



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 08.10.2018
ORDERS PRONOUNCED ON : 10.10.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrIOP(MD)No.15402 of 2017
and
CrIIMP(MD)No.10237 of 2017

1.Helen Anitha,

2.Girija

... Petitioners

Vs

1.The Inspector of Police,
Vadaseri Police Station,
Nagercoil,
Kanyakumari District.

2.The District Child Protection Officer,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.197 of 2017 on the file of the Inspector of Police, Vadaseri Police Station, Kanyakumari District, quash the same.

For Petitioners :Mr.Niranjana S.Kumar
For Respondents :Ms.S.Bharathi,
Government Advocate(crlside)

ORDER

This case raises an important and interesting question as to whether a childless lady, who comes across an abandoned child, takes that child and starts nurturing it as her own child, can be branded as an accused ?

2.This Court has to carefully handle the issue that has arisen in this case, since this case should not be shown as a precedent, where a child is taken away by a person, merely on the ground that it has been abandoned, without handing over the child to the District Child Protection Officer and since the child can be adopted only in accordance with law and by strictly following the procedure



prescribed under law.

3.It is seen from records that the first petitioner and her husband did not have children. During that point of time, the second petitioner, being a Nurse, was giving treatment to the first petitioner and her husband. A lady without getting married, became pregnant and she wanted to abort the child in the womb. She got in touch with the second petitioner. The abortion could not be carried out and therefore, the lady gave birth to a male child. This lady abandoned the child and absconded from the Hospital without any intimation. In spite of best efforts, this lady was not able to be traced.

4.The second petitioner, who was giving treatment to the first petitioner and her husband, informed them about the abandoned child and asked the first petitioner, whether she was willing to adopt the new born baby and take the child as her son. The first petitioner, who was not aware about the adoption procedure and was desperate to have a child, immediately agreed to take care of the child. The second petitioner, being a Nurse completed the formalities and also arranged to get a birth certificate to the first petitioner to the effect that the child was born to the first petitioner.

5.The child was named as Aaron New Bright and baptism was solemnized by Parish Priest in the Church of the Holy Family at Mela Ramanputhoor. Since baptism was performed, a certificate of baptism was also issued. The child started growing in the family of the first petitioner and the childless couple were bringing up the child with a lot of love and affection.

6.As the fate would have it, an anonymous complaint landed in the Office of the District Child Protection Officer, Kanyakumari District. Immediately, the District Child Protection Officer, visited the house of the first petitioner. The first petitioner explained the entire story. Immediately, the District Child Protection Officer, got the statement in writing and lodged the present complaint before the respondent Police, which was registered by the respondent Police in Crime No.197 of 2017 for the offence under Section 307 of IPC.

7.All the above facts narrated by this Court are admitted facts. Immediately, thereafter, the child was taken away by the Child Welfare Officer and kept in a Home. The child stopped eating and was profusely crying, since it was taken away from its parents. Immediately, this was informed to the first petitioner and her husband and they made a representation to the Child Welfare Committee to take care of the child. Since, the welfare of the child was of paramount importance, the Child Welfare Committee got legal opinion and by proceedings dated 25.06.2017, the child was handed over to the first petitioner and she was permitted to take the child and ever since, the child is happily living with the first petitioner and her family.



8. This Criminal Original Petition has been filed by the petitioners seeking to quash the FIR registered by the respondent Police in Crime No.197 of 2017.

9. The moot question to be answered in this case, is whether the act of the petitioners can be called as child trafficking, in order to attract the provisions of Section 370 of IPC?

10. Trafficking was brought in as an offence under the Indian Penal Code, by Criminal Law (Amendment) Act, 2013. By bringing in the said amendment, the legislature had enlarged the scope of the offence under Section 370 of IPC and included within its purview not just mischief of slavery, but trafficking in general of minors as also adults and also forced or bonded labourer, prostitution, organ transplantation and to some extent child marriages.

11. For the purposes of this new offence, the offender has been classified into five categories, thus covering every aspect of the commission of such offence. A person can be held liable within the mischief of this offence, if he either (i) recruits or (ii) transports, (iii) harbours, (iv) transfers or (v) receives, a person or persons.

12. Exploitation is at the core of this new offence of trafficking. This exploitation can be deciphered from either of the following course of conduct:-

- (i) use of threats upon the victim who is being trafficked;
- (ii) use of force, or any other form of coercion upon the victim who is being trafficked.
- (iii) by means of abduction of the victim who is being trafficked
- (iv) by practising fraud, or deception upon the victim who is being trafficked
- (v) by abuse of power upon the victim who is being trafficked
- (vi) by inducement of the victim who is being trafficked, 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

13. The first explanation that is added to this Section, further adds to the meaning of exploitation, any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or forced removal of organs. The second explanation added to this Section, takes away the possibility of the accused from taking a defence of consent of the victim to any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs.

14. It is to be seen whether the facts of the present case falls within the four corners of Section 370 of IPC. The admitted facts of



the case are that there was an abandoned child, who was desperately looking for parents and it was destined to get into the arms of the craving childless couple. This couple had adopted the child and had started bringing up the child, as their own child, without knowing about the legal consequences and in complete ignorance of the procedure to be followed for adopting the child. In fact, the first petitioner had narrated the entire incident to the District Child Protection Officer, When she was questioned about the child and she did not even attempt to conceal about the facts. Can the first petitioner and her husband be called as child traffickers?. The only answer that this Court can give is an "emphatic No". The childless couple, without understanding the consequences of what they were doing and with lot of craving and desperation in their heart, started bringing up the child as their own child. They were shown to be the parents in all legal documents such as birth certificate, Aadhar card, certificate of baptism, etc.,. The Core of this offence is exploitation. By no stretch of imagination, can the petitioners be said to be exploiting the child. Rather the child is being brought up with a lot of love and affection by the first petitioner and her family.

15.It is true that the child was not adopted in accordance with law and the mandatory procedure for adoption was not followed in this case. That by itself will not make the act of the first petitioner, an offence. It was more an act of a craving mother for a child. To call it a sin, or an offence, sounds blasphemous. Even after the FIR was registered and the child was taken away from the first petitioner and brought to the Home, the Child Welfare Committee, Kanyakumari District, immediately found that the child was missing its parents and it even refused to take food. Therefore, the Child Welfare Committee was forced to handover the child to the first petitioner and her family. The welfare of this child is paramount in this case. This Court does not want to precipitate the issue and take away the child from the first petitioner.

17.In the interest of justice, this Court has to exercise its jurisdiction under Section 482 of CrPC to quash the FIR pending before the first respondent Police and bring this story to a happy ending.

18.In order to ensure that the child is being properly brought up by the first petitioner and her family, the Child Welfare Committee, Kanyakumari District can make a periodical visit to the house of the first petitioner and apprise itself to the prevailing situation, till the child reaches the age of five. This arrangement is made only to ensure the welfare of the child.

19. In the result the FIR in Crime No.197 of 2017 pending on the file of the first respondent Police is hereby quashed. Accordingly, this Criminal Original Petition is allowed.

<https://hcservices.ecourts.gov.in/hcservices/>

20.It is made clear that the decision rendered in this case,



cannot be taken as a precedent in all other cases and it confines itself to the peculiar facts of the present case.

Sd/

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS-I)

To

1. The Inspector of Police,
Vadaseri Police Station,
Nagercoil,
Kanyakumari District.

2. The District Child Protection Officer,
Nagercoil,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. NIRANJAN S. KUMAR, Advocate, SR.No.89836

Cr1OP (MD) No.15402 of 2017
10.10.2018

DSK

KK/RP/SAR-1/22.11.2018/5P-5C