

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2287 OF 2015

Mr. Abhijit Shivaji Deore & Anr. ...	Petitioners
vs.	
Mr. Hemant Gulabrao Gadhari & Anr....	Respondents

Mr. Amey Deshpande, Advocate, for the petitioners.
Ms. G.P.Mulekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 21st August, 2015.

P.C.

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

2. The petitioners herein are Medical Practitioners by profession and are practising at Malegaon. The petitioner No.1 runs a clinic/sonography centre in the name and style of "Shivmangal Sonography Centre", Satana Road, Malegaon.

3. On 21.7.2013, the Appropriate Authority under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as “PCPNDT Act”) lodged a report at the

Malegaon Police Station alleging therein that on the basis of the information received by the State Government Flying Squad, he had visited Shivmangal X-Ray and Sonography Centre along with his assisting staff. The information received was that the petitioner herein is indulging into determination of sex of the foetus. The Sonography Machine was sealed. The Appropriate Authority had sent a decoy witness Smt. Pragati Patil, who had paid Rs.12,500/-. The Appropriate Authority had specifically alleged that determination of sex of foetus is prohibited by the said PCPNDT Act and that the petitioner has indulged into the said act. On the basis of the report, Crime No.93 of 2013 was registered against the petitioner for the offences punishable under Sections 353, 186, 187, 201, 504 of Indian Penal Code and Section 23 of the PCPNDT Act. It was alleged in the first information report that when the Appropriate Authority had visited the clinic along with the assistant staff, the petitioner had not co-operated with the Appropriate Authority and had caused the disturbance in discharge of their official duty and he is being prosecuted for the offence under Sec. 353 of Indian Penal Code. The investigation is completed and charge sheet is filed in the said case. The said case is registered as SCC No.888 of 2014 .

4. The Appropriate Authority had then approached the Court of

Judicial Magistrate, First Class, Malgaon, and had filed a complaint under Section 2(d) of Cr.P.C. against the present petitioner in respect of the incident dated 20.7.2013. It is alleged in the said complaint that Advocate Smt. Varsha Deshpande had contacted the Appropriate Authority and had informed him that the present petitioners are conducting their Sonography Centre in utter violation of the provisions of the said Act and, therefore, deserves to be penalised under the PCPNDT Act. The Appropriate Authority had visited the clinic by sending a decoy witness and after confirming that the allegations levelled by Smt. Varsha Deshpande, prima facie, appears to be correct, had sealed the machine and had taken action in accordance with law in consonance with the provisions of the said Act. The said case is registered as RCC No.391 of 2013.

5. The petitioners herein had filed an application before the learned Judicial Magistrate, First Class, Malegaon, under Section 220 sub-clause (1) of Cr.P.C. and had prayed that the first information report under Section 154 of Cr.P.C. and the complaint filed by the Appropriate Authority under Section 2(d) of Cr.P.C. are in respect of the same incident and same facts. It was, therefore, prayed that both the cases i.e. S.C.C. No.888 of 2014 and R.C.C. No.391 of 2013 be conducted as a single trial i.e. they be tried

together.

6. The learned Judicial Magistrate by an order dated 9.4.2015, has rejected the said application on the ground that the provisions of Section 220 of Cr.P.C. are not applicable in the present case inasmuch as Section 220 of Cr.P.C. is an enabling provision giving the discretion to court to try two or more offences together in a single trial. The learned Magistrate has held that the case under the provisions of PCPNDT Act is a time bound case in view of the ruling of Hon'ble Supreme Court of India in **Writ Petition (Civil) No. 349 of 2006 Voluntary Health Association of Punjab Vs. Union of India & Ors.** and, therefore, the learned Magistrate has declined to merge the trial of both the cases as prayed.

7. The petitioners herein had initially filed Criminal Writ Petition No.1604 of 2015 before this Court. However, on 21.4.2015, the Writ Petition was withdrawn and thereafter, the petitioners have filed the present petition on 21.5.2015. The learned counsel for the petitioners fairly submits that initially the petitioners were being represented by another Advocate i.e. Advocate M.N.Sandhyanshiv. That there was miscommunication between the said Advocate and the applicant and the

petition was withdrawn.

8. The learned APP submits that on 21.4.2015, the Writ Petition was withdrawn simplicitor. The Court had not granted further liberty to approach this Court by filing a fresh Writ Petition and therefore, according to the learned APP, the present application is not maintainable.

9. The learned counsel for the applicant has prayed that in the interest of justice and to follow the mandate of Section 28 of the said Act, it would be necessary to hear this application although no liberty was granted to file fresh writ petition.

10. Section 28 of the PCPNDT Act reads as follows :-

“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;”

11. Section 2(d) of Cr.P.C. defines “complaint”. It reads as follows :-

“2(d) “complaint” means any allegation made orally or in

writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

In view of this, Section 28 of PCPNDT Act needs to be read in consonance with Section 2(d) of Cr.P.C. and therefore it is clear that the Magistrate cannot take cognizance of any offence under the said Act unless a complaint is filed under Section 2(d) of Cr.P.C. Hence, the report, which was filed under Section 154 of Cr.P.C., investigated by the police and charge sheet was filed, would not be maintainable in the present case. It is in these circumstances, that RCC No.888 of 2014 would entirely merge into RCC No.391 of 2013. The Magistrate is not empowered to take cognizance or record evidence in RCC No.888 of 2014 which spells out the allegations under the said Act. In view of this, the allegations for the offence under Section 353 of Indian Penal Code would be considered as an act of the accused soon after the incident or at the time of incident and can be appreciated under Section 8 of the Indian Evidence Act.

12. In view of this, the Petition deserves to be allowed in terms of prayer clause (a). The order dated 9.4.2015 passed by the learned Judicial Magistrate, First Class, Malegaon below Exhibit 80, in R.C.C. No.391 of

2013 is hereby quashed and set aside. The Magistrate shall take cognizance of the offence under the said Act in R.C.C. No.391 of 2013 and proceed with the case in accordance with the Judgment of the Hon'ble Apex Court in the case of Voluntary Health Association of Punjab vs. Union of India & Others. In view of the statutory mandate under Section 28 of the said Act, no further orders in RCC No.888/2014, are necessary.

Writ Petition is allowed in the above terms. Rule is made absolute accordingly.

(SMT.SADHANA S.JADHAV, J.)