

HIGH COURT OF UTTARAKHAND AT NAINITAL

Hon'ble Justice Sri Rakesh Thapliyal

25th July 2024

Criminal Misc. Application(C482) No. 332 of 2024

Mohit Kucchal

..... Applicant

Vs.

State and others

.....Respondent

Counsel for the Applicant:

Mr. Bhupesh Kandpal

Counsel for the State:

Mr. Sandeep Sharma, learned Brief
Holder

Upon hearing the learned Counsel, the Court made the following Judgment:

(Per Mr. Rakesh Thapliyal, J.)

1. A first information report was lodged by respondent no. 4 on 20.08.2023, bearing FIR No. 0334 of 2023 at P.S. Kaliyar Shareef , District Haridwar for the offence punishable under Section 370 IPC in which after investigation charge sheet was filed against six accused persons including the present applicant Mohit Kucchal, S/o Navneet Kucchal for the offence punishable under Section 370 IPC in which after taking cognizance, the applicant and other co-accused persons were summoned and regular trial was registered, i.e., SST No. 27 of 2024, State vs. Nadeem & others. Subsequently, the present applicant Mohit Kucchal preferred instant application under Section 482 Cr.P.C. challenging the proceedings of SST no. 27 of 2024 on the ground that the applicant is not named in the FIR, but, subsequently he has been charge sheeted, and, thereafter he preferred a bail application and he was enlarged on bail.

2. The present C482 application is supported with the compounding application wherein it is stated that

applicant adopted the son of respondent no. 3. The present petition along with compounding application came up before this Court on 29.02.2024, and on that day the present applicant as well as respondent no. 3-original mother of the child were present before the Court and this Court also interacted with respondent no. 3 and on interaction she submits that she has given her minor child in adoption to the applicant. To verify this aspect, the State was granted time to file objection to the compounding application and simultaneously the proceeding of the trial was stayed.

3. Thereafter, the Registry was directed to get instruction in the matter from the District Child Welfare Committee, District Haridwar, and, thereafter the Chairman of District Child Welfare Committee submitted its report on 27.04.2024 mentioning therein that the child was given full medical treatment and after medical examination, the child was admitted in 'Anath Shishu Palan Trust' of Shyampur-Kangri in Haridwar District, which is recognized to look after the children under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. The report further indicates that the Manager of the Trust Mr. Rajeev Bhalla informed that the child was given a name as "Aarav" and he is medically fit.

4. Subsequently, when the matter was again listed, on that day the applicant and respondent no. 3 were also present before this Court and respondent no. 3 requested that the child be handed over to the present applicant. Subsequently, IA No. 3 of 2024 was moved alongwith the joint affidavit of the applicant and respondent no. 3

signed by both the counsel, representing both the parties wherein direction were sought that Child Welfare Committee be directed to handover the child to the applicant. Thereafter, this Court on 30.04.2024, passed the following order:

"4. This Court by order dated 29.02.2024, stayed the proceeding of Special Sessions Trial No. 27 of 2024, State versus Nadeem and others, pending in the Court of 1st Additional District Judge/Additional Session Judge, Roorkee, Haridwar, arising out of FIR No.334 of 2023, under Section 370 IPC.

5. It is submitted by the learned counsel for the parties that the present applicant, namely, Mohit Kucchal S/o of Navneet Kucchal resident of 8/1494, Samrat Vikram Colony, Chilkana Road, Saharanpur, Uttar Pradesh, adopted the son of respondent no.3. Smt. Rukmani wife of Shri Ravi Resident of Bullanwala, Doiwala, Dehradun, who is the natural/biological mother of the child. Earlier, this matter was listed day before yesterday and on that day, the registry was directed to get instruction in the matter from the CWC, District Child Welfare Committee District Haridwar and the Chairman of District Child Welfare Committee Haridwar submitted the instructions to the Registrar General on 27.04.2024, wherein it is reported that the child is given full medical treatment and after medical examination, the child was admitted in Anath Shishu Palan Trust of Shyampur-Kangri in Haridwar District, which is recognized to look after the children under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015.

6. It is also mentioned in this letter that the Manager of this Trust-Rajeev Bhalla also informed that the child was given a name as "Aarav" and the child is medically fit.

7. This matter was again listed yesterday and on that day, the applicant and respondent no.3 were present in the Court physically and they request that since the respondent no.3 gave her childson to the applicant by way of adoption and therefore respondent no.3 requests that the child be handed over to the present applicant.

8. So far as the present applicant is concerned, no doubt the applicant has also been charge-sheeted for the offence punishable under Section 370 IPC, proceeding of which has already been stayed by this Court. However, since a request was made by the applicant for taking custody of the child, and for this purpose, IA No.3 of 2024 has been moved along with the joint affidavit of the applicant and respondent no.3 signed by both the counsels representing both the parties, wherein a relief has been sought that the child welfare committee/Sriram Ashram Haridwar be directed to hand over the child to the applicant. In para 8, the detail of the family members of the present applicant is also mentioned and the same are being reproduced herein-as under:-

"8. The applicant is a man aged about 38 years and is a family person, also has a housewife and 2 daughters along with one male child, that is the child in connection with the present FIR (hereinafter referred to as "The Child").

The child was adopted by the applicant as he was having two daughters and therefore a mere 1 day old child was taken by him by the sole and pious intention of making and treating the child as his own son."

9. Learned counsel for the applicant also pointed out that the present applicant is on bail and while granting him bail this Court by order dated 29.12.2023, also taking into consideration the submission as advanced by learned counsel for the applicant that the applicant has

two daughters and wanted to take one baby boy in adoption, therefore he took the child in adoption. Therefore, it is not a case of trafficking.

10. This Court also taking into consideration the submission of the State Counsel that the child was recovered from the applicant and the statement of the mother of the child reveals that according to her, she had given her child in adoption.

11. In para 10 of the affidavit, it is submitted that the child was taken by the applicant on 30.05.2023 and on the same date, he was taken the child to the Doctor Deepak Bansal at Sahranpur for medical check up. The weight of the child was also measured, which was 2.2 kilogram and the child was not in a very healthy condition and was born underweight. The applicant took the child in adoption since the natural-biological mother of the child respondent no.3 was separated and she is not aware about her husband who is missing and now respondent no.3 remarried and that time she was six months' pregnant and after giving birth to the child, she has decided to give the child in adoption. After taking into consideration the status of the present applicant including the financial condition, she has handed over the child to the present applicant. She is also present in the Court and this Court also interacts with her.

12. In para 11, the financial status of the applicant has also been mentioned. The applicant is doing the business of paper merchant with all the legal formalities and GST registration/income tax payee. There is no criminal antecedent of the present applicant.

13. In para no.13 of the affidavit, it is submitted that after taking the child in the custody, all necessary rituals were done by the applicant such as NAMKARAN, GRAH PRAVESH of child and other ceremonies as per the Hindu Custom and Rites and the applicant, his wife as well as his daughters treated the child as their family member.

14. Mr. Saurabh Pandey, learned Brief Holder for the State submits that the present applicant was made an accused on the charge-sheet merely on the ground that there is no valid adoption of the child and in response to this Mr. Bhupesh Kandpal, learned counsel for the applicant submits that immediately after taking the custody of the child, the applicant was in touch with the Doctors for the medical check up and by that time the FIR was lodged and the child was taken by the Child Welfare Society due to which, the process for adoption of child could not be initiated.

15. Today, both the applicant and respondent no.3.(the natural /biological mother of the child) are present in the Court. This Court interacts with each of them. Both of them undertake before this Court that they will proceed immediately to get adoption deed strictly as per the provisions of The Hindu Adoptions and Maintenance Act, 1956.

16. Mr. Saurabh Pandey, learned Brief Holder for the State submits that the natural-biological mother of the child respondent no.3 admits the fact that she has given her child in adoption to the present applicant. Therefore for the best interest of the child, who, as on today, is only 11 months' old, the custody should be handed over to the present applicant.

17. Learned counsel for the parties, particularly, Mr. Bhupesh Kandpal, learned counsel for the applicant submits that the present applicant, his wife and daughters will take proper care of the child with full affection and love.

18. Accordingly, after taking into consideration of all aspects of the matter, the Chairman of CWC, Haridwar is directed to give the custody of the child to the present applicant in the presence of respondent no.3 by taking their signatures and by identifying the applicant, his wife and respondent no.3. The Chairman will ensure that the custody of the child, after completing all the procedure and the formalities as required under law, be handed over to the present applicant.

19. List this matter on 20.06.2024. By that time the counsel for the parties are directed to file the affidavit giving the details of the

adoption and by that time, the State Counsel may also file the objection to the compounding application.

20. Criminal Miscellaneous Application (IA No.3 of 2024) is disposed of finally.

21. Applicant and respondent no.3 are directed to initiate the process of adoption after taking the custody of the child."

5. In compliance to the order dated 30.04.2024, the custody of the child was given to the applicant on 24.05.2024 and thereafter rejoinder affidavit was also filed bringing on record the copy of adoption deed registered on 06.06.2024. This Court directed to the State Counsel to file objection to the rejoinder affidavit and also to file response with regard to the registered adoption deed.

6. Thereafter, a supplementary affidavit has been filed by the State which was sworn by Ms Rakhi Rawat, Sub Inspector, P.S. Kotwali Roorkee District Haridwar and in para 5 it is stated that the deponent inquired about the adoption deed and it was found that the adoption deed was registered in the office of the Sub Registrar Dehradun bearing Registration no. 1126 of 2024 on 06.06.2024. The original adoption deed is also shown to this Court and the same has been perused which has been returned back to the learned counsel for the applicant.

7. Undisputedly, the applicant was also charge sheeted for the offence punishable under Section 370 IPC and he is facing trial in SST no. 27 of 2024. Now, the present applicant adopted the child of respondent no. 3 by valid adoption deed dated 06.06.2024 and the child was in the custody of the applicant since 30.05.2024 and as per the affidavit filed by the State, the adoption deed is valid one, duly registered in the office of the Sub Registrar. Now the

question arise whether the proceeding should be permitted to continue against the applicant.

8. Learned counsel for the applicant submits that admittedly the child has been adopted by the applicant and the adoption of the child was happily accepted by the wife of the present and his two daughters and the child is treated as a family member, therefore, the proceeding may be dropped by allowing the compounding application by taking into consideration that respondent no. 3 the actual mother of the child voluntarily gave the child on adoption to the applicant and his family members.

9. Apart from this, the learned counsel for the applicant also submits that for the better future prospect of the child who was taken by the applicant by way of adoption, the proceeding be dropped otherwise it will also spoil the family of the applicant as well as the child.

10. Mr. Sandeep Sharma, learned Brief Holder for the State submits that for the betterment of the child, who is minor and has been taken on adoption by the applicant, there is no useful purpose to continue with the proceeding against the applicant and for the interest of the child, the proceedings can be dropped qua the applicant by allowing the compounding application. Learned counsel for the State further submits that the offence punishable under Section 370 IPC is not compoundable but he fairly submits that after taking into consideration that the child has been taken by the applicant by way of adoption and the adoption deed is valid and the wife of the applicant also

accepted this adoption, and therefore, for the betterment of the child the offence can be compounded.

11. Today, the applicant and his wife Chhavi Kucchal are present in Court with child who has been adopted and this Court further interact with each of them and it appears that both the applicant and his wife are very happy with the child, therefore, this Court is also of the view that the compounding application deserves to be allowed.

12. Applicant and his wife are identified by their counsel Mr. Bhupesh Kandpal. Xerox copy of the Aadhar Card duly signed by the applicants and identified by their counsel is filed and kept on record.

13. In view of the above, compounding application is allowed. The proceedings of S.S.T. No. 27 of 2024, State vs. Nadeem and others, pending in the court of 1st Addl. Session Judge, Roorkee, District Haridwar are hereby quashed qua the applicant only.

14. Accordingly, present C482 application is disposed of finally.

(Rakesh Thapliyal, J.)