

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

CRI. WRIT PETITION NO. 4194 OF 2014

Dr. Ranjeet Ghatge

... Petitioner.
(Org.Accused No.2)

V/s.

The State of Maharashtra & Anr.

... Respondents.

**WITH
CRI. WRIT PETITION NO. 4195 OF 2014**

Dr. Sanjay Kadyan

... Petitioner.
(Org.Accused No.2)

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Niranjan Mundargi and Mr. Amit Karkhanis, Advocates
i/by Kay Legal & Associates LLP for the Petitioner in
W.P.No.4194 of 2014.

Mr. Ashish Chavan, Mr. Amit Karkhanis, Ms. Geeta Naval and
Ms. Suparna Holamagi, Advocates i/by Kay Legal & Associates
LLP for the Petitioner in W.P.No.4195 of 2014.

Ms. G. P. Mulekar, APP for the State.

Mr. R.M. Pethe, Advocate for Respondent No.2 in both
petitions.

CORAM : M.L.TAHALIYANI,J.

DATE : 17th AUGUST, 2015

P.C. :

1 Heard the learned counsel for the petitioners in both the petitions, the learned additional public prosecutor for the State and the learned counsel for the Respondent No.2.

2 The petitioners in both the petitions are facing trial for the offence punishable under section 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, hereinafter referred to as “the Act”) for alleged violation of the Rule 9(4) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short, hereinafter referred to as “the Rules”) made under the said Act.

3 Briefly stated, the Nursing Home using diagnostic techniques are supposed to maintain the record, as prescribed. One of the records maintained by the Nursing Home is Form - “F”. The word 'prescribed' is defined under section 2(l) of the Act. 'Prescribed' means prescribed by rules made under the Act. Rule 9 of the Rules is regarding maintenance and preservation of records. Said Rule runs as under :

“9. Maintenance and preservation of records.--

[(1) Every Genetic Counselling Centre, Genetic Laboratory, [Genetic Clinic including a mobile

Genetic Clinic], Ultrasound Clinic and Imaging Centre shall maintain a register showing, in serial order, the names and addresses of the men and women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.]

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specified in Form D.

(3) The record to be maintained by every Genetic Laboratory, in respect of each man and woman subjected to any pre-natal diagnostic procedure/ technique/ test, shall be as specified in Form E.]

[(4) The record to be maintained by every [Genetic Clinic including a mobile Genetic Clinic], in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.]

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved a permanent records.

(6) All case related-records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the [Genetic Counselling Centre, Genetic Laboratory, Genetic

Clinic, Ultrasound Clinic or Imaging Centre] for a period of two years from the date of completion of counselling, pre-natal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the [Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic or Ultrasound Clinic or Imaging Centre] maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

[(8) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy related procedures/ techniques/ tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority.]

4 It is evident from Rule 9(4) of the Rules that the record is to be maintained by the Genetic Clinic in respect of each man or woman subjected to any pre-natal diagnostic procedure/ technique / test as specified in Form-F. As such it is abundantly clear that the Form-F is to be maintained by the Nursing Home or Genetic Clinic. It is not the duty of the visiting Radiologist to maintain the Form F. In my opinion, it

is purely a clerical work which is required to be done by the Genetic Clinic.

5 The petitioner in writ petition no. 4194 of 2014 was working as visiting Radiologist at Dr. Purohit Nursing Home, Pune and the petitioner in writ petition no. 4195 of 2014 was working as visiting Radiologist at Dr.Kashyap Nursing Home, Pune. The case of both the petitioners/accused is similar. In my opinion, they cannot be prosecuted for not maintaining particular record which is required to be maintained by the Genetic Clinic Centre.

6 The learned counsel for the Pune Municipal Corporation, on behalf of the Respondent no.2, has invited my attention to the proviso to sub-section (3) of section 4 of the Act. Sub-section (3) of Section 4 of the Act runs as under :

“[(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely :-

- (i) age of the pregnant woman is above thirty-five years;
- (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;

(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;

(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;

(v) any other condition as may be specified by the Board :

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

(emphasis supplied)

In my opinion, this proviso is to be read alongwith Rule 9(4) of the Rules. A minute details mentioned in the Form-F are, in my opinion, to be filled in by the staff members of the Genetic Clinic. The person/doctor conducting ultrasonography on a pregnant woman will keep complete record of the ultrasonography done by him and not the details of the Form-F. Harmonious reading of proviso to sub-section (3) of section 4 of the Act read with Rule 9(4) of the Rules leads one to the conclusion that the clerical work is to be done by the staff

members of the Genetic Centre and only the Doctor will maintain record of the ultrasonography done by him.

7 In both the cases before me the major irregularities found by the appropriate authority of the Corporation are as under :

- i) Patients details and complete addresses are not mentioned properly.
- ii) Name, registration number and signature etc. of the doctor are not mentioned.
- iii) Indications for conducting PNDD test i.e. USG are not mentioned/written in the Form-F.
- iv) In the Form 'F' number sex of each child was not written.
- v) The declaration of the doctors, the patient's name is not written.
- vi) USG reports of the patients are not maintained.
- vii) Address of Dr. Purohit Hospital is mentioned but tests are conducted at Bibvewadi.

It can be seen that the majority of the work is clerical. The doctor/person, performing the ultrasonography test can be held responsible for the column (vi) i.e. he has to maintain report of the USG.

8 Learned Advocate Mr. Mundargi has brought to my notice that the main accused who were running Genetic Centres in both the cases have been discharged by the learned trial Magistrate. It is submitted that in fact the Genetic Centre was supposed to maintain the record in respect of the majority of the details required to be mentioned in Form-F. It is submitted by the learned counsel Mr. Mundargi that it is not clear from the complaint as to whether the complete record of the Genetic Centre was taken charge of. It is not clear from the complaint as to whether any other hard copies of the sonography were found and as to whether all USG reports were examined to determine that the petitioners/applicants had not maintained USG reports of the particular patient. Since the offence alleged is technical one, it was necessary to collect the precise evidence which may, prima facie, satisfy that the petitioners/ applicants had not maintained the record of U.S.G.. Therefore, it appears to me that a superficial enquiry was done and the panchanama was prepared. The petitioners cannot be asked to face prosecution on the basis of a superficial enquiry. As such, the prosecution launched for violation of the Rule 9(4) of the Rules read with section 25 of the Act, pending in the court of Judicial Magistrate, First Class, Pune against the petitioner in both the petitions deserves to be quashed. Orders of the Revisional Court are required to be set aside.

9 Hence, I pass the following order :

i) Orders passed by the Additional Sessions Judge, Pune in Revision Application Nos. 165 of 2012 and 134 of 2012 are set aside.

ii) The prosecution pending against the Petitioner (Dr. Ranjeet D. Ghatge) vide Criminal Case No. 0401615 of 2011 and the prosecution pending against the Petitioner (Dr. Sanjay Kadyan) vide Criminal Case No. 0401614 of 2011 shall stand quashed.

Both the writ petitions are allowed in the above terms and stand disposed of accordingly.

(JUDGE)

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