

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

CRIMINAL WRIT PETITION NO. 1196 OF 2015

1. Mrs. Shailaja Dattajirao Jadhav,
Age : 47 years, Occu: Advocate,
R/o. 16, Shahu Nagar, Satara,
Tq. & Dist. Satara
2. Prerna Valmik Bhillare,
Age: 28 years, Occu: Social Worker,
Res. At 16, Shahu Nagar, Satara ...Petitioners

versus

1. The State of Maharashtra
2. The Appropriate Authority,
The Medical Superintendent,
Sub-District Hospital,
Parli-Vaijnath, Tq. Parli,
Dist. Beed ...Respondents

.....
Mr. R. A. Tambe, Advocate for petitioners
Mr. R. V. Dasalkar, A.P.P. for respondents
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CORAM : N.W. SAMBRE, J.

DATE : 31st MARCH, 2016

ORAL ORDER :

The learned Judicial Magistrate, First Class, Parli-Vaijnath, on 15/06/2015 in Regular Criminal Case No. 302 of 2010 ordered conviction of the accused in the said trial for the offence punishable under Section 23 read with Section 9(4) of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of

Sex Selection) Act, 1994 (for short 'the PCPNDT Act'). The conviction is based on the decoy operation. The petitioners before this Court have helped the complainant-authority to expose the accused persons resulting into initiation of prosecution in question.

2. In paragraph 31 of the said judgment, the learned Magistrate has observed thus:

“The only contention of Advocate for the accused appears to be correct as mentioned in the written notes of arguments about sting operation, permission to conduct sting operation to N.G.O. Undertaking, affidavit by decoy patient was not submitted to Appropriate Authority prior to sting operation. The complainant in entire case did not produce any record that Prerna Bhillare has executed affidavit, declaration to work as a decoy patient for sting operation. In fact, the complainant and S.D.O. Rajesh Joshi, PW-2 has categorically deposed the fact that they never met to Prerna Bhillare or Shaila Jadhav prior to the incident and thereafter. But at the cost of repetition, I would like to submit that Prerna Bhillare, PW-2 and Shaila Jadhav, PW-4 at the cost of exposing them to the criminal liability have performed the sting operation. Therefore, they are also liable to be prosecuted for the offence punishable under section 23(3) of the PCPNDT Act. However, discretion is left with the Appropriate Authority either to file complaint against them for the above said offence. Hence, the Appropriate Authority is at liberty if they desire to do so.

Much importance was given in the written notes of arguments about currency note of 500/-. But in my view, it is not very material, who has given the said currency note to Shaila Jadhav or Prerna Bhillare.”

3. Feeling aggrieved thereby, present petitioners, who acted in support of decoy patient, have filed this petition.

4. This Court has ordered notice to the respondents and has called upon the competent authority to issue instructions to learned A.P.P. The In-charge Medical Superintendent is personally present in the Court and is not armed with any such instructions, which have prompted or formed to be basis for making observations against the petitioners herein. The petitioners were instrumental and actively participated in sting operation, which has rather helping the prosecution to take the trial to its logical end resulting into conviction of the accused persons.

5. Without any basis, learned Magistrate has proceeded to observe that the petitioners herein, who have participated in sting operation, exposed themselves to the criminal liability for performing sting operation and claimed that the offence could be made punishable under Section 23(3) of the PCPNDT Act.

6. Upon the perusal of Sections 18 and 23(3) of the PCPNDT Act, *prima facie*, I am of the opinion that no such criminal liability/responsibility could be fastened on the petitioners. It is further required to be noted that neither any administrative instructions nor any Circular would take place of statutory provisions, which prompt learned Magistrate to pass such observations against the petitioners.

7. I am of the *prima facie* view that the observations made in Paragraph-31 and clause 18 of the operative part of the judgment and order of conviction delivered in Regular Criminal Case No. 302 of 2010 are not sustainable, as such, same are quashed and set aside to the extent of the present petitioners. The writ petition, as such, stands allowed in above terms.

[N.W. SAMBRE, J.]