IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4310 OF 2015

1. Dr. Rajender Amirchand Sujanyal

2. Dr. Shripad Krishna Inamdar ...Respondents

Versus

1) State of Maharashtra
Public Health Department,
Through its Principal Secretary,
Mantralaya.

2) Appropriate Authority
under the PCPNDT Act, Pimpri
Chinchwad Municipal Corporation,
Health Department, Pimpri.

3)Dr. Anandrao D. Jagdale
Medical Superintendent, Y.C.M.
Hospital and Medical Officer of
Health (Addl. Charge), Pimpri ...Respondents

...

Dr. A.K. Barthakur i/b. Ms Maya Majumdar for the Petitioners.
Ms P.P. Shinde, APP for the Respondent -State.
Mr. Deepak R. More for Respondent Nos. 2 & 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

RESERVED ON :19th DECEMBER, 2016
PRONOUNCED ON: 21st DECEMBER, 2016

ORAL JUDGMENT :

Heard. Rule. By consent of the parties, Rule is made returnable forthwith.

2. The Petitioner herein has challenged the validity of the order dated 6th October, 2015 whereby the learned Additional Sessions Judge, Pune, dismissed the Criminal Revision Application No.695 of 2014.

3. The brief facts necessary to decide this petition are as under:-

The Petitioner No.1 is a Gynecologist and he owns and runs “Stree Hospital”. He has an Ultrasound clinic in the said hospital. The Petitioner No.2 who is a visiting Sonologist at Stree Hospital performs sonographic examinations on the patients in the said hospital on every Tuesday, Thursday, and Friday between 3.00 p.m. to 5.30 p.m. as per the referral chit.

4. By order dated 14th June, 2012 under Section 30 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as "the PCPNDT Act"), the Commissioner of Pimpri Chinchwad Municipal Corporation, who has been notified as the Appropriate Authority delegated powers to various Medical Officers including Dr. L.P. Gophane to enter and search genetic counselling centres, genetic laboratory, genetic clinic and MTP centre and to examine and seize records and seal the machine if there was

reason to believe that an offence under the Act was being committed at any such center or clinic. Accordingly, Dr. Gophane inspected the said Sonography Centre on 21.6.2012 between 1.00 p.m. to 2.20 p.m. He prepared the inspection report, wherein he observed as under:-

1	Qualification of USG Holder	M.D. (Obs & Gynae)
2	General aspects	Good
3	Maintenance record	Update well
4	Monthly returns	Regular
5	Unauthorised person operating machine	No
6	Violation of PCPNDT Act	No.
7	Legal action proposed, if any	No.
8	Any other observation	Case card signed by Hospital owner not by sonologist.

5. Dr. Gophane further observed that the Sonography reports were signed by the Petitioner No.1, the owner of the Hospital, and not by the Petitioner No.2, who had in fact carried out the ultra sonography test. In view of the said alleged contravention of the provisions of the PCPNDT Act, he seized 15 Reports, 'F' forms and referral chits in presence of the pancha witnesses.

6. Dr. L.P. Gophane and the Respondent No.3, who was holding charge of the post of Medical Officer, visited Stree Hospital on 17th July, 2012. They sealed the ultra-sound machine under

panchanama dated 17th July, 2012. By show-cause notice dated 30th August, 2012, the Respondent No.3 called upon the Petitioner No.1 to explain the discrepancies noted in the panchanama. The Petitioner No.1 explained that the hand written reports are signed by the Petitioner No.2 and that he being the head of the institution signs the computer-generated reports. The Petitioner No.1 further submitted that F-Forms are duly filled in and signed by the Petitioner No.2. He has further submitted that the said forms are also signed by him as the owner of the hospital. He stated that the register of the F-Forms is duly maintained and that the F forms are also sent online to PCMC on health line portal. He further submitted that he has maintained every record as required under the PCPNDT Act.

7. The Respondent No.3, who claimed to be the Appropriate Authority did not accept the explanation given by the Petitioners. He filed a complaint against the Petitioners for committing offences punishable under Sections 23, 25, 29 of the PCPNDT Act, 2003 and Rule 6(6) (7) framed thereunder. The same was registered as RCC No. 43 of 2013.

8. The statement of the Respondent No.3 was recorded and by order dated 14th February, 2013 the learned Magistrate issued process

against the Petitioners for committing offences punishable under Sections 23(1), 25 and 29 r/w Rule 6 (6) (7) of the PCPNDT Act, 2003 (sic).

9. The Petitioners challenged the said order in Revision Application No.429 of 2013. The said revision came to be dismissed by order dated 23rd July, 2013. Subsequently, upon recording evidence under Section 244 of the Criminal Procedure Code, the learned Magistrate by order dated 26th November, 2014 held that there is sufficient material to frame charge against the Petitioners for committing offences under Sections 23(1), 25 and 29 of the PCPNDT Act and Rule 6 (6) (7) framed there under. The said order was challenged in Revision Application No.695 of 2014, which came to be dismissed by order dated 6th October, 2014. Being aggrieved by the said orders, the Petitioners have invoked the writ jurisdiction of this Court to quash and set aside the aforesaid orders.

10. Mr. Barthakur, the learned counsel for the Petitioners submitted that the Respondent No.3 is not the Appropriate Authority as defined under Section 2(a) of the PCPNDT Act and was therefore not competent to file the complaint in terms of Section 28 (1)(a) of the PCPNDT Act. He has further submitted that the inspection report of Dr.

Gophane reveals that the Petitioners had not contravened any of the provisions of the PCPNDT Act and hence he had decided not to initiate any legal proceedings against the Petitioners. He has submitted that the contravention alleged in the complaint does not constitute an offence under any of the provisions of the PCPNDT Act or the Rules framed thereunder.

11. Mr. More, the learned counsel for Respondent Nos.2 and 3 has submitted that the material placed on record clearly indicates that the Respondent No.3 was holding charge of the post of Medical Director and hence by virtue of notification dated 4.5.2006 he was the Appropriate Authority within the meaning of Section 2(a) of the PCPNDT Act. The learned Counsel for the respondent has submitted that even otherwise the Commissioner, who has been notified as Appropriate Authority had authorized the respondent no.3 to search the clinic and seize the records. He contends that the Respondent No.3 was competent to file the complaint and that the bar under Section 28 is not applicable.

12. The learned Counsel for the Respondents submitted that the Petitioners had not maintained the records in the prescribed form viz. Form 'F' and have thereby contravened the provisions of Section

4(3) and Rule 9(4) of the PCPNDT Act. The learned counsel for the Respondents therefore, claims that the impugned order does not warrant any interference.

13. I have considered the submissions advanced by the learned counsels appearing for the Petitioners, Respondent Nos.2 and 3 and the learned APP for Respondent No.1-State. I have also perused the records placed before me.

14. The Petitioners have challenged the orders mainly on the following grounds:

(a) That the complaint was not filed by the Appropriate Authority or by the Authorised officer and hence the Court was barred from taking cognizance of the offence.

(b) The discrepancies allegedly committed by the Petitioners do not constitute offence under the PCPNDT Act.

15. Before considering the issues raised by the Petitioners, it would be expedient to refer to sub Section 1 of Section 28 of the PCPNDT Act, which reads as under:-

> 28. ***Cognizance of offence*** *-(1) No court shall take cognizance of an offence under this Act except on a complaint made by-*

> *(a) The Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or*
> *(b) a person who has given notice of not less than [fifteen days] in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.*
> *Explanation: For the purpose of this clause, "person" includes a social organization.* "

16. Section 28 (1) (a) of the Act therefore, imposes an express bar on the Court to take cognizance of an offence under the Act except on the complaint made by the Appropriate Authority or any Officer authorised by the Central or State Government as the case may be or by the concerned Appropriate Authority.

17. The term 'Appropriate Authority' is defined under Section 2(a) of the said Act as the Appropriate Authority appointed under Section 17 of the said Act. Section 17(2) of the Act mandates the State Government to appoint by notification in the official gazette, one or more Appropriate Authorities for the whole or part of the State for the purpose of this Act, having regard to the intensity of the problem of pre-natal examination leading to female foeticide.

18. In the light of the aforesaid provisions the moot question is whether the Respondent No.3 is the Appropriate Authority within the

meaning of Section 2 (a) of the Act or whether he was authorised by the State or the concerned Appropriate Authority to lodge the complaint.

19. The averments made in the complaint reveal that the Respondent No.3 is a Medical Officer of Health in the Health Department of Pimpri Chinchwad Municipal Corporation. Though the Respondent No.3 had averred that he had been appointed as the Appropriate Authority in accordance with the provisions of Section 17 of the Act, he has not placed on record any notification issued by the Government under Section 17 (2) of the Act appointing the Medical Officer of Pimpri Chinchwad Municipal Corporation as the Appropriate Authority.

20. It is sought to be contended that the Respondent No.3 was holding charge of the Post of Medical Director, that he could exercise powers of the Appropriate Authority by virtue of notification dated 4.5.2006, and order dated 9.7.2012. It is to be noted that the notification dated 4th May, 2006, relied upon by the Respondents reveals that the Medical Director of Pimpri Chinchwad Municipal Corporation has been appointed as the Appropriate Authority for the area within the jurisdiction of Pimpri Chinchwad Municipal

Corporation.

21. The order dated 9th July, 2012, which was issued by the Appropriate Authority viz. the Commissioner of Pimpri Chinchwad Municipal Corporation makes reference to : (1) the notification dated 04.05.2006 issued under Section 17 PCPNDT Act, (2) order dated 16.10.2007 and (3) order dated 29.05.2012 and reads thus :

> *Sub- Regarding appointment of Appropriate Authority, PCMC.*
> *As per Ref. No. 1 above notification has been issued appointing the Medical Director as the Appropriate Authority for the area within the Pimpri Chinchwad Municipal Corporation.*
> *Dr.R.R.Iyer who was working as the Medical Director has retired on 31.05.2012. Therefore as per Ref. No.3 above, the charge of the post of Medical Director has been given to Dr.A.D.Jagdale.*
> *As per Ref. No.2 above, the Commissioner of the Corporation has been declared to be the Appropriate Authority. Therefore, I the Commissioner of the Pimpri Chinchwad Municipal Corporation in exercise of power under Section 30 of the Pre-Conception Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act entrust the responsibility to discharge all functions as the Appropriate Authority of the Pimpri Chinchwad Municipal Corporation upon Dr.A.D.Jagdale with effect from 01.06.2012 till further orders.*
>
> *Sd/-*
> *Commissioner, PCMC.*"

22. By the aforesaid order dated 9.7.2012, issued under Section 30 of the Act, the Commissioner of Pimpri Chinchwad Municipal Corporation has authorized the Respondent no.3 to discharge all

functions as Appropriate Authority of Pimpri Chinchwad Municipal Corporation with retrospective effect i.e. w.ith effect from 1.6.2012. It need not be emphasized that the Appropriate Authority as defined under Section 2(a)the Act can be notified only by the Central or the State Government as the case may be. Hence by no stretch of imagination the said order dated 9.7.2012 can be considered as a notification under Section 17(2) of the PCPNDT Act. Consequently the Respondent no.3 cannot consider himself to be the Appropriate Authority by virtue of the order dated 9.7.2012.

23. It is also pertinent to note that the order dated 9.7.2012 precedes on the premise that by order dt. 29.5.2012 the respondent no.3 herein had been given the charge of the post of Medical Director and that by virtue of order dated 4.5.2006 he can exercise powers of the Appropriate Authority. It is therefore necessary to refer to the order dated 29.5.2012, translation of which reads as under :-

"Dated 29-05-2012

Sub: Regarding Additional Charge of the post of the Medical Officer of Health.

ORDER

In the PCMC establishment there is a vacancy of the post designated as Medical Officer of Health sanctioned by the Government. Further as per the order cited in reference No.1 above, Dr.R.R.Iyer, Medical Director, is going to retire on superannuation on 31.05.2012 after office hours. Now, the

additional charge of Medical Officer of Health is given to Dr. Iyer, Medical Director as per the order cited in reference No.2 above. Therefore, now the additional charge of both the posts of Medical Officer of Health and Medical Director is to be given to some other officer.
Therefore, I, the Commissioner of PCMC, Pimpri 18, by this order, for the convenience of the office administration, approve the entrustment of the additional charge of the Medical Officer of Health to Dr. Anand Jagdale, Medical Superintendent of Y.C.M.Hospital, with effect from 01.06.2012. Since the additional charge of the above post has been entrusted to him, now Dr. Jagdale, Medical Superintendent shall exercise all the powers previously given to the Medical Officer of Health.

Sd/-
Commissioner
Pimpri Chincwad Municipal Corporation"

24. The aforestated order does not indicate that the respondent no.3 herein was given additional charge of the post of Medical Director. On the contrary, a plain reading of this order reveals that Dr. Iyer who was the Medical Director was also holding additional charge of the post of Medical Officer. Upon retirement of Dr. Iyer w.e.f. 31.5.2012 the Commissioner, Pimpri Chinchwad Municipal Corporation had entrusted the additional charge of the post of Medical Officer of Health to the Respondent No.3 Dr. Anand Jagdale who was the Medical Superintendent of Y.C.M. Hospital.

25. It is therefore evident that the order dated 9.7.2012

proceeds on the wrong premise that by the said order dated 29.5.2012 the respondent no.3 was given the charge of the post of the Medical Director. There is absolutely no material to indicate that the Respondent No.3 was at any time appointed as a Medical Director or that he was holding charge of such post. Consequently, the Respondent No.3 could not have exercised the powers of the Appropriate Authority by virtue of the notification dated 4.5.2007 or under the garb of the order dated 9.7.2012.

26. By order dated 9.7.2012 issued under Section 30 of PCPNDT Act, the Commissioner had authorised the Respondent No.3 to perform all functions and powers of the Appropriate Authority under the PCPNDT Act. It is to be noted that under clause (a) to (i) of Sub Section 4 of Section 17 of the PCPNDT Act the Appropriate Authority has to perform the following functions:

> *(a) to grant, suspend or cancel registration of a Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic;*
> *(b) to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic;*
> *(c) to investigate complaints of breach of the provisions of this Act or the rules made thereunder and take immediate action; and*
> *(d) to seek and consider the advice of the Advisory Committee, constituted under sub-Section (5), on application for registration and on complaints for*

suspension or cancellation of registration;

(e) to take appropriate legal action against the use of any sex selection technique by any person at any place, suo motu or brought to its notice and also to initiate independent investigations in such matter;

(f) to create public awareness against the practice of sex selection or pre natal determination of sex;

(g) to supervise the implementation of the provisions of the Act and rules;

(h) to recommend to the Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions;

(i) to take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration."

27. Section 17A of the PCPNDT Act also provides that the Appropriate Authority shall have the powers in respect of the following matters:-

(a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the rules made thereunder;

(b) production of any document or material object relating to clause (a);

(c) issuing search warrant for any place suspected to the indulging in sex selection techniques or pre-natal sex determination; and

(d) any other matter which may be prescribed.

28. Whereas Section 30 of the PCPNDT Act r/w. Rule 12 of 1996 Rules empowers the Appropriate Authority to enter and search any genetic counseling centre, genetic laboratory, genetic clinic or other

place and examine any record, register, documents, books, pamphlets, etc and to seize and seal the same if such authority has reason to believe that such records may furnish evidence of the commission of an offence under the Act. The powers under Section 30 of the Act can also be exercised by any officer authorized in this behalf.

29. A plain reading of these provisions clearly indicate that the functions under clauses (a) to (i) of Sub Section 4 of Section 17 and powers conferred on the Appropriate Authority under Section 17-A of the PCPNDT Act can be performed or exercised only by the Appropriate Authority notified under Section 17 of the Act while the powers under Section 30 can be exercised by the Appropriate Authority or by the Officer authorised in that behalf. It therefore, follows that the Commissioner was not competent to authorise the Respondent No.3 to perform the functions and exercise the powers under Section 17(4) and 17-A of the PCPNDT Act. The authorisation if any could have been at the most in respect of search and seizure as specified in Section 30 of the PCPNDT Act.

30. It is also to be noted that acting upon the order dated 9.7.2012, the Respondent No.3 not only sealed the sonography machine but also issued a show cause notice to the Petitioner No.1 and

investigated the allegations of breach of the provisions of the PCPCNDT Act. Furthermore, the Respondent No.3 lodged a complaint against the Petitioners without being appointed as the Appropriate Authority or without there being any authorisation in this regard either by the State Government or by the concerned Appropriate Authority. The Respondent No.3 was neither notified as the Appropriate Authority in accordance with the provisions of Section 17 (2) of the PCPNDT Act nor was he authorised by the State Government or the concerned Appropriate Authority to lodge the complaint. Hence, in view of the express bar under Section 28 of the PCPNDT Act, the court was barred from taking cognizance of the offence under the Act.

31. The second plank of challenge is that the discrepancies and deficiencies alleged in the complaint do not constitute an offence under the Act. While countering the said arguments the learned counsel for the Respondent Nos.2 and 3 has submitted that the Petitioners had not maintained the records in Form 'F'. He has submitted that the Form 'F' is required to be signed by the Sonologist who had performed diagnostic procedure. He has submitted that in the instant case though the procedure was conducted by the Petitioner No.2, Form 'F' was in fact signed by the Petitioner No.1, and that the same is in

contravention of the provisions of Section 4 Sub Section 3 of the Act and the Sub Rule 4 of Rule 9 of PCPNDT, Rules 1996.

32. Section 4 of the PCPNDT Act provides regulation of pre-natal diagnostic techniques. Sub Section 3 of Section 4 provides that no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing for any of the conditions stipulated in clauses (i) to (v) therein are fulfilled. Proviso to sub Section 3 of Section 4 mandates that the person conducting ultra sonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, any deficiency or inaccuracy found therein shall amount to contravention of Section 5 or Section 6 unless contrary is proved by the person conducting such ultrasonography.

33. Rule 9 of the Rules of 1996 prescribes the procedure for maintenance and preservation of records. Sub Rule 4 of Rule 9 mandates that every genetic clinic shall maintain record in respect of each man or woman subjected to any pre-natal diagnostic procedure/ technique/ test, as specified in form 'F'.

34. The object of the safeguards provided in Section 4 and Rule

9 is to prohibit and prevent misuse of pre-natal diagnostic techniques for pre-natal sex determination leading to female foeticide. Thus compliance of these statutory safeguards- viz. maintaining and preserving records and conditions for conducting pre-natal examinations, is absolutely mandatory in nature and any breach thereof can entail penal consequences. The question which therefore, follows is whether the Petitioners herein have contravened the aforestated provisions of the PCPNDT Act and the Rules framed thereunder.

35. It is not in dispute that the Petitioner No.1 is a qualified gynecologist who owns and runs "Stree Hospital" whereas the Petitioner No.2 is a qualified radiologist, who attends to the patients at Ultrasound Clinic of Stree Hospital as a visiting Sonologist. Both Petitioners posses requisite qualifications as well as permission to run the hospital and the sonography clinic.

36. The said hospital/clinic was inspected by Dr.Gophane on 21.6.2012. He seized 15 sonography reports, which according to him did not bear signatures of the Petitioner No.2, but were signed by the Petitioner No.1 as head of the hospital. Dr. Gophane had prepared an inspection report stating that all the records were maintained upto date

and that there was no violation of provisions of the PCPNDT Act. The report further indicates that Dr. Gophane had not proposed to take any legal action against the Petitioners. Despite the said report, the Respondent No.3 and Dr. Gophane visited the clinic again on 17.7.2012 and sealed the sonography machine.

37. It is pertinent to note that the power of seizure conferred by Section 30 of the PCPNDT Act can be exercised only when the Appropriate Authority has reason to believe that an offence under the Act has been committed or is being committed and further that the Appropriate Authority and the officer authorised on that behalf has reason to believe that the records, registers, documents etc. may furnish evidence of the commission of an offence punishable under the PCPNDT Act. In the instant case the report of Dr. Gophane clearly indicated that the petitioners had maintained all the records and that there was no violation of any of the provisions of PCPNDT Act. The report did not indicate that there was any reason to believe that the offence under the Act had been or was being committed in the said hospital/clinic, despite which the Respondent No.3 visited the hospital again on 17th July, 2012 and sealed the sonography machine. Dr. Jagdale as well as Dr Gophane have not disclosed the facts and

circumstances which led them to believe that the offence under the Act was committed or was being committed and which necessitated search of the clinic. The evidence of these witnesses also does not indicate that they had reason to believe that the sonography machine which was sealed on the said date would furnish evidence of commission of offence punishable under the Act. From the records, it is evident that the Respondents had taken drastic measures of sealing the sonography machine in a most casual manner, without discharging the obligations under Section 30 of the Act.

38. It is also relevant to note that the Respondent No.3 had issued a show cause notice dt.30.8.2012 to the Petitioner No.1 to explain the discrepancies noted in the panchnama. No such notice was issued to the Petitioner No.2. The notice issued to the Petitioner No. 1 did not specify the discrepancies which were noticed or recorded in the panchanama. Though by the said notice the Petitioner No.1 was called upon to explain the discrepancies in the panchanama, there is no material on record to indicate that a copy of the said panchanama was furnished to the Petitioners. On the contrary, the panchanama, merely records that the same was conducted in the presence of the Petitioner No.1, the contents of the panchanama were read over and explained to

the Petitioner No.1 and that he had signed the panchanama to endorse that the contents of the panchanama were true. It is also to be noted that there is no material on record to indicate that the copy of the said panchanama was forwarded to the Petitioner No.1 along with the notice. It is thus, evidence that the Respondent No.3 did not disclose to the Petitioners the alleged discrepancies or deficiencies or contraventions committed by them and thus did not afford a reasonable opportunity to the Petitioners to put forth their case.

39. Be that as it may, the Petitioners had submitted their reply wherein they submitted that the hand written sonography reports are signed by the Petitioner No.2-Dr. Inamdar and that the contents of the hand written report are subsequently entered in the computer and for the sake of convenience, the computer generated printouts are signed by the Petitioner No.1. The Petitioners further submitted that the contents of Form 'F' are duly filled in and are signed by the Petitioner No.2 and that the copies of the said forms are sent online to PCMC online portal. The Petitioners claimed that they had complied with all the mandatory provisions of the Act and the Rules framed thereunder. The Appropriate Authority did not consider the reply given by the Petitioners and rejected it outright without giving any reasons for

discarding the reply as baseless.

40. At this stage it would be advantageous to note that the PCPNDT Act, which has been enacted with an avowed object of preventing female foeticide, confers wide powers on the Appropriate Authority to ensure that the diagnostic techniques are not misused for sex selection. Needless to state that the object of the Act can only be achieved when the powers under the Act are exercised judiciously, with due application of mind and in accordance with law. Whereas mechanical, casual or arbitrary exercise of powers or misuse of powers by the Appropriate Authority can defeat the very object of the Act. Reference can be made to the decision in ***Dr. Sai Shiradkar vs. State of Maharashtra in Criminal Writ Petition No.1381 of 2015*** wherein the Division Bench of this Court (Aurangabad Bench) has observed that :-

> " *It is not out of place to observe that sometime such casual approach of the Authority to invariably file complaints without proper inquiry, investigation & due application of mind leads to unnecessary criticism of the provisions of PCPNDT Act & Rules framed thereunder by the persons from the field of Medical profession. It is expected that the legal action must follow based upon sufficient material to establish that there was a violation of provisions of PCPNDT Act and Rules thereunder. Inadvertent mistakes committed during the course of maintaining record, lacunae and omission in filling up certain information in detail in the requisite forms needs to be considered in a proper perspective. Only after holding inquiry, if it is found that such lapses have been committed with any intent or motive to misuse the techniques and such professioner indulges into acts prohibited under the law, then stringent provisions of such act*

> *must be invoked and Appropriate Authority shall ensure that such persons are punished. Mistakes committed without any criminal intent and merely in the nature of procedural lapses needs to be properly understood before taking drastic action of initiating criminal prosecution against a person in the field of Medical profession. In an appropriate case, if the authority is satisfied that the mistakes were inadvertent and there was no criminal intent behind such procedural mistakes then such person be asked to rectify the mistakes and if necessary, such person be appropriately given understanding not to commit such procedural lapse. If there is persistent defaults and lapses on the part of such person, then recourse to stringent provision to prosecute such person may be taken. If such precautions are taken before lodging the prosecution against a person in the field of Medical profession, it would help to remove the fear in the mind of medical profession doing their work with utmost honesty, sincerity and due observance of medical ethics and code of conduct laid down under the PCPNDT Act being subjected to face unnecessary humiliation, harassment and criminal prosecution."*

41. In the instant case, the inspection report records that there was no breach of any of the provisions under the PCPNDT Act. The complaint as well as the evidence of Respondent No.3 Dr.Anandrao Jagdale and Dr. Gophane also does not indicate that there was any discrepancy in filling the form 'F' or signing the same as prescribed under the Act. There are thus no allegations of breach of Rule 9 (4) of 1996 Rules.

42. The only discrepancy spelt out in paragraph No. 5 of the complaint and narrated in the evidence of these two witnesses is that the sonography reports were not signed by the Petitioner No.2 but were signed by the Petitioner No.1 on behalf of the Petitioner No.2. The Respondent No.3 had levelled these allegations solely on the basis of

the observations made in the inspection report. As stated earlier, the Petitioners had categorically stated in the reply to the show cause notice that the original reports were always signed by the Petitioner No.2 and that only the computer generated copies were signed by the Petitioner No.1. The Respondent No.3 who was claiming to be the appropriate Authority did not exercise powers under Section 17 (4)(c) or 17-A of the Act to investigate whether there was merit in the explanation given by the Petitioners or to ascertain whether there was sufficient material to initiate criminal prosecution against the Petitioners. He discarded the explanation given by the Petitioners without discharging his obligations under the Act and furthermore lodged a criminal complaint without ascertaining whether the alleged discrepancy constituted an offence under the Act. The Respondent No.3 has exercised the powers in a very cursory manner which is further evident from the fact that there is absolutely no co-relation between the discrepancies vis-à-vis the section/Rules stated in the complaint.

43. Be that as it may, the learned counsel for the Respondents has not been able to point out any provision under the Act or the Rules framed thereunder which stipulates that the computer print outs of the

reports are required to be signed by the Doctor conducting the test and that omission to sign the computer generated printouts is in breach of any of the provisions under the PCPNDT Act. This being the case, failure to sign the computer-generated reports by the Sonologist does not constitute an offence under the Act.

44. As stated earlier the inspection report indicates that the petitioners had not contravened any provision of the PCPNDT Act. There is no discrepancy in maintaining and preserving the records in respect of pre-natal diagnostic procedure /techniques/test as specified in Form 'F'. It is also not in dispute that the Petitioner No.2 has given declaration on each report as required under Rule 10(1-A) of the 1996 Rules. There is also no denial of the fact that the said forms (form 'F') are sent online to PCMC Healthline Portal and that the reports are duly preserved. The records thus reveal that the Petitioners had complied with the provisions of the PCPNDT Act and the Rules framed thereunder.

45. The complaint as well as the evidence recorded under Section 244 of the Code of Criminal Procedure does not disclose any offence against these Petitioners. Under such circumstances sealing of the sonography machine and subjecting the Petitioners to unnecessary

criminal prosecution, is nothing but an abuse of process of law. The learned Judge failed to consider these vital aspects and erred in dismissing the revision application and thereby ordering framing of charge.

46. Under the circumstances and in view of discussion supra, the impugned order cannot be sustained. Hence the following order :-

(a) The Petition is allowed.

(b) The impugned order dated 6th October, 2015 in Revision Application No.695 of 2014 is quashed and set aside.

(c) The prosecution pending against the Petitioners vide Regular Criminal Case No.43 of 2013 pending before the learned Judicial Magistrate, First Class, Pimpri is quashed and set aside. Consequently, the Petitioners are discharged.

(d) The sonography machine is ordered to be desealed forthwith.

(e) Rule is accordingly made absolute in above terms.

(ANUJA PRABHUDESSAI, J.)