

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

CRIMINAL WRIT PETITION NO.524 OF 2015

Dr.Ravindra Kashinath Kulkarni .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Mr.K.C.Sant, Advocate for the petitioner.
Mr.U.S.Mote, APP for the respondent/State.

**CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 18.04.2015**

PER COURT :-

1. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein is challenging the order dated 10.04.2015, passed by the Additional Sessions Judge, Amalner, thereby confirming the order passed by the Judicial Magistrate, First Class, Amalner below Exh. 109 in RCC No.116 of 2012 rejecting the prayer of the

petitioner to examine the Civil Surgeon as a defence witness in order to substantiate contentions of the petitioner that the complainant in RCC No.116 of 2012 is not the appropriate authority, as contemplated under Provision of P.C.P.N.D.T. Act. The petitioner had also prayed for relief of examination of PSI Somvanshi who happens to be the Police Inspector and he was present at the time of raid and that the panchanama has not been recorded in accordance with law. The learned Magistrate vide order dated 13.03.2015 has been pleased to reject the said application on the ground that in the case of Dr. Aparna Muthe the Hon'ble High Court has considered that Dr. Savkare is appropriate authority. The learned Magistrate had also considered while answering the question No.3 in the statement under section 313 that the petitioner who happens to be an accused in RCC No.116 of 2012 has specifically denied the presence of Police Inspector Mr.Somvanshi, at the relevant time. The question and answer in the said respect has been incorporated in the order dated 13.03.2015.

3. Being aggrieved by the said order, the petitioner herein had filed Revision Application No. 5 of 2015, before the Additional Sessions Judge, Amalner. The learned Additional Sessions Judge has considered that the said application was made after statement under Section

313 of the Criminal Procedure Code was recorded, and that, it simply appears that the petitioner has not followed the proper procedure and has belatedly filed an application only to protract the trial. It is pertinent to note that the Revisional Court has specifically considered answer to question No.3 and has observed that when accused has admitted the seizure panchanama of sonography machine in his statement under Section 313 of the Criminal Procedure Code, then the question of examining Police Inspector Mr. Somwanshi of Police Station, Amalner, does not arise. The learned Revisional Court, vide order dated 10.04.2015, has been pleased to reject the said application. Perused the annexures to the petition. The appropriate authority was examined as P.W.1 Dr. Ramchandra Savkare. In the cross examination, the witness has specifically admitted as follows:

- i. My name and designation is not published in gazette.
- ii. It is true to say that no legal documents are filed on record to show that I am an appropriate authority.
- iii. It is true to say that in my retirement order it is mentioned that I am retiring as a Medical Officer, Rural Hospital.
- iv. It is true to say that since the year 1999 till

today the post of Medical Superintendent at Rural Hospital, Amalner is vacant.

- v. It is true to say that after 31.05.2013 I am not a Medical Officer.
- vi. It is true to say that, in the order at Exh.102 it is mentioned against my name as Medical Officer Class-II Rural Hospital, Amalner.
- vii. It is true to say that letter at Exh.102 is of period later than my retirement.
- viii. It is true to say that as per the order at Exh. 100 I was given authority regarding Drawing & Disbursement, only, of Rural Hospital, Amalner.
- ix. It is true to say that since 2003-2004 till my retirement I have not received the written order regarding the charge of Medical Superintendent with charge of Drawing & Disbursement Officer.

4. It is pertinent to note that the complaint was filed by P.W.1 on 09.07.2012. The evidence on oath of P.W.1 makes it amply clear that at the time of filing of the complaint he was not a Medical Superintendent as contemplated under Section 17 of the P.C.P.N.D.T. Act. Section 17 of the P.C.P.N.D.T. Act specifically contemplates that the State Government shall appoint, by notification in the Official Gazette, one or more appropriate authorities for the whole or part of the

State for the purpose of this Act, having regard to the intensity of the problem of the pre-natal sex determination leading to female foeticide. The admission of P.W.1 makes it amply clear that neither he was appointed by any notification nor he was authorized by the State Government. In fact he was a Medical Officer Class-II. In view of the admission made by P.W.1 it would not be necessary to call upon the Civil Surgeon to verify as to whether the complainant was a appropriate authority or not. The said aspect is to be decided at the time of delivery of judgment.

5. Section 28 of the P.C.P.N.D.T. Act contemplates that no Court shall take cognizance of an offence under this Act except upon a complaint made by the appropriate authority or any officer authorized on behalf of the Central Government or State Government as the case may be, or the appropriate authority. The substantive evidence of the P.W.1 makes it amply clear that he was not authorized by the Central Government or State Government. The powers under the P.C.P.N.D.T. Act cannot be delegated. It further reveals in his evidence on oath that the post of Medical Superintendent at Rural Hospital, Amalner was vacant since 1999. The power under Section 17 of the said Act could not have been delegated to the complainant. As far as recording of evidence of PI

Somvanshi is concerned it would be a futile exercise.

6. The Statement of the accused under Section 313 of the Criminal Procedure Code would be more than sufficient as the defence of the accused needs to be considered in the course of appreciating evidence and at the time of judgment. In view of this, it is not necessary to pass any order on the application filed by the petitioner to examine two witnesses.

7. Hence the petition stands disposed of in the above terms.

[SMT. SADHANA S. JADHAV,J.]