



Crl.R.C.(MD).No.796 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 15.10.2024

Orders Pronounced on : **03.12.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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and Crl.M.P.(MD).No.8580 of 2024

1. M/s.Good Shepherd Evangelical
Mission Pvt., Ltd.,
Rep. by its Managing Director,
Gideon Jacon

2. Pastor Gideon Jacob

... Petitioners

Versus

State represented by
Inspector of Police,
CBI/SCB, Chennai.

... Respondent

Prayer: Criminal Revision Case filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to the order passed in Crl.M.P.No.93 of 2024 in S.C.No.48 of 2020 on the file of the Sessions-cum-Mahila Court, Tiruchirapalli, dated 19.06.2024 and set aside the same as illegal.

For Petitioners : Mr.K.Samidurai

For Respondent : Mr.Mohideen Basha.N
Special Public Prosecutor for
C.B.I cases



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ORDER

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This Criminal Revision is filed to call for the records pertaining to the order passed in Crl.M.P.No.93 of 2024 in S.C.No.48 of 2020 on the file of the learned Sessions-cum-Mahila Judge, Tiruchirappalli, dated 19.06.2024 and set aside the same as illegal.

2. The petitioners' case is that the first petitioner is a Company, *M/s.Good Shepherd Evangelical Mission Pvt. Ltd.* and the second petitioner is the Director of the said Company and also a pastor. The petitioner runs a destitute home for children functioning as *Mose Ministries* in Trichy Town, Tamil Nadu. Permission was granted by the District Collector to run the home. The home is running as a charity giving food, shelter and education to the destitute and abandoned children. While so, in the year 2015, the District Social Welfare Officer refused to give registration of the institution as per the *Juvenile Justice (Care and Protection) Act, 2015* and the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*. The home, therefore, was constrained to file W.P.(MD). No.16723 of 2015.

3. When the matter was pending, one organisation namely, Change India, filed a Public Interest Litigation in W.P.(MD).Nos.16273 and 20895 of



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2015 alleging trafficking and illegal confinement of 89 children in the petitioner's home praying for investigation by the Central Bureau of Investigation. By a common order, dated 30.11.2016, this Court ordered an investigation by the Central Bureau of Investigation and there was also a direction to the Director of Social Welfare to pass orders based on the relevant documents concerning the application of the petitioners therein. Thereafter, upon the investigation, the Central Bureau of Investigation filed a Final Report against the petitioners alleging the offences under Sections 363, 368, 201, 370-A, 295-A and 153-A of the Indian Penal Code and Section 24 re/w Sections 13, 16(3) of the *Orphanages and other Charitable Home (Supervision and Control) Act, 1960* and Section 20 of the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*.

4. Initially, the case was taken on file by the learned Chief Judicial Magistrate, Tiruchirapalli in C.C.No.2534 of 2019. The petitioners filed Crl. O.P.(MD). No.1403 of 2020 to quash the proceedings in C.C.No.2534 of 2019. By the order, dated 08.06.2023, the quash petition was allowed in part insofar as the offences under Sections 366, 368, 295-A of the Indian Penal Code, Section 20 r/w Sections 6 and 12 of the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*. However, the



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proceedings in C.C.No.2534 of 2019 were not quashed insofar as the offences under Sections 201, 370, 370A of the Indian Penal Code and Section 24 r/w Section 13, 16(3) of the *Orphanages and Other Charitable Home (Supervision and Control) Act, 1960* and the offences under Sections 32, 33 and 34 of the *Juvenile Justice (Care and Protection) Act, 2015*. Aggrieved thereby, the petitioners filed S.L.P.No.9542 of 2023 and the said Special Leave Petition was dismissed by the order, dated 11.12.2023 with the following observations:-

"We are not inclined to interfere with the impugned judgment and hence the special leave petition is dismissed. We clarify the petitioner Pastor Gideon Jacob will be entitled to raise all pleas and contentions at the time of arguments on framing of charges which will be considered in accordance with law."

5. In the meanwhile, finding that the offences are triable by the Sessions Court, the case was also committed, made over and taken on file by the learned Sessions Judge, Mahila Court, Tiruchirappalli in S.C.No.48 of 2020. Therefore, in tune with the liberty granted by the Hon'ble Supreme Court, the present application in Crl.M.P.No.93 of 2024 was filed to discharge the petitioners from the case. However, by the order impugned in the revision, dated 19.06.2024, while allowing the discharge petition in respect of the offences under Section 295-A and 153-A of the Indian Penal Code, the Trial Court, finding that there are materials, proceeded under



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Sections 370, 370-A and 201 of the Indian Penal Code and the *Orphanages and other Charitable Home (Supervision and Control) Act, 1960* and Section 20 read with Sections 6 and 12 of the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*. Consequent to the dismissal of the petition, on 27.06.2024, five charges are framed against the petitioner. Aggrieved by which, the present Criminal Revision Case is filed.

6. It is the case of the petitioner that none of the above five charges are made out. There is no material whatsoever to allege that the offences under Sections 370, 370-A or other offences are said to have been committed by the petitioner. It is the case of the petitioner that earlier, in the Writ Petition, this Court nominated Hon'ble Mr.Justice K.N.Basha, a retired Hon'ble Judge of this Court, to conduct a fact-finding enquiry. Pending the Writ Petition, the Hon'ble Judge visited the home, interacted with each and every one of the inmates and recorded their statements. From the findings of the learned Judge, it can be seen that the children were very well treated in the home. They grew up in the home throughout their life and were never visited even once by their parents. In spite of the D.N.A profiling and identifying the parents, they refused to go to their parents, alleging that they had nothing to do with them, and they are all very much grateful to the



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petitioner. The educational qualifications of every girl child and the various avocations in which they were all in are placed before this Court.

7. *Mr.K.Samidurai*, learned Counsel for the petitioner, would submit that absolutely, none of the offences is made out. On the contrary, after a thorough investigation, it was found that there is no allegation of any trafficking, exploitation or sexual harassment by any of the inmates and consistent findings concerning the noble and pious purpose with which the home was running. The Trial Court ought to have discharged the petitioner, and the charges framed are thoroughly unsustainable and are without any materials, even taking all the materials that are collected by the investigating agency, on its face value.

8. Per *contra*, it is the case of the respondent that pursuant to the allegations of trafficking and abuse of inmate girls of *M/s.Mose Ministries*, initially, a case was registered, upon the direction of this Court, dated 21.10.2016 in W.P.(MD).No.16723 of 2015, in RC.No.1/(S)/2016/CBI/SCB/Chennai, originally as against one *M/s.Mose Ministries*, through *Jeyam Abraham* and Pastor *Gideon Jacob* for the alleged offences under Sections 120-B, 361, 368 and 201 of the Indian Penal Code read with



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Sections 34, 33 and 81 of the *Juvenile Justice (Care and Protection) Act, 2015* and Section 20 r/w 6 of the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*. In the course of the investigation, identification of the parents of the inmates was also done by conducting a D.N.A test and by taking the help of the experts of the National Institute of Mental Health and Neuro Sciences Hospital, Bangalore. The experts also counselled and interacted with the inmate girls. The entire investigation was monitored by this Court. Status reports were filed from time to time. Ultimately, finding that *Mose Ministries* was only the name and it was only the Company namely, *M/s.Good Shepherd Evangelical Mission Pvt. Ltd.*, which is running the home the charge sheet is laid against the petitioner.

9. The investigation reveals that during the period 1994-1999, the petitioner/accused procured 89 girl children in and around the village of Usilampatti through his co-workers and with the help of the local retired Panchayat leader one *Akkini Thevar* and his daughter, *Rani* with a false promise to the parents/guardians that the girl children will be raised in *Mose Ministries* home and the parents/guardians could visit them at any time they wanted. They can also take back the children whenever they want. At that time, the parents were made to sign in blank non-judicial stamp papers.



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Thereafter, the petitioner, Pastor *Gideon Jacob* got it filled as if they had undertaken to hand over the children to *Mose Ministries* and they would not claim back their children and that in that event, they have to pay a sum of Rs.10,000/- to the home.

10. Further, they did not register the intake of the girls with the appropriate Government department and also did not make any application for registering their home till the year 2004. The petitioner/accused, Pastor *Gideon Jacob*, suppressed the parentage and guardianship of the inmate children and raised them as Christians and made them have a sense of belonging to the institution by saying that their parents threw them away since they did not want them. The girls were brought up as Christians and it was inculcated in their minds that they should study Theology and do the ministry works knowing fully aware that their parents are Hindus and the petitioner/accused, Pastor *Gideon Jacob* also says that he was their saviour and this created a state of fact in the minds of the inmate girls about their parents.

11. The petitioner/accused, Pastor *Gideon Jacob* also sexually abused one of the inmate girls/victims. Hence, the petitioner was charged under



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Sections 363, 368, 201, 370, 370-A, 153-A and 295-A of the Indian Penal Code and Section 24 read with 13, 16(3) of the *Orphanages and Other Charitable Home (Supervision and Control) Act, 1960*, Section 34 read with 32 and 33, 75 of the *Juvenile Justice (Care and Protection) Act, 2015* and Section 20 read with Section 6 and 12 of the *Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014*. The charges are duly supported by the materials. No grounds are made out to discharge. Each of the grounds raised in the Criminal Revision Case has been dealt with in detail.

12. *Mr.N.Mohideen Basha*, learned Special Public Prosecutor for C.B.I cases, for the respondent, after taking this Court through the materials collected and the statements of the witnesses, would also point out to the relevant witnesses and documents and submit that they are materials to proceed in respect of every charge framed and therefore, no grounds are made out to discharge the petitioner.

13. I have considered the rival submissions made on either side and perused the material records of the case.



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14. In this Criminal Revision Case, though grounds are raised both concerning the discharge petition and the charges that are framed, a specific prayer is not made impugning the charges that are framed. Be that as it may, the same being technical, I am of the view that when detailed arguments are made concerning the *prima facie* material or otherwise, in respect of every charge, the same can be gone into in accordance with the law.

15. At the outset, it can be seen that earlier, the petitioners filed an Original Petition for quashing the proceedings. The same was partly allowed only in respect of some of the offences and dismissed in respect of the rest of the offences. When the petitioner filed a Special Leave Petition to the Hon'ble Supreme Court of India, while dismissing the Special Leave Petition granted liberty to the petitioner to raise the issues at the time of framing of charges. The kind of exercise, that the Court undertakes at the time of framing of charges, is to consider whether, in respect of every offence alleged, there are materials to proceed. The Court is not concerned with the adequacy or quality of the evidence, but, on the other hand, will proceed to frame the charges and try the accused, if materials are placed by the prosecution in support of the charge, however, weak or feeble as may be alleged by the accused. Therefore, the only point that has to be considered



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by this Court is, whether there are materials for the Court prima facie pointing out the offences, to reject the discharge application and frame the charges.

16. In respect of some of the offences the discharge petition was also allowed. Therefore, it has to be seen as to whether in respect of the charges that are framed, this Court has to see whether there are materials to proceed.

17. In this regard, the first charge is made under Section 370 of the Indian Penal Code and the same is extracted hereunder for ready reference:-

"திருச்சிராப்பள்ளி □ 20, சுப்பிரமணியபுரத்தில் செயல்பட்டு வரும் 1வது எதிரியான M/s.Good Shepherd Evangelical Mission Pvt. Ltd என்ற கம்பெனிக்கு 2வது எதிரி நிர்வாக இயக்குநரக பொறுப்பில் இருந்து கொண்டு 1994-99 காலக்கட்டத்தில் மதுரை உசிலம்பட்டியை சுற்றி உள்ள கிராமங்களில் இருந்து கைவிடப்பட்ட மற்றும் அனாதை பெண் குழந்தைகளுக்கு பெண் சிசு கொலை தடுப்பு என்ற பெயரில் Mose Ministries Home என்ற குழந்தைகள் காப்பகத்தை தமிழ்நாடு விடுதி மற்றும் பெண்கள் குழந்தைகள் விடுதிகளுக்கான ஒழுங்குமுறைச்சட்டம் 2014ல் உள்ள விதிமுறைகளை பின்பற்றாமல் உரிய உரிமம் பெறாமல் நிறுவி உசிலம்பட்டியில் அரசு மருத்துவமனையில் பணிபுரியும் ஒரு செவிலியர் மூலமாக ஏழை குழந்தைகளுக்கு உணவு, உடை, இருப்பிடம் இலவசமாக கொடுப்பதாகவும், அவர்களை நல்ல முறையில் வளர்த்து படிக்கவைப்பதாகவும், குழந்தைகளின் பெற்றோருக்கும், அவர்களுடைய இயற்கை



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பாதுகாவலருக்கும் பொய்யாக உறுதிமொழியை அளித்து 125 பெண் குழந்தைகளை மேற்படி Mose Ministries Home என்ற எதிரிகளின் காப்பகத்தில் அனுமதித்து மேற்படி குழந்தைகளிடம் 2வது எதிரி அவர்களை காப்பாற்றுவதற்காக கடவுள் தன்னை படைத்திருப்பதாகவும், தான் கடவுளின் தூதன் என்றும் பொய்யுரை செய்து அவர்களை கிறிஸ்துவ மத போதனைகளை கட்டாயப்படுத்தி படிக்க வைத்து அவர்களை கிறிஸ்துவ மதத்தின் மீது பற்று ஏற்பட செய்து புனித நீராட்டல் மூலமாக (Holy Bath) கிறிஸ்துவ மதத்திற்கு மாற்றி மூளை சலவை செய்து அதன் பிறகு மேற்படி பாதிக்கப்பட்ட பெண் குழந்தைகளை சமையல் அறையில் சமையல் செய்வது, கழிப்பிடம் மற்றும் விடுதியின் பல பகுதிகளை சுத்தம் செய்வது போன்ற பணிகளை கட்டாயப்படுத்தி செய்ய வைத்தும், அவ்வாறு விடுதியில் அனுமதிக்கப்பட்ட பெண் குழந்தைகளில் சிலரை அவர்களுடைய பாதுகாவலர் கடவுச்சீட்டு பெற்று ஜெர்மனிக்கு அங்கு உள்ள பேக்கரியில் வேலை செய்வதற்காக பிரதிபலன் பெற்று அனுப்பி வைத்தும், இந்திய தண்டனை சட்டம் 370வது பிரிவின்படி தண்டிக்கத்தக்கதும், இந்நீதிமன்றத்தால் விசாரிக்கத்தக்கதுமான குழந்தைகளை சட்டத்திற்கு எதிராக தவறாக பயன்படுத்துதல் அல்லது சுரண்டல் குற்றம்புரிந்துள்ளீர்கள் அதுபற்றி நீர் என்ன சொல்கிறீர்? எதிரிகளின் சார்பாக 2வது எதிரியின் பதில்: பொய் வழக்கு, குற்றவாளி இல்லை□

18. In this regard, Section 370 of the Indian Penal Code, in its present form, was substituted with effect from 03.02.2013. The allegations, even as per the charge is for the period 1994-1999. As such, the pre-amended Section 370 reads as follows:-

"370. Buying or disposing of any person as a slave.---



Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to be fine."

Thus, on a plain reading of the allegations which are made, they never make out an offence under Section 370 as of the period 1994-1999.

19. Even stretching the allegations further and considering the fact that girls were kept in the home even after the year 2013 and therefore, applying the substituted Section 370, it is relevant to extract Section 370 as it stood after substitution in the year 2013 as follows:-

"370. Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.—using threats, or

Secondly.—using force, or any other form of coercion, or

Thirdly.—by abduction, or

Fourthly.—by practising fraud, or deception, or

Fifthly.—by abuse of power, or

Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking



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shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

Thus, it can be seen that recruiting, transporting, harbouring, transferring or receiving persons should be for exploitation.

20. The term 'exploitation' is defined in Explanation-I to include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or forced removal of organs. This charge relates to the procuring of 89 girls. The allegation, concerning sexual



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exploitation, is made concerning one girl, is a separate charge. Generally, these 89 girls, even as per the prosecution, were admitted as inmates. The second accused, Pastor Gideon Jacob, proclaimed as if he was created by god to save them and brought up these children as Christians. The alleged exploitation is that they have been made to clean the toilets, cook and clean the home etc. The second alleged exploitation is that they were taken to Germany and were directed to work in a bakery.

21. Firstly, any human being is supposed to clean his/her toilet and the place, in which, he is living and cook food. They were in the home, they were studying and were admitted even to higher education. They were also meant to be taught to take care of these things, by cleaning the place, in which they are living, cleaning the toilets etc. The same cannot be in any manner termed as physical exploitation. The sexual exploitation is not alleged. There was no slavery, servitude or forced removal of organs.

22. As far as the trip to Germany is concerned, it cannot be treated as slavery or forced labour. The girls were taken on as trip and only to be exposed to the techniques, they were made to learn in the bakery, that too for a short period and they came back to India even as per the prosecution.



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Therefore, the first limb, for exploitation is not made out. Therefore, I am of the view that firstly, when the case of the prosecution that the occurrence i.e., taking the girls either from the cradle or the parents, had taken place only during the period 1994-1999, the amended Section 370 cannot be applied and no offence is made out as per the original Section 370 as it stood on the relevant date. Even for a moment, considering the substituted Section 370, the offence is still not made out and thus, the Court below omitted to consider the above aspect concerning Section 370. Therefore, this Court has no other option than to interfere with the charge concerning Section 370.

23. Charge No.2 reads as follows:-

□மேற்படி சம்பவத்தின் தொடர்ச்சியாக எதிரிகளுக்கு சொந்தமான Mose Ministries Home என்ற விடுதியில் படித்த 12ல் இருந்து 13 வயதான சிறுமியை 2வது எதிரி கத்தியை காட்டி மிரட்டி நான் சொல்வது போல் செய்யாவிட்டால் கொலை செய்து விடுவேன் என்று அச்சுறுத்த பாலியல் ரீதியாக பாலியல் செய்கைகளில் ஈடுபடுத்தி தவறாக பயன்படுத்தி வந்ததாகவும், இந்த நிலையில் மேற்படி பாதிக்கப்பட்ட சிறுமி கர்ப்பமாகி கருச்சிதைவிற்கு உள்ளானதாகவும், அதற்கு பிறகு மேற்படி பாதிக்கப்பட்ட சிறுமியை அவர் தங்கியிருந்த விடுதியிலிருந்து இரவிலும், விடியற்காலையிலும் பாலியல் நோக்கத்துடன் அழைத்துச்சென்றும், மேற்படி 2வது எதிரியின் வீட்டில் வேலை செய்ய வைத்தும், பெண் குழந்தைகளை பாலியல் நோக்கத்துடன் தவறாக பயன்படுத்துதல் அல்லது சுரண்டல் குற்றம் செய்ததாக இந்திய தண்டனை சட்டம் 370(A) பிரிவின்படி இந்நீதிமன்றத்தால்



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விசாரணை செய்யத்தக்கதும்,
தண்டிக்கத்தக்கதுமான குற்றம் புரிந்துள்ளீரே
அதுபற்றி நீர் என்ன சொல்கிறீர்?
எதிரிகளின் சார்பாக 2வது எதிரியின் பதில்: பொய்
வழக்கு. குற்றவாளி இல்லை□

24. As far as the second charge is concerned, Section 370-A of the Indian Penal Code reads as follows:-

"370-A. Exploitation of a trafficked person.—(1)
Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.
(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine."

25. It can be seen that even though the concerned victim denied any kind of sexual exploitation, there are materials in the form of the statements of *L.W.34, Pricilla Jebamalar*; *L.W.35, Jesumanickam @David* and other witnesses in the form of *L.W.42, L.W.60, L.W.75, L.W.84, L.W.87, L.W.95, L.W.190, L.W.191, L.W.192, L.W.193, L.W.194* and *L.W.196*, who speak about the second accused, *Gideon Jacob*, taking the victim *Ms.AAA* alone during the evenings and nights and the said inmate receiving always a special treatment and not following the rules with reference to the said inmate. The said inmate *Ms.AAA*, has now given a statement that she was



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never subject to any sexual exploitation and that now, she was married to a person in Maharashtra.

26. The learned Counsel for the petitioner would submit that in view of the statement of the victim herself no offence could be made out,. The same cannot be accepted at this stage. It is a question of giving weightage of evidence of the statement of the said alleged victim vis-à-vis, the statements which are made by the others, which is a question for trial and appraisal of evidence. As stated supra, howsoever weak the evidence may be termed, still, materials are found, this Court cannot interfere at the stage of framing of charges and interdict before the accused being tried. Accordingly, I find that Charge No. 2 has rightly been framed and that the accused is to be tried in respect thereof.

27. Charge No.3 reads as follows:-

□மேற்படி சம்பவத்தின் தொடர்ச்சியாக
பாதிக்கப்பட்ட சிறுமிகளுக்கு உணவு,
உடை, இருப்பிடம் போன்ற வசதிகளை
செய்வதாக வாக்குறுதி கொடுத்தும்,
குழந்தைகளின் பெற்றோர்கள் அல்லது
பாதுகாவலர்கள் எப்போது வேண்டுமானாலும்
தங்கள் வசம் எடுத்துக்கொள்ளலாம் என்று
சொல்லியும், குழந்தைகளின் பெற்றோர் மற்றும்
பாதுகாவலரிடம் எழுதப்படாத முத்திரை தாளில்
கையொப்பம் வாங்கி குழந்தைகளின் பெற்றோர்
பாதுகாவலர்கள் குழந்தைகளை திரும்ப கேட்டால்



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ரூபாய்.10,000/- கொடுக்க வேண்டும் என்ற
சரத்துடன் பொய் ஆவணம் புனைந்து இந்திய
தண்டனை சட்டம் 467 வது
பிரிவின்படி இந்நீதிமன்றத்தால் விசாரணை
செய்யத்தக்கதும், தண்டிக்கத்தக்கதுமான குற்றம்
புரிந்துள்ளீரே அதுபற்றி நீர் என்ன சொல்கிறீர்?
எதிரிகளின் சார்பாக 2வது எதிரியின் பதில்: பொய்
வழக்கு. குற்றவாளி இல்லை□

28. The essence of the case of the prosecution is that at the time of taking the girl children as inmates from the parents who were not able to take care of the children, signatures were obtained in blank papers. Later, the blank papers were filled up as they were undertakings given by the parents that they voluntarily handed over their children to the Mose Ministries and they will not claim the children back. If they want to claim their children back, they have to pay a sum of Rs.10,000/- to the home. It is the case of the prosecution that the parents signed only blank papers with the fond hope that their children would be taken care of. and Thereafter the accused filled it up with a dishonest intention of causing it to be believed that such documents were indeed executed by the said parents and therefore the same would amount to making of false documents.

29. The person does not commit forgery the moment he makes a false document. The document has to be used in some context or the other to



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support any claim or giving some part of the property to any person etc., as mentioned under Section 463 of the Indian Penal Code and if only the offence of forgery is made out, then, the offence of forgery of valuable security would be made out as per Section 467.

30. In this case, admittedly, the children got admitted to the home during the period 1994-1999 and thereafter, not even a single parent made any attempt to see their child nor there is any complaint from anyone of the child that they are prohibited from seeing their parents. It can be that the children refused to go along with their parents. They felt that they had absolutely nothing to do with them as they discarded them merely because they happened to be female. No parent, at any point of time, made any complaint before any authority until the year 2016 when this Court ordered an investigation in the Public Interest Litigation filed by the N.G.O. Thus, there is no allegation that the alleged false document was ever used to claim any money or any right from the said parent. Therefore, the mere allegation of making false document alone is made by the prosecution and the further limb, to satisfy the ingredient, that is, of the use of the said documents in any manner whatsoever, is not even alleged and that there is no material concerning using of the said false documents.



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31. The statements of *L.W.125* to *L.W.188*, which are from the parents, do not make any allegation that the accused showed stamp papers or claimed any right. The statements, on the contrary, show that it is only the Investigating Officer, for the first time, shown the said stamp paper document to the witnesses. The entire statements of the parents reveal that on account of the poverty, they gave the children. It is to be noted that it was a culture in Usilampatti and other areas, to get a higher dowry from the girl child to get married even though they were poor persons and it was also the culture even to kill the female child by administering poison. The Government of the day, considering the alarming situation, introduced a scheme namely, the Cradle Baby Scheme, whereby, instead of killing the girl child, the parents are free to come and leave the girl child for the state to take care of. In this case, some of the children came through the Cradle Baby Scheme also. Thus, it can be seen that it is the gravest immorality that was widely prevalent in the particular area. It is to be noted that it was not the same position in every backward or dry area of the state.

32. The fact remains that there was no attempt to meet the child or make any claim and it is with the help of the experts by D.N.A profiling,



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they were even identified only after the orders of this Court in the Writ Petition in the year 2016. Thus, even taking these statements at face value, it can be seen that at no point in time, there is any allegation that such stamp papers are shown to them to claim any right or money from them. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India in ***Sheila Sebastian Vs. R.Jawaharaj and Anr.***¹, (2018) 7 SCC 581 and paragraph 19 is extracted for ready reference :

"19.A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete."

Accordingly, even taking the version of the parents(?) as true, still, the offence under Section 467 is still not made out.

33. Charge No.5 reads as follows:-

□மேற்படி சம்பவத்தின் போது குழந்தைகளை

¹ (2018) 7 SCC 581
<https://www.mhc.tn.gov.in/judis>



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பராமரிப்பதற்க்கான காப்பகத்தை சமூக நலத்துறையில் இருந்து உரிய உரிமம் பெறாமல் மேற்படி Mose Ministries Home நடத்தி **THE ORPHANAGES AND OTHER CHARITABLE HOMES (SUPERVISION AND CONTROL) ACT - 1960** சட்டம் 17 உடன் இணைப்பு 24வது பிரிவின்படி இந்நீதிமன்றத்தால் விசாரணை செய்யத்தக்கதும், தண்டிக்கத்தக்கதுமான குற்றம் புரிந்துள்ளீரே அதுபற்றி நீர் என்ன சொல்கிறீர்? எதிரிகளின் சார்பாக 2வது எதிரியின் பதில்: பொய் வழக்கு. குற்றவாளி இல்லை

34. As far as the offence under Section 24 of the *Orphanages and Other Charitable Home (Supervision and Control) Act, 1960* is concerned, it is relevant to extract Section 24 which reads as follows:-

"24. Penalties.-Any person who fails to comply with any of the provisions of this Act or of any rule, regulation, direction or order thereunder or any of the conditions of a certificate shall be punishable in the case of a first offence with imprisonment which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both, and in the case of a second or subsequent offence, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both."

Therefore, the offence is made out if only any of the provisions of the Act is violated.

35. As per the provision, if the home is not covered under any other Act, it will be covered under the present Act. Under Section 13 of the said Act, the home cannot be run without a certificate. The person, who is



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maintaining the home, is expected to apply to the board and get a certificate.

In this case, it is the case of the prosecution that except for the communication of the District Collector, which shows pending consideration of the board, there will be temporary recognition, there was no certificate which is granted by the board. There is no such enabling provision in the Act for the Collector to grant temporary recognition, Be that as it may, to launch prosecution for the offence under Section 24, Section 25 prescribes sanction.

36. Section 25 reads as follows:-

"25. Sanction for prosecutions.-No prosecution under this Act shall be instituted except with the previous sanction of the District Magistrate or the Chief Presidency Magistrate, as the case may be."

37. In this case, no such sanction has been obtained or produced along with the Final Report and as such, the Trial Court omitted to consider the same at the time of framing of the charge. When there is a specific embargo under Section 25, Charge No.5 cannot be maintained.

38. Charge No.4 reads as follows:-

□மேற்படி சம்பவத்தின் தொடர்ச்சியாக 1வது எதிரி
கம்பெனி Mose Ministries Home என்ற
குழந்தைகள் காப்பகத்தை நடத்தி வந்த



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நிலையில் மாவட்ட சமூகநலத்துறையில் இருந்து உரிய உரிமம் பெறாமல் அதிகபட்ச எண்ணிக்கையை காட்டிலும் 120 குழந்தைகளை மேற்படி குழந்தைகள் காப்பகத்தில் வைத்திருந்தும், பொழுதுபோக்கு, ஓய்வு, படிப்பு ஆகியவற்றிற்க்கான அடிப்படை வசதிகள் எதுவும் செய்து கொடுக்காமல் இருந்தும், குழந்தைகளை காப்பகத்தில் சேர்ப்பதற்கான நுழைவு பதிவேடு, கண்காணிப்பு பதிவேடு, இருப்பு பதிவேடு, மருத்துவ பதிவேடு ஆகியவற்றை முறையாக பராமரிக்காமலும், மேற்படி பதிவேடுகளை குற்ற நிகழ்வுகளை மறைப்பதற்க்காக அழித்தும் இந்திய தண்டனை சட்டம் 201வது பிரிவின்படி இந்நீதிமன்றத்தால் விசாரணை செய்யத்தக்கதும், தண்டிக்கத்தக்கதுமான குற்றம் புரிந்துள்ளீரே அதுபற்றி நீர் என்ன சொல்கிறீர்? எதிரிகளின் சார்பாக 2வது எதிரியின் பதில்: பொய் வழக்கு. குற்றவாளி இல்லை□

39. The charge is that records are destroyed to screen the other offences. This Court has already rendered its finding in respect of every offence. Except for the offence under Section 370-A, the other offences are not made out. In respect of Section 370-A, though it can be said that in respect of the sexual harassment of one particular inmate, it can still be possible for the prosecution to contend that the records would have helped in further buttressing the offence concerning the said child concerning her date of admission, time, in which, she was put into the question etc., and ingress and egress and other particulars. Therefore, at this stage, it is not possible to interfere with the said charge.



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40. For all the above reasons, this Criminal Revision Case is partly allowed on the following terms:-

(i) In so far as charge Nos.2 and 4 concerning the offences under Sections 370-A and 201 of the Indian Penal Code, the charges and also the findings in the impugned order in Crl.M.P.No.93 of 2024 in S.C.No.48 of 2020, dated 19.06.2024 are upheld. The trial can proceed in accordance with the law in respect of the said charges;

(ii) In so far as charge Nos.1, 3 and 5 concerning the offences under Sections 370 and 467 of the Indian Penal Code and Section 24 of the *Orphanages and Other Charitable Home (Supervision and Control) Act, 1960* , the charges are set aside and also the findings in the impugned order in Crl.M.P.No.93 of 2024 in S.C.No.48 of 2020, dated 19.06.2024, shall stand set aside;

(iii) Consequently, the connected miscellaneous petition is closed.

03.12.2024

Neutral Citation : yes
grs

To

1. The Sessions-cum-Mahila Judge,

<https://www.mhc.tn.gov.in/judis>



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Tiruchirapalli.

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2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
CBI/SCB, Chennai.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Crl.R.C.(MD).No.796 of 2024
and Crl.M.P.(MD).No.8580 of 2024

03.12.2024