

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 20th OF NOVEMBER, 2023

CRIMINAL REVISION No. 4629 of 2023

BETWEEN:-

**AJAI LALL S/O LATE SHRI VIJAY LALL, AGED ABOUT 64
YEARS, OCCUPATION: SOCIAL WORKER R/O GRAM
MARHOTAL, AAM CHPRA, TEHSIL AND DISTRICT
DAMOH (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI SHASHANK SHEKHAR - SENIOR ADVOCATE ASSISTED BY SHRI
BHOOPESH TIWARI - ADVOCATE)***

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION DAMOH(DEHAT) DISTRICT DAMOH (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI PRASHANT SINGH - ADVOCATE GENERAL WITH BRAMHADATT
SINGH - LEARNED DEPUTY ADVOCATE GENERAL)***

CRIMINAL REVISION No. 4657 of 2023

BETWEEN:-

**SHANTI LALL S/O SHRI RAJKUMAL DAVID LALL, AGED
ABOUT 42 YEARS, R/O MISSION BUNGALOW CIVIL
WARD NO 5 TEHSIL (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI SHASHANK SHEKHAR - SENIOR ADVOCATE ASSISTED BY SHRI
BHOOPESH TIWARI - ADVOCATE AND SHRI ABHAID PARIK -
ADVOCATE)***

AND

**THE STATE OF MADHYA PRADESH THROUGH PS
DAMOH, DISTICT DAMOH (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PRASHANT SINGH - ADVOCATE GENERAL WITH BRAMHADATT SINGH - LEARNED DEPUTY ADVOCATE GENERAL)

CRIMINAL REVISION No. 4658 of 2023

BETWEEN:-

SHEELA LALL W/O SHRI RAJKAMAL DAVID LALL,
AGED ABOUT 63 YEARS, MISSION BUNGALOW CIVIL
WARD NO. 5 TEHSIL AND DISTRICT DAMOH (MADHYA
PRADESH)

.....PETITIONER

*(BY SHRI SHASHANK SHEKHAR - SENIOR ADVOCATE ASSISTED BY SHRI
BHOOPESH TIWARI - ADVOCATE AND SHRI ABHAID PARIK -
ADVOCATE)*

AND

THE STATE OF MAHDYA PRADESH THROUGH POLICE
STATION DAMOH (DEHAT) DISTRICT DAMOH
(MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI PRASHANT SINGH - ADVOCATE GENERAL WITH BRAMHADATT
SINGH - LEARNED DEPUTY ADVOCATE GENERAL)*

CRIMINAL REVISION No. 4664 of 2023

BETWEEN:-

RAJKAMAL DAVID LALL S/O LATE SHRI VIJAY LALL,
AGED ABOUT 66 YEARS, R/O MISSION BUNGALOW
CIVIL WARD NO 5 TEHSIL AND DISTRICT DAMOH
(MADHYA PRADESH)

.....PETITIONER

*(BY SHRI SHASHANK SHEKHAR - SENIOR ADVOCATE ASSISTED BY SHRI
BHOOPESH TIWARI - ADVOCATE AND SHRI ABHAID PARIK -
ADVOCATE)*

AND

THE STATE OF MADHYA PRADESH THORUGH POLICE
STATION DAMOH DEHAT DISTRICT DAMOH (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI PRASHANT SINGH - ADVOCATE GENERAL WITH BRAMHADATT SINGH - LEARNED DEPUTY ADVOCATE GENERAL)

Reserved on : **18.10.2023**
Pronounced on : **.11.2023**

These revisions having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

These Criminal Revisions are filed being aggrieved of order dated 23.09.2023 passed by learned Special Judge (POCSO Act), 2012/Second Additional District and Sessions Judge, Damoh (M.P.), in SC No.27/23 (on behalf of Ajay Lall S/o late Vijay Lall and others and 8 others, Shainit(Shanti) Lall, Sheela Lall W/o Shri Raj Kumar David Lall and Rajkamal David Lall, on the ground that charges have been framed by the learned Trial Judge under the provisions of Sub-section (5) of Section 370 of the Indian Penal Code (hereinafter referred to as the IPC for short), Section 186 of IPC, Section 42 and 75 of the Juvenile Justice (Protection of Children) Act, 2015 (hereinafter referred to as the Act of 2015 for short), so also under Section 3/5 of M.P. Dharmik Swantrata Adhiniyam, 2021, without there being any basis for framing of said charges.

2. The first limb of argument addressed by Shri Shashank Shekhar, learned Senior Advocate while arguing Criminal Revisions seeking quashing of framing of charges is to the effect that final report which was filed by the police authorities on 17/07/2023 makes a clear mention of the fact that accused Ajay Lall is a Director of Aadhar Shila Institute and other accused persons are members of Mid India Christian Services. Therefore, it is submitted that for the acts of commission or omission of Mid India Christian Services (hereinafter referred to as MICS for short) Ajay Lal cannot be roped in.

3. It is submitted that there is no concept of vicarious liability under criminal jurisprudence. It is submitted that for the acts of MICS, Ajay Lal cannot be held responsible. It is further submitted that no charge under Section 370 I.P.C. is made out against Ajay Lall on account of there being no allegation of trafficking against Ajay Lall in the chargesheet in his capacity as Director of Aadhar Shila. It is submitted that Ajay Lall had resigned from MICS, thus, he cannot be held responsible for the acts of MICS.

4. It is further submitted that there are two different children to whom acts of

omission/commission have been attributed namely Usha Vishwakarma and Shri Jhanak Singh. It is pointed out that Jhanak Singh is admittedly a member of Bethlem Society under MICS. Therefore, Jhanak Singh has no connection with Aadhar Shila.

5. As far as Usha is concerned, it is submitted that neither Usha nor her parents have stated anything about conversion or torturing. It is submitted that Usha's parents got converted in Orissa which has nothing to do with present Aadhar Shila institution and, therefore, for the acts of the parents of Usha who have not been made an accused, if they got converted and consequentially the adopted child followed the religion of their adopted parents, then charge under Section 370 of I.P.C. will not be made out.

6. The second limb of argument is that no complaint was made by Mr. Priyank Kanoongo as is the requirement of Section 2(d) of Cr.P.C. read with Section 195 Cr.P.C.

7. Thus, Magistrate without there being any complaint made by the complainant in terms of Section 2(d) of Cr.P.C. could not have taken cognizance *de hors* the provisions contained in Section 195 Cr.P.C. Thirdly, it is submitted that registration of Aadhar Shila Institute is available on record which was given by the State Government on 27/02/2018 under the provisions of Section 41 of Juvenile Justice (Care and Protection of Children) Act, 2015. Thus, on the date of inspection in November, 2022, this registration was valid.

8. Thus, it is pointed out that there cannot be any charge under Section 42 of the Act of 2015. It is further submitted that Section 75 of the Act of 2015 deals with punishment for cruelty to a child. There is no allegation of cruelty to Usha who is the subject matter of investigation in the present case qua the Aadhar Shila. There is no mention of any other child in the statement given by Shri Priyank Kanoongo and, therefore, charge to the extent that it makes mention of other children to whom cruelty was meted out is not made out and, therefore, charge under Section 75 is also not made out.

9. Learned counsel for the revision petitioners further submits that no charge under Section 3/5 of Madhya Pradesh Dharmik Swatantrata Adhinyam is made out against Ajay Lal because there is no charge of forcing children or anybody else to conversion at Aadhar Shila Sansthan, Balgriha Damoh. It is further submitted that all the charges are cyclostyled and therefore, there is no charge

made against Ajay Lal.

10. Arguing for other revision petitioners, it is submitted that Institute at Bhadarwari was registered on 4/04/2023. Since, that has been registered subsequently and admittedly, it was not registered on the date of the inspection, the provisions of Section 89 of the Right of Persons with Disabilities Act, 2016 will come into play and no charge can be framed even for non-registration of Institute at Bhadarwari.

11. It is also submitted that Aadhar Shila has nothing to do with MICS and MICS has nothing to do with Aadhar Shila. Therefore, charges pertaining to the acts of MICS could not have been made against the Aadhar Shila and vice-versa. It is submitted that omnibus and general charges have been framed by the Magistrate without keeping this distinction in mind that two institutions are separate and there is no overlapping in their functioning.

12. It is also submitted that there will be bar under Section 4 of the Madhya Pradesh Freedom of Religion Act, 2021 in as much as, no complaint was made by the either converttee or the parents of the persons who were converted.

13. Learned counsel for the petitioners submits that learned trial Judge while framing the charges did not consider any of the submissions made by the applicant in his application under Section 227 of Code of Criminal Procedure, whereas, Supreme Court in catena of judgments has held that trial Court should not act as a mouth piece of the prosecution and while deciding the application under Section 227 of Cr.P.C., is bound to apply its mind to the contentions raised in the application and the documents filed along with the Challan. It is submitted that Ajay Lal is not a member of Mid India Christian Services as he had already resigned from that organization, but despite this fact being brought on record that Ajay Lal is a member of a separate Society, namely, Adharshila Sansthan, whereas, other accused persons are office bearers of the Society, namely, MICS. Ajay Lal has been falsely roped in this case.

14. It is submitted that MICS and Adharshila Sansthan being two separate and distinct societies registered under the Societies Registration Act, 1973, has no commonality in their activities and their registration is also different, therefore, their registration being different, they cannot be said to be having interference in each others working i.e. to say that they are overlapping in their working. The allegation is that applicant being office bearer of Adharshila Sansthan, Bal Grih at Bhadwari, Bible Society and Bal Grih Society caused

physical exploitation of children, namely, Usha Vishwakarma by diverting them from their religions. It is pointed out that this is not the case of prosecution.

15. It is submitted that Bal Grih at Bhadwari, Bible Society and Bal Grih Society are under the umbrella of MICS. Jhanak Singh was residing at Bible Society and not in Adharshila Sansthan. Only on the submission of Usha Vishwakarma, who was residing in the hostel of Adharshila Sansthan and was studying at Nav Jagriti School in Class 12 and pursuing her studies with Commerce subject, had deposed that her father had adopted her in the year 2017 and he was working as a priest in a Church of Katni, following Christian religion. It is submitted that on the insistence of her adopting parents, she started going to church. It is further submitted that before her adoption, she was informed that her parents are having business and agricultural operations. Thus, it is pointed out that when her adopting parents were following a particular religion, then it is not wish of a child to not follow that religion. There is no allegation of cruelty or physical exploitation qua Usha Vishwakarma in her statement and even statement of her parents have not been taken.

16. It is further submitted that the next allegation is that the complainant was prevented from inspecting Bal Grih at Bhadwari by putting lock in the children home and hiding them inside the hall. Since Bal Grih at Bhadwari is run by MICS and not by Adharshila Sansthan, no charges could have been framed against Ajay Lall. It is further submitted that allegation is that Adharshila Sansthan, Bal Grih at Bhadwari and Bible Society is not registered under the Juvenile Justice Act, whereas, fact is that children home of Adharshila Sansthan is duly registered under the Juvenile Justice Act, as is evident from order dated 27.02.2018, passed by the State Government of Madhya Pradesh Woman and Child Development Department bearing Order No.472/3591/2017/50-2(AN) and others registration is under Section 41 of the Juvenile Justice Act.

17. It is further submitted that there was an allegation of mental and physical cruelty by converting them to Christianity. It is submitted that it is not even the case of the prosecution and, therefore, this allegation is not made out.

18. It is further submitted that allegation is that these institutions have conspired to convert religion of Hindu, Muslim and differently abled children into Christian religion, which is not made out from any of the records. It is submitted that Usha Vishwakarma was given in adoption to Shri Rohit Vishwakarma and Smt. Kalpana Vishwakarma through 'CARA' pursuant to

judicial order passed by the Family Court in 2017. Her parents baptized in the year 2018 at Orissa i.e. after adoption, but no such material has been brought on record.

19. It is submitted that Freedom and Religion Act, 2011 is having substantial precedence over general Act like Cr.P.C. Section 4 of the said Act does not empower lodging of FIR by stranger.

20. Reliance is placed on the judgment of Supreme Court in *Vinubhai Haribhai Malviya and others Vs. State of Gujarat and another [(2019) 17 SCC 1]*, wherein, Supreme Court has held that power of further investigation is available till trial commences i.e. charges are framed. It is submitted that in the instant case since charges have already been framed and trial has begun, therefore, prosecution does not enjoy authority to further investigate the case on its own.

21. Reliance is placed on the judgment of Supreme Court in *K.K. Mishra Vs. State of Madhya Pradesh and another [(2018) 6 SCC 676]* to submit that in that case very initiation of prosecution was found to be untenable in law. Reliance is also placed on the judgment of Supreme Court in *Satish Mehra Vs. State of N.C.T. of Delhi and another [(2012) 13 SCC 614]*, to point out that High Court has inherent powers to interfere with the pending criminal proceedings and they can be exercised even at relatively at advanced stage i.e. after framing of charge. Reliance is also placed on the judgment of Supreme Court in *Anand Kumar Mohatta and another Vs. State of N.C.T. of Delhi, Department of Home and another, [(2019) 11 SCC 706]*, that High Court can exercise power under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court.

22. Same is the ratio of law in case of *C.V.K. Balkrishnan and another Vs. State of Tamil Naidu and others, decided on 03.03.2023 in S.L.P. (Cri.) Diary No.1733/2023, Abhishek Vs. State of Madhya Pradesh [2023 SCC Online SC 1083], Navneet Jain (Dr.) and others Vs. State of M.P. and another, ILR 2018 M.P. 2560, Megha Singh Sindhe (Smt.) Vs. State of M.P. [ILR 2018 MP 1017], Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another [(2009) 2 SCC 370], Prabhu Chawla Vs. State of Rajasthan and another [(2016) 16 SCC 30] and Sandeep Singh Bais alias Anshu and others Vs. State of M.P. and another decided in M.Cr.C.No.3658/2016 on 09.03.2017.*

23. It is also submitted that since there is no concept of vicarious liability under the Criminal Law and, therefore, Ajay Lall cannot be held responsible for the acts of MICS or the institutions run by them, charges are liable to be quashed. Reliance is placed on the judgment of Supreme Court in *Jethsur Surangbhai Vs. State of Gujrat [1984 Suppl. SCC 207]*, *S.K. Alagh Vs. State of U.P. and others [(2008) 5 SCC 662]*, *Maharashtra State Electricity Distribution Company Ltd. and others Vs. Datar Switchgear Ltd. and others [(2010) 10 SCC 479]*, *Shiv Kumar Jatia Vs. State of N.C.T. of Delhi [(2019) 17 SCC 193]*.

24. It is further submitted that since Act of 2021 i.e. the M.P. Freedom of Religion Act, 2021 is a Special Act, it will prevail over Cr.P.C. as held in *Mahmadhusen Abdulrahim Kalota Shaikh (2) Vs. Union of India and others [(2009) 2 SCC 1]*, and thereafter reliance on the judgment of Supreme Court in *State of Haryana and others Vs. Bhajan Lal [1992 Suppl 1 SCC 335]*, it is submitted that it is a fit case to quash the charges.

25. Shri Prashant Singh, learned Advocate General, answering said queries yesterday and submits that there are two parts to this Section 3 of the Madhya Pradesh Freedom of Religion Act, 2021 namely Section 3 (1) (a) deals with two exigencies, one conversion and another attempt to convert.

26. Shri Prashant Singh submits that for an act of conversion, no police officer will inquire or investigate except upon a written complaint of a person converted in contravention of Section 3 above or his parents or siblings or with the leave of the court by any other person who is related by blood, marriage, adoption, guardianship or custodianship as may be applicable but provisions of Section 4 of the Act of 2021 will not be applicable wherein attempt to covert is being made out.

27. It is further pointed out that if a cognizable offence is committed, then police is bound to investigate it on receiving such information and in the present case, since the offences under Sections 370 and 186 are cognizable offences, the police was authorized to investigate the same on receiving a complaint from Mr. Priyank Kanoongo or anybody else.

28. Shri Prashant Singh, learned Advocate General for the State, further submits that there is something more than what meets the eyes. It is submitted that Shri Priyank Kanoongo was called to record his statement. This notice was under Section 161 Cr.P.C.. Thereafter, there is a note to the effect that said

information was already given to the Superintendent of Police, yet a supplementary statement was recorded. It is submitted that the purpose of the Central India Christian Mission is to promote Christianity, to assist individuals, groups and churches which consistently agree with and subscribe to the doctrine of the New Testament, in their efforts to reach and promote Christianity. It is submitted that name of Dr. Ajay Lall is mentioned as one of the members of the governing body and, therefore, their submission that Ajay Lall had resigned, is not made out from record.

29. It is submitted that in fact before the Central Adoption Reserving Authority (CARA), religion of Rohit Vishwakarma and Kalpana Vishwakarma is mentioned as Hinduism. Their occupation is mentioned as business and housewife. They have been shown as resident of Murwara, District Katni. They already had a child Ashish Vishwakarma. This form was filled by David D. Thangadurai, who had visited the home of Rohit Vishwakarma and Kalpana Vishwakarma 20.12.2016. There is no material to show that they ever baptized to Christianity at Orissa. In fact, in a pre-adoption post care undertaking affidavit, Rohit Vishwakarma and Kalpana Vishwakarma had agreed to keep proposed adopted child Usha Vishwakarma in the care of Balgrih Adharshila Sansthan, Marutal, Damoh. This was filled on 24.03.2017. It is pointed out that theory of conversion of parents of Usha is not made out from the record. It is submitted that there is a close nexus between the acts of the petitioners and the allegation of post conversion bringing them within the ambit of Section 370 IPC.

30. It is further pointed out that proper infrastructure is not available. Dining room is common for boys and girls and boys are kept on the ground floor and girls are on the first floor which is in violation of provisions contained in Rule 29(1)(iv) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as Rules of 2016 for short). There is also violation of Rule 29(6)(v).

31. It is also submitted that there is violation of Rule 32 of M.P. Juvenile Justice (Care and Protection of Children) Rules, 2022. There were allegation of sexual harassment meted to a minor girl by one Mr. Devendra Daniel and this report was made to Mr. Frankunson, who has filed Writ Petition No.23748/2023. It is further submitted that Section 41(7) of the Juvenile Justice Act does not permit continuance of children in a children home whose

registration is not renewed but cancelled.

32. It is further submitted that defence taken by Mr. Ajay Lall that he had resigned from MICS is not made out from the record. The original register which is produced, reveals that there is no page numbering. There are several blank pages in between. This starts from January 2001 when for the first time meeting was held on January 2001 in the MICS office Damoh. Thereafter, after recording minutes of the meeting, it is mentioned that resignation of Ajay Lall is approved by the Board of Director and Board of Director is thankful for his services. Thereafter, in the meeting which was called on 28.03.2022, name of Ajay Lal is mentioned as the member of Board of Director of MICS. Thus, it is submitted that Ajay Lal continuous to be associated with MICS and theoretical resignation is not sufficient to say that he had deassociated himself MICS.

33. It is further submitted that mini trial is not permissible. In support, reliance is placed on the judgment of *State of U.P. and another Vs. Akhil Sharda and others (2022 SCC Online SC 820)*, whereby, reading paras 28 & 29, Supreme Court deprecated the practice of conducting mini trial.

34. Similarly, reliance is placed on the judgment of Supreme Court in *State of M.P. Vs. Surendra Kori [(2012) 10 SCC 155]*. Placing reliance on paragraphs 14, 15 and 16, it is held that High Court in exercise of power under Section 482 Cr.P.C., does not function as a Court of appeal or revision. It is held that inherent jurisdiction is to be used sparingly, carefully and with caution.

35. Shri Prashant Singh, learned Advocate General for the State, placing reliance on Article 8 of Convention on Rights of the Child, submits that State parties undertake to respect the right of the child to preserve his or her identity, including Nationality, name and family relations as recognized by law without unlawful interference. It is submitted that where a child is illegally deprived of some or all the elements of his or her identity, State parties shall provide appropriate assistance and protection with a view to reestablishing safely his or her identity.

36. Placing reliance on the judgment of Supreme Court in *Minakshi Bala Vs. Sudhir Kumar and others [(1994) 4 SCC 142]*, Supreme Court has held that once charges are framed, High Court is not justified in quashing the same relying upon the documents other than those referred to in Section 239 and 240 Cr.P.C., while exercising its revisional jurisdiction. It is further held that High Court would also not be justified in invoking its inherent jurisdiction to quash

the proceedings except where forensic exigencies and formidable compulsions justify such a course. Placing reliance on the judgment of Supreme Court in *Asian Resurfacing of Road Agency Vs. Central Bureau of Investigation [(2018) 16 SCC 299]*, it is held that in revisional jurisdiction, interference can be made for securing ends of justice or to take abuse of process of Court or against proceedings initiated illegally or without jurisdiction, but that being not a case, therefore, no case is made out to cause interference in the matter of framing of charges.

37. Reliance is also placed on the judgment of Supreme Court in *Manik Bi Vs. Kadapala Shreyas Reddy and another (arising out of SLP (Cri.) No.2924/2023)*, wherein, it is held by three Judges Bench that at the stage of deciding an application under Section 482 Cr.P.C., it is not possible for the High Court to go into the correctness or the material placed by the prosecution in the charge sheet. Reliance is also placed on the judgment of the High Court of Madhya Pradesh in case of *Zaid Pathan and others Vs. State of Madhya Pradesh (ILR 2021 MP 152)*.

38. Reliance is also placed on the judgment of Supreme Court in *P. Kasilingam and others Vs. PSG College of Technology and others [(1995) Suppl. 2 SCC 348]*, wherein, it is held that use of words are to be seen as *contemporanea expositio* and, therefore, words cannot be given meaning in isolation. Reliance is also placed on the decision of Supreme Court in *Onkar Nath Mishra and others Vs. State (N.C.T. of Delhi) and another [(2008) 2 SCC 561]*, to point out that at the time of framing of the charge is not expected to deep in the probative value of the material on record, Court has to form presumptive opinion as to existence of factual ingredients constituting the offence alleged and, therefore, no ground is made out to quash the FIR.

39. Similarly, reliance is placed on the judgment in *State of Karnataka Lokayukt Police Station, Bengaluru Vs. M.R.Hiremath [(2019) 7 SCC 515]*, to submit that it is settled principle of law that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the fact emerging from the material taken on its face value, disclosing the existence of the ingredients necessary to constitute the offence.

40. Shri Prashant Singh, learned Advocate General, submits that dictionary

meaning of word 'Exploitation' as per Webster's 9th Edition New Collegiate Dictionary is an act of exploiting; as a; utilization or working of a natural resource, an unjust or improper use of another person for once own profit or advantage. Reading this definition, it is submitted that word 'Exploitation' is to be given right interpretation.

41. Shri Prashant Singh, learned Advocate General, further submits that the conduct of petitioners does constitute an offence under Section 370(1) of the IPC, inasmuch as, the petitioners are guilty of practicing fraud and adoption by abuse of power. It is submitted that it is not unusual that all the children who were given in adoption, return back to the institution hostel one or the other pretext. Similarly, charge under Section 186 IPC is also made out, inasmuch as, Chairman of CPCR was obstructed from discharging his public function by closing the doors of the accommodation from inspection in the hands of the Chairman of CPCR along with other State member.

42. Shri Abid Parik, learned counsel, placing reliance on the judgment of Supreme Court in ***Kaptan Singh Vs. State of U.P. and others [(2021) 9 SCC 35]***, submits that High Court cannot appreciate the evidence nor it can draw interference on the material relied on. It is further observed that it is more so, when the material relied on is disputed. It is further observed that it is the job of the investigating authority at stage to prove and then of the Court to examine question once the charge sheet is filed along with such material as to half and to an extent reliance can be placed on that material.

43. Shri Parik also placed reliance on the judgment of Supreme Court in ***Writ Petition (Cri.) No.102/2007 (Re : Exploitation of Children in Orphanage in the State of Tamil Naidu Vs. Union of India and others)*** to point out that how children are being exploited and has in this backdrop issued several directions as contained in para 62 to submit that there is a strange *modus operandi* in the hands of petitioners. Children are given in adoption taken back in the hostel/school and then surprisingly one or the other factors be it parents or children opt for conversion. This *modus operandi* is evident and writ large.

44. After hearing learned counsel for the parties and going through the record, though lengthy arguments have been advanced by learned counsel for the parties, but this Court is conscious of the fact that law laid down in case of ***K.K. Mishra*** (supra) on which reliance is placed by the petitioners is to the

effect that unless statements which may be defamatory have nexus with the discharge of public duties by or behalf of public beneficiaries, remedy under Sections 199(2) and 199(4) Cr.P.C. is not available. Thus, this judgment has no application to the facts of the present case.

45. As far as law laid down in case of *Satish Mehra* (supra) is concerned, ratio of law is that power to quash proceedings after charges were framed is wider as evidence adduced, can be looked into for determining disclosure of offence against accused, but in terms of the statements made by the learned Advocate General that further investigation is contemplated is to take place with the consent of the Magistrate, this judgment has limited application.

46. Judgments in case of *Anand Kumar,, C.V.K. Balkrishnan and others Vs. State of Tamil Naidu and others, Abhishek Vs. State of Madhya, Navneet Jain (Dr.) Megha Singh Sindhe, Dhariwal Tobacco Products Ltd. and others, Prabhu, Sandeep Singh (supra)*, are in relation to exercise of authority under Section 482 of Cr.P.C. and not in regard to exercise of revisional authority under Section 397 read with Section 401 Cr.P.C. Therefore, these judgments have no application to the facts of the present case.

47. In case of *Vinubhai Harbhai* (supra), Supreme Court noted that the question of law which had arisen for their consideration was whether, after a charge sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, upto what stage of a criminal proceedings. Taking note of various provisions contained in Cr.P.C. and also the 40th Law Commission report forwarded to the Ministry of Law in September 1969, so also the facet of Article 21 of the Constitution wherein taking note of the judgment of Supreme Court in *Menka Gandhi Vs. Union of India [(1978) 1 SCC 248]*, observed that procedure in criminal trials must be “right, just and fair and not arbitrary fanciful or oppressive.” It also took note of judgment of Supreme Court in *Commissioner of Police, Delhi Vs. Registrar, Delhi High Court, New Delhi [(1996) 6 SCC 323]*, wherein, it is held that Article 21 enshrines and guarantees the protection of life and personal liberty to a person which can only be deprived of following the procedure established by law in a fair trial, which assures the safety of the accused.

48. It is further noted that with the introduction of Section 173(8) Cr.P.C., the police department has been armed with the power to investigate an offence after a police report has been forwarded to the Magistrate. Taking note of the

judgment of Supreme Court in *State of Bihar Vs. J.A.C. Saldanha and others [(1980) 1 SCC 554]*, the Supreme Court held that the power in the Magistrate to order further investigation under Section 156(3) Cr.P.C., is an independent power and does not affect the power of Investigating Officer to further investigate the case even after submission of his report vide Section 173. Supreme Court in fact has set aside the order of the High Court which stated that post cognizance Magistrate denuded the order of further investigation, meaning thereby that Magistrate has power to further investigation even after filing of the charge sheet. Thus, the submission made by Shri Shashank Shekhar that judgment of *Vinubhai Harbhai* (supra) have application to the facts of the present case, is not made out.

49. There is substance in the submissions made by learned Advocate General and the judgment on the subject *State of Rajasthan Vs. Ashok Kumar Kashyap [(2021) 11 SCC 191]*, that at the time of framing of the charges, Judge has merely to sift evidence in order to find out whether or not there is sufficient ground for proceeding against accused. While exercising its judicial mind to facts of case in order to determine whether case for trial has been made out by prosecution, it is not necessary for Court to enter into pros and cons of matter or into weighing and balancing of evidence and probability of conviction which is really function of Courts after trial starts. At the stage of framing of charge and or considering discharge application mini trial is not permissible.

50. In case of *R.S. Mishra Vs. State of Orissa and others [(2011) 2 SCC 689]*, Supreme Court has held that if there is a strong suspicion/evidence of commission of certain offence, discharge and dilution of charge is unwarranted.

51. Similarly, Supreme Court in case of exploitation of children in orphanages has clearly noted that beneficial legislation like Juvenile Justice Act demands an expansive view to be taken by Courts and all concerned. Child care institutions are to be viewed in terms of the provisions contained in Section 41 of the Juvenile Justice Act which mandates, notwithstanding anything contained in any other law for the time being in force, that all institutions, whether run by a State Government or by voluntary organization or NGOs which are meant either wholly or partially for housing children in need of care and protection shall be under the Juvenile Justice Act, in such a manner as may be prescribed. Then minimum standard of care for utilization of grants etc. have been discussed. Thereafter, role of National and State commission for protection of child rights

is discussed and when these roles are taken into consideration and provisions contained in Section 13 as well as 24 of the CPC Act are taken into consideration, then act of the complainant discharging his statutory duties cannot be prima facie said to be arbitrary or illegal.

52. In fact, Supreme Court in ***Sajjan Kumar Vs. Central Bureau of Investigation [(2010) 9 SCC 368]***, has held that delay may be a relevant ground. However, without testing the same at trial proceedings cannot be quashed merely on the ground of delay. It is held that it is at the trial that Judge has to appreciate evidentiary value credible or otherwise of the material veracity of various documents and is free to take a decision one or the other.

53. Therefore, when all these aspects are taken into consideration, specially the law laid down by Supreme Court in ***Sajjan Kumar*** (supra), so also law laid down in case of ***B.K. Sharma Vs. State of Uttar Pradesh, [1987 (3) Crimes 23, 25 ALL]*** and ***Veera Rangnekar Vs. State [2000 Cr.L.J. 2543]***, wherein, it is held that the standard of test in judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion based on the material on record, would be sufficient to frame the charge, then it is equally true that as held in State of ***J & K Vs. Sudershan Chakkar and another [(1995) 4 SCC 181]*** and ***Rukmini Narvekar Vs. Vijaya Satardekar and others [(2008) 14 SCC 1]***, that no weight is to be probably given in defence of the accused, I am of the opinion that since trial Court has considered the material available on record and it was not required to sift the evidence and decide the pros and cons of conviction, then order framing charge cannot be interfered with specially when impression as to *prima facie* case was formulated by the Sessions Judge on the basis of the material available on record. This is the ratio of law held in case of ***Tulsa Bai Vs. State of Madhya Pradesh (1993 Cr.L.J. 368 MP)***.

54. Therefore, without commenting on the merits as that may prejudice the case of applicants before the trial Court, this Court is of the opinion that since trial Court has formed an opinion that there is ground for presuming that accused has committed an offence and at this stage evidence is not to be appreciated as is done in a trial, therefore, it cannot be said that Sessions Court has failed in discharge of its duty in framing charges, which calls for any interference.

55. Accordingly, revisions fail and are **dismissed**.

(VIVEK AGARWAL)
JUDGE

A.Praj.

