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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 10th January, 2025

+ **CRL.M.C. 1909/2021**

SMT RENU GARG

W/o Shri Naresh Kumar Garg,
R/o 32/77, IInd Floor, Near Vishram Chowk,
Rohini, Delhi-110085

SH. NARESH GARG

S/o Shri Late Jai Narain Garg,
R/o 32/77, IInd Floor, Near Vishram Chowk,
Rohini, Delhi-110085

.....Petitioners

Through: Mr. Shiv Chgaran Garg & Mr. Imran
Khan, Advocates

Versus

THE STATE

.....Respondent

Through: Mr. Shoaib Haider, Ld. APP for the
State with SI Sangam Yadav, P.S.
Mayur Vihar

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. A Criminal Petition under *Section 482* of the *Criminal Procedure Code, 1973* read with *Article 227* of the *Constitution of India, 1950* has been filed to challenge the order dated 17.02.2021, vide which Charge under



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Sections 363/370 read with Section 120B of the Indian Penal Code, 1860 and Sections 80 & 81 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter 'JJ Act') has been framed against the Petitioners.

2. The **case of the prosecution** is that on 19.08.2020 at about 02:00 PM, secret information was received by ASI Shailesh that one lady, Shahida, who is in the business of sale and purchase of children, *has purchased a child of two-three months old*, whom she would be bringing at Gazipur-Noida Road, New Barat Ghar Chilla Village for the purpose of selling. Accordingly, a raid was organized. The lady *Shahida* with a child in her lap, came at the spot and she was identified by the informant. She waited at the spot for about 20 minutes, but none came. As she was seen intending to leave, the raiding party apprehended her along with the child.

3. On enquiry, *Shahida* was unable to give any satisfactory explanation about the child; she along with the child were brought to the Office of the Special Staff, where she was thoroughly interrogated.

4. *Shahida* revealed that on 18.08.2020, she went to Burari on the directions of one *Priyanka*, who told that one lady, *Shanti* would give a baby for a consideration of Rs.4,00,000/-, out of which she had given the initial amount of Rs.70,000/-. She had gone to the spot at about 03:50 P.M. for the purpose of selling the child to the person whom *Priyanka* was supposed to bring, but because she failed to arrive, she was about to leave when she was apprehended by the police.

5. Accused/*Shahida* was produced before the Court of learned Metropolitan Magistrate and she was arrested and her confessional statement was recorded. *The child was sent to Nirmal Chaaya as per*



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directions of CWC, Mayur Vihar.

6. During investigation, it revealed that one Kusum Lata was going to sell the infant to the relative of one Naresh. Notice was served upon Vikas, husband of Kusum Lata, for her alleged involvement in the case. Kusum Lata was arrested and her mobile phone was checked, which showed WhatsApp messages in regard to sale and purchase of the children. *Kusum Lata also disclosed that in June, 2020 she had sold one new born child to Mr. Naresh Garg and his wife Smt. Renu Garg.*

7. Shivam, a child of two month, named was recovered from the custody of Naresh Garg and Renu Garg i.e. the Petitioners herein. During investigation, Petitioners revealed that they were having medical complications and were not able to have a child. Naresh Garg revealed that through his elder brother, he was introduced to Dr. Kusum Lata who was running a Private Clinic. She told him that a poor family wanted to give away their child for adoption in lieu of sum of Rs.5,00,000/-. An Adoption Deed between Mrs. Putul, wife of Mr. Sukhdeb and Mr. Naresh Garg, son of Sh. Jai Narain Garg, was accordingly prepared, though it did not bear the signatures of either of Petitioners i.e. Naresh Garg and Renu Garg or of the alleged natural parents. Also, Kusum Lata did not arrange a meeting with the parents of the child.

8. Since Petitioners Naresh Garg and Renu Garg did not follow the procedure of adoption as prescribed under *JJ Act*, both were arrested and after completion of the investigation, Charge-sheet under *Sections 370/363* read with *Section 120B* of *IPC* and *Sections 80/81* of *JJ Act*, was filed against them along with other co-accused persons.



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9. *Vide* impugned Order dated 17.02.2021 charges for the aforesaid Offences under Sections 363/370 read with *Section 120B* IPC and *Sections 80 & 81* of *J J Act* were framed against the Petitioners.

10. *The Order on Charge dated 17.02.2021 is sought to be quashed* by the present Petitioners by asserting that none of the alleged offences are made out.

11. It is argued that they had duly adopted the child after execution of proper Adoption Deed and therefore, it cannot be said that the child had been kidnapped by them, as defined under *Section 363* of *IPC*. Moreover, there are no allegations in the entire Chargesheet that the petitioners have kidnapped the child from the lawful guardian.

12. Likewise, *Section 370* of the *IPC* deals with trafficking of persons; however, the entire Chargesheet does not level any allegation of trafficking of the minor by the Petitioners. In fact, they are the adoptive parents and no offence of trafficking can be made out against them.

13. It is further contended that *Section 80* of the *JJ Act* provides punitive measures of adoption without following prescribed procedure; it states that *if any person or organization 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 would be punishable with imprisonment of either description for a terms which may extent upon three years or with fine of one lakh rupees or with both.

14. ***Learned counsel for Petitioners*** has also submitted that *Section 81* of *JJ Act* prescribes that any person including employees of a hospital or



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nursing home or maternity home, who sells or buys a child for any purpose, shall be punishable with rigorous imprisonment for a term, which may extend to five years with fine of Rs.1,00,000/-, provided that such person is having actual charge of the child,.

15. Learned Counsel for the Petitioners submits that the term '*abandoned child*' has been defined under *Section 2(1)* of the *JJ Act*, as a child who has been deserted by their biological or adoptive parents or guardians and has been declared abandoned by a committee. The term '*surrendered child*', under *S. 2(60)* 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. *S. 2(42)* of *JJ Act* defines an '*orphan Child*' as a child who is without biological or adoptive parents, or whose legal guardian is unable or unwilling to care for them.

16. It is submitted that the child recovered from the Petitioners does not fall into any of the categories mentioned above and no proof whatsoever has been placed on record that there was any money consideration in adoption of the child.

17. Learned counsel submits that neither any statement nor any evidence has been placed on record to show that Petitioners had indulged in trafficking of the child or they had either sold or purchased the child from anyone. It is submitted that the child has been duly adopted by the Petitioners from their natural parents and no offence is made out against the Petitioners.



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18. Reliance is placed on Chaman Lal Vs. State of Punjab (1970) SCC 590 and S.K.Sundaram Suo Moto Contempt Petition (Crl.) 5 of 2000 (2001) 2 SCC 171 wherein it is observed that nothing is said to be done or believed to be done in good faith, if it is performed with due care and caution. Similar observations have been made in Harbhajan Singh Vs. State of Punjab and Another AIR 1966 SC 97 and Asstt. Commissioner, Anti Evasion Commercial Taxes Vs. Amtek India Ltd., (2007) 11 SCC 407.

19. **Ld. Counsel for the Petitioners** has further submitted that the Adoption Deed dated 16.06.2020 does not bear signatures of the Petitioners. The Police has not been able to identify or trace out the biological parents of the child and so, no case is made out against the accused persons. Furthermore, the only basis of the Prosecution case is founded is the disclosure statement of co-accused Kusum Lata, which is not admissible in evidence.

20. It is thus, submitted that the impugned Order dated 17.02.2021 on framing of Charge for the offences under *Sections 363/370* read with *Section 120B* of *IPC* and *Sections 80 & 81* of *JJ Act* deserves to be set aside and the FIR No. 430/2020, registered at Police Station Mayur Vihar, Delhi is liable to be also quashed.

21. In the ***Status Report filed on behalf of the Respondent/State***, it is asserted that the accused *Shahida* in her disclosure statement, has stated that she is involved in selling and buying of the new born babies. She admitted that the child recovered from her possession on 19.08.2020, was bought from accused Shanti Devi with the help of co-accused *Priyanka*.



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22. During further investigation, co-accused Shanti Devi and Kusum Lata were interrogated. From the mobile phone of Kusum Lata, certain chats in respect of selling and buying of infants was recovered and at her instance only, a baby boy of two months age was recovered from the possession of Petitioners.

23. Accused Shanti Devi also admitted that she is involved in the syndicate through accused persons namely, Priyanka and Deepika, who are absconding and have been declared Proclaimed Offender by the Trial Court.

24. Charge sheet for the offences under *Sections 363/370/120B of IPC* and *Sections 80/81 of JJ Act* was filed against Shahida, Kusum Lata, Shanti Devi, Naresh Garg and Renu Garg and *Charge for the said offences has rightly been framed against the Petitioners.*

25. **Submissions heard and Record perused.**

26. In the present case, there is specific averment of the Respondent/ State that the Petitioners along with the co-accused Priyanka and Deepika, who have been declared Proclaimed Offender, had indulged in the offence of sale and purchase of the children. The case against the present Petitioners is that they had no child and had failed five pregnancies, they were keen to adopt a child. They were introduced to Dr. Kusum Lata by the elder brother of Naresh Garg, who told them that she knew a poor couple who were inclined to give their new born child in adoption on payment of Rs.5,00,000/-. An Adoption Deed dated 16.06.2020 between Mrs. Putul, w/o Mr. Sukhdeb and Mrs. Renu Garg w/o Mr. Naresh Garg, s/o Sh. Jai Narain Garg, was prepared. But they admittedly never met the parents of the



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infant child. As per their own statement, the Adoption Deed was not a proper document, as it did not bear their signatures.

27. It is a matter of evidence whether Petitioners had genuinely adopted the child. Also, Petitioners have taken a contrary stand inasmuch as at one point they are claiming to have adopted the child and on the other, they are denying the Adoption Deed by asserting that it is not signed by them.

28. Furthermore, it is the case of the Prosecution that Dr. Kusum Lata was given Rs.5,00,000/- for the child and whereabouts of natural parents of the child are not known nor the Petitioners ever met them. Thus, there is *prima facie* nothing to show on record that the child had been handed over by the natural parents to Dr. Kusum Lata for adoption, from whom Petitioners had received custody of the child.

29. Pertinently, the natural parents of the child have not been traced and their statements recorded. *Prima facie* it shows that the Petitioners have taken the child from Dr. Kusum Lata. Undeniably, the child has been recovered from the custody of the Petitioners. It is a matter of evidence to prove if there was any monetary consideration underlying the entire process.

30. The Trial Court has rightly concluded that there is *prima facie* conspiracy under *Section 120B* of *IPC* read with *Sections 363/370* of *IPC* disclosed amongst the accused persons, of which Petitioners wittingly or unwittingly became a part. *The framing of Charge under these Sections is, therefore, justified.*

31. Learned Counsel for the Petitioners had vehemently contended that *Section 80 & 81 of the JJ Act* is not made out.

32. ***S. 80 of JJ Act*** reads as under:



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80. Punitive measures for adoption without following prescribed procedures

If any person or organization 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.

33. At this stage, in the absence of the identity of the parents being established, the evidence as collected by the Prosecution prima facie reflects that Baby Shivam was an *abandoned, orphan or surrendered* child. Though there is an Adoption Deed in regards to Baby Shivam, but the same does not bear any signatures of the Petitioners or the natural mother. Even the natural parents of the child are not traceable to prove the Adoption Deed.

34. The *procedure for adoption for such children as been laid down in JJ Act, has not been followed by the Petitioners. Therefore, the Charge under S.80 JJ Act, is also rightly framed.*

35. **S.81 of JJ Act, deals with sale and procurement of children for any purpose.** It reads as under:

“81. Sale and procurement of children for any purpose.



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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."

36. It is the case of the Prosecution that the petitioners along with the other co-accused, have procured the child in violation of procedures under S. 80 & 81 of the JJ Act. It may be that the hapless petitioners, who desperately desired to adopt a Child, fell prey to the System and the Co-accused persons, but at this stage it cannot be said that no prima facie case offence is made out under *Section 81* of the JJ Act, in the facts of the case.

37. In the light of aforesaid discussion, the impugned Order dated 17.02.2021 directing framing of Charge under Sections 363/370 read with Section 120B IPC and Sections 80 & 81 of *Juvenile Justice (Care and Protection of Children) Act, 2015*, does not call for any interference.

38. The Petition and pending Application(s), if any, are accordingly dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 10, 2025

va/r