

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.M-28093 of 2015
DATE OF DECISION : FEBRUARY 05, 2016

DR. ANITA GUPTA

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM :HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Madan Gupta, Advocate,
for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

None for respondent No.2.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

The instant petition has been preferred under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") preferred by Dr. Anita Gupta-petitioner seeking quashing of FIR No. 547, dated 15.07.2015 (Annexure P-1) under Sections 3-A/5/23 of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "Act") and under Sections 417, 420 andn 336 IPC, registered at Police Station City Jind and

all other consequential proceedings arising therefrom.

2. Brief facts of the case are that on 13.07.2015, patient namely Ms. Kavita, who was pregnant, came in the OPD of Nursing Home, Rani Talab, Jind with the complaint of pain and that she also failed to percept foetal movements. Petitioner-Dr. Anita Gupta examined and advised ultrasoundgraphy for determining the period of gestation and to know about the defect, if any, in the child. Medicines were advised and ultrasoundgraphy was done and as per the report, it was found that there was a twin pregnancy. Petitioner charged Rs.500/- as professional fee and neither the sex was determined nor disclosed to anyone. On 15.07.2015, Ms. Kavita again came in the Hospital and was advised certain tests by the petitioner. On the same day, some police officials came in the hospital and arrested Dharamjeet and petitioner and lodged FIR against them. Thereafter, the petitioner applied for regular bail and vide order dated 23.07.2015, ld. Additional Sessions Judge, Jind granted the concession of regular bail and she was released on regular bail, in which, it was admitted by ld. State counsel that there was no ingredients of the offences as alleged in the FIR under Section 417, 420, 336 IPC.

3. The first and foremost contention raised by learned counsel for the petitioner while seeking the quashing above-said FIR (Annexure P-1), is that as per provisions contained under Section 28 of the Act a cognizance can only be taken on a complaint made by an appropriate authority to the Court, therefore no FIR can be lodged. In respect of his contention, learned counsel for the petitioner has placed reliance upon the pronouncements of this Court rendered in the case of **Dr. Tejinder Pal Singh Multani vs. State of Punjab and another,**

decided on September 16, 2014, Dr. Shiv Kumar vs. State of Haryana, decided on May 16, 2013, Dr. Arvind Pal Singh Gambhir and another vs. State of Punjab and others, decided on July 10, 2013, Amit vs. State of Haryana and another, decided on November 21, 2011, Neelam vs. State of Haryana, decided on February 23, 2012.

4. Before deciding the controversy on merits it would be desirable to reproduce Section 28 of the Act:

“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 authorized in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority : or

(b) 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.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub section (1), the court may on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

5. A glance at the afore-said provision makes it crystal clear that in the present case cognizance of offence is contrary to the provisions of the Act. In Section 17 of the Act, authorities have been prescribed who can proceed with the matter but none of the authorities has put the court into motion by filing

complaint etc. As such proceedings are contrary to the provisions contained in Section 28 of the Act. A perusal of the afore-said provisions of Section 28 of the Act also prescribe a bar to lodge the FIR but despite the existence of a bar, FIR has been registered and the investigation has been put into motion.

6. Adverting to the facts of the case in hand on July 13, 2015, Kavita visited the OPD of Nursing Home, Rani Talab, Jind with complaint of pain, she was advised ultrasoundgraphy for determining the period of gestation and to know about the defect, if any, in the child. Subsequent therto, on July 15, 2015, she again visited the hospital and was advised certain tests by the petitioner but on that day some police officials bagged into the hospital; arrested the Dharamjeet as well petitioner and lodged FIR against them.

7. Here, it would be pertinent to mention that in the order dated July 23, 2015 passed by learned Additional Sessions Judge, Jind vide which petitioner was granted the concession of regular bail, it has been categorically admitted by learned State counsel that no offence under Sections 417, 420 and 336 IPC is attracted, even from the contents of FIR. Meaning thereby, that lodging of FIR is unwarranted in respect of the afore-said offences. Thus, in view of the aforesaid fact as well as bar created under Section 28 of the Act, the above-said FIR is not sustainable. As such FIR referred to above and subsequent proceedings carried by the investigating agency are quashed.

8. However, quashing of FIR shall not debar the competent authority to have recourse to the other remedies available under law, if any or in accordance with the provisions of the Act.

FEBRUARY 05, 2016
sham

(JASPAL SINGH)
JUDGE