

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Writ Petition No.708 Of 2014.

Dr. Mrs. Yogita Vinay Theng.
Age: 32 Years, Occ.: Medical Practitioner.
R/o.: Anand Hospital, Hirapur Road,
Chhalisgaon, Tal. Chhalisgaon,
Dist. Jalgaon

:: **Petitioner.**

Versus

(1) The State of Maharashtra.

(2) Dr. Bapu Pandit Baviskar.
The Appropriate Authority.
Medical Superintendent.
Rural Hospital, Chhalisgaon,
Tal. Chhalisgaon, Dist. Jalgaon

:: **Respondents.**

Appearance ==>

Mr. V.D. Hon, Senior Counsel i/by Mr. A.V. Hon, Advocate for the
Petitioner.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of
Maharashtra / Respondent No.1.

CORAM : V.M. DESHPANDE, J.

DATE : 2nd MARCH, 2015.

J U D G M E N T :-

Rule. Rule is made returnable forthwith. Heard finally with the
consent of both the parties.

[2] By the present petition, the petitioner is challenging the order dated 26th February, 2014 passed below Exhibit – 1 by the learned Judicial Magistrate, F.C., Chhalisgaon, in Regular Criminal Case No.220 Of 2011, whereby the learned Magistrate has framed the Charge together with the Judgment and Order dated 16th June, 2014 passed by the learned Sessions Judge, Jalgaon, in Criminal Revision Application 62 Of 2014.

[3] I have heard Mr. V.D. Hon, Senior Counsel i/by Mr. A.V. Hon, Advocate for the Petitioner and Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra / Respondent No.1. The question that is involved in the present Writ Petition is in respect of fact that :-

“Whether Dr. B.P. Baviskar, was competent authority on 08/07/2011 to file the Complaint under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 2003 and and Rules made thereunder. ?” (In short, “the Act.)

[4] Complaint against the present petitioner was filed in the court of the learned Judicial Magistrate, F.C., Chhalisgaon, Dist. Jalgaon by Dr. B.P. Baviskar, Medical Superintendent, Rural Hospital, Chhalisgaon, on the assertion that he is appropriate authority under “the Act”. The said complaint was lodged on 08/07/2011. In the complaint, it has been specifically narrated by the complainant that he is the Medical Superintendent working at Rural Hospital, Chhalisgaon and is also the appropriate authority as per Section 2(a) of “the Act”.

[5] At the time of framing of charge, it was submitted that Dr. B.P. Baviskar is not appropriate authority and, therefore, the complaint filed by a

person who was not competent to file the same. However, the said submission of the petitioner was not accepted and passed order dated 26th February, 2014 to frame the charge.

[6] Said order was confirmed by the learned Sessions Judge, Jalgaon in Criminal Revision Application 62 Of 2014. Against the aforesaid, present Writ Petition is filed.

[7] The Only point that is agitated before this court by the learned Senior Counsel is that, Regular Criminal Case No.220 Of 2011 filed against the present petitioner is filed by the person, who on the date of filing of the complaint, was not competent to file the said complaint. The learned Senior Counsel invited attention to the Judgment delivered by this court on 4th August, 2014 in Writ Petition No.206 Of 2013. [Dr. Vinod s/o Murlidahr Kotkar V/s. The State of Maharashtra & Ors.]

[8] Writ Petition No.206/2013 arises out of Regular Criminal Case No. 354/2011 which was pending on the file of the Judicial Magistrate, F.C., Chhalisgaon, Dist. Jalgaon. The said complaint was also filed under “the Act”. Said complaint was also filed by Dr. B.P. Baviskar.

[9] In the Writ Petition No.206 Of 2013, the question which was posed before this court was that, “ Whether the complainant - Dr. B.P. Baviskar was competent person to file Regular Criminal Case No.354 Of 2011.?” Said Writ Petition was filed by Dr. Vinod s/o Murlidahr Kotkar. The complaint Regular Criminal Case No.354 Of 2011 against Dr. Vinod s/o Murlidahr Kotkar was filed on 28th September, 2011. Regular Criminal Case No.220 Of 2011 filed by Dr. B.P. Baviskar against the present petitioner was also filed on 08/07/2011 before the same Magistrate.

[10] This court vide Judgment dated 4th August, 2014 has observed in paragraph No.10 as under :-

In view of the fact that this court on earlier occasion has specifically recorded that when sealing of the Sonography machine was done, that time Dr. Baviskar was not the competent authority under the Act and since no material is placed on record to show that on 28.9.2011 he was the appropriate authority and/or he was authorised either by the State Government or the Central Government or by the appropriate authority to launch and initiate the prosecution by filing the complaint before the learned Magistrate. I see no reason to disagree with the submissions made by the learned counsel for the petitioner that the present complaint is filed by the incompetent person, and therefore, it needs to be quashed.

[11] Thus this court on 4th August, 2014 has already taken a view that on 28th September, 2011, Dr. B.P. Baviskar was not competent person / appropriate authority authorised either by the State Government or the Central Government or by the appropriate authority to launch and initiate the prosecution by filing the complaint before the learned Magistrate.

[12] This court in Writ Petition 206/2013, in detail has recorded the finding as to why Dr. B.P. Baviskar was not competent person to file complaint on 28th September, 2011.

[13] In that view of the matter, present Writ Petition needs to be allowed. Hence, I proceed to pass the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 26th February, 2014 passed by the learned Judicial Magistrate, F.C., Chhalisgaon, Dist. Jalgaon in Regular Criminal Case No.220 Of 2011 below Exhibit -1 and the Judgment and Order dated 16th June, 2014 passed by the learned Sessions Judge, Jalgaon in Criminal Revision Application 62 Of 2011 are hereby quashed and set aside.
- (ii) Regular Criminal Case No.220 Of 2011 pending on the file of the learned Judicial Magistrate, F.C., Chhalisgaon, Dist. Jalgaon is dismissed, as it is not filed by appropriate authority and/or Dr. B.P. Baviskar was not authorized either by the State Government or the Central Government or by the appropriate authority to launch and initiate the prosecution by filing the complaint before the learned Magistrate.
- (iii) Rule is made absolute.

(V.M. DESHPANDE, J.)