

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.27461 of 2015
and
Criminal Misc. No.M-8866 of 2015

.....

Date of decision:27.8.2015

Dr. R.D. Negi and another

.....Petitioners

v.

State of Haryana

.....Respondent

....

Present: Mr. Sanjeev Kr. Panwar, Advocate for the petitioners.

.....

Inderjit Singh, J.

Cr. Misc. No.27461 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the hearing of the main petition is preponed from 5.10.2015 to today.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.M-8866 of 2015:

This petition has been filed under Section 482 Cr.P.C. praying for quashing of criminal complaint No.RBT-05 dated 30.9.2009 (Annexure-P.1) titled "State through Dr. Raminder Singh Versus Dr. R.D. Negi and another" filed for the offence under Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the PNDT Act') along with all subsequent proceedings arising therefrom including the order dated 26.11.2013 (Annexure-P.2) passed by the learned Judicial Magistrate Ist Class,

Faridabad, summoning the petitioners for the offence under Section 23 of the PNDT Act as also the order dated 23.1.2014 (Annexure-P.3) passed by the learned Additional Sessions Judge, Faridabad in Criminal Revision No.68 dated 17.12.2013 upholding the order summoning the petitioners and impugned order dated 7.8.2014 (Annexure-P.4) passed by learned JMIC, Faridabad, whereby charges have been framed against the petitioners. It has been further prayed to stay the proceedings before the trial Court.

I have heard learned counsel for the petitioners and have gone through the record.

As per the record, the complaint was filed by the State through Dr. Raminder Singh, District Appropriate Authority (PNDT)-cum-Civil Surgeon, Faridabad against Dr. R.D. Negi and M/s Taneya Hospital Pvt. Ltd. for the offence under Section 28 of the PNDT Act and rules made thereunder. It is stated in the complaint that the complainant has been appointed as the District Appropriate Authority under Section 17(2) of the PNDT Act vide Haryana Government Gazette notification which has now been got published by notification in the official gazette dated 4.3.2009 and further the complainant being authorized person under the Act is competent to file the present complaint and is presently posted as Civil Surgeon, District Faridabad. It is also stated that earlier a complaint regarding the facts mentioned in the present complaint was filed by the Civil Surgeon on which the Hon'ble Court had not taken cognizance under Section 28 of PNDT Act observing that in the absence of the notification in the official gazette, the Court cannot take cognizance and cannot treat Civil Surgeon as

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a complainant and consequently the accused were discharged. Now the notification, which was got published in the official gazette vide notification dated 4.3.2009, the Civil Surgeon has become competent to file the present complaint as per the notification. The State had preferred a criminal revision against the discharge which was disposed of by the learned Additional Sessions Judge, Faridabad, giving permission to the Civil Surgeon/District Appropriate Authority/Authorized person to file a complaint afresh after perusing the gazette notification which was got published vide notification dated 4.3.2009.

At the time of arguments, learned counsel for the petitioners argued that this complaint is time barred as the cognizance has been taken by summoning the accused in 2013 after the period of limitation. He argued that the limitation period is to be taken not from the filing of the complaint, but from the period when the summoning order is passed. He further argued that the notification authorizing the Civil Surgeon to file complaint under the NDPT Act was issued on 24.10.1997 which came to be published in the official gazette on 4.3.2009. It is argued that the notification dated 4.3.2009 and notification dated 21.7.2009 cannot be relied upon by the complainant as these have already been challenged before the Hon'ble High Court.

As regards the first argument that it has not been disputed by the learned counsel for the petitioners that the complaint has been filed within three years, from the date of occurrence, but the only argument is that three years period is to be taken from the cause of action/date of occurrence to till the Court takes the cognizance. The Hon'ble Supreme Court in Mrs.

Sarah Mathew v. The Institute of Cardio Vascular Diseases by its Director – Dr. K.M. Cherian and others, 2014 (1) R.C.R. (Cr.) 590, in which it is held that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of a process by Courts. It is also held that limitation to file complaint provided in the statute is that no Court shall take cognizance after expiry of one year from the date on which offence is committed. If in a given case complaint was filed within period of one year, but Court took cognizance after expiry of one year, the complaint whether could be quashed on the ground that Court took cognizance after expiry of one year whereas the Court was required to take cognizance within one year from the date of commission of offence, the Supreme Court held that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by Courts.

The period for the purpose of limitation under Section 468 Cr.P.C. is to be taken from the date of occurrence till filing of the complaint and not when the Court takes the cognizance. Therefore, in view of the above fact this can not be held as barred by limitation. Otherwise also, under Section 473 Cr.P.C., the period can be condoned even by the Court if the Court is satisfied that reasonable ground exists for delay which means that it is finding of fact for the trial Court to condone the delay if there is

any sufficient explanation in this regard. But in the present case, as already discussed, the complaint has been filed within limitation, therefore, I find no merit in the argument of the learned counsel for the petitioners.

Further, I find that against the summoning order, a criminal revision petition was filed which has also been dismissed. As argued, the charge has already been framed by the trial Court as this petition was also filed for setting aside the charge. Further, it is admitted at the time of arguments that the charge has already been framed by the Court by finding *prima facie* case, which means the Court has already taken the cognizance and the trial is going on. The argument regarding notification has already been discussed in detail in the criminal revision petition against the summoning order by the learned Additional Sessions Judge. From the perusal of the record, I do not find that any illegality has been committed by the Courts below while passing the impugned orders. A perusal of the record shows that the filing of the complaint, in no way, can be held as amounting to abuse or misuse of the process of the law nor it amounts to miscarriage of justice. Therefore, finding no merit in the present quashing petition, the same is dismissed.

However, nothing stated above will be construed as an expression of opinion on the merits of the case and the petitioners are at liberty to raise all the points before the trial Court at an appropriate stage.

August 27, 2015.

(Inderjit Singh)
Judge

hsp