

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1864 OF 2017

Adharashram Through Rahul Jadhav

...Petitioner

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Shirin Merchant for the Petitioner.

Mr. Ashish Sawant (Amicus Curiae) for Respondent No.2.

Mr. A. D. Kamkhedkar, APP for the Respondent-State.

**CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.**

DATE : 23/01/2019.

P.C.:

. Heard learned counsel for the petitioner, learned APP and learned counsel (appointed) for respondent No.2.

2. Learned APP is seeking time as instructions are awaited.

3. The present proceedings are pending since June-2017 and on 28/9/2017 this Court has after hearing the petitioner and learned APP passed order staying proceedings in Misc. Application No.43/2016 pending on the file of the learned District Judge-8, Nashik. The petitioner a duly authorized agency is prosecuting Misc. Application for seeking approval of District Court to give child in adoption.

4. It is not in dispute that child is born to unwed mother who then handed it over to the petitioner. She had also filed police complaint. Respondent No.2 is her relative who was accused of offence punishable

under sections 376, 420 and 506 of IPC. The District Judge-7 & Additional Sessions Judge, Nashik has acquitted him on 28/11/2016 in Sessions Case No.39/2016. This judgment of acquittal is not assailed either by the victim or the State Government. Learned APP wanted to verify this position. As the matter is pending since long we reject her request. In the judgment dated 28/11/016 District Judge-& & Additional Sessions Judge, Nashik has made some observations which cast cloud on the process of handing over of child by unwed mother to the petitioner institution. Learned Sessions Court has found that the mother could not have handed over custody of the child to the petitioner without consent of the father of that child. Because of this observation the further proceedings in Misc. 43/2016 for clearing the adoption are withheld. Learned District Judge-8, Nashik was about to dismiss the prayer of the petitioner and hence this Court on 12/9/2017 has stayed this proceeding.

5. Respondent No.2 before this Court is the accused represented by counsel appointed for him. Learned counsel upon instruction states that respondent No.2 does not object to the process of adoption and has also no objection if observations in the judgment of acquittal which are coming in the way of adoption process are quashed and set aside. After hearing respective counsel we find these observations were not necessary for considering the accusations and for recording the judgment of acquittal.

6. We therefore quash and set aside these observations in the judgment and particularly in paragraph Nos.17 to 24. In the result, with consent of respondent No.2 operative clause 4 and 5 in the order are also set aside.

7. Accordingly, the present writ petition is allowed and disposed of. No costs. Charges of learned counsel (appointed) for respondent No.2

be paid as per rules.

(REVATI MOHITE DERE, J.)

(B. P. DHARMADHIKARI, J.)