

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48848 of 2013

Arising Out of PS.Case No. -30 Year- 2013 Thana -GOVERNMENT OFFICIAL COMP. District-
DARBHANGA

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1. Dr. Kanhaiya Jha Son Of Late Chandra Mohan Jha R/O Mohalla- Dighi West,
P.S.- Town, District- Darbhanga, Presently Posted As Assistant Professor,
Department Of Microbiology, Darbhanga Medical College, Laheriasarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Uday Kumar Choudhary, Appropriate authority/authorised officer, under
P.N.D.T. Act, Darbhanga, Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3, Advocate

For the Opposite Party/s : Mr. Kumar Birendra Narayan, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 25-01-2017

This application under Section 482 Cr.P.C. is for quashment of order dated 16.05.2013 passed by the learned Chief Judicial Magistrate, Darbhanga, in G.O. Case No.30 of 2013, corresponding to T.R. No.894 of 2013, whereby processes have been issued against the petitioner and his wife Dr. Sheela Jha to face trial for the offences under Sections 23, 24 and 25 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the 'P.N.D.T. Act') after condoning the delay.

2. Submission of the learned counsel for the petitioner is that no offence is made out on perusal of the complaint petition and



the material brought on the record, hence, the continuance of the proceeding would amount to abuse of the process of the court.

3. Dr. U. K. Choudhary, the Civil Surgeon-cum-Appropriate Authority under the Act, filed aforesaid complaint on 13.05.2013 against the petitioner and his wife alleging therein that the accused persons were running a diagnostic centre named as U.C.M., Diagnostic Centre, Laheriasarai, Darbhanga. On inspection of the Centre the authorities found that the old Ultrasound Machine vide Serial No.R-1163 was non-functional, however, housed at the Centre. A new Ultrasound Machine vide SIMENS X300 PE colour Doppler System along with probes and accessories were functional there, which was not found mentioned on the registration certificate. Hence, it was found that the said Colour Doppler System installed was being used without information to the authorities as required under the Act. Hence, punishable under the Act. Sections 23, 24 and 25 of the P.N.D.T. Act are being reproduced below:

“23. Offences and penalties.- (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise,



and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

[(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in sub-section (2) of section 4 , he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for



any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.]

24. Presumption in the case of conduct of pre-natal diagnostic techniques.- *Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), the Court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in sub-section (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.*

25. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided.- *Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of*



continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.”

4. The record reveals that the aforesaid Ultrasound system was purchased by the wife of the petitioner, who is real owner of the Ultrasound Centre, as claimed by the petitioner. The same was purchased on 22.06.2010, vide receipt at page-39. He further submits that at the time of prayer for renewal of the licence, the wife of the petitioner had filed the filled-up application form in Form-A, as required under the Act, on 29.11.2011 disclosing about the availability of equipments at the Centre and Column-8 would reveal that there is mention of both the equipments, the non-functional as well as the functional one. The aforesaid form along with application for renewal of licence is at Annexure-6 filed with supplementary affidavit. His contention is that once the aforesaid fact was brought to the notice of the authorities, it was the duty of the authorities to mention the same in the certificate of registration granted by the authorities at page-33, which is to be filled-up by the authorities after verification of the equipments.

5. On perusal of the record, I find substance in the submission aforesaid. The correctness and genuineness of Annexure-6 has not been disputed by learned counsel for the Opposite Party.



6. However, his contention is that ones the Court has taken cognizance on satisfaction that prima facie case is made out, the criminal prosecution should not be quashed in exercise of powers under Section 482 of the Cr.P.C., which should be sparingly exercised only on satisfaction that no case is made out on perusal of the allegation.

7. On perusal of the material available on the record, in my view no offence under Sections 23, 24 and 25 of the P.N.D.T. Act is applicable as there is no non-compliance of the statutory provision and without proper verification the complaint was filed. In similar circumstances, different coordinate Benches of this Court have allowed quashing of criminal prosecution in Criminal Misc. No.817 of 2014 by order dated 04.08.2014 and Cr. Misc. No.33343 of 2013 by order dated 11.12.2014.

8. Hence, the impugned order is hereby set aside and this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	28.01.2017
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