

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1500 OF 2015

Dr. Vijay s/o Shivnath Lahoti ...Petitioner

versus

Medical Superintendent,
Rural Hospital, Rahuri and another ...Respondents

.....
Mr. Amol S. Gandhi, advocate for the petitioner
Mr. S.G. Karlekar, A.P.P. for respondents
.....

CORAM : V. K. JADHAV, J.

DATED : 25th JULY, 2016.

PER COURT :-

1. By consent of parties, heard finally.
2. Being aggrieved by the order dated 2.11.2015 passed by the learned J.M.F.C. Rahuri, below Exh.111 in R.T.C. No. 97 of 2014, the petitioner preferred this writ petition.
3. The petitioner is registered medical practitioner, possessing the qualification of M.B.B.S. The petitioner had also applied for registration of ultrasound clinic under the provisions of Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex

Selection) Act (for short, hereinafter referred to as the "P.C.P.N.D.T. Act") and the competent authority has accordingly granted said registration to him. Thus, the petitioner runs Lahoti Hospital and Maternity Home, at Rahuri.

4. On 8.10.2007, the Medical Superintendent/Appropriate authority, has filed complaint R.T.C. No. 97 of 2014 (Old S.T.C. No. 896 of 2007) in the Court of Chief Judicial Magistrate, Rahuri alleging that he had visited the hospital of the petitioner on 16.7.2007 and found that the petitioner has not maintained the record properly and he has also not affixed the board properly at sonography center. In the said complaint, the petitioner filed application under Section 91 of Cr.P.C. for issuing witness summons to the Administrative Officer, District Hospital, Ahmednagar for production of documents. However, the trial court had rejected the said application on 8.10.2014.

5. Being aggrieved by the order dated 8.10.2014 passed by the learned J.M.F.C. Rahuri, the petitioner had filed Criminal Revision No. 179 of 2014 in the District and Sessions Court at Ahmednagar. Initially, the learned Sessions Judge, had stayed the proceeding of R.T.C. No. 97 of 2014, however, subsequently, dismissed the revision by order dated 30.9.2015. Being aggrieved by both the

orders passed by the lower courts, the petitioner had filed criminal writ petition No. 1321 of 2015 in this Court. In the said writ petition, notices were issued to the respondents. During pendency of the said writ petition, petitioner filed an application before the trial court contending that the petitioner has filed criminal writ petition No. 1321 of 2015 and this Hon'ble Court has issued notice to the respondents, however, inspite of that trial court framed charge against the petitioner under section 4 (3), 5 of P.C.P.N.D.T. Act r.w. Rule 9(4) of the Rules.

6. In the meanwhile, in view of liberty given by the learned Sessions Judge in criminal revision No. 179 of 2014, the petitioner had filed an application below Exh.111 for production of documents. However, the learned Judge of the trial court rejected the said application by order dated 2.11.2015. On 27.11.2015, when criminal writ petition No. 1321 of 2015 was listed before this Court, this Court disposed of the same giving liberty to the petitioner to challenge the order dated 2.11.2015 by filing fresh writ petition. Hence, this writ petition.

7. Learned counsel for the petitioner submits that finding recorded by the lower court is contrary to the provisions of Section 91 of Cr.P.C. As per provision of Section 243 of Cr.P.C. the accused

is entitled to apply to the Magistrate to issue process for compelling the attendance of any witness for the purpose of examination or cross examination, or the production of any documents or other thing. However, the learned Judge of the lower court without considering the said aspect has rejected the application Exh.111 filed by the petitioner.

8. Learned counsel for the petitioner further submits that the accused wanted to bring on record various illegalities committed by the witness Dr. Madhav Munde while discharging his duties under the provisions of P.C.P.N.D.T. Act. The petitioner-accused sought information from Civil Surgeon, General Hospital, Ahmednagar about the notices issued by Dr. Madhav Munde to various doctors in the year 2007. The said notices are relevant and essential for establishing defence of the petitioner-accused. So also the said documents are necessary to be placed on record to shake the credit of P.W.3 Munde. P.W.3 Dr. Munde, the then Civil Surgeon, even though the doctors mentioned in the said notices found violating the provisions of P.C.P.N.D.T. Act, especially non maintenance of record, etc. did not take any legal action against those doctors deliberately and implicated the present petitioner-accused in this case. The petitioner by seeking production of said notices on record claims parity and thus, the said documents are necessary to

establish his defence. The prosecution withheld the said information from accused as well as Court. Even the petitioner-accused is also not getting the said information under the relevant provisions of Right to Information Act. The Magistrate has passed order rejecting application Exh.111 without looking into the contents of the said documents.

9. Learned counsel for the petitioner, in order to substantiate his submissions, places reliance on the following judgments:-

- I) Prashant @ Rohit Ghasiram Tandon vs. State of Maharashtra, reported in 2003 B.C.I. 102;***
- II) Kamal Ahmed Mohammed Vakil and Ors. vs. State of Maharashtra, reported in 2013 (2) Bom.C.R. (Cri.) 217;***

10. Learned A.P.P. for the respondent-State submits that the said documents in the form of notices issued to various doctors are not relevant for the purpose of trial of the petitioner in the present complaint. The petitioner-accused can very well put the relevant questions to P.W.3 Dr. Madhav Munde to impeach his credit at the time of cross examination. The learned Judge of the trial court has therefore, rightly passed order below Exh.111. Learned A.P.P. further submits that no interference is required and the writ petition is liable to be dismissed.

11. On 16.7.2007 the Medical Superintendent/Appropriate Authority had visited the hospital of the petitioner and noticed that the petitioner had violated provisions of Section 29 of P.C.P.N.D.T. Act and Rule 9(4) of P.C.P.N.D.T. Rules. The District Civil Surgeon, Ahmednagar subsequently has suspended the registration certificate of sonography machine and also sealed the sonography center while suspending the registration certificate of sonography center. Furthermore, the appropriate authority has filed complaint before the court and the same is registered as R.T.C. No. 97 of 2014 pending before the Magistrate, Rahuri. In discharge of duty as Civil Surgeon as well as District appropriate authority, General Hospital, Ahmednagar if P.W.3 Dr. Madhav Munde issues notices/orders to other doctors, who run the sonography centers in the district, such notices are not relevant to the case of the present petitioners.

12. Learned counsel for the petitioner submits that the impugned order passed by the learned Magistrate is contrary to the provisions of Section 91 of Cr.P.C. In terms of provisions of Section 247 of Cr.P.C. for which the provisions of Section 243 shall apply, the accused is entitled to apply for issuance of process for attendance of any witness or production of any document.

13. In view of above submissions, provisions of Sections 91, 247 r.w. 243 of Cr.P.C. are necessary to be reproduced herein below:-

“91. Summons to produce document or other thing.- (1)

Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, or the Bankers' Books Evidence Act, 1891 or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

247. Evidence for defence.- *The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of Section 243 shall apply to the case.*

243. Evidence for defence.- (1) *The accused shall then be called*

upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court."

14. The Apex Court and the various High Courts considered the scope and ambit of Section 91 of Cr.P.C. It is now settled that "any document or other thing as envisaged under the provisions of Section 91 of Cr.P.C. can be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, enquiry, trial or other proceeding, under the Code". The first and

foremost requirement of Section 91 of Cr.P.C. is about the document being necessary and desirable. Section 91 does not give any absolute right to the accused to ask for summoning of any document. The Magistrate cannot call for anything or everything from anybody or everybody.

15. So far as the provisions of Section 247 of Cr.P.C. are concerned, in a case instituted otherwise on police report, after cross examination, as contemplated under Section 246 of Cr.P.C. is over, the accused should be called upon to enter upon his defence and the provisions of Section 243 then attracts. As per sub-section (2) of Section 243 of Cr.P.C. the Magistrate can issue process for production of any document unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating ends of justice and such ground shall be recorded by him in writing.

16. In the case in hand, the petitioner-accused is seeking production of document, which is in the form of show cause notice issued by the appropriate authority under the provisions of P.C.P.N.D.T. Act against some sonography centers, laboratories or clinics and action taken against those centers pursuant to the notice issued by the same appropriate authority. The same is absolutely not

necessary or desirable for the purpose of trial of the petitioner-accused. It is thus clear that application Exh.111 is filed for the purpose of causing delay in disposal of the case.

17. In view of the above discussion, I find no substance and merit in the writ petition. Writ petition is hereby accordingly dismissed.

(V. K. JADHAV, J.)

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