

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.143 OF 2021

1. Kripal Amrik Singh]
R/at, Shri Guru Singh Sabha,]
Gurudwara, Four Bungalows,]
Andheri (W), Mumbai – 400 053.]

2. Balwinder Kaur Kripal Singh]
Sabharwal, R/at, Shri Guru Singh]
Sabha, Gurudwara, Four]
Bungalows, Andheri (W), Mumbai]
– 400 053.] ... Petitioners

Versus

1. The State of Maharashtra]

2. Child Welfare Committee, Mumbai]
Suburban District,]
having office at, Chembur]
Children's Home Campus, V.N.]
Purav Marg, Opp. Anushakti]
Nagar Bus Depot, Mankhurd,]
Mumbai – 400 088.]

3. Durgamiti Dharmendra Bahadur]
Saha @ Heera Saha]
R/at, 2/401, Amber Building,]
Suresh Nagar SRA, Lokhandwala]
Road, in front of RTO Office, Four]
Bungalows, Andheri (W), Mumbai]
– 400 053.] ... Respondents

...

Mr. Raja Thakare, senior counsel with Mr. Siddharth Jagushte i/b Mr. Akash Kavade for the petitioner.

Mr. J.P. Yagnik, A.P.P. for the State.

Mr. Karansingh B. Rajput for respondent No.2.

Ms. Aishwarya Sharma for respondent No.3.

Ms. Rashmi Kamble, CWC Member-present in court.

...

CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 01ST MARCH, 2021.

PRONOUNCED ON : 18TH MARCH, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. This is a writ petition seeking a writ of habeas corpus and a direction to respondent Nos.1 and 2 to release minor child - “Bhavreet @ Bhavnoor Kaur” and for handing over her custody to the petitioners.

2. The petitioners claim that they adopted the said child when she was about two weeks’ old and it is their claim that action undertaken by respondent Nos.1 and 2 against them was not warranted in the facts and circumstances of the present case. The relevant facts pertaining to the present petition are that the aforesaid

girl-child was born on 08/01/2019. When it was found that the biological mother of the child i.e. respondent No.3 herein was not willing to take care of the girl-child, an intimation was given to a Non Governmental Organization (“NGO”) viz. Childline. Pursuant to such intimation, a letter dated 17/01/2019 was sent on behalf of the NGO – Childline to respondent No.2 - Child Welfare Committee (“CWC”) constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015 (“**Juvenile Justice Act**”). In this letter, the fact regarding respondent No.3 not willing to take care of the child was mentioned and that, she had decided to either give the girl-child in adoption or to keep her in some Ashram. It was also stated in the letter that there was a possibility of the girl-child being sold by the biological mother i.e. respondent No.3 herein.

3. Upon receiving the said written communication, respondent No.2-CWC took cognizance of the matter and directed respondent No.3 to come before it with the girl-child once in a month and respondent No.2-CWC further gave a direction to the aforesaid NGO to supervise the activities of respondent No.3 by visiting her once in a month. But, it appears that immediately thereafter, on 22/01/2019, a notarized Adoption Deed was signed by respondent No.3, whereby the girl-child was purportedly given in adoption to the petitioners herein. On this basis, the girl-child was given to the petitioners, who took her to Punjab.

4. On 14/02/2019, when persons from the said NGO–Childline visited the house of respondent No.3 as per the direction given by respondent No.2-CWC, it was found that the girl-child was given away by respondent No.3 to the petitioners for which respondent No.3 had received an amount of Rs.20,000/-. In this situation, the NGO–Childline sent written communication to respondent No.3 to take appropriate action in the matter, whereupon respondent No.2–CWC immediately directed the NGO–Childline to report the matter to the police. Respondent No.2-CWC also sought the presence of respondent No.3 before it but, respondent No.3 did not respond.

5. It is in this backdrop that on 18/06/2019, an FIR came to be registered at Amboli Police Station being C.R. No.115 of 2019 against petitioner No.1 and respondent No.3 for offence under Section 80 of the Juvenile Justice Act.

6. On 28/06/2019, the girl-child was produced before respondent No.2–CWC by the police and respondent No.3 was also present. Respondent No.3 admitted before respondent No.2-CWC that she had received an amount of Rs.40,000/- from the petitioners for handing over the girl-child. Respondent No.2–CWC, in these circumstances, directed the girl-child to be handed over to “Vatsalya Trust”, a Special Adoptive Agency.

7. Respondent No.3 filed an application before respondent No.2–CWC for custody of the girl-child. Petitioner No.1 also filed applications for meeting the girl-child and for celebrating her birthday. Respondent No.2-CWC directed the NGO to submit a Social Investigation Report as contemplated under the Juvenile Justice Act, which was submitted on 24/12/2019. In this report, it was stated that respondent No.3 had initially stated that she was impregnated by her friend. Later, she stated that she was raped by her employer. Respondent No.3 stated that she had handed over the girl-child to the petitioners out of goodwill and that, they had given her financial help of about Rs.20,000/- for the treatment and groceries. The said report recorded the fact that the petitioners relied upon the aforesaid notarized Deed of Adoption for their claim in respect of the girl-child. It was observed in the report that respondent No.3 was possibly suffering from mental illness.

8. On 03/01/2020, respondent No.2–CWC passed an order rejecting the aforesaid applications of petitioner No.1 and respondent No.3. Respondent No.3 filed a second application seeking custody of the girl-child before respondent No.2-CWC, wherein she claimed, for the first time, that she was physically and financially capable of taking care of the girl-child. Petitioner No.1 addressed a letter to respondent No.2 expressing that he had no objection to the custody of the girl-child being given to respondent

No.3. In the interregnum, the petitioners had filed a writ petition before this court seeking custody of the girl-child and at this stage, petitioner No.1 expressed his willingness to withdraw the said writ petition. On 22/12/2020, this court passed an order in the aforesaid writ petition being Writ Petition No.3998 of 2019 permitting the petitioners to withdraw the writ petition with liberty to file fresh petition. Thereafter, the petitioners filed the present writ petition on 02/02/2021 for a writ of habeas corpus and a direction to respondent No.2–CWC to handover custody of the girl-child to them.

9. In the present writ petition, the petitioners have relied upon the notarized Adoption Deed executed in their favour by respondent No.3. It was stated that the petitioners had not committed any offence under Section 80 of the Juvenile Justice Act and to support this contention, they relied upon Section 56(3) thereof, which states that nothing in the Juvenile Justice Act shall apply to adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (**“Hindu Adoption Act”**). They claimed that the continued custody of the girl-child under the directions of respondent No.2 with the Adoption Agency amounted to illegal detention and in these circumstances, the writ petition deserved to be allowed.

10. On 22/01/2021, this court issued notice in the present writ

petition. By order dated 18/02/2021 advocate was appointed to represent respondent No.2-CWC and the petitioners were allowed to have access to the girl-child through video conferencing between 4.00 p.m. and 6.00 p.m. on 24/02/2021. Thereafter, the writ petition was finally heard on 01/03/2021.

11. Mr. Raja Thakare, learned senior counsel appearing on behalf of the petitioners submitted that the writ petition deserved to be allowed because in the present case, respondent No.3 i.e. the biological mother of the girl-child had willingly given the child in adoption to the petitioners by executing the aforesaid Adoption Deed. It was submitted that the requirements for a valid adoption as per the provisions of the Hindu Adoption Act were fully satisfied in the facts and circumstances of the present case and, therefore, by operation of Section 56(3) of the Juvenile Justice Act, Section 80 thereof did not apply in the case of the petitioners and, therefore, the registration of FIR against petitioner No.1 was wholly misplaced. It was further submitted that once it was found that the petitioners had validly adopted the girl-child, there was no jurisdiction with respondent No.2-CWC, to have proceeded to take away the custody of the girl-child. It was submitted that therefore, the petition deserved to be allowed and respondent No.2-CWC ought to be directed to hand over the custody of the girl-child to the petitioners. In order to support his contention, learned senior counsel placed reliance on the judgment of the Hon'ble Supreme

Court in the case of *Mst. Param Pal Singh through Father v. National Insurance Company & Ors.*¹

12. Mr. Rajput, learned counsel appointed to appear on behalf of respondent No.2-CWC submitted that in the present case, the provisions of the aforesaid Act squarely applied, particularly for the reason that the girl-child in the present case was a child in need of care and protection as defined under Section 2(14) of the Juvenile Justice Act. It was submitted that the documents available on record including the rozanamas of the proceedings before respondent No.2-CWC clearly demonstrated that the girl-child was sold by the biological mother i.e. respondent No.3 to the petitioners and that such an act could not be covered up on the basis of the said purported Adoption Deed. It was submitted that respondent No.2-CWC was clearly empowered to take all necessary steps for the safety and security of the said girl-child, who was in need of her care and protection as per the provisions of the Juvenile Justice Act. Learned counsel stressed upon the objects and reasons of the Juvenile Justice Act, which pertain to principles and procedures required in the case of children in need of care and protection so as to ensure proper care, protection, development, treatment and social re-integration of such children, keeping in view the best interest of the children.

¹ (2013) 3 SCC 409.

13. Learned counsel appearing for respondent No.2-CWC laid much stress on the reports submitted by the NGO and the observations made by the representatives of the NGO regarding the background in which respondent No.3 had given birth to the girl-child and the manner in which she had accepted money for handing over the said girl-child to the petitioners. On this basis, it was submitted that reliance could not be placed on the notarized Adoption Deed as proper procedure for adoption of the girl-child ought to have been undertaken by the petitioners. On this basis, it was submitted that the FIR was correctly registered against petitioner No.1 and respondent No.3 and that in the face of such criminal proceedings, the present writ petition did not deserve favourable consideration. It was also submitted that the girl-child could not be said to be in illegal detention and, therefore, the present writ petition is not maintainable. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the cases of Exploitation of Children in Orphanages in State of Tamil Nadu, in Re. v. Union of India & Ors.² and S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Ors.³

14. Ms. Sharma, learned counsel appeared on behalf of respondent No.3 and supported the contentions raised on behalf of the petitioners. We have also heard Mr. Yagnik, learned A.P.P. appearing for the State.

² (2017) 7 SCC 578

³ 2020 SCC OnLine SC 1023

15. The petitioners in this writ petition are seeking a writ of habeas corpus and a consequent direction that the aforesaid girl-child be handed over by respondent No.2-CWC to them. Such a writ at the behest of the petitioners would be maintainable on the basis that the custody of the child with respondent No.2-CWC is illegal and that they are entitled to custody of the child. In order to reach findings on the said aspect, it is necessary to refer to the documents on record as also the relevant provisions of the Juvenile Justice Act.

16. The documents placed on record, particularly the documents brought on record by respondent No.2-CWC, show that respondent No.3 i.e. the biological mother of the child, immediately after the childbirth, had expressed her opinion that she was not interested in taking care of the girl-child. This is evident from the written communications submitted by the NGO to respondent No.2-CWC and the visits of the representatives of the NGO. This is a significant aspect of the present matter because the moment there is material to show that the child is in a situation where her needs are not likely to be taken care of by the parents, such a child is in need of care and protection as defined under the provisions of the Juvenile Justice Act. Section 2(14)(v) of the Juvenile Justice Act reads as follows:

“2. Definitions. - In this Act, unless the context otherwise required, -

xxx

xxx

(14) “child in need of care and protection” means a child -

xxx

xxx

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or”

17. In the present case, respondent No.3 i.e. the biological mother of the child had expressed her opinion immediately after the birth of girl-child, leading to the NGO and its representatives reporting the matter to respondent No.2-CWC. The reports sought by respondent No.2-CWC from the NGO elaborately brought on record the unwillingness of respondent No.3 to take care of the child, thereby indicating that the said child was clearly a child in need of care and protection as defined in the above quoted provision of the Juvenile Justice Act. Consequently, respondent No.2-CWC had the power and responsibility to take necessary action in the context of the said girl-child. It is for this reason that the visits to the house of respondent No.3 were arranged so as to ensure that respondent No.3 was taking care of the said child.

18. But, on one such visit of representatives of the NGO, the fact about respondent No.3 having given away the girl-child to the petitioners stood revealed. Respondent No.3 stated that she had

given away the child and that she had received amounts from the petitioners. This *prima facie* appeared to be a case of the child being sold and, therefore, respondent No.2-CWC was justified in taking consequent action in the matter. A perusal of the rozanamas of the proceedings before respondent No.2-CWC show that respondent No.3 herself stated before respondent No.2-CWC on 28/06/2019 that she had received an amount of Rs.40,000/- from the petitioners and that she had given the girl-child to them. For this reason, the aforementioned FIR dated 18/06/2019 came to be registered against petitioner No.1 and respondent No.3 under Section 80 of the Juvenile Justice Act. The girl-child was taken back from the custody of the petitioners and she was handed over to Vatsalya Trust, which is a recognized Special Adoptive Agency.

19. The petitioners have based their claim on the alleged voluntarily giving away in adoption of the child by respondent No.3 and the consequent “Adoption Deed” executed between the parties. A perusal of the said document dated 22/01/2019 shows that it is merely a notarized document. It was strenuously contended on behalf of the petitioners that adoption of the girl-child in the facts and circumstances of the present case, was absolutely valid and that therefore, the petitioners were entitled to avail of protection under the specific provision under the Juvenile Justice Act i.e. Section 56(3) thereof. The petitioners claimed that the child was adopted under the Hindu Adoption Act and that, therefore, the provisions of

the Juvenile Justice Act would not apply to the present case, thereby showing that the entire proceedings before respondent No.2 were not in accordance with law and that, therefore, the writ petition ought to be allowed.

20. We have considered the aforesaid notarized document, purported to be an Adoption Deed, as also the contentions raised on behalf of the petitioners by relying upon Section 56(3) of the Juvenile Justice Act. We find that the said document nowhere indicates that the adoption is under the provisions of the Hindu Adoption Act. Nothing is sought to be placed on record to indicate that the requirements of the Hindu Adoption Act pertaining to a valid adoption were complied with in letter and spirit. It is only after the aforesaid FIR stood registered against petitioner No.1 that such a stand has been taken, for the first time, before this court. We are of the opinion that by merely executing a notarized document purporting to be an Adoption Deed, the petitioners cannot claim that they have a right to hold custody of the girl-child. This is particularly in the backdrop of the fact that respondent No.3 i.e. the biological mother of the girl-child herself specifically conceded, firstly before the representatives of the NGO when they visited her home on the instructions of respondent No.2-CWC that she had given away the girl-child and received Rs.20,000/- and secondly, when she appeared before respondent No.2-CWC and stated that she had received Rs.40,000/- from the petitioners and given away

the girl-child.

21. Although respondent No.3 claimed that the amount was given to her for her treatment and groceries, the material on record indicates that the child was given away to the petitioners in exchange of money. This is particularly so, because the NGO had reported to respondent No.2-CWC on 17/01/2019 itself that respondent No.3 was not inclined to take care of the girl-child and that there was necessity to take appropriate steps in the interest of the girl-child. It is thereafter, that on 22/01/2019, the aforesaid purported Adoption Deed was executed, the document was merely notarized and the girl-child was given away by respondent No.3 to the petitioners, upon accepting money from them. These facts clearly indicate that respondent No.2-CWC was indeed justified in taking action in the matter in terms of the Juvenile Justice Act. There is no doubt in our minds that the child was indeed a child in need of care and protection as defined in Section 2(14)(v) of the Juvenile Justice Act. Respondent No.2-CWC has acted in terms of the mandate of the Juvenile Justice Act and in pursuance of the objects and reasons for enactment of the said legislation, which is to ensure proper care, protection, development, treatment and social re-integration of such children by keeping the best interest of the children in mind.

22. A perusal of the provisions of the Juvenile Justice Act would

show that respondent No.2-CWC under Section 30 of the Juvenile Justice Act is required to ensure proper enquiry in respect of such children, who are in need of care and protection, to ensure their safety and well being.

23. Clauses (i) to (xviii) of Section 30 enumerate the functions and responsibilities of respondent No.2-CWC . We are of the opinion that in the present case, respondent No.2-CWC acted in furtherance of such functions and responsibilities placed upon it under the Juvenile Justice Act. Therefore, respondent No.2-CWC was justified in sending the girl-child to the Special Adoptive Agency, in this case, “Vatsalya Trust”.

24. It is relevant to note here that as per Section 1(4) of the Juvenile Justice Act, notwithstanding anything contained in any other law in force, the provisions of the said Act shall apply to all matters concerning children in need of care and protection. The said non-obstante clause makes it abundantly clear that the respondent No.2-CWC has acted as per the mandate of law.

25. Once we have reached the conclusion that in the present case, the girl-child was indeed in need of care and protection and that respondent No.2-CWC proceeded correctly on that basis, it becomes clear that the order dated 03/01/2020 was passed in exercise of powers of respondent No.2-CWC under the provisions

of the Juvenile Justice Act. Even otherwise, Section 101 of the Juvenile Justice Act provides for appeal that can be filed by any person aggrieved by an order passed by CWC. The petitioners could have proceeded under the said provision, if at all they had any grievance in respect of the said order dated 03/01/2020 passed by respondent No.2-CWC. Since the order passed by the respondent No.2-CWC is in accordance with law and pursuant to the said order, the girl-child is in custody of the CWC, it cannot be said that she is in improper or illegal custody. Hence, the present writ petition for habeas corpus must fail.

26. Insofar as the judgment on which reliance was placed by learned senior counsel appearing for the petitioners, we find that the said judgment of the Hon'ble Supreme Court in the case of **Mst. Param Pal Singh (supra)**, is clearly distinguishable on facts. In the said case, an adopted person was claiming compensation under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of his adoptive father in an incident during the course of employment. The Hon'ble Supreme Court held that the adopted son was entitled to the amount of compensation for the reason that the biological father of the said person had filed an affidavit of proof of adoption and he had offered himself for cross-examination. Evidence was led on the issue of adoption and it was found that the oral evidence on record proved the ceremony performed when the adoption took place. It becomes clear that in the said case, not only

was there an Adoption Deed but there was evidence led before the Workmen's Compensation Commissioner / Labour Court in the form of documentary and oral evidence to prove the factum of adoption. In the present case, such exercise has not been undertaken before any competent court or authority and, therefore, the petitioners cannot rely upon the ratio of the said judgment in support of their contention.

27. On the other hand, learned counsel appearing for respondent No.2-CWC correctly relied upon the judgments of the Hon'ble Supreme Court in the cases of Exploitation of Children in Orphanages (supra) and S. Vanitha (supra). In the said judgments, the Hon'ble Supreme Court has emphasized upon the necessity to ensure that the rights of the children are protected and that broad and purposeful interpretation is given to the definition "child in need or care and protection" under Section 2(14) of the Juvenile Justice Act. The Hon'ble Supreme Court has made reference to Directive Principles of State Policy enumerated in the Constitution of India while emphasizing upon the role of institutions established under the provisions of the Juvenile Justice Act and the manner in which courts and all concerned institutions need to give effect to the provisions of the Juvenile Justice Act.

28. In this backdrop, we are of the considered opinion that since the girl-child, in the facts and circumstances of the present case, is in

need of care and protection, which respondent No.2-CWC is providing in terms of the provisions of the Juvenile Justice Act, the prayers made on behalf of the petitioners cannot be granted. We have arrived at this conclusion keeping the best interest of the girl-child as being of paramount significance. Hence, we find that there is no merit in the writ petition. Accordingly, the writ petition is dismissed.

29. We appreciate the sincere efforts taken by Mr. Karansingh B. Rajput, the learned appointed advocate for respondent No.2-CWC and we quantify his fees at Rs.10,000/-.

30. The High Court Legal Services Committee, Mumbai, is directed to pay the said amount to the appointed advocate Mr. Karansingh B. Rajput within four weeks from the date of receipt of this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)