

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 265 OF 2014

Dr. Anand s/o. Bansilal Karnawat
and another

....Petitioners

Versus

The State of Maharashtra and
another

....Respondents.

Mr. N.B. Khandare, Advocate for petitioners.

Mr. U.H. Bhogle, APP for State/respondent No. 1.

CORAM : T.V. NALAWADE, J.

DATED : 9th June, 2015.

ORDER :

1) The petition is filed to challenge the order made by Judicial Magistrate, First Class, Ambajogai on Exh. 26 in RCC No. 222/2012 and other equitable relief is also claimed. The order was not challenged by filing the proceeding like revision in Sessions Court. Both the sides are heard.

2) Respondent No. 2, the authority appointed under Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ('the Act' for short) has filed complaint against the petitioners for the offences punishable under section 9 (4) of the Act and the J.M.F.C. had issued

process. There is the allegation against the petitioner No. 1 that he was operating the sonography machine in sonography clinic owned by present petitioner No. 2. There are allegations that the authority noticed that form 'F' of a pregnant lady Smt. Renuka Ingale was not complete, it was not filled as per the Rules and thereby the petitioners have committed the offence. The relevant record was taken over by the authority and even the machine was seized and sealed.

3) In discharge application, the petitioners contended that there was no need to fill column No. 8 of form 'F' as the lady was not pregnant at that time and she was referred for examination by Dr. Bhutda for other purpose.

4) After going through the record and hearing submissions, the learned J.M.F.C. has observed that even Dr. Bhutda is responsible for concealing the material information and he needs to be made accused in the case.

5) From the record and the observations made by the learned J.M.F.C., it can be said that the aforesaid lady has suffered abortion and she was referred to sonography clinic by Dr. Bhutda with reference letter. The contents of the reference letter are as follows : -

"Referring Patient Renuka Manoj Ingale of Age 26 yrs R/o. Prashant nagar Ambajogai complaining of bleeding PV for the pelvic Sonography to rule out retain bits of Incomplete abortion."

6) After examination, the petitioners prepared following report :-

"UTERUS : Just bulky in size, Shape and position.
The Echogenecity & Echopattern is norman
e/o mixed, echotexture, retained bits of product of
conception
with bright echogenicity seen in endometrial
cavity"

7) In reply affidavit, the complainant, the State has contended that the said lady was having a female child, she was aged about 26 years and so, the information in column No. 8 about the last menstrual period was necessary or the mentioning of the period of pregnancy was necessary.

8) There is no need to quote the scheme given by the aforesaid Special Act, but it can be said that in view of the object behind the provisions, the persons running the clinic must follow the procedure given strictly and the provisions are mandatory in nature. In the present case, the aforesaid circumstances are there and they indicate that the lady had undergone abortion. It needs to be observed that in such cases, even action for illegal

abortion needs to be taken against Dr. Bhutda and report in that regard could have been given to police for collection of necessary material. The submissions made by the petitioner that Dr. Bhutda had requested the petitioners to examine the patient for other purpose and so, the information in column No. 8 was not filled, cannot be accepted. This information was more necessary in the present matter as lady was having a female issue, she had undergone abortion and she had come for sonography after the abortion. There was clear possibility of illegal abortion in the present matter. If the information was not collected from Dr. Bhutda, it was necessary for the petitioner to collect it from the patient herself. The conduct of not filling the information indicates in the present case that they wanted to suppress everything. It appears that complete address of the lady was also not mentioned. In view of these circumstances, this Court holds that it is not possible to discharge the petitioners and there is sufficient material to frame charge for aforesaid offences.

9) In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/