

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.6251 OF 2017

ORDER:

This writ petition is filed by the petitioners under Article 226 of the Constitution of India, for the following relief:

“...to issue a appropriate Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the Proceedings in FIR in Crime No.76/ 2017, dated 16-02-2017 for the offence U/ Sec.80 of the Juvenile Justice (Care & Protection of Children – CPC) Act, 2015 on the file 6th respondent as arbitrary, illegal, and misuse of provisions Juvenile Justice Act in view of the Dathatha Homam Dt.21-12-2016 and Registered Adoption Deed Dt.22-12-2016 and set aside the same and further declare that respondents 1 to 7 has no power to interfere with the affairs of petitioners family and their Adoption done through the Dathatha Homam Dt.21-12-2016 and Registered Adoption Deed Dt.22-12-2016 and pass such other order or orders as this Hon’ble Court may fit and proper in the interest of justice.”

Heard learned counsel for the petitioners and learned Government Pleaders for Home, Revenue and learned counsel for respondents 8 and 9.

The FIR registered was on 16.02.2017 bearing No.76 of 2017 of Visakhapatnam City under Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

The sum and substance of the accusation is that A1 and A2 adopted a three months old female baby from one Ajaya Kumar Behera and Saraswati Behera W/ o Ajaya Kumar Behera of Odisha State through registered deed of adoption without following the Central Adoption Resource Authority (CARA) guidelines and it is an offence under 80 of the Act, thereby.

Section 80 is a penal section if any person or organization offers or gives or receives any orphan, abandoned or surrendered child for the purpose of adoption without following the provisions or procedure provided under the Act, it is not a case of the child is orphan, Section 80 of the Act has no application at all thereby. In fact for the biology parents to give a child in adoption to take by prospective adoptive parents, the procedure of the CARA guidelines need not be followed. The law is very clear on this aspect from the expression in Anokha v. State of Rajasthan¹. Hence, the crime proceedings are unsustainable.

Accordingly, the Writ Petition is allowed quashing the proceedings against the petitioners in Crime No.76 of 2017 on the file of Visakhapatnam City.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.12.2018
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¹ 2004(1) SCC 382