

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 431 OF 2016

1. The Superintendent Medical Rural,
Rural Hospital, Rahata
Tq. Rahata, District Ahmednagar
 2. The State of Maharashtra,
Through A.P.P. Kopargaon
Tal. Kopargaon, Dist. Ahmednagar
- ...Petitioners

versus

Dr. Yogendra Pishorilal Sachdev,
Age 43 years, Occ. Medical practitioner,
R/o. Ashirwad Clinic, Near Bus Stand
Loni Khurd, Tq. Rahata
District Ahmednagar

...Respondent

...
A.P.P. for Petitioners : Mr. S.G. Karlekar
Advocate for Respondent No.1 : Mr. V.B. Jadhav, h/f Mr. A.V. Hon
.....

CORAM : V. K. JADHAV, J.
DATED : 27th JULY, 2016

ORAL ORDER:-

1. Leave to correct prayer clauses B and C. Correction be carried out forthwith. Heard finally with consent of the parties.
2. By way of this writ petition, the petitioners are challenging the order dated 24.11.2015 passed by the 2nd Additional Sessions Judge, Kopargaon in Criminal Revision No. 54 of 2015.

3. Brief facts giving rise to the present writ petition are as follows:-

a) Petitioner No.1 is an appropriate authority under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, referred to as the "P.C.P.N.D.T.") and certain inspection was carried out in respect of one Maid Hospital at Rahata. During the course of inspection, it was revealed that the sonography center being run by doctor at Rahata was without any registration as required under the provisions of P.C.P.N.D.T. Act. It was also revealed that said hospital had used portable sonography machine, which was supplied by present respondent-original accused. The respondent-accused is also running sonography Center near Bus stand of Loni (Kd). Tq. Rahata, district Ahmednagar. As per the mandatory provisions of P.C.P.N.D.T. Act, the sonography machine cannot be shifted from one place to another. Consequently, the petitioner No.1 has filed a complaint against the respondent-original accused with allegations that the respondent-accused had supplied his own portable sonography machine to the said hospital and thereby unauthorizedly moved the sonography machine from his sonography center, in violation with the

provisions contained under Section 3 of the P.C.P.N.D.T. Act.

b) On the basis of said complaint, R.T.C. No. 152 of 2007 came to be registered and accordingly learned Magistrate has recorded evidence before framing charge. By order dated 20.3.2015, learned Magistrate has framed charge against respondent-accused. Thereafter, the prosecution has moved an application on 9.4.2015 at Exh.85 for production of certain documents. Even though said application was opposed by the respondent-original accused, the same was allowed. The prosecution has filed an application Exh.87 on 24.4.2015 for recalling of the witnesses for referring of said documents. However, learned Magistrate by order dated 24.4.2015 below Exh.87 filed the said application on the ground that the application is prematured, as the cross examination of the complainant was yet to be completed.

c) After cross examination of complainant was completed, prosecution has moved an application below Exh.105 for recalling the complainant under the provisions of Section 311 of Cr.P.C. Learned Magistrate vide his order dated 19.11.2015 below Exh.105 allowed the said application and recalled the complainant for his examination. Being aggrieved

by the same, respondent-original accused has filed criminal revision No. 54 of 2015. The learned Additional Sessions Judge, Kopargaon by its impugned judgment and order dated 24.11.2015 allowed the said revision and order passed by the learned Magistrate, dated 19.11.2015 below Exh.105 in R.T.C. No. 152 of 2007 came to be set aside. Hence, this writ petition.

4. Learned A.P.P. for the petitioners submits that after framing of charge against respondent-accused on 20.3.2015, the prosecution has filed an application Exh.85 for production of certain documents as per list at Exh.86. The said application was strongly opposed by the respondent-accused. However, learned Magistrate by order dated 9.4.2015 allowed the production by considering the documents as mentioned in the list. The respondent-accused has not challenged the order passed below Exh.85. Thereafter, the prosecution has filed another application Exh.87 for recalling of the complainant for referring the said documents as per list. The said application Exh.87 came to be filed on the ground that the application is premature and after cross examination of the complainant is over, the prosecution would be at liberty to file application on the same grounds. Even the order passed below Exh.87 dated 18.5.2015 was also not challenged by the respondent-accused. Even though the learned Judge of the

trial court has allowed application Exh.105 after cross examination of the complainant was over, learned Additional Sessions Judge has observed that the said documents for which production was allowed by the Magistrate, are irrelevant and the witnesses cannot be recalled for proving irrelevant documents. Learned A.P.P. submits that at the time of production of documents, learned Magistrate has considered the same and accordingly allowed its production. Since the said order is not challenged by the respondent-accused, there was no reason for the learned Additional Sessions Judge to enter into the same by making observation that the documents produced at that time are irrelevant documents for the purpose of trial.

5. Learned counsel for the respondent-accused submits that after completion of cross examination, the prosecution has filed an application Exh.105 for recalling of complainant. The prosecution in that way is permitted to fill up the lacuna and the same is thus improper, incorrect and illegal. After filing of complaint, the documents as per the list have come in existence. Thus, the said documents are irrelevant for the purpose of trial of the complaint before the Magistrate. Learned counsel submits that the Additional Sessions Judge has rightly considered the same and accordingly rejected application Exh.105.

6. It is a matter of record that the respondent-accused has not challenged the order passed below Exh 85 filed by the prosecution for production of documents alongwith list Exh.86. It is true that after filing of complaint, a show cause notice was issued to the respondent-accused and he had also submitted his explanation to the said show cause notice and thereafter, order regarding suspension of registration came to be passed. It appears from the order passed below Exh.85 dated 9.4.2015 that after hearing both sides and considering the documents, learned Magistrate has allowed production of documents. Thereafter, the prosecution has submitted application Exh.87.

7. It is not out of place to mention that while framing of charge, the prosecution has submitted an application Exh.87 for referring the documents as per the list Exh.86 to the complainant. Said application was strongly opposed by the respondent-accused by filing say at Exh.97. Learned Magistrate has considered the provisions of Section 246 (4) of Cr.P.C. and held that application Exh.87 cannot be entertained unless cross examination of the witnesses is conducted on behalf of the accused. Learned Magistrate, filed application Exh.87 with observation that the prosecution is at liberty to move an application on same ground and under same provision after conducting cross examination of its

witnesses by the accused. Thus, after cross examination of the complainant was over, the prosecution by availing the said liberty filed application Exh.105 on the same ground and under the same provision i.e. Section 311 of Cr.P.C.. It is also not out of place to mention that the respondent-accused neither challenged the order passed below Exh.85 nor the order passed by the learned Magistrate below Exh.87. Learned Magistrate, after considering the provisions of Section 311 allowed the application Exh.105. Learned Magistrate has observed that those documents are relevant in context of the alleged incident dated 20.7.2007 though the said documents, listed at Exh.86 are subsequent to the date of filing of complaint.

8. The learned 2nd Additional Sessions Judge, Kopargaon has erroneously held that the said documents as per list Exh.86 are irrelevant documents. It appears from impugned judgment and order passed by the Additional Sessions Judge, Kopargaon that learned Judge has considered only dates of the documents and not the contents. Learned Magistrate has allowed production of those documents as per order passed below Exh.85. Even though the liberty is granted to the prosecution to file application under Section 311 of Cr.P.C. after cross examination of the complainant is over, by passing order below Exh.87, the respondent original accused has not challenged the said order. Even though the said documents are

relevant for the purpose of trial, learned Additional Sessions Judge rejected application Exh.105 on that ground and also on the ground that the complaint case is old one and the learned Judge has been directed to dispose of the trial as early as possible. Learned Additional Sessions Judge has further observed that the exercise of recalling of the complainant again into the witness box and again cross-examining him by the applicant (original accused) will kill the time of the Court. So far as the said exercise is time consuming, as observed by the Learned Additional Sessions Judge, that can be taken care of by modifying the order passed by learned Magistrate below Exh.105 by invoking the provisions of Section 294 of Cr.P.C. Thus, the following order would meet the ends of justice:-

O R D E R

- I. Criminal writ petition is hereby allowed.
- II. The impugned judgment and order dated 24.11.2015 passed by the 2nd Additional Sessions Judge, Kopargaon in Criminal Revision No. 54 of 2015 is hereby quashed and set aside.
- III. The order dated 19.11.2015 passed by the learned J.M.F.C. Rahata below Exh.105 in R.T.C. No.152 of 2007 stands confirmed with following modifications:-

- “a. The prosecution shall call upon the accused to admit or deny the genuineness of documents as per list Exh.86 by issuing notice under Section 294 of Cr.P.C. and if the genuineness of the said documents is not disputed by the accused, the said documents may be read in evidence for trial. In that event recalling of complainant is not required.
- b. If the genuineness of documents listed at Exh.86 is disputed by the accused, the complainant shall be recalled for re-examination in the matter.
- c. Needless to say that such recalling and re-examination is restricted to the extent of referring the said documents as per list Exh.86 and cross examination to that extent only.”

III. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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