

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

Date of decision: 12<sup>th</sup> APRIL, 2022

IN THE MATTER OF:

+ **CRL.REV.P. 192/2021**

SHRI KUSUM LATA

..... Petitioner

Through Mr. Jatan Singh, Mr. Shaurea Tyagi,  
and Mr. Saurav Joon, Advocates

versus

STATE (GOVT. OF NCT DELHI)

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the  
State with SI Rahul Kumar, P.S.  
Mayur Vihar

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. This petition has been filed under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. challenging the Order dated 17.02.2021 passed by the Ld. ASJ-03, Karkardooma Courts, framing charges against the Petitioner for offences punishable under Section 120-B of the Indian Penal Code, 1860 (*hereinafter*, "IPC") read with Sections 363/370 IPC as well as Sections 80/81 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter*, "JJ Act").

2. The facts, in brief, leading up to the filing of the petition are as follows:

- a) It is stated that a secret information was received on 19.08.2020 at about 2:00 P.M. that a woman named Shahida was trafficking infants and that she would arrive at Ghazipur Noida, New Barat

Ghar, Chilla Village around 3 P.M. with a 2-3 months old child for the purpose of selling the same.

- b) A raiding party was accordingly prepared to nab the persons involved; no passer-by's were willing to join the raid. Around 3:15 P.M., a lady with a small child appeared and the secret informer identified her as Shahida. The lady waited for about twenty minutes and as she was about to leave, the raiding team apprehended her. She was then arrested and interrogated about the child.
- c) It is stated that Shahida revealed that on 18.08.2020 she had gone to Burari at 2:00 P.M. on the directions of one Priyanka who had informed her that a lady by the name of Shanti would give her a baby and in return, she was to pay Rs. 4,00,000/- to her. Shahida paid an initial amount of Rs. 70,000/- and stated that the rest of the amount would be paid to Shanti through Priyanka. A telephonic conversation had transpired with Priyanka who told Shahida to reach Ghazipur on the same day where she would be present with the proposed purchasers of the baby. However, as they did not show up, Shahida decided to leave after which she was apprehended.
- d) Accordingly, FIR No. 430/2020 dated 19.08.2020 was registered at Police Station Mayur Vihar Ph-I for offences punishable under Sections 370/363 IPC and Section 80 of the JJ Act. The Petitioner herein was formally added by way of the chargesheet filed, along with one Renu Garg and Naresh Kumar Garg. She was arrested on 21.08.2020, and was given interim

bail on account of suffering from the COVID-19 virus. She surrendered before the jail authorities on 21.03.2021.

- e) *Vide* Order dated 17.02.2021, charges were framed against the Petitioner for offences under Sections 363/370 IPC read with Section 120-B IPC as well as Sections 80/81 of the JJ Act. Aggrieved by this, the Petitioner has approached this Court by way of the instant revision petition.

3. Mr. Jatan Singh, learned Counsel for the Petitioner, submits that the Petitioner is a medical professional who is merely running a consultation centre for patients seeking IVF treatment and has been falsely implicated in the matter herein. He states that the Petitioner has not been mentioned in the FIR and that no specific role has been assigned to her therein, and that she has merely been arrested on the basis of the disclosure statement of co-accused Shahida.

4. Mr. Singh submits that there is no evidence that establishes the factum of sale and purchase of the child for the purposes of child trafficking, and relies upon an adoption deed dated 16.06.2020 to state that the case was merely that of an adoption. The learned Counsel for the Petitioner argues that the impugned Order dated 17.02.2021 does not take into account the evidence on record to discern whether a *prima facie* case has been made out against the Petitioner under Sections 370/363 IPC. He states that the child which was given to Krishan Kumar was at best a case of improper adoption and could be categorised as an offence under Sections 80/81 of the JJ Act, and that the Ld. Trial Court has failed to consider the same and has sweepingly added Sections 370/363 IPC to the charges against the Petitioner. He relies upon a judgement of the Karnataka High Court in Pm

Robin v. State of Karnataka, (2020) 0 Supreme (Kar) 318 wherein the High Court considered the ingredients that must exist for Section 370 IPC to be attracted. He further cites Madhuri Bandooni v. State (NCT of Delhi) and Ors., (CRL.M.C. 5050/2018) dated 17.03.2020 to showcase that ingredients of the offence under Section 363 IPC are not made out. He, therefore, submits that the impugned Order of the Ld. Trial Court is bad in law and is liable to be set aside, thereby securing the discharge of the Petitioner herein.

5. Ms. Neelam Sharma, learned APP for the State, opposes the revision petition on the grounds that the Ld. Trial Court has considered the material before it astutely before framing charges against the Petitioner. She submits that no infirmity exists in the impugned Order dated 17.02.2021 and that the evidence on record establishes the ingredients required for the invocation of Sections 370 and 363 IPC. The learned APP relies upon a judgement dated 21.08.2002 of the Orissa High Court titled Dhanurjaya Patel and Anr. v. State of Orissa, 2002 II OLR 412 to submit that there is a *prima facie* case which is made out and that the ingredients for Section 370 IPC have been satisfied.

6. Heard Mr. Jatan Singh, learned Counsel for the Petitioner, Ms. Neelam Sharma, learned APP for the State, and perused the material on record.

7. A perusal of the chargesheet indicates the disclosure statement of the accused Shahida led the police to the residence of the Petitioner herein. Notice to join investigation was served upon the Petitioner and her husband. It states that the Petitioner joined the investigation and was arrested soon after. Further, upon checking the WhatsApp of the Petitioner, chats were found regarding selling and buying of children. After the interrogation of the

Petitioner, a male child which had been sold by the Petitioner in June 2020 was recovered from the custody of one Naresh Garg and one Renu Garg. When they were interrogated, they revealed that as they were facing problems in having a child, they had turned to the Petitioner who was a running her private clinic in Shahabad Diary.

8. The chargesheet reveals that the childless couple was informed by the Petitioner that there was a poor family who wanted to give up their child for adoption at the cost of Rs. 5 lakhs. The Petitioner accordingly assured the family about the properness of the adoption procedure and *vide* adoption deed dated 17.06.2020, the child was handed over to the couple. Naresh Garg also revealed to the police that the Petitioner on 10.08.2020 had given some assurance to one of her relatives, namely Krishan Kumar, that she would give him a child for Rs. 5 lakhs, but this never fructified. Chargesheet states that the investigation has revealed that a planned syndicate involving buying and selling of children was in existence.

9. The scope of Section 227 Cr.P.C and the principles, which are to be kept in mind while dealing with an application for discharge, have been enunciated by the Supreme Court in a number of cases. The Supreme Court in Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4, had laid down the principles that were to be followed while dealing with discharge under Section 227 Cr.P.C. or framing of charges under Section 228 Cr.P.C. The same has been reproduced as follows:

*"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for*

*the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

10. The Supreme Court had further noted that a Judge was not a mere post office that was to frame the charge at the behest of the prosecution, but had sift through the material on record and exercise his judicial mind to the facts of the case before arriving at the conclusion that there was sufficient ground for proceeding against the accused. In P. Vijayan v. State of Kerala, (2010) 2 SCC 398, the Supreme Court has observed as follows:

*"10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:*

*"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

*If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*

*11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."*

11. The aforementioned judgements convey that at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining whether or not a prima facie case has been made out against the accused. If the Court arrives at the conclusion that the material placed before it does not satisfy the ingredients of an offence that has been alleged against the accused, then the Court has the liberty to discharge the accused from being prosecuted under the said offence. For this purpose, the Court is meant to exercise his judicial mind and consider the material placed before it comprehensively. Lack of application of judicial mind may lead to the accused having to face the rigours of the criminal justice system without having committed the offence.

12. In the instant case, the learned Counsel for the Petitioner has alleged that the Petitioner can at best be said to have unwittingly committed an offence under Sections 80/81 of the JJ Act, but that the ingredients of Sections 370/363 IPC are not made out. To ascertain the same, it is pertinent to reproduce Section 370 and Section 363 IPC at this juncture:

***"370. Trafficking of persons***

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

- 1. using threats, or*
- 2. using force, or any other form of coercion, or*
- 3. by abduction, or*
- 4. by practising fraud, or deception, or*
- 5. by abuse of power, or*
- 6. 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.*

### ***Explanations***

*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*

*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.*

7. *When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer 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.*

**363. Punishment for kidnapping.**—*Whoever kidnaps any person from 1[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".*

13. Section 370 IPC deals with trafficking of a person and states that whoever, for the purpose of exploitation, recruits or transports or harbours or transfers or receives a person or persons by using threats or using force or any form of coercion, or by abduction, or by practising fraud, or deception or by abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control of the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. Section 363 IPC entails punishment for kidnapping of any person from India or from lawful guardianship.

14. A bare perusal of Section 370 IPC reveals that trafficking of a person can only be said to have been committed when the same is done with the purpose of exploiting the same by various methods. Section 370 IPC *Sixthly*, in particular, states that whoever recruits / receives / transports / harbours /

transfers a person 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/received/transported/harboured/transferred is said to commit the offence of trafficking. In the instant case, the chargesheet categorically reveals that the male child was transferred to the couple, i.e. Naresh Garg and Renu Garg, in exchange of Rs. 5 lakhs that was paid to a poor family wanting to give up the child for adoption. This Court is of the opinion that the exchange of money amounts to inducement aimed at achieving consent of the lawful guardians of the male child to forsake him.

15. Similarly, the ingredients for Section 363 IPC are also made out as the consent for taking the child of the poor family has been secured by way of inducement and misconception, and therefore, it does not amount lawful consent as per Section 90 IPC. The learned Counsel for the Petitioner's submission that the matter before this Court only amounts to a case of improper adoption cannot be sustained in the face of the facts and circumstances of this case, and must be determined only during the course of trial.

16. The scope of a revision petition under Section 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been succinctly explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 wherein the Supreme Court has noted that revisional jurisdiction must only be invoked when the decision that has been challenged is grossly erroneous, there is no compliance with the provisions, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

17. Furthermore, the scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. is narrow. The Supreme Court in

Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, has observed as under:

*“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.*

*13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.*

*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. **Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.”** (emphasis supplied)*

18. Similarly in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123, the Supreme Court observed as under:

*“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of*

*records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”*

19. A reading of the impugned Order dated 17.02.2021 wherein the Ld. Trial Court has framed charges against the Petitioner under Sections 370/363 IPC and 80/81 JJ Act indicates to this Court that the Ld. Trial Court has duly sifted through the material before it and found sufficient ground to proceed against the Petitioner. Charges are to be framed on the basis of strong suspicion and detailed appreciation of evidence is not required at the stage of framing of charges. It is stated that the Petitioner is running a clinic for facilitating adoption, however, in what capacity the same is being done by the Petitioner is unclear at this juncture. This Court, therefore, finds that a strong suspicion of a planned syndicate for selling and buying of children is indeed in place and the Petitioner may have a role to play in the same, which can only be conclusively ascertained during the course of trial. There is no legal infirmity or lack of application of judicial mind in the impugned Order dated 17.02.2021 that warrants the interference of this Court and, therefore,

this Court does not deem it fit to exercise its jurisdiction under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. to set the same aside.

20. In light of the above observations, the instant petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J.**

**APRIL 12, 2022**

*Rahul*

