

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL WRIT PETITION NO. 22 OF 2014

Dr. Dipak s/o Madanrao Jagtap,
age 40 years, occ. Medical Practitioner,
at Barshi, Tq. Barshi, Dist.Solapur

...Petitioner

VERSUS

1] The State of Maharashtra,
through its Principal Secretary,
Home Department, Mantralaya,
Mumbai,

2] The Appropriate Authority/
Medical Superintendent,
Rural Hospital, Washi, Tq. Washi,
District Osmanabad,

3] Dr. Tukaram s/o Ramkrushna Karde,
age 35 years, occ. Medical Practitioner,
'Bhagwat Hospital', College Road,
Washi, Tq.Washi, Dist.Osmanabad,
R/o Washi, Tq.Washi,
District Osmanabad

...Respondents

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Shri R.N.Dhorde, Senior advocate i/b
Shri V.R.Dhorde, advocate for petitioner
Shri V.P.Kadam, A.P.P. for respondent nos. 1 and 2
Shri V.M.Mane, advocate for respondent no.3
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CORAM : V.M.DESHPANDE, J.

DATED : 5th January, 2015

ORAL JUDGMENT :-

1] Rule. Rule is made returnable forthwith. Heard with the consent of the parties.

2] By the present petition, the petitioner is questioning the correctness of the order, dated 22.3.2012, passed by the learned Judicial Magistrate, First Class, Washi, District Osmanabad, below Exh. 72 in Regular Criminal Case No. 30 of 2011, by which the learned Magistrate was pleased to reject the application filed by the petitioner for discharge.

3] Heard Shri R.N.Dhorde, learned Senior Counsel with Shri V.R.Dhorde, advocate for the petitioner, Shri V.P.Kadam, learned Additional Public Prosecutor for respondent nos. 1 and 2 and Shri V.M.Mane, learned counsel for respondent no.3.

4] Relevant facts for decision of the present Writ Petition can succinctly be narrated as under :-

A complaint was lodged by the appropriate authority on 19.3.2011 in the court of Judicial Magistrate, First Class, Washi for infraction of the provisions of Sections 23, 25 and 29 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred as to 'the PC and PNDT Act' for the sake of brevity) and Rule 9(4)

(6)(9) of the Rules made under the PC and PNDDT Act. The said proceedings were registered as Regular Criminal Case No. 30 of 2011. The said proceedings were filed against Dr. Tukaram Ramkrushna Karde-Respondent no.3 and Dr.Archana Tukaram Karde. The present petitioner was shown as witness no.4.

5] Undisputedly, the sonography clinic known as “Bhagwan Hospital” at Washi was started with due permission from the competent authority by respondent no.3. It is also not in dispute that with the permission from the competent authority the present petitioner was a visiting doctor in the said sonography clinic run by respondent no.3.

6] During the pendency of the proceedings before the learned Magistrate, an application Exh.52 was filed under Section 319 of the Criminal Procedure Code for permitting the complainant to prosecute the complaint against the present petitioner. The aforesaid application was allowed by the learned Magistrate on 18.1.2012.

7] In the evidence before charge, complainant Dr.Rajabhau Vishwanath Galande entered into witness box. In his cross-examination, he has specifically admitted that the present petitioner was not under obligation nor he was

responsible for maintenance of record. The relevant portion from his cross-examination will be useful to be reproduced hereinunder :-

" हे म्हणणे खरे आहे कि, प्रस्तुत प्रकरणात गर्भ गर्भधारानापूर्व व प्रसवपूर्व निदान तंत्र (लिंग निवड प्रतिबंध) अधिनियम व नियमाप्रमाणेची अभिलेख ठेवलेचि जबाबदारी आरोपी कर. ३ डॉ.जगताप याची नाही. साक्षीदार स्वतः सांगतात कि सदरहू जबाबदारी हि आरोपी कर. १ डॉ.करडे यानी जिल्हा शल्य चिकित्सक उस्मानाबाद याचेकडी लेखी हमीपत्र देवून घेतली आहे. प्रस्तुत सोनोग्राफी सेंटरला भेट दिल्यानंतर त्याठिकाणी अभिलेख जप्त करण्यात आले व त्यातील चौकशीत डॉ.जगताप याचा सहभाग आढळून आल्याने त्याचे विरुद्ध फिर्याद दाखल केली नव्हती. "

8] Consequent to that, on 13.3.2012 an application was moved by the petitioner for discharge. The said application is at Exh.72. The aforesaid application is rejected requiring the petitioner to approach to this court.

9] Admittedly, when the complaint was lodged before the learned Magistrate, the complainant chose not to join the present petitioner as one of the accused. On the contrary, the present petitioner was shown as a witness for the complainant.

10] Admittedly, the sonography center is run by respondent no.3 Dr. Tukaram Karde and the present petitioner was a visiting doctor. Obviously, therefore, the present petitioner is not having any control over the running and the

management of the said sonography center. The complaint shows that Form F register is not properly maintained. The consent forms after 27.12.2009 are not available.

11] Rule 9 of the Rules deal with the maintenance and preservation of records. Perusal of the said Rule shows that it is the responsibility of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres to maintain the register and the other record. Admittedly, in the present case, it is not in dispute that the petitioner Dr. Jagrtap was not running the Sonpgraph Center. It is an admitted position that the said center was run with due permission from the competent authority by respondent no.3. Form F also shows that it has to be signed either by the Gynaecologist, Radiologist or Director of the Clinic. In the light of Rule 9 and Form F, the admission of the complainant as given aforesaid assumes importance. According to me, it clearly clinches the issue in favour of the petitioner. The petitioner cannot be held responsible. In the complaint, there is no whisper of any allegation against the present petitioner. The prosecution can be launched only on a complaint by the appropriate authority before the competent court. In absence of any allegations against the present petitioner, coupled with the admission given by the complainant himself at the time of evidence before charge clearly shows that the petitioner cannot

be prosecuted. In that view of the matter, the order, dated 22.3.2012 cannot stand to the scrutiny of law.

12] Consequently, the petition is allowed. The order, passed by the Judicial Magistrate, First Class, Washi, dated 22.3.2012 in Regular Criminal Case No. 30 of 2011 below Exh.72 is hereby quashed and set aside. Application Exh. 72 filed by the present petitioner in Regular Criminal Case No. 30 of 2011 is hereby allowed. The petitioner is discharged from Regular Criminal Case No. 30 of 2011 pending on the file of Judicial Magistrate, First Class, Washi. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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