

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

CRIMINAL WRIT PETITION NO. 1628 OF 2015

1. Dr. Anand s/o Bansilal Karnawat,
Age: 42 years, Occ: Medical Practitioner,
R/o. At present Renapur, Dist. Latur.
2. Dr. Surekha Mishrilalji Pagaria,
Age: 39 years, Occ: Medical Practitioner,
R/o. Ambajogai, Dist. Beed. ...Petitioners

versus

1. The State of Maharashtra
2. Dr. Dilip s/o Kashinath Soundane,
Age: 44 years, Occ: Service as
Medical Superintendent, Rural Hospital
Dhanora (Bk), Tq. Ambajogai,
Dist. Beed. ...Respondents

.....
Mr. N. B. Khandare, Advocate for petitioners
Mr. D.V. Tele, A.P.P. for respondent/State
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CORAM : N.W. SAMBRE, J.

DATE : 10th MARCH, 2016

ORAL ORDER :

Present writ petition is preferred by the petitioners questioning the legality and validity of the proceedings initiated against them under the provisions of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and rules framed thereunder, (hereinafter shall be referred to as "the Act and Rules" respectively, for sake of brevity).

2. The case of the present petitioners is that one Dr. Anil Bhutada, M.B.B.S. DGO, referred patient Renuka Manoj Ingale by reference letter dated 10/09/2011 for pelvic sonography so as to rule out retain bits of incomplete abortion.

3. Pursuant thereto, present petitioners filled in Form 'F' as provided under the Rules, particular Rule 9.

4. Subsequent thereto, the complaint came to be filed against present petitioners for violating the above referred provisions, particularly Rule 9(4) of the Rules referred supra.

5. Amongst other, it is mentioned in the complaint, which was filed by one Dr. Dilip Kashinath Soundale, M.O., for and on behalf of State, that the present petitioners have not filled in Form 'F' in its entirety and has not mentioned the age of foetus.

6. Mr. Khandare, learned Counsel for the petitioners would strenuously urge that the charge is framed against the present petitioners on 15/12/2015 by learned Judicial Magistrate, First Class, (Court No. 1), Ambajogai, which reads thus :

“ Hence, charge under Section 25 for infringement of Rule 9(iv) of the said Act is framed against accused Nos. 1 to 3.”

7. While trying to make out a case for quashing of the proceedings initiated against present petitioners, Mr. Khandare, learned Counsel for the petitioners, would urge that plain reading of Rule 9 with Section 25 of the Act would display that no offence could be attributed against present petitioners. He would then invite my attention to the language of Rule 9 and also contents of Form 'F', which is maintained under the Rules so as to canvass that the information that was not filled in in the Form 'F', was of hardly any consequence or seriousness, particularly when the patient was referred by Gynecologist. According to him, the present petitioners have not carried out any activity, which is prohibited by the Act and Rules framed thereunder on patient Renuka and as the provisions of the Act itself are not attracted as against the petitioners. So as to substantiate his contention, he would submit that, the patient was referred to the present petitioners after the operation only for the purpose of finding out as to whether any retain bits of incomplete abortion could be noticed in pelvic Sonography.

8. While opposing the petition, learned A.P.P. would submit that there is strong *prima facie* case as against present petitioners, particularly in the matter of violation of Rule 9 and mandatory conditions imposed on Sonography Centre Operators of maintaining

record in appropriate form, much less Form 'F' framed under Rules referred supra. He would then submit that if the patient Renuka had already undergone abortion, the petitioners were duty bound to ascertain as to whether there was illegal abortion and if so, the petitioners in law, were duty bound to take appropriate steps in such matter. He would then submit that perusal of Form 'F' as is produced depicts that the fact about patient Renuka has undergone abortion was well within their knowledge and the petitioners have intentionally and deliberately so as to solicit the patient, have ignored mandate of Rule 9 and filled in Form 'F' incompletely, which is an offence under the Act. He submits that the petition lacks merit and is liable to be dismissed.

9. With the assistance, I have perused the complaint bearing Regular Criminal Case No. 222 of 2012 filed against present petitioners for the offence punishable under Section 25 of the Act for infringement of Rule 9(iv) of the Rules framed thereunder. From the complaint, it is specifically noted that the allegations against the petitioners are that the petitioners have not filled in Form 'F' in its entirety in the matter of pelvic sonography of patient Renuka. The information as regards age of foetus was also not filled in.

10. In the above referred background, if Form 'F', which is

produced by the petitioners is perused, admittedly the petitioners have not referred to entire details, which has prompted Renuka to undergo abortion. Though the petitioners have tried to rely upon the referred letter for sonography issued by Dr. Bhutada, however, in my opinion, it was incumbent on the part of present petitioners to ascertain from Dr. Bhutada and patient Renuka by calling original papers in regard to alleged abortion, as to whether, she has undergone process of abortion contrary to the provisions of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act. It is further required to be noted that had it been a case that the petitioners would have ascertained the details from the said patient Renuka and Dr. Bhutada about history of abortion from the case papers of patient, the case of illegal abortion, in such an eventuality should have been noticed by petitioners, which would have prompted them to refuse request for pelvic sonography. It is further required to be observed that in such an eventuality, Statute cast obligations on the professional Doctors like present petitioners to act in accordance with the provisions of statute by bringing to the notice of the competent authority such illegal abortion.

11. *Prima facie*, from the record, what is noticed is the petitioners without perusing and confirming earlier medical papers and legal and medical necessity qua abortion, in absence of details

of patient Renuka, has proceeded to conduct further pelvic sonography, when above background was well within their knowledge that the patient was referred only for the purpose of finding out whether there are any retain bits of incomplete abortion.

12. In my opinion, the information that was filled in form 'F' could be an issue that can be gone into after recording the evidence at the stage of final hearing of prosecution. The case initiated against the present petitioners is based on the evidence brought on record, *prima facie* depicts that petitioners are rightly charged with the offence. No case for interference, in my opinion, as such, is made out. The writ petition fails, stands dismissed.

13. The observations made herein above are *prima facie* in nature.

[N.W. SAMBRE, J.]