

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1584 OF 2015
(Dr. Smt. Nirmla Ramprasad Bajaj Vs. The State of
Maharashtra and others)

Mr. S.V. Munde, Advocate for the petitioner
Mr. A.R. Kale, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 16/02/2016

ORAL ORDER :

1. Heard both sides.
2. The petitioner is aggrieved by the order of learned Judicial Magistrate First Class, Majalgaon, dated 10th December, 2015, thereby rejecting the application of the present petitioner whereunder he had sought hearing on the issue as to whether the property involved in the offence can now be taken in possession by the prosecution.
3. The petitioner is an accused in the case filed by the Appropriate Authority for the offences punishable under section 11 and 12 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (for short,

"PCPNDT Act").

. According to the petitioner, at the time of seizure of the sonography machine and other registers/ documents, immediately after seizure, the Appropriate Authority has returned the said property to the petitioner and in the circumstances, the Appropriate Authority cannot again take over the possession of the property.

4. The Appropriate Authority, however, filed the reply to the effect that the property was not delivered to the petitioner/accused at any time. It was kept in sealed condition and as such, was in the custody of the Appropriate Authority.

5. Before the learned Judicial Magistrate First Class, the arguments were advanced as to whether the Appropriate Authority can compel the petitioner/accused to give evidence. The learned Judicial Magistrate First Class has observed that the panchanama was prepared by the Appropriate authority in presence of the panch witnesses and it had also requested to the Court for granting permission for production of the muddemal in

the court. The muddemal is not handed over to the petitioner/accused and it is kept in the premises of the hospital. It, however, would not mean that the custody of the property is handed over to the petitioner.

6. The issue as to whether the property is still in the custody of the Appropriate Authority or the present petitioner, in fact, is not relevant to the trial. Both the sides claim that the custody of the property is with them. In the circumstances, there is no issue of testimonial compulsion as against the present petitioner.

. In that view of the matter, there is no force in the present writ petition. The writ petition is, therefore, dismissed with liberty to the petitioner to file appropriate proceeding regarding the dispute of handing over of the custody of the property.

[M.T. JOSHI]
JUDGE