IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 23rd OF SEPTEMBER, 2024

WRIT PETITION NO.23048/2024

DR. AJAI LALL

VS.

STATE OF MADHYA PRADESH & OTHERS

Appearance:

Petitioner by Shri Vivek Tankha, Senior Advocate, with Shri Shashank Shekhar, Senior Advocate and Shri Bhoopesh Tiwari – Advocate.

Respondents/State by Shri Prashant Singh, Advocate General, Shri B.D. Singh, Deputy Advocate General.

Respondent No.5 by Shri Akshat Arjaria and Shri Abid Parikh, Advocate.

Interveners by Shri Aakash Choudhury, Advocate and Shri Vishal Daniel, Advocate .

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Reserved on: 17.08.2024

Pronounced on: 23.09.2024

ORDER

The pleadings were complete and looking to the underlying urgency in the matter, the learned counsel for the rival parties agreed to

argue it finally, ergo, it was heard finally on 17.08.2024 and today the order is being pronounced.

2. This petition is filed under Article 226 of the Constitution of India for seeking to quash the communication dated 06.08.2024 made by the City Superintendent of Police, Damoh to the petitioner asking to furnish details and information with regard to the children who were residing in the Orphanage, run by the petitioner in the name and styled "Bal Bhawan" and thereafter under the garb of order of the family court the children were given on adoption. The Orphanage was earlier known as Central India Christian Mission and as per the information sought by the City Superintendent of Police, he was asking the source of receiving children, their date of birth, date of place and also the place where they had gone for the medical examination and also the information as to how the children reached the orphanage and whether any such information was conveyed to the police authority or other government organisation or not and if so, the original copy of the same and all other records of the said orphanage. Thereafter, the police registered a crime against the petitioner vide Crime No.571/2024 on 07.08.2024 at Police Station Damoh (Dehat) for the offence punishable under Sections 370(3), 370(4) & 34 of IPC and Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity "Act, 2015"). Notably, the petitioner by way of amendment has also sought the relief to quash the said FIR.

3. For bringing the actual cause of petitioner's incrimination to the surface, it is expedient to muster the necessary facts. Suffice it to say that the petitioner claiming himself to be an office-bearer of the Society viz. Aadhaarshila Sansthan (previously known as "Central India Christian Mission") and this society was running two distinct

institutions namely “Bal Bhawan” and “Central India Academy”. Bal Bhawan was the orphanage which falls under the definition of Child Care Institution and was duly registered under the Act, 2015, whereas the Central India Academy is a school with residential facility i.e. hostel and this institution does not fall within the definition of Child Care Institution and as such no registration under the provisions of Act, 2015 was necessitated.

3.1 However, as per the petitioner, both these institutions stood closed. Bal Bhawan was closed after cancellation of its registration vide order dated 14.08.2023 and all the children were shifted as directed by the competent authority. Likewise, the Central India Academy has been closed since academic session 2023-24. Earlier, on the anvil of an inspection got done on 13.11.2022 by respondent No.5, who happens to be the Chairperson of the National Commission for Protection of Child Rights (NCPCR), an FIR was registered against the office-bearers of certain institutions/societies situated in Damoh namely Mid India Christian Services, Bible College and Aadhaarshila Sansthan. Being one of the office-bearers of Aadhaarshila Sansthan, the petitioner was also made an accused. The umbrella of anticipatory bail was provided by the High Court vide order dated 28.11.2022 and thereafter the petitioner preferred a criminal revision i.e. Cr.R. No.4629/2023 assailing the order of framing of charge, which was dismissed by the High Court vide order dated 20.11.2023 and that order was further put to test and the Supreme Court stayed the further proceeding of the trial vide order dated 05.01.2024. The said SLP is still pending before the Supreme Court. In the said SLP, the NCPCR filed an application for seeking permission to place on record additional facts and documents. The said application contained allegations that there were two more children namely ‘X-

Bhosle' and 'X-Dhurvey', who were found living in the hostel even after their adoption. The NCPCR agitated the issue of those two children in regard to their post follow-up report before the Supreme Court and whole issue including the issue of post adoption report of those two children is seized by the Supreme Court.

3.2 Similar thereto, one more FIR was registered on 26.09.2022 against the petitioner and his brother by the Economic Offence Wing (EOW). In the said FIR, it was alleged that the petitioner sold his land to one Rajendra Singh Bagga with deficit stamp duty. Petitioner protested such FIR and submitted that adequate stamp duty was paid, although it was accentuated that since the petitioner was the seller of the land, it was not incumbent upon him to pay the stamp duty. Primarily, anticipatory bail was granted to the petitioner and finally said FIR was quashed vide order dated 28.05.2024 by the court.

3.3 Additionally, on the fulcrum of complaint made by the private respondent – Shri Priyank Kanoongo, registration of Bal Bhawan was cancelled on 14.08.2023. The writ petition challenging the aforesaid order was dismissed by the High Court vide order dated 20.11.2023 and the review petition bearing R.P.No.1298/2023 seeking review of the said order is still pending for its consideration.

3.4 It is alleged by the petitioner that the Chairperson of NCPCR by misusing his authority started pressurizing the statutory authorities namely the District Magistrate, Superintendent of Police, Additional Superintendent of Police and the officers of the department of Women & Child Welfare for lodging an FIR against the petitioner. In furtherance thereto, vide orders dated 19.01.2024 and 27.01.2024, post adoption follow-up report of children 'X-Bhosle' and 'X-Dhurvey' was sought. As per the petitioner, these orders were issued on the basis of

letters issued by NCPCR. Aadhaarshila Sansthan duly replied the aforesaid letters and also furnished requisite information by way of replies dated 29.01.2024 and 16.03.2024. But again on 06.08.2024, the City Superintendent of Police issued a letter asking the information as to under what circumstance, the children namely 'X-Bhosle' and 'X-Dhurve' were first found in Bal Bhawan run by Aadhaarshila Sansthan and documents relating to date of birth and place of birth of the aforesaid children; the medical treatment taken for the aforesaid children and also the information given at the relevant time to the concerned authorities *et cetera*. As per the petitioner, seeking aforesaid information is itself *de hors* the provisions of Sections 3(xi) and 3(xiv) of Act, 2015 because these provisions provide that every child has right to protection of his privacy and confidentially and all past records of any child under the Juvenile Justice system should be erased except in special circumstances. As per the petitioner, both the children were orphans and were found in the Orphanage run by the Aadhaarshila Sansthan somewhere in the year 2009-10 and astoundingly the information relating to 15 years back was sought at-once. As per the petitioner, whole exercise was driven by respondent No.5 and the authorities were being pressurized for taking illegal action against the petitioner. It is also alleged that respondent No.5 used the social media platform to defame the petitioner and also to mount pressure over the statutory authorities. As per the petitioner, deployment of huge police force, encircling the petitioner's residence, crystallizes the ill-intention of respondent No.5. Left with no option, the petitioner has approached this court by filing the writ petition asking to quash the communication dated 06.08.2024 and also asking a direction to the respondents not to conduct any enquiry without the consent of the parents of aforesaid

children and also asking for a writ of prohibition restraining the private respondent from threatening and pressurizing the statutory authorities to initiate criminal proceedings against the petitioner and further seeking to quash the FIR registered against the petitioner vide Crime No.571/2024 on 07.08.2024 for the offences punishable under Sections 370(3), 370(4) & 34 of IPC and Section 80 of Act, 2015.

4. Of a further note, the FIR got registered mainly on the strength of allegation that post follow-up report of children namely 'X-Bhosle' and 'X-Dhurve' had not been filed or if filed, it was with incorrect information. It is alleged by the authorities that after post adoption, both the children were still found in Bal-Bhawan, but this information was never furnished. Conversely, as per the petitioner, these children were not found in Bal-Bhawan, but found in the hostel of the school namely Central India Academy.

5. The main thrust of challenge is that Bal-Bhawan was an orphanage and falls within the definition of 'Child Care Institution' as defined under Section 2(21) of Act, 2015. The Bal-Bhawan was duly registered under Section 41 of the Act, 2015 and a 'Child Care Institution' is for the 'child in need of care & protection' as defined under Section 2(14) of Act, 2015, whereas 'Central India Academy' was a school with residential facility i.e. hostel and that Academy was not a 'child care institution' as the children studying and residing in 'Central India Academy' were not the children covered under the definition of 'child in need of care & protection' as defined under the Act, 2015.

6. It was submitted on behalf of the petitioner and also on behalf of interveners that the children were given on adoption by the order of the Family Court and they were given to their respective parents, who got them admitted and permitted them to reside in Central

India Academy and as such they were studying in the said Academy so as to get better education. It was also pointed out that when Aadhaarshila Sansthan directed their parents to take the aforesaid children out of the school, this court stayed the aforesaid direction and directed Aadhaarshila Sansthan to allow the aforesaid children to study in Central India Academy. As per the learned counsel for the petitioner and also the interveners, both the children were adopted after following due procedure enshrined in Act, 2015 and Adoption Regulations, 2017. The child 'X-Bhosle' was given on adoption pursuant to the order dated 06.05.2017 of the Principal Judge, Family Court, Damoh as the child was declared legally free for adoption on the basis of a certificate dated 18.02.2016 issued by the Child Welfare Committee, Damoh and similarly the child 'X-Dhurvey' was given on adoption pursuant to the order dated 18.05.2017 of the Principal Judge, Family Court, Damoh declaring him legally free for adoption on the basis of certificate dated 18.02.2016 issued by the Child Welfare Committee, Damoh. As per the learned counsel for the petitioner and also the interveners, after valid adoption that too by the order of the Court, it is not only the duty of Specialised Adoption Agency i.e. the Aadhaarshila Sansthan but other statutory authorities like the State Adoption Resource Agency (SARA), District Child Protection Unit, Central Adoption Resource Agency (CARA) are entrusted with the function of preparing home study report of prospective adoptive parents, preparing post adoptive follow-up report, post adoptive counseling of adopted children and adoptive parent etc. as per the Adoption Regulations, 2017. Admittedly, both the children were orphans and were found in Bal-Bhawan somewhere in the year 2009-10 and at the relevant time Juvenile Justice (Care and Protection of Children) Act, 2000 was in vogue, which stood repealed

by the Act, 2015 and it came into force w.e.f. 01.01.2016. Proviso of Section 32 of Act, 2000 provided that the child shall be produced before the Child Welfare Committee without any loss of time but within twenty four hours excluding the time necessary for the journey. If that is not done, it is not categorised as offence much less a criminal offence under the Act, 2000. The acts categorized as offences are provided under Sections 22, 24, 25 and 26 of the Act, 2000 but the case of prosecution is not that the petitioner has committed any offence punishable under these sections. Rather, as per the prosecution case and the allegations made therein, it reveals that with regard to children 'X-Bhosle' and 'X-Dhurve' the post follow-up report was not filed or if filed, it was with incorrect information and the children were found in Bal-Bhawan, but the petitioner did not furnish the said information. According to the petitioner, this allegation is fallible because the children were found in the hostel i.e. Central India Academy.

7. As per the learned senior counsel for the petitioner if any violation of the provisions of Act, 2015 is made and no step was taken for preparing the post adoption report or report regarding prospective adoptive parents, the act does not provide any penal action, but at the most that agency can be penalised with imposing of fine to the extent of Rs.50,000/- and if said default is repeated, the recognition of the Specialized Adoption Agency can be withdrawn. As such, if the allegations made against the petitioner are at all found correct, at-best he can be punished by imposing a fine of maximum Rs.50,000/-. The Registration of Bal-Bhawan has already been cancelled and therefore no other action can be taken only because of violation of not submitting the post adoption report by the Adoption Agency. As per the petitioner, by and large on the face of overall circumstances, the offence under Section

370 of IPC is not attracted inasmuch as it is not a case of trafficking of person and the requirement of the said section is neither available nor fulfilled. According to the petitioner, the adoption was well within the four corners of law and the parents of the children have taken care of their respective child appropriately and not only that, but the State and the Central Academy i.e. SARA and CARA even did not point out any such illegality against the petitioner, but on the other hand, for the remarkable duty and work done by the petitioner-Sansthan, if not praised, should not have been brought under the clouds of suspicion.

8. It was submitted by the learned counsel for the petitioner and also the interveners that no complaint was made by the children that their adoptive parents were not taking their care and no Agency has pointed out that even after adoption, the parents are not facilitating proper education of the children. Conversely, the respondents are bent upon to violate the mandatory terms of the provisions so as to publicize the information which in any case cannot be published in regard to an adopted child. As per the petitioner, the of action the of respondents is inscrutable as they did not assail the order passed by the competent court permitting adoption. As per the learned counsel for the petitioner and also by the learned counsel for the interveners, proper procedure was followed and the children were given by way of valid adoption and when adoption order has never been assailed and no complaint made by anyone, the conduct of the parents cannot doubted and even the Orphanage which has already been closed cannot be punished in the manner that the petitioner being one of the office-bearers of said Orphanage can be made accused in an offence of male trafficking. Imprecating the whole action of the respondents being devoid of

infallible fulcrum, the petitioner implored to quash the FIR in the dearth of material ingredients.

9. In contrast, the respondents have filed their reply taking a stand therein that as of now only FIR has been registered and investigation is going-on and concrete material will be gleaned by the Investigating Agency if they are not restrained from investigating the matter further. As per the learned counsel for the State, interference by this court at this stage is unwarranted. Shri Singh, learned Advocate General appearing for the State submitted that mere information was sought from the petitioner granting him sufficient time, but non-submission of the information is indicative of his conduct as to from where they got the children and, even after adoption, how the children again came back to their Orphanage and as such it is nothing but a planned crime which has been committed by the petitioner since long and if the investigating authority is permitted to investigate the matter, they would separate the wheat from the chaff and would definitely prove that it was a very serious crime of male trafficking committed by the petitioner under the guise of welfare of children. He further pointed out that as per Section 109 of Act, 2015 it is the solvent duty of the NCPCR to monitor the implementation of the provisions of Act, 2015 and having power to act accordingly. As per the respondents, from the overall scenario, it transpired that the petitioner did not follow the pre-adoption and even post-adoption formalities and did not disclose the information as to from where they got the children and even after adoption, the children again remained in the Bal-Bhawan.

10. I have heard the submissions of learned counsel for the rival parties at length and perused the documents available on record.

11. Primarily, this Court is obliged to deal with the objection

raised by the respondents about the maintainability of intervention application on the anvil that they have no right to intervene in the matter inasmuch as the case is against the registration of FIR, in which interveners have no role to play and as they are neither the accused nor any prosecution is launched against them, therefore, it is justifiable to turn down their request for intervention. Indeed, from the submissions made on behalf of the interveners as also averred in their intervention application, it is gathered that the interveners are the adoptive parents of the children namely 'X-Bhosle' and 'X-Dhurve' who were given to them on adoption by the order passed in their favour by the competent court of law. It was submitted on their behalf that Section 74 of the Act, 2015 prohibits the disclosure of identity of children, despite that the respondents are trying to uncover the past of the children and such an action would not only affect the future of the children adversely but would also taint the image of the interveners, who are parents of the children and as such they have every right to intervene in the matter. Obviously, the respondents are questioning the conduct of the petitioner alleging that he is involved in mail trafficking and the children i.e. 'X-Bhosle' and 'X-Dhurve' are the part of the crime which is said to be an organised crime of male trafficking and would also affect the future of the children and also their parents/interveners. There is valid adoption order in favour of the interveners by the competent court i.e. Family Court, Damoh. Mulling over all these aspect, I found that the application for intervention could be allowed and therefore, the application was allowed and the learned counsel for the interveners were permitted to put-forth their stand.

12. Indubitably, the statutory obligation before the authorities

and organizations which are involved in the protection of juveniles or working for their welfare and also working in the field to bring the orphan or abandoned or surrendered child into the main stream of life by protecting them and making attempts for their rehabilitation and their social integration and as such measures are provided for doing so in different Acts and Rules and also under the provisions of Act, 2015 in that, Section 74 of Act, 2015 is one of the mode/measure casting obligation upon the society and especially upon the authorities which are active in the field of proferring protection to the children and provide them basic amenities so as to build-up their future. Certain restrictions are imposed in the Act and Section 74 is one of them, which deals as under:-

> **74. Prohibition on disclosure of identity of children**;-
> (1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:
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> Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.
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> (2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise 1[in the pending case or in the case which] has been closed or disposed of.
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> (3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a

> term which may extend to six months or fine which may extend to two lakh rupees or both.

From the aforesaid provision, it is clear that the statute puts strict restrictions over the society including the police and also over other organisations claiming themselves to be working in the interest of children, for not publishing any report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, which involves the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such manner. Subsection (2) of Section 74 also restricts the police authorities from disclosing any record of the child for the purpose of character certificate. Not only this, this provision also provides penal consequences for a person who contravenes the provisions of Subsection (1) of Section 74 of the Act, 2015.

13. In the case at hand, indisputably a letter was issued by the City Superintendent of Police, Damoh on 06.08.2024 to the petitioner for disclosing the details of the children who were orphans and were found in the orphanage run by the petitioner. The children who are named in the impugned communication have been given on adoption under the provisions of Act, 2015 and the competent court i.e. Family Court, Damoh vide orders dated 06.05.2017/18.05.2017 after completing all formalities found that the children were available for adoption, thus, allowed the respective applications of the interveners namely Sanjay Kumar Bhosle & Smt. Elizabeth Bhosle and Arjun Singh Dhurve & Smt. Mamta Dhurve, to seek adoption of the said children.

14. Section 3(xi) of Act, 2015 provides ***"Principle of right to privacy and confidentiality; Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.*** Seemingly, the respondents have violated the aforesaid provision and anyhow have not protected the privacy and confidentiality of the children, conversely, they have disclosed the names of the children in their communication. Apparently, when the competent court of law i.e. Family Court, Damoh considered the applications for seeking permission of adoption must have obtained NOC or opinion from the said agencies and also of the Central Agencies working for the interest of children whether the child can be given on adoption or not. It is but obvious that there was no objection raised by any such agencies or organisations for rejecting the applications of the interveners seeking adoption of the children and therefore the court found that the children were free from legal requirements and available for adoption and therefore allowed the applications.

15. In exercise of power conferred under Section 68 of Act, 2015, Adoption Regulations, 2017 have been framed in which it is provided that as to what formalities are required at the time of adoption and it also provides when child is found legally free for adoption by the Adoption Committee which is also defined in sub-clause (2) of definition clause 2 of Adoption Regulations, 2017. Said Regulation also provides if there is non-adjustment of the child with the adoptive family, the adoption can be annulled, although there is nothing on record to indicate that after due adoption, there was any complaint received about non-adjustment of the child given on adoption with the parents. Clause 6 of Regulations, 2017 provides procedure relating to orphan or

abandoned child and as per the said clause, it is clear that several committees and organisations working in that field give their consent and remain present at the time of adoption. The respective provision under which the adoption was made and also the relevant Adoption Committee, is required to be quoted hereinunder:-

> **6. Procedure relating to orphan or abandoned child**;- The provisions relating to the process of declaring an orphan or abandoned child, as legally free for adoption are laid down in sections 31, 32, 36 clauses (a) to (c) and clause (h) of sub-section (1) of section 37 and section 40 of the Act, as well as under the relevant provisions of the rules made thereunder.
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> 6(12) The Child Welfare Committee shall use the designated portal to ascertain whether the abandoned child or orphan child is a missing child.
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> **2(2) "Adoption Committee"**, means the Committee comprising of the authorised office-bearer of the Specialised Adoption Agency concerned, its visiting doctor or a medical officer from a Government hospital and one official from the District Child Protection Unit; and shall also include a representative of the Child Care Institution, in case the adoption is from a Child Care Institution other than the Specialised Adoption Agency.

In view of the above provisions, it is amply clear that the order of adoption by the competent court was passed after scrutinizing each and every aspect related to the children and once that order is passed, the conduct and status of the child cannot be re-investigated on the whims of respondent No.5.

16. Section 3(xiv) of Act, 2015 provides ***"Principle of fresh start; All past records of any child under the Juvenile Justice system should be erased except in special circumstances."***. All these provisions clearly reveal as to in what manner and to what extent the

confidentiality with regard to the child is to be maintained. In my opinion, when the children were found legally free for adoption by the competent court of law and after the orders passed by the court, the said children have come out of the definition of 'orphan' and acquired the status of normal children having all legal rights as are available to the child in general, if there is any infirmity in such procedure and the children were not legally available for adoption and there was any defect in any of the requirements, the same could have been raised at the time of consideration of application for adoption, but once the order is passed by the competent court after getting the opinion from the Adoption Committee which is defined under Section 2 of the Adoption Regulations, 2017, there is no purpose to revisit the past of the child. Moreso, if there was any doubt in the procedure, the order of adoption could have been assailed, but no Agencies including NCPCR having any right to violate the provisions which cast obligation to maintain the confidentiality of the child. Much to the surprise, when the children have never raised any objection about any exploitation or ill-treatment from anybody relating to the orphanage and also after adoption, the parents, then no question arises for respondent No.5 to discharge the obligation as has been provided under Section 109 of Act, 2015. For ready reference, Section 109 of Act, 2015 is reproduced hereinunder:-

> **109. Monitoring of implementation of Act**;-(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under the said Act, also

> monitor the implementation of the provisions of this Act, in such manner, as may be prescribed.
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> (2) The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).
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> (3) The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

From the aforesaid provision, it is clear that NCPCR constituted under Section 3 of Act, 2015 while implementing the provisions of the Act shall be guided by the fundamental principles, in that, Section 3(xiv), as quoted above, provides 'all past records of any child under the Juvenile Justice system should be erased except in special circumstances.'. Thus, it can be deduced that when valid adoption was made, there was no necessity to keep the record of the child preserved and the authorities having no right cannot be permitted to ask the petitioner to produce such record, unless showing any special circumstance.

17. Adverting to the arguments advanced, learned counsel for the State had alleged that post adoption report and other obligations cast upon the orphanage were not complied with and as such they violated the provisions of the Act and failed in discharging their obligation. But, in my firm opinion, the consequence of that violation would not be such that the petitioner should be harassed in the manner as is being adopted in the case at hand. Not to go far, even the parents of the children represented before this court have dissuaded the action of the respondents.

18. Over and above, in the existing circumstances, especially when the registration of orphanage is already cancelled as to how any criminal proceeding can be initiated that too under Section 370 of IPC because the ingredients of said section are completely missing in the present case. To make it more precise, I feel it imperative to quote Section 370 of IPC, which read as under:-

> **"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
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> Fifthly;- by abuse of power, or
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> 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."

19. Indeed, the contents of FIR do not suggest that required ingredients of Section 370 are fulfilled or available in the case at hand. Essentially, there is no material available with the respondents on the basis of which offence under Section 370 of IPC can be registered against the petitioner. Apparently, the competent court i.e. Family Court, Damoh at the time adoption had to consider the report of the Adoption Committee containing history of the child and then opined that the children are legally free. Once, the committee has given opinion that the children were legally free and that has been accepted by the competent court and allowed the application for adoption; the said order was never put to test and therefore only because there emerged a doubt in the mind

of respondent No.5, his action cannot be held justifiable. Ergo, no offence under Section 370 IPC is made out against the petitioner. So far as the offence under Section 80 of the Act, 2015 is concerned, no ingredient of said provisions is available because unless the order of adoption passed by the Family Court in favour of the inteveners is questioned before the competent court of law and it is set aside with a finding that a person or organisation has violated the provisions of the Act, 2015, in that eventuality, the proceedings consequent to FIR, can be green-signaled. However, it is not alleged as to how Section 80 of Act, 2015 came into operation and what violation had been done before making the children available for adoption. Even otherwise, just to bring home the offence, the alleged violation that too after a long lapse of time, cannot be allowed to stand.

20. Indisputably, exercising inherent power provided under Section 482 of CrPC / Article 226 of the Constitution, the High Court would not ordinarily embark upon an enquiry to ascertain whether the evidence in question is reliable or not and inherent jurisdiction has to be exercised sparingly and carefully with caution, but at the same time, the High Court is empowered to prevent the abuse of process of court. Obviously, the High Court in exercise of its inherent power can quash the proceeding if it comes to a conclusion that such proceeding is frivolous, vexatious or oppressive.

21. Essentially, I feel it apposite here to go-through the legal position already set at rest by the Apex Court. *In re* **Prashant Bharti v. State (NCT of Delhi) (2013) 9 SCC 293**, the Supreme Court has observed that exercising the power provided under Section 482 of CrPC for quashing the proceeding, the same parameters would be applicable

even at the later stage, which are available at the initial stage like before commencement of actual trial, at the stage of issuing process or at the stage of committal. The Supreme Court taking note of the law laid down *in re* **Rajiv Thapar v. Madan Lal Kapoor (2013) 3 SCC 330**, has observed as under:-

> "22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor (supra) wherein this Court *inter alia* held as under:
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> 29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the

prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power

> vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

Indeed, the above observations strengthen my view of brushing aside the submissions raised by the learned counsel for the State.

22. On the face of assertions, there appears no reason to negate the claim of the petitioner. Thus, I find substance in the submission of learned senior counsel for the petitioner that if the allegations made by the complainant are considered to be true, even then alleged offence is not made out.

23. Similarly, in case of **State of Haryana and others v. Bhajan Lal and others 1992 Supp.(1) SCC 335**, the Supreme Court has observed as under:-

> "**102** (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> * * * * *
>
> **102** (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

24. In case of **Inder Mohan Goswami and another v. State of Uttaranchal and others (2007) 12 SCC 1,** the Supreme Court dealing with the inherent power of the High Court provided under Sections 482 of Cr.P.C., has observed as under:-

"***Scope and ambit of courts' powers under Section 482 CrPC***

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

* * * * *

28. This Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

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31. This Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] observed in para 7 as under : (SCC p. 695)

> "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is

> also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

32. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised : (SCC pp. 378-79, para 102)

> "102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

* * * * *

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

25. In case of **Kapil Agarwal and others v. Sanjay Sharma and others (2021) 5 SCC 524**, the Supreme Court dealt with the power provided under Section 482 of Cr.P.C. to the High Court has observed as under:-

"**18.** However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of

> powers under Section 482 Cr.PC. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C."

26. Furthermore, in case of **Wyeth Limited & Ors. v. State of Bihar & Anr. 2022 LiveLaw (SC) 721**, the Supreme Court has observed as under:-

> "**14.** A careful reading of the complaint, the gist of which we have extracted above would show that none of the ingredients of any of the offences complained against the appellants are made out. Even if all the averments contained in the complaint are taken to be true, they do not make out any of the offences alleged against the appellants. Therefore, we do not know how an FIR was registered and a charge-sheet was also filed.
>
> * * * * *
>
> **18.** It is too late in the day to seek support from any precedents, for the proposition that if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed."

The Supreme Court has also observed that while exercising inherent powers provided with the High Court, it is the duty of the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The guidelines laid down by the Supreme Court in a case of **Bhajan Lal** (supra) and the categories in which FIR can also be quashed in a petition preferred under Article 226 of the Constitution of India or in exercise of inherent power of the High Court provided under Section 482 of Cr.P.C. It is clear that if High Court comes to a conclusion where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is

sufficient ground for proceeding against the accused. Further, where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power can be exercised and FIR can be quashed.

27. In view of the above discourse thereby appreciating the facts & circumstances; gleaned material by the prosecution and also the settled legal position, I am of the opinion that the prosecution of the petitioner is sugarcoated with ill-intention and made to belittle his image in the society. In such circumstances, the prosecution cannot be allowed to continue.

28. As a result, finding no offence being made out against the petitioner, I **allow** the petition. Thus, FIR registered at Police Station Dehat, Damoh vide Crime No.571/2024 against the petitioner for the offence punishable under Sections 370(3), 370(4) & 34 of the Indian Penal Code and Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is hereby quashed.

29. Before parting with the case, it needs to be emphasized that all previous/subsequent proceedings, if any, initiated pursuant to said FIR, will automatically come to an end.

30. The petition stands **allowed**.

(SANJAY DWIVEDI)
JUDGE

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