

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 111 OF 2014
WITH
CRIMINAL APPEAL (ST) NO. 547 OF 2014
WITH
CRIMINAL APPLICATION NO. 841 OF 2014

The State of Maharashtra	...	Appellant
vs.		
Dr. Mrs. Shraddha Yuvraj Patil & Anr...		Respondents

Mr. S.S.Pednekar, APP, for the Appellant-State.
Mr. Vivek Patil i/b. Vivek Patil & Associates for respondent Nos. 1 & 2.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 14th March, 2016.

P.C.

Heard the learned APP and the learned counsel for the respondents.

2. The State has filed the present Application seeking leave to appeal challenging the judgment and order of acquittal dated 29.1.2014 passed by the learned Judicial Magistrate, First Class, Kagal, in R.C.C. No.20 of 2011, thereby acquitting the respondents of the offences punishable under Sections 3(2), 3(3) , 3(B) and 18 of the Pre-Conception

And Pre-Natal Diagnostics Techniques Act, 1994 (hereinafter referred to as PCPNDT Act and Rules 3A, 9 and 17 of the Pre Conception And Pre Natal Diagnostic Technique (Prohibition of Sex Selection) Rules 1996.

3. The learned counsel for the respondents vehemently submits that the present application seeking leave to appeal filed by the respondents is not maintainable in view of the fact that Dr. M.M.Sadigale, who was functioning as the Appropriate Authority under the provisions of PCPNDT act, had filed the private complaint. In fact, it is settled position of law that the complainant, who is an Appropriate Authority, has not filed the complaint in his private capacity, but has filed the complaint on behalf of the State.

4. The Hon'ble Apex Court in the case of **Somprakash Rakhi V/s. Union of India and another (AIR 1981 S.C.643)** held as follows :-

'Authority' in law belongs to the province of power: Authority (in Administrative Law) is a body having jurisdiction in certain matters of a public nature. Therefore, the "ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons" must be present ab extra to make a person an 'authority'. When the person is an 'agent or instrument of the functions of the State' the power is public.

So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others. Sometimes the test is formulated, over-simplified fashion, by asking whether the corporation is formed by a statute or under a statute. The true test is functional. Not how the legal person is born but why it is created. Nay more. Apart from discharging functions or doing business as the proxy of the State, wearing the corporate mask there must be an element of ability to affect legal relations by virtue of power vested in it by law.”

5. The learned APP has placed implicit reliance upon the judgment of the Hon'ble Apex Court in the case of **Subhash Chand vs. State (Delhi Administration) (2013)2 SCC 17**. The learned APP has further brought to the notice of this Court the ratio laid down by the Hon'ble Apex Court in para 20 of the Judgment which reads as under :-

“Under the PFA Act, cases are instituted on filing of a complaint before the Court of the Metropolitan Magistrate as specified in Section 20 of the PFA Act and offences under the PFA Act are both cognizable and non-cognizable. Thus, whether a case is a case instituted on a complaint depends on the legal provisions relating to the offence involved therein. But once it is a case instituted on a complaint and an order of acquittal is passed, whether the offence be bailable or non-bailable, cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High Court. Section 378(4) places no restriction on the complainant. So far as the State is concerned, as per Section 378(1)(b), it can in any case, that is, even in a case instituted on a complaint, direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court. But there is, as stated by us hereinabove, an important inbuilt and categorical restriction on the State's power. It cannot direct the Public Prosecutor to present an appeal from an order of acquittal passed by a

Magistrate in respect of a cognizable and non-cognizable offence. In such a case the District Magistrate may under Section 378(1)(a) direct the Public Prosecutor to file an appeal to the Sessions Court. This appears to be the right approach and correct interpretation of Section 378 of the Code.”

The said view has been followed by this Court in the case of **Sanjay Gajanan Chivate vs. Dr. Ramesh Yadu Kadam and Anr. (Cri. W.P.No.2085 of 2013)**. There is no doubt that this is not a private complaint in the private capacity of the complainant and, therefore, an application seeking leave to appeal as contemplated under Section 378(4) of Cr.P.C. would be maintainable. The issue is set at rest. Upon going through the merits, the application seeking leave to appeal deserves to be allowed.

6. The application is allowed. The appeal is admitted.
7. Call for the records and proceedings.
8. Liberty to the State to mention the matter upon receipt of R & P.
9. Office to communicate this order to the concerned Authority as well as the Maharashtra Medical Council forthwith.

(SMT.SADHANA S.JADHAV, J.)