

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 715 OF 2014

Dr.Chandana w/o Pravin Nagarale,
Age : 42 years, Occupation : Medical Practitioner,
R/o Tejas Hospital, Shivajinagar, Basmat Road,
Parbhani, District Parbhani.

...PETITIONER

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...
Advocate for Petitioner : Shri R.B.Singare h/f Shri Latange V.P.
APP for Respondent/ State : Shri N.T.Bhagat.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2 This Court (Coram : Smt.S.S.Jadhav, J.) after considering the submissions of the learned Advocate for the Petitioner and the learned APP has passed the following order on 07.04.2015 :-

- “1. *Heard respective counsel.*
2. *Learned APP seeks time. Stand over to 28th April, 2015.*

3. *Perused the complaint. The appropriate authority had raided the Hospital of the petitioner on 18th June, 2011. The sonography machine was sealed. The documents were seized. The appropriate authority has filed a complaint on 28th June, 2011, alleging therein that the monthly report was not regularly filed by the petitioner - Doctor and, therefore, there was non-compliance of Section 29 and Rule 9(8) of Preconception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (hereinafter shall be referred to as "PCPNDT Act" for the sake of brevity). The second allegation is that, the Sonography machine is not purchased as per original proposal and thirdly, the 'F' form is not completely filled up. The learned Magistrate had issued summons to the accused under Sections 23, 25, 29 and Rule 9(8) of the PCPNDT Act.*
4. *Learned Counsel for the applicant submits, that the next scheduled date before the Court is for recording evidence before charge. Prima facie, it appears from the record that the present applicant had purchased the sonography machine on 11th May, 2011. The said machine was installed on the same day and intimation to that effect was also given to the concerned authority i.e. the Civil Surgeon, Parbhani on the same day.*
5. *Learned APP has filed an affidavit and form 'F' is annexed to the affidavit. It appears, that the petitioner had performed sonography upon a patient on 8th June, 2011 and 18th June, 2011 and the raid was conducted on 18th June, 2011. It is alleged in the complaint that the monthly report has not been filed. The learned Counsel for the petitioner submits that, it is mandatory upon the Doctors to send the monthly report on or before 5th of every month. In view of this, the report was to be submitted on 5th July, 2011, however, the raid was conducted on 18th June, 2011 and, therefore, the monthly report could not be submitted. The learned Counsel for the petitioner rightly submits, that after noticing defects it was incumbent upon the authority to issue a notice to the Doctor and call upon an explanation however, no such*

procedure was followed. Hence, the principles of natural justice had not been followed. In view of this, the further proceedings in RCC No. 448 of 2011 deserves to be stayed. Hence, interim relief in terms of prayer clause 'C' of the petition.”

3 I have considered the submissions of the learned Advocate for the Petitioner and the learned APP. It is not in dispute, as has been observed by this Court in its order dated 07.04.2015, that the raid was conducted on the hospital on 18.06.2011. The monthly report was to be filed on fifth day of each month and the Petitioner was expected to submit the monthly report on 05.07.2011. It, therefore, could not be said that the Petitioner has failed to submit a monthly report for June, 2011 when the same was due on 05.07.2011.

4 This Court has also observed that the sonography machine was purchased on 11.05.2011 and after the machine was installed on the same day, an intimation was forwarded to the concerned Authority which was the Civil Surgeon, Parbhani. I find that the objections raised by the Respondent are under Rule 13 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 post amendment.

5 Rule 13 prior to its amendment reads as under:-

“13. Intimation of changes in employees, place or equipment. :- Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change.”

6 Rule 13 post amendment on 05.06.2012 reads as under:-

*“13. Intimation of changes in employees, place or equipment.:- Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority *[atleast thirty days in advance of the expected date of such change, and seek re-issuance of certificate of registration from the Appropriate Authority, with the changes duly incorporated.]”*

**Substituted by GSR 418(E) dated 04.06.2012 w.e.f. 05.06.2012.*

7 It is, therefore, apparent that sanction to change any employee or place or machine is provided for in the amended form of Rule 13 which mandates that the concerned hospital or doctor should acquire permission or sanction to the proposed change at least 30 days prior to the date on which the change is proposed to be effected. In the instant case, the raid was conducted on 18.06.2011 and hence, the case of the Petitioner needs to be considered on the basis of Rule 13 prior to its amendment. This aspect has been dealt with by this Court in its judgment dated 15.06.2016 in the matter of *Dr.Gaurav Ramesh Parekh vs. The*

*Member of Appropriate Authority @ Medical Officer, **Criminal Writ Petition No.821/2015.***

8 By order dated 07.04.2015 passed by this Court when interim relief in terms of prayer clause (C) was granted, it was noted by this Court that if at all there were any defects in the record or it's maintenance, the concerned Authority was mandated in issuing notice to the concerned doctor for calling upon him to explain the defects mentioned in the notice. This procedure was not followed.

9 In the light of the above and in view of the order of this Court dated 07.04.2015, this Criminal Writ Petition succeeds. The same is allowed in terms of prayer clause (B) which reads as under:-

“(B) By issuing appropriate writ, order or directions in the like nature, this Hon'ble Court may be pleased to quash and set aside the criminal complaint bearing Regular Criminal Case No.448/2011 pending before the learned JMFC, Parbhani, district Parbhani filed by the respondent No.2 for an offence punishable under sections 23, 25, 29 and Rule 9 of Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 and amended as Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 and for that purpose issue necessary orders.”

10 Needless to state, the Respondent/ Authority is not precluded

from following due procedure in law by issuing an appropriate notice to the Petitioner for seeking her explanation to the defects/ irregularities/ discrepancies that may be noticed by the said Authority and proceed to initiate appropriate action, if being fit and proper in accordance with the law applicable as on date of the raid.

11 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)