

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207/3 CRM M-24475 of 2022
Date of Decision: 02.05.2024

Saikiran Madhavan and another ...Petitioners
Versus
State of U.T. Chandigarh and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Chanderhass Yadav, Advocate, for the petitioner.

Mr. Rajeev Anand, Additional P.P., for U.T., Chandigarh.

Ms. Satinder Kaur, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. At the very outset, learned counsel for the petitioner contends that in the present case, offences under Sections 177, 465, 467, 468 and 471 IPC have been added later on.
2. The Registry of this Court is directed to carry out the necessary corrections in the head note as well as prayer clause of the present petition and the offences under Sections 177, 465, 467, 468 and 471 IPC may be added in the present petition.
3. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 80 dated 13.05.2022 under Sections 120 and 120-B IPC (Sections 177, 465, 467, 468 and 471 IPC added later on), Police Station South Sector 34, Chandigarh, District Chandigarh (Annexure P-19) and all proceedings emanating

therefrom primarily on the ground that the FIR was not only without jurisdiction but a civil dispute had been converted into a criminal offence.

4. Learned counsel for the petitioners submitted that Richa Gupta, respondent No. 2/complainant was married to Adesh Gupta on 27.05.2017 at Baharpur Garden, Patiala. On the night intervening, 31.05.2019/01.06.2019 Master Advait Gupta/Aariket Madhavan (named so by the petitioners) was born. Unfortunately, on 22.07.2019, Adesh Gupta, husband of respondent No. 2 had expired. On 05.09.2019, a common relative of the petitioners and respondent No. 2, after coming to know that the respondent No. 2 and her in-law were looking for a couple, who could adopt her child, arranged a dialogue between the petitioners and respondent No. 2. Even, the respondent No. 2 was aware of the fact that the petitioners, a couple was desirous of adopting a child. At the same time, respondent No. 2 and her family members were in a hurry to give Advait Gupta/Aariket Madhavan in adoption to some other couple as they had to perform remarriage of respondent No. 2. At that time, the petitioners were living in United States of America and their arrival would have taken some time. Consequently, the petitioners asked the sister of the petitioner No.2 to perform the “give and take ceremony”, in view of the urgency of the matter and even photographs (Annexures P-1 and P-2) were clicked in the said ceremony, which had taken place in presence of 20 members of the family. Even, the complainant

executed an affidavit (Annexure P-3) on the said day to the effect that she intended to re-marry after the death of her husband and she was willing to give her son in adoption to the present petitioners and it had happened with the understanding of both the families. Ultimately, on 22.11.2019, the petitioners came to India and petitioner No. 2 took the child in her custody and the petitioners approached the respondent No. 2 and her parents for further formal adoption also. On 03.12.2019, both the sides gathered again at the house of Ms. Rajni Gupta, common relative of both the parties at Patiala (Punjab) where the adoption was reduced into writing on the stamp paper of Rs. 1,000/-, which was purchased on 05.09.2019 itself. The respondent No. 2 and her father were signatories to the deed of adoption dated 03.12.2019 (Annexure P-4) and it was also signed by a common relative Jainender Gupta and the adoption deed was duly notarized at Patiala. Learned counsel further submitted that with an oblique motive, the respondent No. 2 changed her mind and filed complaint dated 18.12.2019 (Annexure P-5) and complaint (Annexure P-6) to the Chandigarh Police and other authorities. However, no action was taken on the same and the petitioner filed a Criminal Writ Petition No. 820/2020 (Annexure P-7) for issuance of a writ in the nature of *Habeas Corpus* to secure the release of alleged detainee Master Advait Gupta/Aariket Madhavan, who was in the alleged illegal custody of the petitioner and their family members. The petitioners also filed a reply to the said writ petition and a specific stand was

taken by the petitioners that the respondent No.2/petitioner in the writ petition had herself given the child in adoption to the petitioners. Even, the Union Territory of Chandigarh/State had also filed a detailed reply (Annexure P-9) in the said writ petition by way of affidavit of SHO, Police Station Sector 34 Chandigarh. It was clearly stated that the respondent No. 2 had filed complaints on 18.12.2019, 20.12.2019 and 14.01.2020 against the petitioners. However, the Chandigarh Police did not have the jurisdiction to look into the matter as the alleged adoption papers were executed at Patiala and in-law of respondent No.2/complainant were also residents of Patiala. Still further, it was stated that respondent No.2/complainant should approach Patiala Police as the alleged occurrence comes within the jurisdiction of District Patiala. The petitioners also filed replies to the complaints submitted by respondent No.2. Ultimately, in the above mentioned writ petition, this Court had ordered for giving custody of the child to the respondent No.2/complainant. However, the petitioners approached the Hon'ble Supreme court of India by way of filing of Criminal Appeal 855 of 2020 and vide order 14.12.2020, the Hon'ble Supreme Court permitted the petitioner No. 2 to take the child to United States of America subject to furnishing an undertaking to return India with the child on or before 31.03.2021. Operative part of the said order has been reproduced below:-

“The closeness of the child to the appellant has been mentioned and the child is of a young age less than a year and a half now and has been staying with the appellant. The appellant wants to take the child to the US for 2-3 months with an undertaking that she will return back to India with the minor child immediately after receipt of the visa extension papers.

Learned counsel for the respondent opposed the request and specially expresses a concern about the possibility of the appellant and the child not returning to India.

On our query as to what is the security which the appellant is going to furnish, learned senior counsel for the appellant, on instructions, states that the appellant undertakes to return back on or before the 31st March, 2021 to India and to secure the presence of the appellant and the child both in India by that date and is willing to give a bank guarantee in the name of the Registrar of this Court for a sum of Rs.1 crore.

On a consideration of the matter and looking to the peculiar facts of the case, we are inclined to permit the appellant to take the child to the US subject to furnishing an undertaking before this Court to return with the child to India on or before 31st March, 2021.

In addition, the appellant will furnish an unconditional

bank guarantee in the name of the Registrar of this Court for a sum of Rs.1 crore, in case there is any breach of this condition.

Subject to the aforesaid, we allow the application including for the appellant to carry Advait Gupta with her. As to what should be the further arrangements in respect of this child form the subject matter of our main order and thus, after 31 March, 2021 those aspects will be dealt with by the Larger Bench to whom the matter has been referred in terms of the impugned order and in terms of the orders passed by us today”.

5. Learned counsel for the petitioner contended that in pursuance of the interim order dated 14.12.2020 (Annexure P-13) passed by the Hon’ble Supreme Court, the petitioner No. 2 obtained the passport of Master Advait Gupta/Aariket Madhavan (Annexure P-15) and the petitioner No. 2 travelled to U.S.A. with the child, as per the permission granted by the Hon’ble Supreme Court.

6. At this stage, the respondent No.2 moved similar application in CRWP 820 of 2020 with a prayer to direct the petitioners to surrender their passports before this Court and the allegations similar to the present FIR were raised. The reply (Annexure P-17) was filed on behalf of petitioner No. 2 before this Court. Apart from that, learned State counsel/Union Territory of Chandigarh also filed a reply before this Court and again it was

reiterated that during the course of inquiry, it had been found that the birth certificate had been prepared at New Delhi and even the Passport Issuing Authority was at New Delhi. Consequently, the Chandigarh Police has no jurisdiction in the matter. Even, it was stated by the learned State counsel that the birth certificate issued by the Office of New Delhi, Municipal Corporation and since the respondent No. 2 had raised the issue relating to the genuineness of these two documents, the said complaint was not maintainable before the Chandigarh Police and the cause of action had taken place beyond the territorial jurisdiction of Chandigarh Police. However, the respondent No. 2 managed to get the present FIR (Annexure P-19) registered against the petitioners by alleging that Master Advait Gupta/Aariket Madhavan was never given in adoption to the petitioners and the passport had been issued to the said child without valid adoption and even the birth certificate issued by the Municipal Corporation, New Delhi, was forged and fabricated. Learned counsel for the petitioner further contended that even the parents-in-law of the respondent No. 2 had also filed a reply and had stated that adoption by the petitioners was valid and it was performed with the consent of the respondent No. 2.

7. By referring to the replies (Annexures P-9 and P-18) submitted by the Union Territory of Chandigarh, learned counsel for the petitioners contended that as per the admitted case of Chandigarh Police, no cause of action had accrued within the jurisdiction of

Union Territory of Chandigarh. The passport was issued at New Delhi by the Passport Authorities and the birth certificate was issued by the New Delhi, Municipal Corporation at New Delhi. The Chandigarh Police had no jurisdiction to register the FIR in the present case. Even the earlier complaints (Annexures P-5 and P-6) and other complaint submitted by respondent No.2 were filed by Chandigarh Police, however, on the same set of allegations, the present FIR was registered by Chandigarh Police with *malafide* intention. Learned counsel further contended that so far as the question of territorial jurisdiction with reference to a criminal offence is concerned, the main factor to be considered by the Court is the place, where the alleged offence was committed and the cause of action accrued to the complainant. In the present case, the dispute was pertaining to a passport issued by the Passport Authorities at New Delhi and a birth certificate issued by the Municipal Corporation, so the Chandigarh Police had no territorial jurisdiction over the matter and they had taken the stand by filing replies on affidavits (Annexures P-9 and P-18) before this Court and the FIR was an instrument of the misuse of the process of law. Still further, a Criminal Writ Petition 820 of 2020 involving the controversy between the parties regarding the adoption of Master Advait Gupta/Aariket Madhavan was pending before this Court and the Chandigarh Police had got the FIR registered on the same set of allegations by misusing the process of law. Further, the said child was given in adoption to the present

petitioners by executing a valid adoption deed (Annexure P-4), which was never challenged by the respondent No. 2 nor the said adoption deed has been set aside by any competent Court of law till date. Still further, the matter was considered by the Hon'ble Supreme Court and the passport was issued and the child was permitted to go to United States of America with petitioner No. 2 by the Hon'ble Supreme Court of India by passing order dated 14.12.2020 (Annexure P-13). Thus, when the subject matter was pending before this Court as well as the Hon'ble Supreme Court of India, the police had no authority to register the FIR with regard to the same allegations and the FIR is liable to be quashed by this Court. Learned counsel further contended that even the respondent No. 2/complainant has already made a complaint to the Ministry of External Affairs, Regional Passport Office, New Delhi and no action was taken by the Regional Passport Office, New Delhi, on the complaint submitted by respondent No.2. Learned counsel further contended that in fact the petitioner No. 2 is a green card holder of United States of America and due to job exigencies and commitments, he had to travel to U.S.A and the criminal prosecution was launched by the respondent No.2 in collusion with Chandigarh Police, just to use pressure tactics. Learned counsel further contended that even otherwise, the valid adoption had taken place on 05.09.2019 and the FIR has been got registered by the respondent No. 2/complainant on 13.05.2022 after long and unexplained delay. Learned counsel for the petitioners contended that

in the present case, the offences under Sections 177, 465, 467, 468 and 471 IPC have been added later on, illegally.

8. On the other hand, learned State counsel submitted that from the complaints submitted by respondent No.2, cognizable offence was made out and consequently, the FIR was ordered to be registered against the present petitioners. Learned State counsel submitted that even a letter dated 20.09.2021 was addressed to the Regional Passport Office, R.K. Puram, New Delhi, for necessary action at their end. However, he admits that earlier also, the complaints were received from the respondent No.2 but no action was taken on the same.

9. On the other hand, learned counsel appearing on behalf of respondent No. 2 submitted that in the present case, the petitioner has raised several disputed questions of fact, which can never be adjudicated by this Court while exercising its jurisdiction under Section 482 Cr.P.C. Learned counsel further contended that even the birth certificate and documents were fake, which is apparent from the birth certificate (Annexure P-4) submitted by the petitioners. Even, the petitioners have been wrongly shown as parents of Master Advait Gupta/Aariket Madhavan and the petition deserves to be dismissed by this Court.

10. I have heard learned counsel for the parties and perused the record.

11. While exercising the powers under Section 482 Cr.P.C., the High Court has to be conscious that this power has to be exercised sparingly and only for the purpose of prevention of abuse of process of the Court or otherwise to secure the ends of justice. Whether a complaint discloses the commission of cognizable offence, it depends on the nature of the act alleged in the said complaint. Whether the essential ingredients of an offence are present or not has to be judged by this Court. The High Court must see whether the dispute which is in substance of a civil nature, is given a cloak of criminal offence. In such situation, if civil remedy is available and is in fact adopted, as has apparently happened in the present case, the High Court should quash the criminal prosecution, to prevent the abuse of the process of the Court.

12. In the present case, the petitioners are sought to be prosecuted for committing the offence under Sections 420 and 120-B IPC and later on added offences under Sections 177, 465, 467, 468 and 471 IPC. Before proceeding further, this Court would examine whether the ingredients of offence of cheating are made out in the present case or not.

“The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention

thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)”.

13. In the present case, from a perusal of the FIR (Annexure P-19), it is apparent that the allegations have been levelled by respondent No. 2/complainant that the child had not been given in adoption. However, admittedly, the Affidavit (Annexure P-3) and Adoption Deed (Annexure P-4) were executed by respondent No.2/complainant herself and she could not dispute the said document nor the validity of such documents as admittedly been challenged before any Court of law. Rather the said matter was pending for adjudication before this Court in Criminal Writ Petition No. 820 of 2020 and Criminal Appeal No. 855 of 2020 before the Hon'ble Supreme Court of India. Still further, the petitioner No. 2 was permitted by the Hon'ble Supreme Court of India to take the child to USA subject to furnishing an undertaking before the Court and,

thereafter, in pursuance to the said order, the petitioners had obtained the passport of Master Advait Gupta/Aariket Madhavan. Apart from that, even the respondent No. 2 had moved a complaint to the Regional Passport Office, New Delhi, against the issuance of the passport in favour of the child, but no action has been taken by the Passport Authorities so far. Even, the respondent No. 2 has failed to show as to how and in what manner, the respondent No. 2 was cheated by the present petitioners. Rather from the admitted facts, it is apparent that it is a dispute of adoption of a child, which is already the subject matter of dispute between the parties before the competent Courts and the police had no jurisdiction to register the FIR in the present case.

14. Apart from that, it is admitted case of the parties that the child was given to the petitioners by respondent No. 2 at Patiala. Even, the Union Territory of Chandigarh/State had filed two affidavits (Annexures P-9 and P-18) before this Court and it was categorically admitted that the birth certificate had been issued by the Office of Municipal Corporation, New Delhi and the passport had been issued by Regional Passport Office, New Delhi. Thus, admittedly, the Chandigarh Police had no territorial jurisdiction so far as the commission of a criminal offence was considered. If at all, the offence was committed, it was at New Delhi and this fact was also admitted by the Chandigarh Police in its replies (Annexures P-9 and P-18) before this Court.

15. It has been held by the Hon'ble Supreme Court of India in the matter of **Md. Ibrahim and others Vs. State of Bihar and another, 2009(4) R.C.R. (Criminal) 369** as follows:

"9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part

thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to

have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration”.

16. Now advertent to the facts of the present case, it has been alleged that the birth certificate issued by the Municipal Corporation, New Delhi and the passport issued by the Regional Passport Office, New Delhi in favour of Master Advait Gupta/Aariket Madhavan were forged and fabricated. Again, it is observed that both the documents were issued by the competent Authorities at New Delhi and not at Chandigarh. Even, the process of adoption had taken place at Patiala

(Punjab) and the Chandigarh Police admittedly had no territorial jurisdiction over the matter. Still further, the respondent No. 2 had already made a complaint to the Passport Authorities and no action was taken by the Regional Passport Office, New Delhi. Apart from that, the learned State counsel has failed to point out as to how and in what manner, the birth certificate/passport were forged and fabricated. Still further, the respondent No. 2 had been making complaint in that regard to the competent authorities also, but there is no document on record to show that the said documents were declared to be forged and fabricated by the competent authorities.

17. Still further, in the matter of **Md. Ibrahim and others Vs. State of Bihar and another, (supra)** it has been held as follows:-

“7. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have

to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind. Sections 467 and 471 of the Penal Code”

18. It has been held by the Hon'ble Supreme Court of India in the matter of **R. Nagender Yadav Vs. The State of Teangana and another 2022(17) Scale 516** as follows:

“17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the

criminal proceeding to prevent abuse of process of court”.

19. In the present case also, the FIR was ordered to be registered on 13.05.2022 by the Chandigarh Police in Police Station South on the same set of allegations, which were earlier rejected by Chandigarh Police by holding that it had no territorial jurisdiction over the matter. Even, two affidavits (Annexure P-9 and P-18) were filed on behalf of Chandigarh Police before this Court, in which, the same stand was reiterated by the police. However, without any further development, the Chandigarh Police registered the present FIR against the petitioners, just to pressurize them to enter into a compromise with respondent No. 2 and made a futile attempt to convert the civil dispute in a criminal offence. Apart from that, on the date, when the FIR was registered, the matter was pending for adjudication before this Court and the dispute relating to adoption deed could be very well challenged before the Civil Courts.

20. Thus, this Court has no hesitation to hold that the essential ingredients to constitute the alleged offences were completely missing in the present case and the criminal proceedings were launched by the Chandigarh Police as a weapon of harassment against the present petitioners. Consequently, the FIR No. 80 dated 13.05.2022 under Sections 420 and 120-B IPC (Sections 177, 465, 467, 468 and 471 IPC added later on), Police Station South Sector 34, Chandigarh, District Chandigarh (Annexure P-19) alongwith all

consequential proceedings arising therefrom are ordered to be quashed.

Needless to observe that the above observations have been made only for the limited purpose of disposal of the present petition before this Court and both the parties shall be at liberty to avail their alternative remedies with regard to the adoption of Master Advait Gupta/Aariket Madhavan before the competent Courts of law.

02.05.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No