

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31935 of 2013

Arising Out of PS.Case No. -45 Year- 2013 Thana -SIWAN COMPLAINT CASE District- SIWAN

1. Amrendra Kumar Son of Krishna Kishore Prasad Resident of Village-Barauli
Road Barahari, P.S.-Baraharia District-Siwan

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Adv.

For the Opposite Party/s : Mr. Dr. Mayanand Jha, APP

Mr. Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-08-2016

Heard Mr. Vijay Shankar Shrivastava, learned counsel
for the petitioner, Dr. Mayanand Jha and Mr. Md. Fahimuddin,
learned Additional Public Prosecutor for the State.

2. By way of the present application preferred under
Section 482 of the Code of Criminal Procedure, the petitioner seeks
quashing of the order dated 3rd June, 2013 passed by the learned
Chief Judicial Magistrate, Siwan in Case No. C II 45 of 2013,
whereby after taking cognizance of the offences punishable under
Sections 23 and 25 of the Pre-Conception and Pre-Natal Diagnostics
Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'PC
& PNDT Act'), the petitioner has been summoned to face trial.

3. The case instituted against the petitioner is based on a



complaint. From perusal of the entire complaint petition, as contained in Annexure-1, it appears that the Civil Surgeon-cum-Chief Medical Officer, Siwan in the capacity of appropriate authority under the PC & PNDT Act visited the premises of the Genetic Clinic Rabiya Ultrasound, Barauli Road, Baraharia, Siwan and found that the center is not a registered one, neither registration certificate has been issued nor any application has been made by the center for registration under the PC & PNDT Act.

4. It is submitted by the learned counsel for the petitioner that the petitioner is the owner of the aforesaid Rabiya Ultrasound Center situated at Barauli Road, Barharia, Siwan. An application for registration/license was made by the petitioner before the Civil Surgeon-cum-Chief Medical Officer, Siwan, which was granted to him on 28th February, 2009 and the period of validity of the certificate was from 28th February, 2009 to 27th February, 2014. The registration number allotted to the petitioner is 04/08-09. In the said clinic Dr. Ashraf Ali, MBBS was appointed as the working doctor. The abovesaid registration/license has been issued by the Civil Surgeon-cum-Chief Medical Officer, Siwan in exercise of power under Section 19(1) of the PC & PNDT Act, 1994.

5. He has submitted that after grant of the aforesaid certificate, the petitioner started his Center through Dr. Ashraf Ali.



No complain was ever made against the Center in question. However, the Civil Surgeon-cum-Chief Medical Officer, Siwan visited the premises on 21st May, 2013 and started verification and on 1st June, 2013 the Civil Surgeon-cum-Chief Medical Officer, Siwan in the capacity of appropriate authority under the PC & PNDT Act lodged a complaint against the petitioner pursuant to which the court took cognizance of the offence under Sections 23 and 25 of the PC & PNDT Act.

6. It is submitted by the petitioner that on the date of institution of the complaint itself, i.e. on 1st June, 2013 vide an order, as contained in Memo No.749 dated 1st June, 2013 issued under the signature of the Complainant-Civil Surgeon-cum-Chief Medical Officer, Siwan, the registration of the Center has been cancelled on the ground of non-availability of the doctor at the time of inspection of the Center. The order issued vide Memo No.749 dated 1st June, 2013, as contained in Annexure-3 to the present application was issued without notice to the petitioner to show cause which was completely in violation of Section 20 of the PC & PNDT Act.

7. It is submitted that the petitioner challenged the aforesaid order dated 1st June, 2013 by filing a writ application before this Court vide C.W.J.C. No. 13080 of 2013 and vide order dated 26.04.2016 the impugned order dated 1st June, 2013 was quashed so

far as it related to the petitioner. It has been submitted that the stand of the complainant that the Center was not registered is completely in conflict with his own action taken on the same day by which he has cancelled the registration of the Center.

8. Dr. Mayanand Jha, learned Additional Public Prosecutor appearing for the State has fairly submitted that the complaint in question has been filed on two grounds :

First, the doctor was found absent; and

Second, the Ultrasound Center was not having valid registration.

9. According to him, the subsequent order issued under the signature of the Civil Surgeon-cum-Chief Medical Officer whereby he has cancelled the certificate of registration of the Center would go in favour of the petitioner and the stand of the complainant that the Center was being run without any valid registration cannot be defended. He also concedes that the absence of the doctor from the Centre would attract no ingredients of the offence punishable under Sections 23 and 25 of the PC & PNDT Act.

10. I have heard learned counsel for the parties and perused the record.

11. I find force in the submission of the counsel for the petitioner, which has not been controverted by even the learned



counsel for the State. Apart from the submissions made by the petitioner, this Court has noticed a glaring defect in the complaint petition. A printed proforma has been utilized by the complainant for filing the complaint by merely filling up the blank in respect of name of the complainant, name of the Center, name of the owner of the Center and the date and time of institution of complaint. Filing of a complaint on the basis of a printed proforma cannot be appreciated. It shows a mechanical approach of the authority in launching a criminal prosecution. There are many things stated in the printed proforma, which have got no application to the facts of the present case. In the proforma there is no mention that at the time of inspection the doctor was not found present.

12. The only allegation on which the complaint has been filed is that the Center was not registered and on demand the documents in this regard were not produced. The aforesaid allegation of the complainant is self-contradictory in view of the subsequent letter issued under his own signature on the date of filing of the complaint case itself whereby he has ordered for cancellation of the registration of the Centre in question.

13. I further find that the cancellation of registration of the Center vide order bearing Memo No. 749 dated 1st June, 2013 was challenged before this Court in writ application bearing C.W.J.C. No.

13080 of 2013 and this Court vide order dated 26th April, 2016 quashed the order so far as the petitioner is concerned. The operative part of the order dated 26th April, 2016 reads as under :-

“Having heard learned counsel for the parties and considering the admitted circumstances where the order impugned has been passed without notice and without giving opportunity of hearing to the petitioner who has not even been given a copy of the inspection report which is the foundation for the impugned order, in view of the legal position settled by this Court in the case of **Dr. Chandrabhanu Singh** (supra) the order impugned bearing Memo no. 749 dated 1.6.2013 in so far as it relates to the petitioner appearing at serial no.1 cannot be upheld and is accordingly set aside. As a consequence the licence of the petitioner stands restored and he can apply for renewal thereof in accordance with law.

This order would, however, not preclude the Civil Surgeon –cum- Chief Medical Officer, Siwan to proceed afresh but in accordance with law.

This writ petition is allowed with the direction/observation aforementioned.”

14. As a consequence of the order passed in the writ application the registration of the Center got restored.

15. Moreover, the complaint has been filed on the ground of non-production as well as non-issuing the certificate of registration whereas the license has been cancelled on the date of filing of complaint itself on the ground of non-availability of the doctor. The reasons assigned in the complaint and the order of cancellation of

license are contradictory to each other. Hence, the action impugned whereby a criminal prosecution has been launched cannot be sustained.

16. Accordingly, the impugned order dated 3rd June, 2013 passed by the learned Chief Judicial Magistrate, Siwan in Case No. C II 45 of 2013 summoning the petitioner to face trial under Sections 23 and 25 of the PC & PNDT Act is set aside.

17. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	11-08-2016
Transmission Date	11-08-2016