

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1332 of 2017**

1. Kapil Dev Agrawal S/o Bhup Dev Agrawal, Aged About 45 Years
2. Smt. Neetu Agarwal, W/o Kapil Dev Agarwal, Aged About 40 Years
3. Minor Jaidev Agrawal S/o Kapil Dev Agrawal Aged About 3 Years through Natural Guardian Mother Neetu Agrawal

All R/o Samta Colony, Raipur Tehsil - Police Station And District Raipur Chhattisgarh

---- **Petitioners****Versus**

1. Smt. Babita Agrawal W/o Vasudev Agrawal Aged About 28 Years
2. Vasudev Agrawal S/o Bhup Dev Agarwal Aged About 37 Years

Both R/o Kharsia, District Raigarh Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri Amit Sharma, Advocate
For Respondents	:	Ms. Hamida Siddiqui, Advocate with Shri Raghvendra Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/02/2018**

1. Heard.
2. The instant petition is against the order dated 29.07.2017 passed by the Sub-Divisional Magistrate, Kharsia whereby a search warrant has been issued against the petitioners to produce the minor child aged about 3 years before the Court of Sub Divisional Magistrate, Kharsia.
3. Learned counsel for the petitioners would submit that the application was

filed under Section 97 & 98 of the Cr.P.C. and a prayer was made to give the custody of the child to the respondents. He would further submit that such order which is passed by the SDM is without jurisdiction in exercise of powers under Section 97 of the Cr.P.C.

4. Per contra learned counsel for the respondents oppose the same and submit that the order is well merited which do not call for any interference.
5. Section 97 of the Cr.P.C. reads as under:-

97. Search for persons wrongfully confined.- If any District Magistrate, Sub- divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search- warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

6. Section 97 would show that when there is a reason to believe that a person is wrongfully confined and the confinement amounts to an offence, the search warrant may be issued.
7. Perusal of the application filed under Section 97 Cr.P.C. would show that Babita Agrawal, the applicant therein was stated to be married to Vasudev Agrawal and one document of *Godnama* is on record, which shows that the Vasudev Agrawal and Babita Agrawal have given their son to Kapil Dev Agrawal and Smt. Neetu Agrawal, the petitioners herein. The said adoption deed as on date prima facie exists unless is annulled or proved otherwise as nonexistent.
8. In view of the law laid down by the Supreme Court in the case of **Ramesh Vs. Laxmi Bai (SMT) {(1998) 9 SCC 266}** Section 97 in this case cannot be pressed into motion as Section 97 speaks for forceful confinement of the

person, which prima facie do not appear to be existing in this case subject to the decision of merits on the adoption. In view of this, the order dated 29.07.2017 passed by the Sub-Divisional Magistrate, Kharsia, is set aside. However, it is made clear that this Court has not expressed any opinion on the merits on custody of child and the petitioners shall be at liberty to raise all the grounds in the properly constituted proceedings before the appropriate forum.

9. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu