



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

CRIMINAL WRIT PETITION NO. 339 OF 2023

Ramu Maruti Gadivdar,
Room No: 503/33/10, Sangharsh
Nagar Sakinaka, Mumbai – 400 072. ... Petitioner

vs.

1. The State of Maharashtra
(Through Public Prosecutor)
Office at :- 1st floor Main Building, High
Court, Fort, Mumbai – 400 001.
2. Child Welfare Committee,
Office at:- Mumbai Suburban – II
D.S.I School Campus, Mumbai.
3. XYZ
4. Central Adoption Resource Authority
(CARA) West Block 8, Wing 2, 1st Floor,
Rama Krishna Puram, New Delhi,
Delhi – 110066. ... Respondents

Mr. Ashish Dubey a/w Mr. Rahul Tripathi and Ms. Ajay Dube for
Petitioner.

Mrs. P.P. Shinde, APP for the State.

Ms. Flavia Agnes for Respondent No.3.

Mrs. Savita Ganoo a/w Mr. D.P. Singh & Ms. Amita Kamble i/b
Ms. Kshtija Wadkar for Respondent No.4.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

RESERVED ON : 21st AUGUST 2023

PRONOUNCED ON : 15th SEPTEMBER 2023

JUDGMENT (PER: GAURI GODSE, J.) :-

1. At the outset, learned counsel for the petitioner seeks leave to amend the petition to mask the name of the respondent no. 3. Leave granted. Amendment to be carried out within a period of four weeks from today. After amendment is carried out, NIC to also delete the name of the Respondent No.3 from the website.

2. This petition is filed seeking a Writ of Habeas Corpus directing respondent no.2- Child Welfare Committee ('CWC') Mumbai to produce the petitioner's minor son-Mahaningappa before this Court and further prayed for handing over custody of his minor son to the petitioner.

3. The petitioner is the father of the minor child, and respondent no.3- XYZ, is the mother of the minor child. It is the case of the petitioner that he and respondent no. 3 knew each

other, and out of their love relationship, their son was born on 26th November 2021. The petitioner contended that since respondent no.3 was pregnant, they feared threats from their respective family members; they ran away on 1st October 2021 and started residing in Karnataka, where the child was born on 26th November 2021. On 4th March 2022, the petitioner's mother and father traced them and brought them back to Mumbai. Respondent No. 3's father filed a police complaint, pursuant to which the petitioner was arrested. Thereafter, respondent no.3, surrendered the child before respondent no. 2, and subsequently, she got married to another man. In such circumstances, the present petition was filed.

4. An affidavit dated 21st February 2023 was filed on behalf of CWC, thereby stating that the victim girl (Respondent No. 3) has surrendered the child by signing the required documents and after completion of 60 days as per section 35 of the Juvenile Justice Act (**'the JJ Act'**) the procedure under section 38 of the JJ Act is followed for declaring the child free for adoption. The said affidavit further stated that the child in question is offered for

adoption through the Central Adoption Resource Authority ('CARA'). The said affidavit also stated that the adoption procedure was completed, and the child was under pre-adoption foster care. Hence, the petitioner was granted leave to amend to add CARA as a party respondent and notice was issued to CARA.

5. Since the petitioner, who is the biological father of the child, was willing to take custody of the child by order dated 4th May 2023, this Court directed not to complete the adoption procedure till the next date.

6. On 28th June 2023, the learned counsel appearing for respondent no.4- CARA informed that the prospective adoptive parents whom CWC handed over the child have been told that the order dated 21st December 2022 (declaring the child free for adoption) has been revoked by CWC vide order dated 16th June 2023. The learned counsel further informed that in view of the revocation of the order by CWC, the prospective adoptive parents would be handing over the child to the Adoption Committee. Accordingly, on 14th July 2023, learned counsel

appearing for respondent no.4-CARA informed that the prospective adoptive parents had handed over the child to the Adoption Committee in view of the revocation order passed by CWC on 16th June 2023. She further submitted that the child was at St. Catherine Home, Mumbai and that CWC would take an appropriate decision for handing over the child in accordance with the law.

7. Petitioner has filed an additional affidavit dated 24th July 2023. To the said additional affidavit, the petitioner has annexed a copy of an application dated 17th July 2023 filed by him before respondent no. 2-CWC praying for handing over the custody of the minor child to him. The petitioner has also annexed a copy of the order dated 21st July 2023 passed by the respondent no. 2-CWC, thereby rejecting the petitioner's application for custody.

8. On 26th July 2023, the learned APP, on instructions, submitted that the order dated 21st July 2023 issued by CWC on the application filed by the petitioner for getting custody of the child would be revoked as the said order was passed contrary to

the provisions of JJ Act and that an appropriate order would be passed. Hence, the petition was adjourned to 28th July 2023. Learned APP on 28th July 2023 submitted that the custody of the child has been handed over to the petitioner on 27th July 2023. She submitted that although the order had been passed to hand over the child to the petitioner, CWC would pass an appropriate order in proper format as the order passed on 27th July 2023 was not a detailed order. Accordingly, Respondent No. 2-CWC has passed a detailed order on 31st July 2023 for handing over custody of the minor child to the Petitioner.

9. In the meantime, Ms. Flavia Agnes appeared on behalf of respondent no.3 and submitted that respondent no.3 desired to make certain submissions before this Court. Hence, we heard Ms. Flavia Agnes on behalf of respondent no.3 on 21st August 2023. It is necessary to record that as respondent no. 3 had surrendered the child, and thereafter, she got married to another man, we found it appropriate not to issue any notice to the respondent no.3, lest, her marital life would get affected. We were informed that private notice was also not served upon

respondent no.3. Hence, a specific query was made to Ms. Agnes as to the source of knowledge of the present proceedings to respondent no.3; however, Ms. Agnes was unable to give any satisfactory response. Ms. Agnes submitted that Respondent No. 3 had instructed her to appear and place on record her submissions. In view of the aforesaid peculiar facts and considering the sensitivity involved in the matter, we verified the record to ascertain if any vakalatnama was filed on behalf of Respondent No. 3. However, we were unable to find any vakalatnama filed on behalf of Respondent No. 3. We thus express our displeasure in the manner in which Respondent No. 3 is sought to be represented in this Petition, in as much as, it is not disputed that the respondent no. 3 had surrendered the child, and had moved forward in her life by getting married.

10. Be that as it may, we have considered the submissions made by Ms. Agnes. She submitted that respondent no.3 never had any consensual relationship with the petitioner and that the petitioner had forced himself on respondent no.3. She further submitted that respondent no. 3 was only 16 years old at the

relevant time and she was never willing to reside with the petitioner. However, the petitioner forced her to leave her house and took her to a strange place in Karnataka, where she was completely isolated, and the petitioner did not allow her to contact her parents. She submitted that on a missing complaint filed by respondent no. 3's parents, she was traced out. Thereafter, she was counselled at the shelter home, and later she surrendered the child. She submitted that considering the conduct of the petitioner, respondent no.3 had filed police complaints against him. She thus submitted that according to respondent no. 3 the petitioner is not a good father, and hence, she has an objection to handing over the custody of the child to the petitioner.

11. Ms Agnes, however, did not dispute that respondent no.3 had already surrendered the child and that she has got married. We are afraid there is no basis for making the aforesaid submissions on behalf of respondent no. 3. Learned APP has placed on record a copy of the statement of respondent no. 3 recorded under section 164 of the Code of Criminal Procedure

in the FIR lodged against the petitioner. A perusal of the said statement shows that it is consistent with the case of the petitioner, as set out in Para 3 of this Order. In her statement recorded under section 164, the respondent no. 3 has stated that she knew the petitioner for three years and had love relationship with the petitioner. She further stated that out of their love relationship she remained pregnant and hence, she went with the petitioner to Karnataka due to fear from their respective families. She has also stated that she lived with the petitioner in Karnataka till the petitioner's parents traced them and brought them back to Mumbai. Thus, the submissions made by Ms. Agnes are baseless and do not appear to be true. Even otherwise, once respondent no. 3 has surrendered the child; it is now not open for respondent no. 3 to raise any objection in the present petition.

12. We have considered the submission made by all the parties. It is not disputed that the petitioner is the biological father of the child. It is also not disputed that considering the age of respondent no.3, the provisions of Protection of Children from

Sexual Offences, Act, 2012 ('POCSO' Act) were invoked, and the petitioner was arrested. It is not disputed that since birth, the child was residing with the petitioner and respondent no.3 together till the date of arrest of the petitioner i.e. for more than three months. The petitioner is the biological father of the child, and the custody of the child is already handed over to the petitioner, pursuant to the order passed by CWC under the provisions of the JJ Act. In the order dated 31st July 2023, respondent no. 2-CWC has referred to the application dated 18th May 2022, submitted by the petitioner's parents seeking custody of the child; however, the same was misplaced by CWC. It is the case of the petitioner that since he was in custody, the said application was made by his parents. Thus, it is clear that the petitioner and his parents made all possible efforts to get back the custody of the minor child. Thus, CWC, by taking into consideration the said facts as well as by considering that the petitioner is the biological father of the minor child and that respondent no. 3(mother) has surrendered the child, found it fit to handover the custody of the child to the petitioner.

13. In view of the aforesaid, in the ordinary course, nothing survives in the present petition. However, in view of the objections raised by Ms. Agnes, it was necessary to record the aforesaid facts and submissions in detail.

14. Though initially respondent no. 2 had rejected the petitioner's application for handing over custody by passing an order dated 21st July 2023, subsequently, respondent no. 2 has revoked the said order and custody of the minor child is handed over to the petitioner. In view of the same, prayer clauses (a) and (b) of the petition do not survive.

15. We may also note that Ms. Agnes was unable to point out any provision of law including any provision under the JJ Act, which would disentitle the petitioner from getting custody of the minor child.

16. It is not disputed that since birth of the child on 26th November 2021 till arrest of the petitioner on 5th March 2022, the child was living with the petitioner and respondent no. 3.

The petitioner who is the biological father of the child had never surrendered or abandoned the child. Instead, had made all possible efforts to get the custody of the child.

17. It is not disputed that the petitioner and the respondent no. 3 were living together in Karnataka and the child was born in Karnataka when the respondent no. 3 was living with the petitioner. Only because the petitioner was arrested, the child was produced before CWC and the respondent no. 3 had surrendered the child. The petitioner thereafter filed the present petition and pending the present petition also, filed an application before the respondent no. 2-CWC for custody of the child. In view of the application filed by the petitioner, CWC has already handed over the custody of the minor child to the petitioner.

18. In view of the aforesaid there is no question of raising any objection on behalf of the respondent no. 3 for handing over the minor child to the petitioner. The petitioner being the biological father of the minor child, there is no impediment in him being

handed over the custody of the minor child in the peculiar facts and circumstances of the present case.

19. For the reasons stated above, we find that the submissions made by Ms. Agnes deserve to be rejected the same being baseless and irrational.

20. For the reasons recorded above the petition is disposed of in above terms.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)