

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4530 OF 2014

Dr. Nina Anil Mathrani

....Petitioner

v/S.

Dr. Vaishali Uttam Jadhav

.....Respondent

* * * * *

Mr. Harshad Nimbalkar a/w. Mr. Hrishi Ghorpade i/by. Satyam Nimbalkar, Advocate for the petitioner.

Mr. R.P. Pethe, Advocate for respondent no.1.

Ms. S.V. Gajare, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2016.

P.C. :-

1). The petitioner is a Radiologist/Sonologist and owner of a Diagnostic Centre by name "Nimit Diagnostic Centre (X-Ray and Sonography) registered with Pune Municipal Corporation under the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "PCNPDT Act") Respondent no.1, the authority under the PCNPDT Act has filed Regular Criminal Case No. 2763 of 2011 against the petitioner and one more person, Dr. Makarand Ranade for the offences punishable under

Sections 4(1), 4(2), 4(3), 5(1), 5(2), 6(a), 6(b), 6(c), 29, 23, 28 of PCPNPDT Act and under Rule 9(1), 9(4), 9(6), 9(8), 10(1)-A, 18(i), 18(iii), 18(v), 18(vi), 18(ix) of PCPNPDT Rules read with Section 34 Indian Penal Code. On 1st July, 2011 the learned Judicial Magistrate First Class issued process against the both the accused. In the month of January, 2014 accused no.1, Makarand Ranade expired and the complaint abated against him. The complainant led evidence before charge against the petitioner on the basis of which on 17th January, 2014, the learned Magistrate framed charge against the petitioner for the offences under Section 4(1) read with Rules 18(iii) and 18(v), Section 5(1)(b), 5(1)(c) read with Rule 18(i), Sections 6(b) and 6(c), Rule 9(1), 10(1)-A of PCPNPDT Act and Rules punishable under Section 23(1) of PCPNPDT Act. The petitioner was discharged of the offences punishable under Section 4(2), 4(3), Section 5(2a) of PCPNPDT Act and also under Rule 9(4), 9(6), 9(8), 18(4) and 9 of PCPNPDT Rules.

2). Respondent no.1, filed an application under Section 216 Criminal Procedure Code for adding charges for the offences under Sections 29(1), 29(2), Rule 9(4), 9(6), as well as, proviso to Section 4(3) read with Sections 5 and 6 of PCPNPDT Act punishable under Section 23, against the petitioner in respect of which she was discharged. The learned Magistrate by his order dated 1st March, 2014 rejected that application. Respondent no.1, then filed Criminal Revision Application before the

Sessions Court. By the order dated 4th August, 2014 the Sessions Court allowed the Revision Application and directed the learned Magistrate to frame the charges as requested.

3). Feeling aggrieved by the order of the learned Sessions Judge, the petitioner has filed the present petition under Article 227 of the Constitution of India and under Section 482 Criminal Procedure Code.

4). The Sessions Court found that, the documents found on record by the respondent, as well as, the fatal admissions given by the petitioner through the documents at Exhibit-80, 81 and 84 demonstrate that there is sufficient material to frame the charge against the petitioner for violation of the provisions mentioned in the application. These facts and circumstances were not considered by the learned Magistrate in proper perspective. The Learned Sessions Judge also noted that at the stage of framing charge, all that the Magistrate is required to ascertain is, whether there is sufficient material on record to frame charge and not embark upon a roving enquiry to ascertain whether the trial would end into conviction or acquittal.

5). Mr. Nimbalkar, appearing for the applicant submits that the Court of Judicial Magistrate First Class, had applied his judicial mind to the evidence on record and rightly framed charges for certain violations and discharged the petitioner of the allegations of other violations and

there was no need for the Sessions Court to interfere with that order.

6). The brief facts of the case are that, in the month of June, 2011 an NGO named Akhil Bhartiya Janwadi Mahila Sanghatana, Pune, learnt that Dr. Makarand Ranade used to reveal sex of the foetus of the patients in his maternity home. Therefore, the Additional Director of Health Services, Maharashtra with the help of the NGO planned for a sting operation by using a decoy patient. Then, one Mrs. Prajakta Borgaonkar and her husband approached Dr. Ranade on 28th August, 2011 for determining and disclosing the foetus carried by Mrs. Prajakta Borgaonkar. Dr. Makarand Ranade charged Rs.8,900/- for the determination and disclosure. He consulted the petitioner herein and sent the decoy patient to her clinic for sonography. The petitioner conducted sonography without filling F-Form and sent the result of the sonography test to Dr. Ranade who later revealed the report to the decoy patient. Section 29 of the PCPNDT Act, provides for maintenance of record for the period specified therein and making the record available for inspection of the appropriate authority. One of the record is of F-Form. Admittedly, the petitioner did not get the F-Form filled up by the decoy patient. Therefore, as regards the charge under Section 29(1), 29(2), in my opinion, there is sufficient material on record as found by the learned Sessions Judge. Rules 9(4) and 9(6) are also about maintenance of the record for a substantive period. Therefore, in the

above facts, frame of charge under Rule 9(4) and 9(6) would also be justified. Sections 4, 5 and 6 provide for regulation of pre-natal diagnostic techniques, written consent of pregnant woman and prohibition of communicating the sex of the foetus and prohibition as regards determination of sex. The proviso to Section 4(3) relates to the record to be maintained in the clinic and the ultrasonography test conducted on a pregnant woman. This again being about maintenance of record ought to have been considered for framing of charge. As regards Sections 5 and 6, undisputedly the petitioner had not taken written consent of the decoy patient before performing sonography on her and determined the sex of the foetus. Therefore, framing of charge under these provisions are also justified. In the circumstances, I find no infirmity whatsoever with the impugned order. The writ petition is therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)