln of respondent No. 1. The petitioner owed a sum of Ks.60,000 to the owner of the brick-kiln. After giving surety fogy repayment of the aforesaid amount the petitioner and his family members shifted to the prick-kiln of respondent No.9. on 4-3-1997 respondent No.l alongwith others after giving threats took away the detenues in a Hilux wagon.

2. The police.. was directed to recover the detenues. The A.S.-I. of Police Station Bhera has stated that the detenues could not be recovered. Respondent No.9 has stated that the detenues were taken from his custody on i8-2-1997 by respondent No.l. It is stated by him that respondent No. l had taken away that detenues saying that they owed

money *which had* been taken in advance for working at his brick-kiln and' for completing their term of employment. Respondent No.5 stated that the detenues were working at his brick-kiln but they slipped away 4/5 days back.

3. It appears that the petitioner obtained money in advance from the owner of the brick-kiln for the employment of the detenues and before the expiry of the contract period shifted them to some other brick-kiln after taking advance therefor under the bonded labour system.

4. By general practice, ladies and children are made to work under forced conditions by the management of the brick-kilns with the connivance of the heads of the families. Usually such labour force is put under restraint and tightly guarded. In some cases this practice even amounts to slavery and human trafficking. Article 11 of the Constitution prohibits slavery, forced labour and traffic in human beings in all forms. Similarly, no child below the age of 14 years can be engaged in any factory or mine or any other hazardous employment. Needless to observe that environments at brick-kilns on account of excessive smoke are hazardous to the health of children. Women and children are made to work at brick-kilns in negation of the fundamental rights guaranteed under Article 11 of the Constitution. In appropriate cases such acts may even constitute offences under sections 3371 and 374, P.P.C. In addition thereto, extraction of bonded labour under the bonded labour, system, is punishable Under ,sections 11 and 12 of the Bonded Labour System (Abolition Act), 1992. These offence's are cognizable under section 17 of the Act. These penal provisions are reproduced below:--

"11. 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 shall not be less than two years nor more than five years, or with fine which shall not be less than fifty thousand rupees, or with both.

12. Punishment for extracting bonded labour under the bonded labour system.--Whoever enforces, after the commencement of. this Act any custom, tradition, practice, contract, agreement or other instrument, by virtue of which any person or any member of his family is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which shall not be less than two years nor more than five years or with fine which shall not be less than fifty thousand rupees, or with both,, and out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of not less than fifty rupees of each day for which bonded labour was extracted from him.

17. Cognizance of offences.--Every offence under this Act shall be cognizable and bailable. "

5. Prima facie, women and children of the family of the petitioner, have been made victims of forced labour under the bonded labour system with the connivance of the petitioner. The owners of the brick-kilns cannot engage labour after making advance payments under the bonded labour system. This is patently an offence. Resultantly,

they cannot plead justification for getting forced labour from the detenues on the ground that head of the family had obtained advance amount for future work by the detenues.

6. For what has been stated above, it is directed that S. S. P. , Sargodha shall direct S.H.O., Police Station Bhera to register the case against the petitioner, respondent No.9 and the owners of the brick-kilns who have been dealing the detenues under the bonded labour system, . for committing the aforementioned offences, and get the case investigated by a responsible senior officer not below the rank of a D. S. P..

7. It may be observed that the police being part of the State Administration is duty-bound to ensure that Constitutional and. statutory rights guaranteed to the citizens are not violated by unlawful practices. Therefore, in all such-like cases, criminal cases should be registered against persons including family heads who are found responsible for forced labour under the bonded labour system and the culprits brought to book.

8. The detenues who have not been recovered so far will be recovered by the police and set them at liberty.

9. The petition stands disposed of in the above terms.

N.H.Q./M-274/L Order accordingly.

;