

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.24 of 2016

* The Appropriate Authority,
Ranjeet s/o Annasaheb Patil,
Age 38 years,
Occupation : Service
R/o Parbhani. **.. Petitioner.**

Versus

- 1) Dr. Sachin Prabhakar Pathak,
Age 47 years,
Occupation: Medical Practitioner,
R/o Vyanktesh Hospital,
Yogkshem Colony, Jintur Road,
Parbhani.
- 2) Dr. Hemangi Sachin Pathak,
Age 40 years,
Occupation: Medical Practitioner,
R/o As above. **.. Respondents.**

Shri. Satyajeet Bora, Advocate, for petitioner.

Shri. Bhushan Kulkarni, for respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 6 JANUARY 2017

ORAL JUDGMENT:

- 1) Rule, rule made returnable forthwith. Heard
both sides by consent for final disposal.

2) The present proceeding is filed to challenge the judgment and order of Criminal Revision No.63/2013 which was pending in the Court of learned Sessions Judge, Parbhani. The revision was filed by present respondents, who are medical practitioners against the order of issue process made by the Judicial Magistrate, First Class, Parbhani in RCC No.417/2012. The Judicial Magistrate had issued process for offence punishable under section 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 read with rule 8 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. The Sessions Court has held that the competent authority had renewed the registration certificate with back effect and as the person who has registered the centre is entitled to run the centre during pendency of the proceeding before the competent authority, no offence can be made out for absence of renewal of registration under rule 8. Reliance is placed by the learned Additional Sessions Judge on some observations made by the Division Bench of this Court in the case reported as **2013(4) Mh.L.J. 620 (Dr. Bela Bhatt v. The State of Maharashtra)**.

3) Learned counsel for the competent authority, present petitioner, submitted that the learned Judge of the Sessions Court has not considered the other allegations made in the complaint and the possibility of continuation of the proceeding for other offences which can be made out from the allegations and the record is not considered by the Sessions Court. It was submitted that the Sessions Court ought to have considered the relevant provisions like Sections 216 and 221 of the Criminal Procedure Code and the power of the Court to frame charge for other offences also on the basis of material available and as that was not done, the decision cannot sustain in law. Learned counsel for the petitioner submitted that the allegation as against accused No.2, wife of the registered owner ought to have been considered specifically as those allegations also relate to the entitlement of the accused No.2 to operate the sonography machine and liability of the accused No.1 for allowing his wife to operate the machine when necessary compliance in that regard was not made. He submitted that this aspect also relates to the registration certificate and so the Sessions Court ought not to have allowed the revision.

4) Copy of the complaint is on record. It appears that accused No.1 Dr. Sachin obtained registration in the year 2007 in respect of his sonography centre. As per the rules [Rule 8 (1)] it was necessary for accused No.1 to file application for renewal of registration one month prior to the date of expiry of the period but he did not apply for such renewal on or before 14-2-2012 and he made application for renewal on 15-3-2012 when the period of registration was over. Allegations are made that in view of these circumstances, accused No.1 could not have used the sonography machine after 14-3-2012 but he continued to use the machine.

5) There are specific allegations made in the complaint that sonography of at least 4 patients who were pregnant women was done after 14-3-2012 and was done prior to 7-6-2012. Names of these ladies are given. There are specific allegations that not only accused No.1 was using the centre but accused No.2, wife of accused No.1, was operating the sonography machine when she was not entitled to do so. There are allegations against accused No.2 that when she was not allowed to operate the

machine she operated the machine in many cases and the patients involved were pregnant women. Names of more than 50 such patients are given in the complaint. These patients were subjected to sonography examination by accused No.2 before 27-2-2012.

6) There are allegations made in the complaint that the holder of the certificate and the doctor using the machine did not maintain the record properly. There are allegations that when the centre was examined on 9-6-2012, many "F" forms which were blank but which were signed by both accused Nos.1 and 2 were found in the centre and this shows that they were not properly complying the provisions of the Act and the Rules. There are allegations that inquiry was made with some of the ladies who had visited the centre as patient for sonography and they informed that, accused No.2 had operated the machine for examination.

7) There are other allegations like not maintaining the book of the aforesaid Act for information, not maintaining the record of referring doctors, and doing

sonography of the pregnant women without creation of such record.

8) In the complaint, the provision are mentioned as Section 25 of the Act and Rule 8 of the Rules. This mention does not put restriction on the powers of the Magistrate and it is the duty of the Magistrate to ascertain as to which offence is made out under the provisions of the aforesaid Act due to allegations made in the complaint and in view of the material like record available against the accused.

9) In Marathwada area, birth rate of female child had drastically come down in the year 2011-12 and the proportion of female children had got down below 800. Due to this circumstance, the authority had tried to see that there is strict implementation of the provisions of the Act and the Rules. Many cases of female foeticide were noticed in this region. Things are improving little bit due to the steps taken by the competent authority but still the strict compliance of the provisions is necessary to prevent female foeticide.

10) Form "A" under rules 4(1) and 8(1) of the Rules, 1996 shows that the person applying for registration or renewal of registration of such centre needs to inform the names, qualifications, experience and registration number of the employees though as enclosure along with the form. Admittedly, in the present matter name of accused No.2 was not informed to the competent authority when registration was obtained in the year 2007. In view of these circumstances, it can be said that there is material to make out prima facie case that there was no compliance of the provision of Rule 8. Due to this circumstance, complaint can be filed against both accused Nos.1 and 2. Record is collected, which is already mentioned, which shows that accused No.2 had operated the sonography machine and she had examined many patients even when she was not authorised to do so under the registration given in the year 2007. This single circumstance was sufficient for issuing process for offence punishable under section 25 of the Act read with rule 8 of the Rules. This aspect is not at all considered by the Sessions Court.

11) The afore said allegations show that they are in respect of form "F" also and the other rules which require maintenance of record like referral slips of other doctors etc. Thus, there were other allegations against both accused Nos.1 and 2. If there were such irregularities accused No.1 becomes responsible for those irregularities and as accused No.2 was operating the centre she also becomes responsible for those irregularities. This circumstance ought to have been considered by the learned Judicial Magistrate, First Class and the process could have been issued for breach of those provisions also.

12) Learned counsel for the petitioner, competent authority placed reliance on some observations made by the Apex Court in Criminal Appeal No.613 of 2012 (arising out of **S.L.P. (Cri.) 9953 of 2010 (Bhushan Kumar v. State (NCT of Delhi)**). The Apex Court has made some observations with regard to the manner in which order under section 204 of the Cr.P.C. needs to be made by Judicial Magistrate, First Class. There cannot be dispute over the proposition that the Magistrate needs to form opinion as to whether there exists sufficient ground for

summoning the accused and it is not necessary to give in detail the circumstances or reasons for the same. This Court has already observed that it was necessary for the Magistrate to go into all the allegations to form opinion about the nature of offence which is made out in the allegations. This is not done by the Magistrate. The learned Judge of the Sessions Court has committed grave error in setting aside the order of issue process made by the learned Judicial Magistrate, First Class. Such decision cannot sustain in law.

13) In the result, the petition is allowed. The decision given by the Judge of the Sessions Court in Criminal Revision No.63/2013 is set side to the extent of dismissal of the complaint. The revision stands dismissed. The learned Judicial Magistrate, First Class is expected to ascertain as to whether other offences are also made out. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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