



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

APPEAL AGAINST ORDER No.30 OF 2024

(Shri Sanjay s/o. Damodar Krishnani and another Vs. Smt. Bebibai alias Sarika w/o.
Ajayrao Wanjari and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.R. Charpe, Advocate for appellants.
Mr. H.Z. Kothari, Advocate for respondent No.1.
Mr. K.P. Pathak, Advocate for respondent No.2.
Ms. P.C. Bawankule, AGP for respondent No.3/State.

CORAM : **ANIL L. PANSARE, J.**

DATE : **8th MAY, 2025.**

1. Heard Mr. S.R. Charpe, learned counsel for the appellants, Mr. H.Z. Kothari, learned Advocate for the respondent No.1, Mr. K.P. Pathak, learned Advocate for the respondent No.2 and Ms. P.C. Bawankule, learned Assistant Government Pleader for respondent No.3.

2. The challenge is to order dated 24th September, 2024 passed by the learned District Judge, Nagpur in Misc. Civil Application No.497/2024 thereby rejecting the application filed on behalf of the appellants under Sections 7 and 12 of the Guardian and Wards Act, 1890.

3. It appears that Court below, taking aid of provision under Section 19 of the Guardian and Wards Act, 1890 refused to recognize the appellants as guardian on the ground that the natural mother i.e. respondent No.1 is not unfit in order to appoint appellants as guardian of the baby girl who was 10 days

old when was handed over to them by the respondent No.1.

4. Having heard both sides, it appears that the appellants have approached Court below under the provisions which ought not to have been invoked in the given facts and circumstances of the case. The facts below will be having more clarity on this point.

5. The respondent No.1 delivered baby girl on 5th June, 2022 at Government Hospital, Yavatmal. One Mr. Sachin Patil claiming himself to be person from Adoption Agency approached the appellants, who were desperate to have child having spent 10 years unsuccessful efforts. The craving for child appears to have overpowered the necessity to inquire about the genuineness of the claim made by Sachin Patil and thus appellants rushed to respondent No.1 and took the child for adoption under a Deed of Adoption.

6. The appellants and respondent no.1 are present in the Court. The respondent no.1 submits that she has two sons, her husband has deserted her and got married with someone else. She is working as maid, she is not financially sound to maintain her sons and is somehow managing their up-bringing she being not in a position to maintain third child has willingly given her baby girl to appellants for adoption and appellants have accepted her.

7. In context with the aforesaid set of facts I have gone through the provisions of Hindu Adoptions and Maintenance Act, 1956. The appellants are capable of adopting child in terms of Section 7 of the Act and the respondent No.1 is capable of giving child in adoption in terms of Section 9 of the Act. It further

appears that the process of adoption taken here can be endorsed as valid if one goes through the conditions stipulated in Section 11 of the Act. It provides that in every adoption, 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 son's daughter living at the time of adoption. In the present case it is nobody's case that the appellants have a son and, therefore, there arises no question of their son having daughter living. Another important condition is that in terms of Section 11 performance of *datta homam* is not essential to validate adoption.

8. Thus, here is a case where the natural mother has given a child for adoption under compelling circumstances. The appellant No.1 is an Interior Designer and appellant No.2 is housewife. When inquired appellant No.1 submits that his annual income is Rs.10 to 12 Lakhs. They got married in the year 2013. They were trying hard to have natural child for last many years but couldn't succeed. Their dream appeared to have come through when they got message from said Sachin Patil and finding that the dream is coming true and the craving for child, they didn't even inquire of genuineness of claim made by said Sachin Patil, that he is from Adoption Agency. Nonetheless, the fact remains that the process of adoption was validly done.

9. The child was in custody of appellants for about nine months and on 12th March, 2023 the Police Officials visited the house of appellants and made inquiry. The Police Officials instructed appellants to appear before the Gittikhadan Police Station, Nagpur alongwith child and on that day the Police Officer took custody of the child and handedover to respondent

No.2. The custody was given to respondent No.2 under Order 24th March, 2023 passed by the Child Welfare Committee. It appears that Police Officer has produced child before the Child Welfare Committee and upon such production, order came to be passed.

10. The reason why the Police officials visited appellants' house is that an F.I.R. was registered vide Crime No.0183/2023 under Section 370,34 of the Indian Penal Code and provisions of Section 75 and Section 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short, 'Act of 2015'). A complaint was lodged by another Police Officer against Sachin Patil and others. The contents of the F.I.R. indicate that the accused persons in some different crime confessed of selling the baby girl to appellants on 14th June, 2022 and thereupon investigation was carried on. The appellants as well as respondent No.1 are also made accused. Thus, the foundation is confession made by accused in an investigation pertaining to another crime. I need not go into the details of allegation. However, certain obvious aspects must be mentioned here. The Investigating Agency has invoked Section 370 of the Indian Penal Code which reads thus :

“370. Trafficking of person- (1) *Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by -*

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or

receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

11. As could be seen, to accuse someone of trafficking, the accused should carry a blame of transferring, recruiting, transporting, harbouring or receiving a person set to have been trafficking for the purpose of exploitation, that too, by using threats or using force, or by abduction or by practicing fraud or

by abuse of power or by inducement.

12. The case here may be viewed from the point of view of inducement in the sense the Investigating Agency may blame appellants of inducing respondent No.1 to transfer the child to them by obtaining her consent on receiving payment or benefit. As such there appears no evidence but, presuming such to be the case here, the expression “exploitation” as spelt out under Explanation (i) will include an act of physical exploitation or sexual exploitation, slaving or practices similar to slavery, servitude, or the forced removal of organs.

13. The question, therefore, is whether the child was given by the respondent No.1 to appellants either for sexual exploitation or for physical exploitation or for slaving or practices similar to slavery, servitude or for forced removal of organs. To my mind, it is nobody's case, as cannot be, that the child was so given by respondent No.1 and/or taken by the appellants. Rather, the child given for its protection and well being. In the circumstances, I am of the view that ingredients of Section 370 may not be attracted in this case.

14. Be that as it may, the trial will reach its logical end in due course, the fact, however, remains that there is cogent evidence to believe that parties entered into valid adoption. The Adoption Deed is signed by both the parties. Thus, the parties are present before the Court and certify the contents thereof indicating willingness of both parties to give and take a child.

15. In the circumstance, the trial Court should have allowed the application to the extent of validating the adoption deed by taking aid of the provisions of the Hindu Adoptions and

Maintenance Act, 1956. Instead the trial Court and all concerned including the appellants focused on the provisions of the Guardian and Wards Act, 1890 resulting into perverse order. Nonetheless, the parties could have invited attention of the trial Court to the provisions of the Hindu Adoptions and Maintenance Act to validate adoption deed. In fact the appellants should not have chosen to recognize themselves as guardian when they had authority of parental recognition. The application, therefore, deserves to be partly allowed.

16. So far as order dated 24th March, 2023 passed by the Child Welfare Committee (in short, 'CWC') is concerned, the Investigating Agency so also the CWC failed to appreciate that ingredients of Section 370 of the Indian Penal Code were apparently not attracted. There was no necessity for the Investigating Agency to remove the child from the custody of the appellants and produce it before the CWC. That apart, CWC has also committed manifest error and failed to protect the interest of the child. The prime focus, under the provisions of the Act 2015 is welfare of the child, however, the CWC has given custody neither to the biological mother nor to adoptive parents but to respondent No.2. The CWC has thus passed perverse order.

17. The appellants shall take appropriate steps to get the order set aside. Till then, interim custody will have to be given to the adoptive parents.

18. The appeal is accordingly partly allowed.

19. The order dated 24th September, 2024, passed by the District Judge, Nagpur in Misc. Civil Application No.497/2024 is quashed and set aside.

20. The application is allowed to the extent of declaration sought by the appellants seeking to validate the adoption deed. The adoption deed dated 14.6.2022 is declared legal and valid.

21. The appellants are hereby declared as parents of the baby girl.

(i) The appeal is disposed of in terms of above order.

(ii) The appellants shall present themselves before respondent No.2 at 11.00 a.m. tomorrow.

(iii) The respondent No.2 shall handover custody of the child to the appellants tomorrow at 11.00 a.m.

(ANIL L. PANSARE, J.)