

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37266 of 2015

Applicant :- Dr. Sanjay Agrawal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sanjay Mishra, Jitendra Singh
Yadav, Rakesh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Rakesh Kumar Gupta, learned counsel for the applicant and Sri Ramesh Kumar, learned A.G.A. for the State.

2. The instant application U/S 482 has been filed seeking quashing of charge sheet dated 31.08.2015 in Case No.91675 of 2015, arising out of Case Crime No.376 of 2015, under Section 6/23 of Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Section 420 I.P.C., Police Station Transport Nagar, District Meerut.

3. Learned counsel for the applicant submits that without falling the procedure provided under Section 28 of the Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "the Act, 1994"), the instant criminal proceeding against the applicant is not maintainable. Section 28 of the said Act reads as follows:-

"Section 28 Cognizance of offences.—

(1) No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than [fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

4. Learned counsel for the applicant submits that this Court in Application U/S 482 No.13126 of 2017 (Smt. Vimla Shukla and another Vs. State of U.P. and another) has already quashed the proceedings for want of compliance of Section 28 of the Act, 1994.

5. In the instant case, the F.I.R. was directly lodged by opposite party no.2 without issuing any notice as amended under Section 28(1)(B) of the Act, 1994, therefore, the proceedings of the instant case is initiated for want of compliance of Section 28 of the said Act, 1994, therefore, the instant criminal proceedings against the applicant herein are not sustainable in the eyes of law.

6. In view of non-compliance of provisions of Section 28 of the aforesaid Act, the instant application deserves to be allowed and is hereby **allowed** and the entire proceedings of the Case No.91675 of 2015, arising out of Case Crime No.376 of 2015, under Section 6/23 of Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Section 420 I.P.C., Police Station Transport Nagar, District Meerut are hereby **quashed**.

Order Date :- 14.12.2023

Atul