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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.1420 OF 2022

1. Shrikant S/o Khushal Patil
Aged 45 years, Occ. Private,

2. Mrs. Sanju W/o Shrikant Patil,
Aged 45 years, Occ. Service,
1 and 2 Both R/o Plot No.1,
Shanti Nagar Colony, Nagpur-02.

3. Jayashree Wd/o Sanjay Dudhkaware,
Aged 40 years, Occ. Housemaker,
R/o C/o Dilip Kotankar, Plot No. 33,
Gajanan Nagar, Opp. Shiv Mandir,
Nagpur.

... Applicants.

Versus

1. State of Maharashtra,
Through Police Station
Rana Pratap Nagar, Nagpur.

[2. Child Welfare Committee,
Office at Patankar Square,
Behind Juvenile Justice Court,
Post Jaripatka, Nagpur-26.]

[Deleted as
per order dt.
5/12/2022.]

... Respondents.

Shri R.T. Anthony, Advocate for the Applicants.
Shri S.S. Doifode, APP for Respondent No.1.

CORAM : **VINAY JOSHI AND**
VALMIKI SA MENEZES, JJ.

DATED : **10.10.2023.**

JUDGMENT: (Per Valmiki Sa Menezes, J.)

1. This Criminal Application invokes this Court's inherent powers under Section 482 of the Code of Criminal Procedure, 1973 to quash FIR No.0270/2022 dated 02.07.2022 registered against the Applicants at Rana Pratap Nagar Police Station, Nagpur for offences punishable under Sections 80 and 81 of the Juvenile Justice (Care and Protection of Children) Act 2015, (JJ Act) and the connected Final Report/Charge Sheet No.205/2022 dated 28.12.2022.

2. An FIR came to be registered against the Applicants by Swati Devdhar, an Assistant Police Inspector at the Rana Pratap Nagar Police Station who lodged the complaint on the directions of the Child Welfare Committee (CWC), Nagpur; The CWC is constituted under the provisions of Section 27 of the JJ Act. The FIR alleges that the Applicant No.3, biological mother of the child had given this child in illegal adoption to the Applicant Nos.1 and 2, the adoptive parents and thus the Applicants had committed an offence under Sections 80 and 81 of the JJ Act.

Subsequently, on completion of investigation, the investigating authority filed Final Report/Charge Sheet alleging commission of offences by the Applicants under Sections 80 and 81 of the JJ Act.

3. After notice was issued of the application to the State of Maharashtra, the application was opposed by filing a reply dated 07.12.2022, wherein the Respondent contended that the investigation revealed that the Applicant No.3 had given birth to a male child whose father was one Darshan Dange. That the Applicant No.3 then executed an

Adoption Deed in favour of the Applicant Nos.1 and 2 and illegally gave this child in adoption to the first two Applicants. It is further revealed in the reply that on 01.07.2022, the Applicants were requested to remain present before the CWC, Nagpur City and an undertaking was taken from the said Darshan Dange, father of the child that the child would be kept in the care of its mother, the Applicant No.3. It was further submitted in the reply that the adoption of the child by the Applicant Nos.1 and 2 is illegal since it is done without taking permission of the Court and contrary to the directions of the CWC to keep the child in a children's home.

4. We have heard learned Shri R.T. Anthony for the Applicants and Shri S.S. Doifode, learned APP for the Respondent No.1. We have perused the record of the FIR and the Charge Sheet.

The point that falls for our determination in this application is whether the FIR and consequent Charge Sheet disclosed an offence made out against the Applicants under Sections 80 or 81 of the JJ Act.

5. The main contention of the Applicants is that the adoption of the child by Applicant Nos.1 and 2 from its biological mother, the Applicant No.3, with the consent of its biological father Darshan Dange, was complete in terms of the provisions of the Hindu Adoption and Maintenance Act, 1956 (HA Act) and consequently, the provisions of the JJ Act could not be applied or any offence be made out under Sections 80 and 81 thereof, in view of the specific exception carved out under Sub-Section 3 of Section 56 of the JJ Act. The learned Advocate for the Applicants has contended that Sub-Section 3 of Section 56 creates an

exception to adoptions which shall from the date of coming into force of the JJ Act be applicable to all such acts, except to adoptions made under the HA Act. He contends that the HA Act, in terms of Chapter II thereof provides for the manner in which a Hindu person can be adopted, and in the absence of any infirmity in following the procedure laid down therein, the adoption is otherwise legal and valid. He argues that, there is no dispute that the Applicant No.3 and Darshan Dange, are the biological mother and father of the child, both being Hindu, and the adoptive parents; Applicant Nos.1 and 2 also being Hindu, married to each other and a barren couple, there was no impediment in terms of the capacities of the parties to complete the adoption or as to the validity of the Deed of Adoption. It is further argued that a plain reading of the FIR itself does not disclose the ingredients of an offence under Sections 80 and 81 of the JJ Act as there was a valid adoption and there was no sale of a child in the transaction; It was further argued that in any event, the child being in the care of its biological mother, the Applicant No.3 could not be termed as an orphan, abandoned or surrendered child in terms of Section 80 of the JJ Act and therefore, these penal provisions would not be applicable in the facts of the case.

It was further submitted that under the HA Act, an adoption does not have to be done by a written or registered document and it is permissible to complete the act of adoption by an oral transaction, so long as there is compliance with the other provisions of that Act as to capacity of the parties and conditions specified in Section 11 thereof.

The learned Counsel for the Applicants relies upon a judgment of

this Court dated 05.05.2022 passed in ***Writ Petition No.2146 of 2021 (Chhaya Yelgalwar vs. State of Maharashtra)*** wherein it is held that registration of an adoption deed is not compulsory in terms of the scheme of the HA Act. It is further contended that in that judgment, this Court has in terms held, that in view of the exception carved out for Hindu adoptions, and more specifically Sub-Section 3 of Section 56 of the JJ Act, the provisions of the JJ Act could not be made applicable to the adoption which is the subject matter of the FIR. The learned Counsel further relies upon the following judgments to contend that the adoption in the present case having been complete, the provisions of the JJ Act could not apply and the Applicants could not be prosecuted for any offence under Sections 80 and 81 thereof:

- a) Judgment dated 07.01.2020 of the High Court of Kerala in ***Sivarama K. Vs. State of Kerala*** passed in ***WP (Crl.) No.439 of 2019***,
- b) Judgment dated 20.07.2020 of the High Court of Punjab and Haryana in ***Jasmine Kaur Vs. Union of India*** passed in ***CWP-10555-2019***,
- c) Judgment dated 21.10.2022 of the High Court of Bombay in ***The Nest India Foundation Vs. State of Maharashtra*** in ***WP 2164 of 2022***,
- d) ***Maunish Dinkar Shaw Vs. State of Gujarat*** reported in ***2023 SCC OnLine Guj 743***.

6. Opposing the contentions argued by the Applicants, the learned APP contends that the child concerned is an “abandoned child” in terms of the definition under Sub-Section 1 of Section 2 of the JJ Act since it has been deserted by its biological parents; It was submitted that the so-called

adoption deed is executed by the mother (Applicant No.3) before a Notary and is not a registered Deed of Adoption and as such, has no presumptive value under the JJ Act. In that scenario, it was argued that the act of adoption was illegal and since there was no legal adoption in terms of the JJ Act, or even in terms of the HA Act, the penal provisions of Sections 80 and 81 were correctly invoked. He further submitted that the FIR discloses material allegations to support the contention that an offence in terms of Sections 80 and 81 was disclosed.

7. To consider whether an offence under Sections 80 and 81 of the JJ Act is disclosed in terms of the statements contained in the FIR, it would be apposite to make reference to certain provisions of various enactments. The FIR has been lodged alleging offences under Sections 80 and 81 which read as under:

“80. Punitive measures for adoption without following prescribed procedures. - If any person or organisation offers or gives or receives, any orphan, abandoned or surrendered child, for the purpose of adoption without following the provisions or procedures as provided in this Act, such person or organisation shall be punishable with imprisonment of either description for a term which may extend upto three years, or with fine of one lakh rupees, or with both:

Provided in case where the offence is committed by a recognised adoption agency, in addition to the above punishment awarded to the persons in-charge of, and responsible for the conduct of the day-to-day affairs of the adoption agency, the registration of such agency under section 41 and its recognition under section 65 shall also be withdrawn for a minimum period of one year.

81. Sale and procurement of children for any purpose. - Any person who sells or buys a child for any purpose shall be punishable with

rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that where such offence is committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home, the term of imprisonment shall not be less than three years and may extend up to seven years.”

8. With the coming into force of the JJ Act, all adoptions of orphaned, abandoned and surrendered children shall be done in accordance with the procedure in Chapter VIII of that Act and more specifically under Section 56 therein, which reads as under:

“56. Adoption. - (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority.

(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956).

(4) All inter-country adoptions shall be done only as per the provisions of this Act and the adoption regulations framed by the Authority.

(5) Any person, who takes or sends a child to a foreign country or takes part in any arrangement for transferring the care and custody of a child to another person in a foreign country without a valid order from the 1[District Magistrate], shall be punishable as per the provisions of section 80.”

9. Abandoned, orphaned and surrendered child are respectively

defined in the JJ Act under Sections 2(1), 2(42) and 2(60) which read as under :

“2(1) "abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;

2(42) "orphan" means a child—

(i) who is without biological or adoptive parents or legal guardian; or

(ii) whose legal guardian is not willing to take, or capable of taking care of the child.

2(60) "surrendered child" means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee.”

10. To deal with the contention that the exceptions carved out in Sub-Section 3 of Section 56 of the JJ Act apply to the facts of this case, it would be advantageous to quote certain provisions of the HA Act. Adoptions are governed by the provisions of Chapter II of the HA Act of which Sections 5, 6, 9 and 11 read as under:

“5. Adoptions to be regulated by this Chapter.

(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. Requisites of a valid adoption.

No adoption shall be valid unless--

- (i) the person adopting has the capacity, and also the right, to take in adoption;*
- (ii) the person giving in adoption has the capacity to do so;*
- (iii) the person adopted is capable of being taken in adoption; and*
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.*

9. Persons capable of giving in adoption.

(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

1[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

2 * * * **

3[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

11. Other conditions for a valid adoption.

In every adoption, the following conditions must be complied with:

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son sons son or sons sons son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or sons daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth 1[or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of an adoption.”

In the present case, the FIR does not disclose any statement that the Applicant No.3 has sold the child or that the Applicant Nos.1 and 2 have bought the child; A perusal of the material appended to the Final Report also does not disclose that the child was sold or for that matter, the terms of adoption were such that the child was sold into adoption. Thus, clearly, there is no material disclosed in the FIR or in the entire investigation that there was an act of sale of the child to bring the transaction within an offence committed under Section 80 of the JJ Act. To that extent, the FIR and the Charge Sheet would have to be quashed.

11. Section 80 postulates that if any person offers, gives or receives a child for the purpose of adoption without following the provisions of the JJ Act would be considered to have committed an offence under that provision. The second ingredient to bring an offence within Section 80 of that Act would be that the child involved in the offence must be an orphan, abandoned or surrendered child, failing which offence under Section 80 would not be made out. Thus, for an offence to be made out under Section 80, the child would have to be an orphan, abandoned or surrendered child, and such child would have to be offered, given or received in adoption, in contravention of the provisions of Section 56 of the JJ Act.

12. Sub-Section 3 of Section 56 makes an exception for adoption of children made under the provisions of HA Act. Thus, if the adoption in question was complete and in compliance with the provisions of Chapter II of the HA Act, no offence can be said to be made out, even if the child concerned was an orphan, abandoned or surrendered child.

An examination of the provisions of Sections 5, 6, 9 and 11 of the HA Act would reveal that the act of adoption is not required to be completed by a written document or for that matter even a registered document and can be by an oral transaction between the adoptive parents and the parents giving the child in adoption. In the present case, the child has been given in adoption in terms of Section 9 of the HA Act, by the mother (Applicant No.3) by recording the act of giving her child in adoption to Applicant Nos.1 and 2 in an unregistered deed of adoption executed before a Notary Public. The act of giving the child and taking the child in adoption is clearly recorded in the document. It is also nobody's

case that the adoptive parents (Applicant Nos.1 and 2) are both Hindus, married to each other and do not have children of their own. It is also not in dispute that both parents of the child are Hindus and have the capacity to give the child in adoption. From the records of the investigation, it appears that the statement of the father was recorded by the Police wherein the consent of the father for giving the child in adoption was also recorded. There is no statement made anywhere in the FIR or in the course of the investigation that there was no consent from either of the parents to the adoption.

13. In *Chhaya Yelgalwar* (supra), this Court has considered the circumstances under which under Section 56 of the HA Act, the adoption of a child is complete and it is held:

“2. We are satisfied that the adoption in question of child - Ritik Gitesh Pipre, has been completed in accordance with the provisions of Hindu Adoption and Maintenance Act, 1956 (for short, the Act of 1956). The said child has been adopted by the adoptive parents i.e. the petitioners from the natural biological parents of the child. These facts clearly indicate that the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, the Act of 2015) has no application to the adoption deed involved in this case. This can be seen from the expression made in Sub-section (3) of Section 56 of the Act of 2015, which is reproduced below for the sake of convenience.

"56. Adoption :

(1)

(2)

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956)."

Thus, it is clear that the provisions of the Act of 2015 are not applicable to the adoption involved in this petition.

3. *Of course, under Section 17 of the Registration Act, 1908 (for short, the Act of 1908), the registration of the adoption deed is not compulsory. But, it is a document which can be registered in terms of Section 18 sub-clause (f) of the Act of 1908. There are distinct advantages attached to the registration of adoption deed under Section 16 of the Act of 1956. Section 16 of the Act of 1956 prescribes that whenever any adoption deed is duly executed by the parties and is registered, the Court shall presume that the adoption has been made in compliance with the provisions of the Act of 1956, until the presumption is rebutted, when such a deed is called before any Court of law. Therefore, we find that the Sub-Registrar, Gadchiroli, could not have directed the parties to first comply with the provisions of Section 56 of the Act of 2015 before adoption deed is registered by him. In fact, the procedure laid down under Section 56 of the Act of 2015 operates in a field which is different than the procedure which is required to be followed, in case the adoption deed is executed in terms of the provisions of the Act of 1956.”*

14. Thus, considering the ratio laid down in *Chhaya Yelgalwar* (supra) and the facts of the present case, the consent of the parents having been given to adoption of the child who had not completed the age of 15, and the parents taking the child in adoption otherwise not having any impediment or disqualification in terms of the provisions of Chapter II of the HA Act, the adoption in the present case would be complete and valid.

15. In *Jasmine Kaur* (supra), the Punjab and Haryana High Court was dealing with a similar fact situation, except that the adoption was completed by a registered deed. The three issues that arose in that case were the following:-

“1. Whether the adoption under HAMA, 1956 is valid and whether

Section 56 of the J.J. Act, 2015 is applicable in the facts of the present case and the adoption in the present case can only be made under the J.J. Act, 2015?

2. Whether an NOC from CARA, i.e. respondent No.3 is mandatory as per the mandate of Section 60 of the J.J. Act, 2015 for direct inter-country relative adoption?

3. Whether respondent No.2 can refuse to issue a passport beyond the statutory provisions of Section 6 of the Passports Act, 1967?"

16. Whilst answering these issues, the High Court in *Jasmine Kaur* (supra) has concluded that unless the child in question is a child in conflict with law i.e. orphaned, surrendered or abandoned, the provisions of the JJ Act would not be applicable to the act of adoption, in view of the provisions of Section 56 thereof. In that regard, it has held as under:-

“A perusal of the J.J. Act, 2015 shows that it is a special provision for a limited class of children, those who are in conflict with law, in need of care and protection, orphaned, surrendered or abandoned. In the 6 of 26 present case the adoptive parents are Sikhs. The child is being given over by the biological parents of sound mental health. The biological mother is the real sister of the adopted mother. The child is neither an orphaned nor surrendered nor in conflict with the law. Thus, the J.J. Act 2015 does not apply for adoption of the particular child in question.

The argument of learned Senior Counsel, Mr. Satya Pal Jain, Additional Solicitor General of India that Section 56(4) shows that in case of adoption relating to inter-country, i.e. when the parents adopting the child belong to or citizens of another country, the said adoption shall be as per the provisions of the J.J. Act, 2015 was met by Mr. Anil Malhotra, learned Amicus Curiae, who referred to Sub Section (3) of Section 56, according to which, provisions of the J.J. Act, 2015 will not apply in case the adoption of the children is made under the provisions of the Hindu Adoption and Maintenance Act, 1956 and that Section 60 of the J.J. Act, 2015 has to be read in

conjunction with Section 56 of the J.J. Act, 2015 which is an inbuilt of the Hindu Adoption and Maintenance Act, 1956 and adoption code in itself and, therefore, the supremacy of Section 56(3) overrides the remaining provisions of Section 56 of the J.J. Act, 2015. The submission made by learned Amicus Curiae makes sense as it is not understood as to how an Act, which is applicable to a special class of children, namely, orphans, abandoned, surrendered and in conflict with the law, be also applied alongwith all its tedious procedures to children being given in adoption by able, mentally sound parents and that too to a relative directly by the adoptive parents. More so, when they are close relatives.

One of the issue as herein came up for hearing before the Division Bench of High Court of Kerala at Ernakulam in the case of 7 of 26 Sivarama K. and others vs The State of Kerala and others, 2020(1) Kerala Law Journal 641. Questions which emerged for consideration before the Kerala High Court were detailed in para 9 of the said order, which read thus:-

"(i) Whether P-1 adoption effected as per the provisions of the HAM Act can be said to be in contravention of the J.J Act?

(ii) Whether the J.J Act overrides the HAM Act.

(iii) Whether the child is in the unlawful detention of respondents 4 to 6."

In the said case also, the biological parents and the adoptive parents decided to execute an adoption deed and in pursuance to the said adoption deed, the child was handed over by the biological parents to the adoptive parents in accordance with the provisions of the HAMA, 1956. However, the child was forcibly taken away by the Child Welfare Committee as being followed by the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court while allowing the writ petition, directed the child to be handed over to the adoptive parents by holding in para 29 as under:-

"29. On the giving of the child by the biological parents and the taking of the child by the adoptive parents, which is

evidenced by Ext.P-1 registered adoption deed, the child can never be labelled as an orphan, abandoned or surrendered child, as interpreted by the fourth respondent. If such a view is taken, it would render the HAM Act otiose and redundant and make it appear that the former enactment is repugnant with the J.J Act, which never is the intention of the lawmakers. Such a narrow and oppressive interpretation cannot be given, particularly when the legislature has consciously included Sec.56(3) in the J.J Act, the later enactment, with the intention to permit adoptions under 8 of 26 the HAM Act. There may be instances where a person may qualify to adopt a child under the provisions of both the HAM Act and the J.J Act. In such an eventuality, especially where is no repugnancy between the two statutes, it would be the choice of such person to opt for the HAM Act or the J.J Act, 2015, adoption. No authority can compel such person to resort to only the J.J Act, 2015."

The argument of learned Additional Solicitor General of India, Mr.Satya Pal Jain, that the judgment pertains to a period before the amendment of the J.J. Act, 2000 and is before the enactment of J.J. Act, 2015, came into operation is correct but the same does not help in any manner as the applicability of the Act under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 remains the same. In fact, its application under J.J. Act, 2015 is even more specific to only special children."

17. As held by the Punjab and Haryana High Court in *Jasmine Kaur* (supra), once the adoption under the HA Act is complete, the bar to the applicability of the JJ Act under Sub-Section 3 of Section 56 would apply, and to that extent, the provisions of the JJ Act would not be applicable to the adoption concerned in the present case. Further, as held in the same judgment, the child concerned in the present case was given in adoption by its biological parents who were Hindu, to adoptive parents who were

also Hindu, and therefore, the child cannot be termed as orphaned, surrendered or abandoned, and hence is not a child in conflict with law such as defined in the JJ Act. Consequently, the provisions of Sections 80 and 81 would not be attracted to the facts of the present case and the Applicants cannot be considered to have committed an offence under those provisions.

18. In *Sivarama K.* (supra), the High Court of Kerala was also considering the provisions of the HA Act and JJ Act and how they operate in cases of Hindu adoption. The following passages are quoted from *Sivarama K.* (supra):-

“19. The above extracted provisions establish that both the HAM Act and the J.J Act are central enactments occupying their respective fields. The former statute deals with adoption and maintenance WP(Crl.).No.439 OF 2019 among Hindus, and the latter statute is an Act to consolidate and amend the law relating to children found in conflict with law and children in need of care and protection. On a close scrutiny of the two statutes, we do not find any repugnancy between the two legislations.

20. The Hon'ble Supreme Court in Shabnam Hashmi vs Union of India [2014 (2) KLT 444(SC)] has held:

"11. The J.J Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the CARA Guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he WP(Crl.).No.439 OF 2019 comprehends to be the dictates of the personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Art.44 of the Constitution.

Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. At the cost of repetition we would like to say that an optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date".

(emphasis supplied)

21. Even though the above judgment was rendered under the J.J Act, 2000, the obiter dictum applies on all four to the subsequent Act, 2015 WP(Crl.).No.439 OF 2019 because the 2015 statute is only a more comprehensive legislation of the Act, 2000.

22. The Parliament has in its wisdom, specifically included Sec.56(3) in the J.J Act, 2015, which substantiates that adoptions carried out under the HAM Act are saved, and that the HAM Act is not repugnant with the J.J Act.

23. The CWC without considering any of the above statutory provisions under the two statutes, directed the police to register Ext P2 FIR, on the allegation that the petitioners have contravened Sec.80 of the J.J Act.

25. It is indubitable as per Sec.80 that if any person or organisation gives or receives any orphan, abandoned or surrendered child in adoption without following the provisions or procedures as per the J.J Act would be punishable under Sec.80. WP(Crl.).No.439 OF 2019

26. In the case before us, the biological parents gave their child in adoption to the adoptive parents after fulfilling all the provisions of the HAM Act, that too, after executing a registered adoption deed.

29. On the giving of the child by the biological parents and the taking of the child by the adoptive parents, which is evidenced by Ext P-1 registered adoption deed, the child can never be labelled as an orphan, abandoned or surrendered child, as interpreted by the fourth respondent. If such a view is taken, it would render the HAM Act otiose

and redundant and make it appear that the former enactment is repugnant with the J.J Act, which never is the intention of the lawmakers. Such a narrow and oppressive interpretation cannot be given, particularly when the legislature has consciously included Sec.56(3) in the J.J Act, the later enactment, with the intention to permit adoptions WP(Crl.).No.439 OF 2019 under the HAM Act. There may be instances where a person may qualify to adopt a child under the provisions of both the HAM Act and the J.J Act. In such an eventuality, especially where is no repugnancy between the two statutes, it would be the choice of such person to opt for the HAM Act or the J.J Act, 2015, adoption. No authority can compel such person to resort to only the J.J Act, 2015.

30. The CWC does not have a case that Ext P-1 adoption deed executed between the petitioners is not in compliance with the provisions of the HAM Act or that the petitioners are not eligible to give and take the child in adoption under the former enactment. Even if the CWC has such a case, it is for the CWC to disprove Ext P-1 deed. Merely by raising an allegation that the child was placed and WP(Crl.).No.439 OF 2019 taken in adoption in contravention of Sec.80 of the J.J Act is not sufficient, to direct the child to be placed with a child care institution. Moreover, Chapter VIII of the J.J Act, which deals with rehabilitation and reintegration of children, makes it apparent that the intention of the legislature is to restore orphan, abandoned or surrendered children to their parents, adoptive parents, foster parents, guardian and fit person, in that priority. The aim and object of the Act is to de-institutionalise children and see that they are restored to their families at the earliest, and not to place the above category of children in institutions.

31. The action of the CWC in directing the police to register a crime and then place the child in the custody of the sixth respondent is erroneous and WP(Crl.).No.439 OF 2019 is in total contravention of the provisions of the HAM Act. Thus, we hold that the placing of the child with the sixth respondent is arbitrary and unwarranted, and tantamounts to illegal detention. We, therefore, confirm the interim order dated 19.12.2019 and hold that the child shall be restored to its adoptive parents.”

19. Applying the ratio laid down in *Sivarama K.* (supra) to the facts of the present case, it becomes all too clear that the CWC has in the first place never held any inquiry or declared the child as an “abandoned child” (under Section 2(1)) as is required in terms of the provisions of Chapter V of the JJ Act. The child concerned not having been declared as an “abandoned child” which is a *sine qua non* for instituting prosecution under Sections 80 and 81 of the JJ Act, the offences alleged in the FIR would not be termed as fulfilling the ingredients of those penal provisions. Apart from this, the adoption having been complete and being protected in terms of Sub-Section 3 of Section 56 of the HA Act, the provisions of the JJ Act would not apply to the facts of the present case.

20. We are therefore of the opinion, for reasons recorded above, that the contents of the FIR do not disclose any offence under Sections 80 and 81 of the JJ Act. Consequently, we declare that the adoption of the child concerned having been complete under the Hindu Adoptions and Maintenance Act, 1956, and for reasons cited hereinabove, the FIR does not disclose any offence punishable under Sections 80 or 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015; Consequently, the FIR No.0270/2022 dated 02.07.2022 registered at Rana Pratap Nagar Police Station, Nagpur for offences punishable under Sections 80 and 81 of the Juvenile Justice (Care and Protection of Children) Act 2015, (JJ Act) and the connected Final Report/Charge Sheet No.205/2022 dated 28.12.2022 is quashed and set aside. No costs.

VALMIKI SA MENEZES, J.

VINAY JOSHI, J.