

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.931 OF 2015

Dr.Datta s/o. Keshav Kanade,
Age 38 years,
Occ.Medical Practitioner,
r/o.Dr.Kanade Hospital and
Maternity Home, Near Bus Stand,
Rahata, Tq. Rahata
Dist. Ahmednagar ..Petitioner

Versus

Medical Superintendent,
Rural Hospital, Rahata @
Appropriate Authority,
Tq. Rahata, Dist. Ahmednagar
and anr. ..Respondents

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Mr.A.S.Gandhi, advocate for petitioner

Mr.A.R.Kale, APP for respondent - State

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CORAM : M.T. JOSHI, J.
DATE : JANUARY 22, 2016

ORAL ORDER :

Heard both sides.

2] Rule. Rule made returnable forthwith. Heard
finally by consent of the parties.

3] The present petitioner is facing trial for the offence punishable under Section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 (for short "the Act").

4] While recording the evidence before Charge, the complainant - PW 1 appears to have referred to the registers seized from the sonography center of the present petitioner which, according to him, were incomplete and against the provisions of the Act. During the examination-in-chief, when those registers were referred, the learned Judicial Magistrate F.C. marked them as Article 'A' and Article 'B'.

5] In the situation, after framing of the Charge, the learned A.P.P. filed an application at Exhibit 95 before the learned Judicial Magistrate F.C. In

the said application, he submitted that since PW 1 had deposed before the court that the registers were not complete as per the requirement and had also referred to certain documents, the documents be exhibited.

6] In the situation, upon hearing both sides, the learned Judicial Magistrate F.C., in paragraphs 3 of the impugned order, has observed as under :-

"It reveals that the alleged documents which were marked as article 'A' and 'B' were referred to the complainant during his examination-in-chief and he identified the same. The complainant now want to mark exhibit numbers to the relevant documents of the period when the alleged incident took place. The documents which the complainant want to exhibit are not said to be different or new as those are already included in article 'A' and 'B' and referred the complainant"

Accordingly, the learned Judicial Magistrate F.C. directed that the complainant be examined for the purpose of marking exhibits to the documents which

are included in Article 'A' and Article 'B' itself.

7] Upon hearing both sides, in my view, legally, the issue is not as to whether the documents were marked as Article or marked as Exhibit. The issue would be as to whether, the documents are proved by primary evidence as per the provisions of the Indian Evidence Act. Either marking the document as Article or marking as Exhibit number, is merely technical in nature. The real issue is, however, lost sight by both the sides.

8] In the situation, the following order would meet the ends of justice :-

A] The Criminal Writ Petition is hereby allowed.

B] The impugned order dated 16th June, 2015 passed by the learned Judicial

Magistrate F.C. is hereby set aside. The issue is again relegated to the learned Judicial Magistrate F.C., who shall decide as to whether, the documents are proved in terms of the provisions of the Indian Evidence Act and shall pass necessary order in this regard.

C] Rule is made absolute accordingly.

[M.T. JOSHI, J.]