

**248 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No. M-1264 of 2016.

Date of Decision: 18.11.2016.

Sunil Kumar Yadav

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Gaurav Mohunta, Advocate and
Mr. Anurag Jain, Advocate,
for the petitioner.

Mr. Naveen Kaushik, Addl. AG, Haryana.

JITENDRA CHAUHAN.J.

This is a petition, under Section 482 of Code of Criminal Procedure for quashing of FIR No. 581 dated 16.12.2015 registered under Sections 23, 4, 5, 6 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short “the Act”) at Police Station Mahendergarh.

The law has been set into motion by Dr. Ashok Kumar, Deputy Civil Surgeon, Mahendergarh, against the petitioner by lodging the aforesaid FIR under the provisions of the Act.

It is contended by the learned counsel for the petitioner that as per the provisions of Section 28 of the Act, FIR in the

matter is not maintainable. The cognizance of offences under the Act can be taken only on a complaint made by the appropriate authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be, or by any person, who has given notice of not less than fifteen days to the appropriate authority. The cognizance of the offence cannot be taken on the FIR. He cites **(i) Dr. Tejinder Pal Singh Multani vs. State of Punjab (P&H) 2015(2) RCR (Criminal) 399; (ii) Dr. Arvind Pal Singh Gambhir and another vs. State of Punjab and others (CRM M-23040 of 2012 decided on 10.07.2013) and; (iii) Suo Motu vs. State of Gujarat 2009 CrI.L.J 721.**

On the other hand, the learned State counsel could not refute the proposition of law that FIR in the matter is not maintainable. He informs this Court that the Appropriate Authority has already filed complaint against the petitioner under the relevant provisions of the Act before the concerned Court.

In **Dr. Tejinder Pal Singh Multani's case (supra)** this Court held that in view of Section 28 of the Act only a complaint filed by the Appropriate Authority under the Act is maintainable accordingly the FIR along with all subsequent proceedings arising therefrom was ordered to be quashed being an abuse of the process of law with liberty to the prescribed authority to initiate proceedings as

per law provided under the Act.

In Dr. Arvind Pal Singh Gambhir's case supra, this Court quashed the FIR along with report under Section 173(8) Cr.P.C and granted liberty to the Appropriate Authority to initiate proceedings as per Section 28 of the Act by making a complaint to the Magistrate.

A bare perusal of Section 28 of the Act clearly states that cognizance of the offence under the Act can be taken only on a complaint. The accused cannot be prosecuted by way of FIR. In view of the statutory bar and the dictum of law enunciated in the said authorities, the aforesaid FIR No. 581 dated 16.12.2015 registered under Sections 23, 4, 5, 6 of the Act, at Police Station Mahendergarh along with all consequential proceedings is hereby quashed. However, the appropriate authority may proceed with the complaint, if so advised.

At this stage, learned counsel for the petitioner states that he reserves his right to contest the complaint. It is ordered accordingly.

The petition stands allowed.

18.11.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No