

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 1st of December, 2022
Pronounced on 28th February, 2023**

CRM-M No.30558 of 2022 (O&M)

Garima Bhardwaj and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunil Chaudhary, Advocate and
Mr. Sudhir Rana, Advocate
for the petitioners.

Mr. Sumit Jain, Addl. Advocate General, Haryana
for respondent No.1-State.

Respondent No.2-Ms. Arpita Biswas, in person with
Mr. Chitragupt, Advocate,
Mr. Lakshay Advocate and
Ms. Neha, Advocate.

PANKAJ JAIN, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of FIR No.295/2020 dated 22nd of November, 2020 registered for the offence punishable under Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as '2015 Act'), at Police Station Sector 56, Gurugram.

2. Reply by way of affidavit of respondent No.2-Arpita

Biswas has been filed. The same is taken on record.

3. The FIR came to be registered on the order passed by Judicial Magistrate 1st Class, Gurugram under Section 156(3) Cr.P.C.

The contents of the FIR reads as under :-

“The complainant most respectfully submits as under: 1. That the complainant is a peace loving and law-abiding citizen residing at the aforesaid address alongwith her partner. The complainant is being constrained by the accused persons to file the instant complaint as the accused persons are having gloves in hand with the local police, due to the courage of accused persons are touching the sky, as they knew positively that the police is puppet of their hands, who is working on their dictation. The accused persons in by hatching a criminal conspiracy in connivance with each other with malafide intention have not only cheated the complainant but have also breached her trust. 2. That the complainant and her partner namely Nitesh Kumar, were in cohabitation (living together) and in the meanwhile the complainant was conceived and went for consultation. They both went to Gynecologist namely Dr. Monika Chaudhary for treatment in her clinic named Get-Well. On very first day, when complainant went to Doctor's clinic, she informed that the fetus has been fully formed, so the complainant and her partner asked for NGO and doctor said that she has no idea about it and informed about the couple, whom she knows for 7 years or so and wanted a child, because that lady can never conceive in future Copy of Doctor's Prescription is annexed herewith as Annexure-1. 3. That the doctor herself exchanged her contact number with the couple and the couple firstly contacted the complainant and secondly the complainant had visited the doctor, where she suggested the complainant to go for Ultra- Sonography Test. 4. That, when the complainant and her partner coming out of the clinic with ultra-Sonography Report at that point of time, the lady

named Garima Bhardwaj and her husband Sarkar Kaushik called the complainant and said she wanted to adopt the baby. Copy of Sonography report Annexure-II. 5. That the complainant had decided to meet in a restaurant, where couple clearly mentioned and categorically admitted that they want to adopt the child in a legal way. The couple asked for the identity of the complainant and her partner, which the partner of the complainant sent them immediately on the whatsapp number provided to him. 6. Thereafter, on 02.07/2020, the complainant got admitted in the clinic and where the complainant gave birth to a child on 03.07.2019 (wrongly mentioned as 03.07.2020), through C-Section and on 5 of July 2019, the complainant was discharged from the hospital. Copy of receipts, discharge slip & photo of baby at the time of delivery are annexed herewith as Annexure-III. 7. That the said couple took the baby immediately from the hospital ensuring the complainant that they would call the complainant and her partner for adoption procedure. The complainant went through surgery, so it took time to recover completely. Immediately as the complainant got recovered, she contacted the couple but they ignored the complainant. 8. That when complainant was ignored by the couple, the complainant did the text to the couple if they will not come legally, she would take time to go for legal procedure. Thereafter, the couple started ignoring the complainant and also started avoiding the details about her child. 9. That, in the month of December, 2019, the couple said to the complainant that they have admitted her child in a day-care school and at that point of time, the child of the complainant was only of 5 (five) months and again in the month of March 2020, the complainant called the couple for adoption paper and again they ignored the complainant and her partner that it will take more time and ignored and avoid sending. 10. That the aforesaid couple i.e. Garima Bhardwaj & Sarkar Kaushik given a random address as their residential address to the complainant for communication and meeting, but when complainant visited the address to meet her baby she got surprised to see that the address

which they provided was fake as they never lived there that has cleared the dust over the wrong intentions of couple to cheat her. 11. That complainant was not aware of the well being of her child as they ignored the complainant. On 03.07.2020, the complainant and her partner also filed a complaint at Police Station Sector-56, Gurugram and the complainant also did e-mail to the DCP, Gurugram on 08.07.2020 in this regard but nothing came out fruitful. The copy of complaint sent through e-mail to DCP concerned is annexed herewith as Annexure-IV. 12. That the accused person in league with each other by hatching a criminal conspiracy with a common and malafide intentions, in order to cheat and play fraud upon the complainant had abducted the child of the complainant with a sole motive to cause wrongful loss to the complainant and to gain themselves illegally by showing the rosy pictures to the complainant. 13. That from the facts mentioned above, it transpires that the accused persons in order to cheat and play fraud upon the complainant in connivance with each other by hatching a criminal conspiracy had wrongfully confined the child of the complainant. 14. That the complainant has made several visits to the SHO, P. S. Sector-56, Gurugram, ACP concerned, not limited to personal approach, requesting the worthy officer to look into the matter, to take cognizance on his complaint and to take stern penal action against the accused persons after registration of FIR but the police have gloves in hands with the accused persons, due to which they neither took any action the accused persons nor any FIR yet been registered against them, and the matter is in heinous in nature. The police officials didn't help the complainant and pressurized her to take money in return of her money and settle the matter. Even the police officials misused their power and threatened the complainant by putting her into lock- up and they said that write a false complained against her partner, By that the complainant got feared and had no option left but to take her complaint back and approach the Hon'ble Court. 15. That the complainant with folded hands requested the police officials to take action against the

aforesaid couple and get her baby/child back to her. But the police officials of P. S. Sector-56 didn't respond to her prayer and replied that "Jao court me complaint karlo vaha kuch nhi Hone wala" which is unfair in the eyes of law. 16. That the aforesaid Dr. Monika Chaudhary played a vital role in this conspiracy she is the one who introduced the couple to the complainant and convinced her to give her baby to them by showing her fear of society and when all this happened to the complainant Dr. Monika Chaudhary clearly said that "insaaf dilana hamara kaam nahi h na hi humsamjhota karane baithe hai". The act done by her makes her equally liable in crime done by all the accused. 17. It is important to mention here that in the interest of justice it is very necessary and essential that an FIR be registered against the accused persons and the accused persons be punished in accordance with law. 18. That the custodial interrogation of the accused is very necessary because the police have to recover various documents from the accused. 19. In view of the above mentioned facts and circumstances discovered by the complainant, a thorough investigation by the police is required in view of the serious nature of allegations and commission of cognizable offence as such it would be expedient in the interest of justice, that investigation and an FIR is registered against the above named accused persons under the above stated sections. 20. That the complainant has no other efficacious as well as alternate remedy but to approach this Hon'ble Court for seeking necessary directions to the SHO P. S. Sector-56, Gurugram for registration of FIR and necessary directions under section 156 (3) of Cr. P. C be passed in the interest of justice. 21. That the police officials of police station sector-56 Gurugram knowingly and intentionally are violating the provisions of section 154 of Cr PC as well as various judgments of passed by the Hon'ble Supreme Court of India and various Hon'ble High Courts including Hon'ble High Court of Punjab & Haryana at Chandigarh, wherein in catena of cases, it was held that "the police has no other choice except to register the FIR after receiving the complaint of a cognizable

offence" but in the instant case, the local police instead of lodging FIR against accused persons, have made the complainant to run from pillar to post for the reason best known to them. 22 That the police knowingly, intentionally and in league with accused is neither willing to register the case despite their being directions to do so in terms of recent judgment passed by the Hon'ble Apex Court in the matter Lalita Kumar Vs Govt. of Uttar Pradesh 2013 (14) JT 399 nor willing to interrogate the accused persons nor ever showed their willingness to investigate the matter thoroughly, on the contrary, the local police is helping the accused, 23. That the complainant is left with no other efficacious remedy available but to file the present complaint. 24. That the offences have been committed by all the accused persons mentioned above in the title and police complaints were also made, which is within the jurisdiction of this Hon'ble Court, hence this Hon'ble Court has jurisdiction to direct the concerned police authorities to register the FIR against the accused person and try the matter. 25. That a prescribed court fee of Rs. 10/- has been paid and affixed on this complaint. Prayer: In view of conspectus of the facts and circumstances mentioned above, the Hon'ble Court may please be gracious enough: (a) To direct the SHO, P. S. Sector-56, Gurugram to register the FI under section 80 of Juvenile Justice Act and 344, 406, 420, 120-B, 34 of IPC against the accused persons. (b) To pass such order and/or further order as this Hon'ble Court may deem fit and proper in the interest of justice, fair play and equity. It is prayed accordingly. Complainant Arpita Biswas d/o Sh. Abhijeet Biswas r/o 115, New D/S Flat, cable Town, Gulmurg, District East Singhboom, Jharkhand at present Tulip Lemon Society, A-5/601, Badshahpur, Gurugram, Haryana Through Counsel Maninder Singh Advocate, Gurugram."

4. The petitioners are before this Court claiming that the child was given in adoption to them by the complainant herself in agreement

with her partner. It has been claimed that the issue w.r.t. legality of adoption is pending in the proceedings initiated by the complainant herself in Guardianship Petition bearing No. GW/15/2021 before the Family Court, Gurugram wherein she is claiming custody of the child. Counsel for the petitioner further submits that both the parties are Hindus and the law does not prescribe any procedure for adoption. The only requirement is that of giving and taking the child. As per contents of FIR, the child was given to the petitioners by the complainant and her partner out of their own will. Present FIR is nothing but an abuse of process of law. It is outcome of the complainant falling apart with her partner. After he stands supplanted in the adoptive family the child can not be allowed to be a tool in their fight.

5. Counsel for the petitioners has further contended that keeping in view the fact that the child is neither an orphan nor surrendered child or abandoned child, no offence under the provisions of 2015 Act is made out and, thus, the present case would fall within the four corners of law laid down by the Apex Court in the **State of Haryana and others vs. Ch. Bhajan Lal and others, 1991(1) RCR (Cr.) 383** and it would be a case where this Court must exercise its jurisdiction vested under Section 482 Cr.P.C. to quash the FIR. In

support of his contention, counsel for the petitioners has relied upon the orders passed by Co-ordinate Bench of this Court in **CWP No.10555 of 2019** titled as **Jasmine Kaur vs. Union of India and others** decided on **28th of July, 2020**.

6. Per contra, counsel for the respondents submits that the child is in unlawful custody of the petitioners. The child has been separated from his natural mother without following due procedure of adoption and, thus, the case would fall within the ambit of Section 80 of the 2015 Act. It has been further claimed that the petitioners in connivance with Dr. Monika Chaudhary have indulged in unlawful practice and thus, the present FIR disclosing the cognizable offence against the petitioner should not be interfered with.

7. I have heard counsel for the parties and have gone through records of the case.

8. In the considered opinion of this Court the primary question that arises for consideration is '*whether the adoption in the present case would be governed by the provisions of 2015 Act or not?*'.

9. Statement of objects and reasons of 2015 Act reads as under :-

“5. Statement of Objects and Reasons of Act of 2015-(1)

Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children Articles 39 (e) and (f), 45 and 47 further makes the State responsible for ensuring that

all needs of children are met and their basic human rights are protected.

(2) The United Nations Convention on the Rights of Children, ratified by India on 11.12.1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account the child's age and the desirability of promoting the child's, reintegration and the child's assuming a constructive role in society.

(3) The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibility and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. have highlighted the need to review the existing law.

(4) Further, increasing cases of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased especially in certain categories of heinous offences.

(5) Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the

above mentioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children, and offences committed against children. This legislation would thus ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstance by adopting a child-friendly approach keeping in view the best interest of the child in mind.

(6) The notes on clauses explain in detail the various provisions contained in the Bill....”

(emphasis supplied)

10. Section 1(4) of 2015 Act further provides as under :-

“~~1~~(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

11. Child in need of care and protection has been defined under Section 2(14) of 2015 Act :

“~~2~~(14) “child in need of care and protection” means a child—

(i) who is found without any home or settled place of

abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(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

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;”

12. A conjoint reading of aforesaid provisions in the light of statement of objects and reasons of the Act does provide a window to peep into the intention of the legislation. Adoption has been perceived as a measure to provide right to family to a child in need of care and protection. The same has been recognised under the Act as one of the rehabilitative measure to integrate a child in the need of care and protection with society and the statute quests for speeding up the adoption procedure. As a check to weed out the possibility of child trafficking in the name of adoption and to save rights of adopted child in family procedure of adoption has been made mandatory. Chapter VIII deals with the adoption and Section 56 contained therein reads as under :-

“56. (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.

(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 Court, shall be punishable as per the provisions of section 80.”

(emphasis supplied)

13. Thus, the Act relates to adoption of the orphan/ abandoned/surrendered child and the same has been recognized to ensure right to family for such children. Section 56(3) consciously avoids overlapping effect of provisions of this Act and that of Hindu Adoption and Maintenance Act, 1956. Chapter IX deals with other offences against the children. Section 80 of 2015 Act reads as under :-

“80. 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.”

14. Corresponding to the provisions as contained in Section 56, Section 80 makes it further clear that the offence prescribed also deals with the adoption of 'orphan', 'abandoned' or 'surrendered' child only. The aforesaid three expressions are also defined under the Act,

“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;”

15. It is under the aforesaid framework of law that the issue involved in the present case needs to be analyzed. Can the child in the present case is said to be 'orphan' or 'abandoned' or 'surrendered child' as prescribed under the Act. The complainant cannot deny that as per

the allegations levelled in the FIR itself the child was never deserted by her or by the adoptive parents. Even as per the contents of FIR after the complainant conceived the child she went to gynecologist for taking treatment. After doctor informed her that the fetus has been fully formed the complainant and her partner asked for NGO. It is on their asking that the doctor informed them about a couple i.e. the petitioners who want a child but could not conceive. On the doctor's asking the petitioners contacted the complainant and couple (the petitioners) had meetings with the complainant wherein adoption of the child was agreed. After the complainant gave birth to child on 3rd of July, 2019, the petitioners took the child from the hospital itself. It was an year thereafter that the present complaint was filed. Moreover, she is already in the midst of litigation to claim the custody of the child which is being strongly contested by the adopted parents as well. Similarly the child can also not be termed as 'surrendered' child as he was never relinquished by his parents or guardians to the Child Welfare Committee constituted under Section 27 as defined under Section 2(22) of the Act. The child is neither an orphan. Thus, it cannot be said that the adoption in the present case would be governed by Chapter VIII of 2015 Act and, thus, no offence punishable under Section 80 of the same, can be said to be made out.

16. The parties are admittedly before the Family Court seeking

custody of the child wherein they have projected their respective claims. It will be in the paramount interest of the child that the *lis* w.r.t. custody gets adjudicated at the earliest. Both the parties will be at liberty to move appropriate application seeking expeditious decision on the same.

17. Coming on to the law wr.t. exercise of jurisdiction under Section 482 Cr.P.C., the law stands well settled in **Ch. Bhajan Lal's case**, wherein Apex Court held as under :-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation

by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

18. The same view was reiterated by the Apex Court in the

case of **Prof. R.K. Vijayasathy & Anr. vs. Sudha Seetharam & Anr. (2019) 16 SCC 739**, wherein it has been held that the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. is required to examine whether the averments made in the complaint constitute the ingredients necessary for an offence alleged. If the averments taken on their face do not constitute ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482 Cr.P.C. Though the law does not require the complaint to reproduce the legal ingredients of the offence verbatim, the complaint must contain basic facts necessary for making out an offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceedings would constitute an abuse of process of the Court.

19. Once this Court has come to the conclusion that the adoption of the child in the present case is not governed by the provisions as contained in 2015 Act, there is no hesitation in holding that the present FIR registered for offence punishable under Section 80 alleging that the petitioners are in breach of Chapter VIII of 2015 Act, cannot be sustained. Finding that the present case would fall within the four corners of law laid down in the case of **Ch. Bhajan Lal's case**

(supra), FIR impugned in the present petition is ordered to be quashed.

20. The present petition stands allowed accordingly.

February 28, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No