

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1541 OF 2017

1. Dr. Ravindra s/o Kadu Patil
age 36 years, occ. Doctor
2. Dr. Sudarshana w/o Vinay Sonwane
age 32 years, occ. Doctor

Both r/o Suvidha Hospital & Sonography Center
Shikshak Colony, Pachora Road, Jamner
Tq. Jamner, Dist. Jalgaon

Petitioners

Versus

1. The State of Maharashtra
Through the Principal Secretary,
Public Health Department
Mumbai.
2. The Appropriate Authority
and Medical Superintendent of
Sub-District Hospital, Jamner
Dist. Jalgaon

Respondents

Mr. B. R. Kedar, Advocate for the petitioners.
Mr. S. P. Sonpawale, APP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 24th JULY, 2023.
PRONOUNCED ON : 28th JULY, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. By consent of both the sides, heard finally at admission stage.

3. This petition under Section 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure takes exception to the order dated 13th January, 2015, passed in RCC No. 56/2012 dismissing the application for discharge and confirmation of the said order by Additional Sessions Judge in Criminal Revision Application No. 19/2015 vide order dated 5th October, 2017.

4. Petitioners are medical practitioners. Petitioner No. 1 runs registered Sonography Center in the name and style as “Suvidha Hospital, Maternity Home and Sonography Center” since 2006. Registration certificate issued in favour of petitioner No. 1 expired in the year 2011 and an application was made for renewal thereof on 14th October, 2011. The said certificate was renewed by order dated 3rd November, 2012 with effect from 17th November, 2011 to 16th November, 2016. It is the contention of petitioners that prior thereto inspection of the sonography machine was done on 3rd

December, 2011 covering period from 15th May, 2011 to 9th June, 2011. It is alleged against petitioner No. 1 that there are discrepancies in Form F. On that day, Form F, report files and MTP register etc. were seized under panchanama. Sonography machine was also sealed. A show cause notice was issued on 9th December, 2011, which came to be replied on 12th December, 2011. Since reply was found unsatisfactory, complaint came to be registered by the Appropriate Authority under Section 4(3), 5, 6 and 29 of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the 'PCPNDT Act').

5. Learned counsel for the petitioners submits that the act of renewal of registration certificate for a period of five years clearly shows that there was no failure on part of petitioners to comply any provision of PCPNDT Act and in any case there is condonation of alleged non-compliance of Form F. He submits that the sonography machine was desealed by order of the District Authority after explanation of petitioner was found satisfactory. In such circumstances, unless any opinion/advise was sought from the District Authority, it was not open for the complainant to lodge complaint against the petitioners. Exception is also taken to the

authority of complainant to file complaint with the contention that he is not Appropriate Authority as defined by Section 2(a) of the PCPNDT Act. According to him, Medical Superintendent of the Rural Hospital was notified to be the Appropriate Authority to take action under the provisions of the PCPNDT Act. He made reference to the evidence of complainant wherein it is stated that he is the Medical Superintendent of Sub-District Hospital, Jamner and that there is Rural Hospital at Pahur. Thus, according to him, since complainant has no *locus standi* to file complaint and on this ground alone the petitioners ought to have been discharged by the learned Trial Court. By referring to the judgments of this Court in the case of Dr. Alka w/o Anant Gite vs. The State of Maharashtra in Criminal Application No. 3500/2011, it is sought to be contended that non-compliance of Form F does not amount to offence as it is clerical work. He also placed reliance on the judgment of Chattisgarh High Court in the case of Rajkumari Badwani vs. Collector, 2016 Cri.L.J. 4995. Finally, it is contended that considering the drastic provisions of Section 23(2) of the PCPNDT Act, the aforesaid circumstances call for discharge of petitioners. According to him, framing of charge has consequence of suspension of registration of petitioners. Thus, in

view of the aforesaid submissions amongst other, he seeks interference in the impugned order and discharge of the petitioners.

6. Learned APP supported the impugned order by referring to the averments in the complaint and provisions of PCPNDT Act. According to him, the Rural Hospital has been renamed as Sub-District Hospital and therefore, the Medical Superintendent of sub-District Hospital is deemed to be the Appropriate Authority under Section 2(a) of the Act. It is his submission that this aspect would be the subject matter of decision in trial and hence could not be a ground for discharge. On merit, it is submitted that non-compliance of Form F is an offence and hence, there would be no justification for discharging the petitioners.

7. For the purpose of appreciating the submissions made across the bar, it would be necessary to take into consideration the intent of the legislature behind enactment of the Act. The Act intends to prevent misuse for sex determination leading to female foeticide and declining sex ratio in India. A question of constitutional validity of Sections 23(2) and 25 of the PCPNDT Act was raised before the Hon'ble Apex Court in the case of Federation of Obstetrics and

Gynaecological Societies of India (FOGSI) vs. Union of India and others, (2019) 6 Supreme Court Cases 283. The Hon'ble Apex Court has in no uncertain terms held therein that non-filling of information cannot be termed to be clerical error, but in case it is kept vague that itself facilitates an offence. It is further observed that the wholesome social legislation would be defeated in case form is not filled which is *sine qua non* to undertake tests/procedures. If such condition does not exist, no such procedure can be performed. The observations of the Hon'ble Apex Court underlines and reminds the necessity of complaint under the provisions of PCPNDT Act and rules framed thereunder. Filling of Form F, therefore, cannot be considered as insignificant or ancillary in view of the aims and objects of the act.

With regard to the submission that renewal of registration and reopening of seal of sonography machine by District Authority, amounts to condonation of the act of non-filling of Form F, it needs to be recorded that the act of sealing of sonography machine is independent to the non compliance and maintenance of relevant record. Rule 12 of Rules of 1996 made under PCPNDT Act, provides that Appropriate Authority may seal and seize ultra sound sonography machine, if there is reason to believe that it may furnish

evidence of commission of offence under the Act. In the instant case, there is no allegation that the sonography machine was misused and that its seizure was required for collection of evidence. Thus, desealing directed by District Authority can never be treated as condonation of the acts of petitioners, which otherwise constitute offence under the Act. Similarly, renewal of registration for further period of five years cannot be termed as waiver of the charges. Thus, in considered view of this Court, these aspects do not affect the tenability of prosecution against petitioners.

8. Perusal of Form F shows that the same was framed by the experts taking into consideration the effect of the information provided therein the decision of conducting sonography and ultimately, for termination of pregnancy. The information like number of male and female children, reasons for conducting sonography, genetical diseases etc. cannot be branded as formal information having no significance as it has direct bearing on the decision of undertaking procedure of sonography and termination of pregnancy thereafter. Considering the view expressed by the Hon'ble Apex Court, this Court does not concur with the view taken in the cases of Dr. Alka and Dr. Udaysingh (supra). If such view is allowed

to be taken, then it will amount to giving licence to the medical practitioners for not complying with the provisions of the act. This would lead to a situation wherein the very purpose of maintaining record will get frustrated. Eventually there can never be effective implementation of the PCPNDT Act and the act will encourage illegal termination of female fetus.

Having regard to the intent of legislature and purpose to bring this enactment on Statute book, even this Court cannot be permitted to dilute the provisions of the Act. A bare look at the provisions of the Act shows that non compliance of the Act in any manner is not excused, as smallest of an error attracts penal consequences. Considering the purpose of enactment, there should be deterrence for those indulging sex determination and to achieve tis objective, strict compliance of the Act is must.

9. In the instant case, prior to filing of this application, the petitioners had sought quashment of the complaint by filing Criminal Writ Petition No. 255/2013. The said petition came to be dismissed by judgment dated 9th May, 2014. The said order was not challenged

before the Hon'ble Apex Court and hence has attained finality. In view of this fact, question that arises before this Court is as to whether it is permissible for the petitioners to re-agitate the issues which were raised in the said petition and rejected. In considered view of this Court, answer to the said question should be emphatic "no".

10. As far as objection regarding *locus* of the complainant to file complaint under PCPNDT Act is concerned, it would be necessary to take into consideration definition of 'Appropriate Authority' under Section 2(a) of the PCPNDT Act which reads thus :

2(a) "Appropriate Authority" means the Appropriate Authority appointed under section 17.

The complainant herein has specifically stated that he is Medical Superintendent of Rural Hospital (Sub-District Hospital). In the cross-examination of the complainant, it has come on record that the Rural Hospital is known as Sub-District Hospital. In such circumstances, it would be a matter for the Trial Court to decide as to whether the Rural Hospital was renamed as Sub-District Hospital and that the Medical Superintendent of Sub-District Hospital so

renamed which was earlier Rural Hospital becomes Appropriate Authority or not. The question that arises for consideration is whether renaming of the hospital would take away authority of the Medical Superintendent to initiate action in the capacity of Appropriate Authority under Section 2(a) of the PCPNDT Act. As this question involves determination of disputed facts, it cannot be decided in writ petition. Pertinently, though cross-examination of the Medical Superintendent is conducted, however, there is no specific suggestion made to him that he has not authority as contemplated by Section 2(a) of the PCPNDT Act to file complaint against the petitioners. Eventually, even if arguable case is made out by both the sides about the complainant being Appropriate Authority or not its decision needs to be left to Trial Court after recording and appreciating evidence.

11. It is sought to be argued that the act of framing of charge has drastic consequences of action including suspension of registration of medical practitioner. The said aspect is also dealt with by the Hon'ble Apex Court in the case of Federation of Obstetrics and Gynaecological Societies of India (supra). After considering the very same argument, the constitutional validity of Section 23(2) of the

PCPNDT Act is upheld. It is pertinent to note that cancellation or suspension of registration as contemplated under Section 20 of PCPNDT Act has no remedy. Section 21 of the Act provides for appeal against such suspension or cancellation of registration. In any event, merely because the act provides for consequences of framing charge which are drastic in nature, accused cannot be discharged where prima facie case is made out showing his involvement in the crime in question. At this stage, it is necessary to take into consideration provisions of Section 245 of the Code of Criminal Procedure which read thus :

245. When accused shall be discharged : (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

The said provision indicates that it is open for the Magistrate to discharge the accused when no case against the

accused has been made out which if unrebutted, would warrant his conviction. In instant case, if the material placed on record remains unrebutted, would warrant conviction of the accused. In such circumstances, no case was made out by accused to seek discharge and both Courts below have rightly rejected prayer made to that effect.

12. In view of above discussion, the petition stands dismissed. Rule discharged.

13. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb