

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

CRM-M No.30116 of 2016

Date of decision: 29th August, 2016

N.C. Medical College and Hospital

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate for the petitioner.

FATEH DEEP SINGH, J.

In this petition seeking exercise of inherent powers of this Court with the aid of Section 482 Cr.P.C. the petitioner N.C. Medical College and Hospital, Panipat (in short 'the petitioner') has sought to challenge by way of quashment of an order dated 13.07.2016 passed by the learned Judicial Magistrate 1st Class, Panipat (Annexure P11) whereby the prayer of the applicant for ordering de-sealing and sapurdari of ultrasound machines stood declined.

Heard at length Mr. R.S. Rai, Senior Advocate assisted by Mr. Gautam Dutt, Advocate representing the petitioner and perused the records.

The background of the factual matrix is all the more essential for better appreciation of what and how it transpired before the Court below.

It was on 16.02.2016 around 10.30 a.m. a team comprising of Dr.Sudhir Batra, Deputy Civil Surgeon, General Hospital, Panipat and others inspected the premises of the petitioner hospital (which is also claimed to be a unit of Shanti Devi Charitable Trust, Israna) and found that there has been violation of the provisions of Sections 4(4), 5,6, 4(3), 10-1A and Rule 9 of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (in short, 'the Act' or 'the PC&PNDT Act') and it was found that ultrasound tests were being conducted on pregnant decoy customers for sex determination and found that one ultrasound machine bearing Model No.Acuson-X-300 was installed in room No.118 registered in the name of Dr.Manjari and another similar machine was installed in room No.119 registered in the name of Dr.Mita Gupta; as a consequence of which report (Annexure P2) was prepared against Dr.Manjari, Mukesh, Sonia and Renu leading to registration of FIR No.27 dated 16.02.2016 (Annexure P1) under Sections 4(4), 5,6, 4(3), 10-1A and Rule 9 of the PC&PNDT Act and thereupon both the ultrasound machines were sealed in the premises. It is subsequent thereto, the application in question was moved by the petitioners for de-sealing the machines and for their release on sapurdari.

The precise grounds that were raked up were to the effect that the appropriate authority had duly permitted the applicant to purchase the stand-by unit of the ultrasound scan equipment which was duly purchased by virtue of that permission and that they had Dr.Mita Gupta as qualified Radiologist to work on that machine in their ultrasound centre and have sought to seek relief qua both these machines.

The stand of the State was to the effect that Dr.Mita Kohli herself got her name cancelled on the ultrasound machine through the District Appropriate Authority, Panipat on 29.04.2016 and has denied release of these machines and de-sealing of the same. It was through impugned orders (Annexure P11) the application stood dismissed and that is how the petitioners are before this Court.

Appreciating the arguments, apparently as the impugned orders reflects there are allegations that the concerned accused Dr.Manjari was determining sex of a child in the womb which is against the provisions of PC&PNDT Act as well as public policy and that the other machine in the name of Dr.Mita Gupta being in the same very premises was also put up for the similar use and purpose and thus, the Court declined the prayer.

The petitioners have come up against an order of the Court below passed for declining for the releasing of these machines which are

properties on sapurdari and that too during the trial of the suit which is governed by the provisions of Section 451 Cr.P.C.

To support his contentions learned counsel for the petitioner has placed reliance on **‘Ben Guren v. Regional Officer, Haryana Pollution Control Board’ SLP (Crl.) No.2181 of 2016 date of order: 28.03.2016; ‘Prabhu Chawla v. State of Rajasthan & Another’ SLP (Crl.) No.3314 of 2009 date of order: 05.07.2013; ‘Mohit @ Sonu & another v. State of Uttar Pradesh & another’ (2013) 7 SCC 789; ‘Dhariwal Tobacco Products Limited & others v. State of Maharashtra & another’ (2009) 2 SC 370; ‘Surya Baksh Singh v. State of Uttar Pradesh’ (2014) 14 SCC 222; and ‘Urmila Devi v. Yudhvair Singh’ (2013) 15 SCC 624** however, at this juncture with due apologies the cited ratios are not of much consequence.

Taking support from **‘Sarjoo Prasad v. State of U.P.’ (1990) Cr.L.J. 123** and **‘Sunderbhai Ambalal Desai v. State of Gujarat’ AIR 2003 SC 638**, this Court views that the allegations against the petitioners are of very serious nature and consequences and these machines so sought to be released on sapurdari/de-sealing were the articles which were used in the commission of such heinous offences thus, a vital piece of evidence for the trial and that too when the investigations are at crucial stage. No doubt, a Magistrate has immense powers in such matters but the same have to be exercised keeping in view judicial principles else such an irresponsible exercise of judicial

discretion might fritter away vital pieces of evidence which would at one point of time be crucial for judicial determination of the case. It was thus the Magistrate who keeping in mind this important aspect has thought it prudent not to accede to the prayer of the applicant. More so, to the mind of this Court there are reasonable apprehensions as expressed in the impugned orders that there could be an eventuality of repetitive action perpetuating further this crime and thus, the Court below has rightly declined the prayer for de-sealing the machines or releasing them on sapurdari. Thus, apparently there is no fault in the order neither any merit in the instant petition and the same stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

August 29, 2016
rps

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