

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.88 OF 2017

Dr.Varsha Bajirao Manurkar-Kadam,
Age 38 years, Occ.Medical Practitioner,
R/o.Kadam Hospital, Work Shop Centre,
Nanded.

Petitioner

versus

The Appropriate Authority-cum-
Medical Superintendent,
Nanded-Waghala Municipal Corporation,
Smt.Meera w/o Ashish Kulkarni,
Age 51 years, Occ. Service.

Respondent

Mr.Vikram S. Kadam for petitioner.
Mr.R.K.Ingole for respondent.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 28th November 2017
Date of pronouncing the judgment : 20th December 2017

JUDGMENT :

1. The petitioner has challenged the proceedings arising out of Regular Criminal Case No.264 of 2015 filed by the respondent by way of private complaint before the Court of Chief Judicial Magistrate, Nanded for offence under Sections 4, 5, 6 and 29 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ('PCPNDT Act') read with Rules 9, 10(1-A) and 18 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 ('PCPNDT Rules').

2. The petitioner is the accused in the said complaint. She is the medical practitioner registered under the Maharashtra Medical Council Act. The petitioner possesses qualification for running professional services at Ultra Sound Clinic under PCPNDT Act. In the year 2004 she applied for registration of Ultra Sound Clinic with respondent authority. A certificate was issued by the respondent for the said clinic under the provisions of PCPNDT Act. She is running the said clinic since last twelve years.

3. The case of the complainant is that on 23rd January 2015 the officers of Divisional PCPNDT Cell, Aurangabad namely Dr.Madhav Munde along with Medical Superintendent of Nanded-Waghala Municipal Corporation Dr.Supriya Pandit and Advocate Puja Rathod, the legal advisor of PCPNDT Cell, visited the Ultra Sound Clinic of the petitioner. They conducted the search and inspected the records maintained by the petitioner. During the inspection the officers found certain irregularities in maintaining the record. On some Form-F, the signatures of petitioner as doctor were absent. The registers were not maintained in accordance with Rule 9(1) of PCPNDT Rules. There was no pagination and certification of register. The name of patient Vijaymala Ghadge and Deepali were not appearing in the register maintained under Rule 9(1). The thumb impression of the patient was not appearing on the consent form. The serial numbers were not reflected in respect of the patients in the register. The signature of the patient Deepali who had undergone sonography, was not reflected on the consent form dated 27th December 2014. Therefore, there was violation of Sections 4, 5, 6 and 28 of PCPNDT Act as well as Rules 9, 10(1-A) and 18 of

PCPNDT Rules. A notice was issued to the accused to show cause on 26th February 2015. The reply was forwarded by the accused on 4th March 2015. The accused was permitted to tender her explanation before the committee. The committee noticed that there was violation of the provisions of law and license of the sonography centre was revoked and the machines were sealed. The records were seized and on examination of Form-F, infirmities were found. It was noticed that on 13th September 2014 sonography was conducted in respect to patient Smt.Vandana Suryatale but there was no signature of doctor on the form. Similarly there was no signature of doctor on Form-F of another patient Smt.Swati Shinde whose sonography was conducted on 15th September 2014 and similar infirmity was also found in respect to patient Sagar Mokale whose sonography was conducted on 6th February 2015. There were alterations in the register. The complaint was filed on 30th April 2015.

4. Learned Chief Judicial Magistrate by order dated 26th August 2015 issued process against the accused for the offences as stated hereinabove.

5. Learned advocate for the petitioner submits that there is no evidence to prosecute the petitioner for the said offence. The learned Chief Judicial Magistrate has mechanically issued process against the petitioner. For every minor infringement or irregularity, the prosecution under PCPNDT Act shall not be initiated. It is submitted that the prosecution was launched with mala fide intention to close down the Ultra Sound Clinic of the petitioner. The action was mala fide as one of the doctor who was party to the inspection, has conflict of interest as she is also conducting a

sonography clinic in the nearby vicinity. The respondent was bent upon to close down the Ultra Sound Clinic of the petitioner and, therefore, lodged the said prosecution against her. There were no previous complaints against petitioner. She has been conducting the clinic since last twelve years without any adverse action. It is submitted that assuming that the charges levelled against the petitioner are true, still it cannot be precipitated as there were minor irregularities which do not warrant prosecution under PCPNDT Act. The petitioner has maintained the register in accordance with Rule 9(1) of PCPNDT Rules. There is no specific provision for pagination and certification of the register. The names of the patients are mentioned serially in the register. As far as allegation in respect of non mentioning the name of patient Smt.Vijaymala Ghadge in the registered maintained under Rule 9(1) is concerned, it can be seen that the sonography was conducted on 23rd January 2015 just before the officers visited the clinic. Therefore, it was not intentional misconduct. There is no suppression of any form by the petitioner. The condition of other patient Smt.Deepali was critical and, therefore, in extreme urgency, her sonography test was conducted. She had delivered the child on the next day. As far as allegations with regards to Form-F in case of Smt.Vandana Suryatale and Smt.Swati Shinde that signatures of the said patients are not appearing on Form-F, it is submitted that the petitioner has filled in online Form-F of the said patients. Merely on account of absence of signatures on Form-F of the patients, the offence under PCPNDT Act is not attracted. It would be a mere irregularity in maintaining Form-F. It is submitted that in the circumstances the proceedings initiated against the petitioner may be quashed. The learned advocate for petitioner relied upon following decisions :

(i) Dr.Sai w/o. Santosh Shiradkar Vs. The State of Maharashtra and another (Criminal Writ Petition No.1381 of 2015 decided on 27th September 2016);

(ii) Dr.Tushar Rangrao Patil Vs. Appropriate Authority, Nanded and Additional Collector, Nanded (Criminal Writ Petition No.406 of 2011, decided on 2nd May 2012);

(iii) Dr.Mrs.Uma Shankarrao Rachewad Vs. Appropriate Authority, Nanded and Sub-Divisional Officer Nanded (Criminal Writ Petition No.407 of 2011 decided on 19th April 2012).

6. Learned counsel appearing for the respondent submits that the contentions of the petitioner are required to be rejected. There is violation of provisions of PCPNDT Act and PCPNDT Rules, which is apparent in the averments made in the complaint. The grounds raised by the petitioner cannot be considered at this stage. The petitioner will have an opportunity to agitate the said grounds at the appropriate stage. It is further submitted that the judgments relied upon by the petitioner, are not applicable in the present case. The lapses committed by the petitioner are not mere irregularities which can be absolved. There is clear violation of the provisions of the PCPNDT Act, which warrants prosecution of the accused. The Trial Court has applied mind to the facts of the case, the material on record and had issued process against the petitioner-accused. The petitioner had replied to the show cause notice dated 26th February 2015, on 4th March 2015 and admitted all the deficiencies found during the course of investigation. The case of the petitioner was put up before the Advisory Committee in accordance with Section 20(2) of the Act and she was given opportunity to defend herself. The Advisory Committee after hearing the petitioner had come to the conclusion that she has violated the provisions of the Act and

accordingly suspended the registration for Ultra Sound Clinic of the petitioner on 15th April 2015. The documents on record makes it clear that the petitioner has avoided to keep proper record of the patients who comes for Ultra Sonography as required under PCPNDT Act. It is, therefore, submitted that the petition may be dismissed.

7. In the decision relied upon by the petitioner in case of Dr.Sai w/o Santosh Shiradkar (Supra), it was observed by this Court that if the discrepancies in the said proceedings were noted, it is not the case of the complainant that the accused had not maintained record as mandatorily required under the Act and Rules. What is alleged is certain omission, mistakes or lacuna in maintaining the record, as envisaged under the provisions of Act and Rules. The discrepancies merely related to non-mentioning of address, mobile number of patient who underwent sonography. The discrepancies noted by the vigilance committee cannot be termed to have been committed with intention to violate the provisions of the Act. The discrepancies cannot be treated as an act committed with an intention to violate the provisions of the Act. The entire process of taking legal action against the person violating the provisions is entrusted to appropriate authority. The role of the said authority is important and it was expected that the said authority should have summoned the person mentioned in the inspection report to verify whether the accused therein had complied with the requirement of obtaining written consent, as contemplated under Section 5 read with Rule 9 of the Act and there was any violation in observing the mandatory conduct. Inadvertent mistakes committed during the course of maintaining record, lacuna and omission in filing up of certain information in the requisite forms, need to be considered in proper perspective. A

similar view was expressed in other decisions relied upon by the advocate for petitioner.

8. In the present case, as stated above, it is noticed that there were lapses on the part of the petitioner-accused in the said clinic which are reflected in the complaint. The lapses and irregularities which amount to violation of the provisions of PCPNDT Act, cannot be brushed aside at this stage. The facts of the case dealt with by this Court in the decision relied upon by the petitioner, were distinct and the observations are not applicable in the present case. It is pertinent to note that learned Magistrate passed the order of process with application of mind by referring to the material on record. It is also required to be noted that the vigilance squad on their visit on 23rd January 2015 found major deficiencies at the sonography centre. The deficiencies include not having thumb impression identification, serial numbers were not given to the patients, pagination was not done as per Rule 9(1), not taking entries in the register wherein ultra sonography was done on patients, Rule 9(1) register was not certified by the owner of the centre, not taking signature of the concerned women on the consent form, Form-F not verified and signed by the doctor. It is also necessary to note that the prosecution was not launched hurriedly by the respondent. On inspection the report was submitted by the team and thereafter show cause notice was issued to the petitioner under Section 20(1) of the PCPNDT Act seeking explanation. The same was replied by admitting deficiencies. The case was put up before Advisory Committee in accordance with Section 20(2) of the Act and she was given opportunity to defend herself. The committee came to the conclusion that there is violation of the provisions of PCPNDT Act and suspended the registration of

Ultra Sound Clinic of the petitioner on 15th April 2015. In the circumstances the contentions of the petitioner cannot be accepted and the proceedings cannot be quashed at this stage.

9. Hence, I pass following order :

ORDER

- (i) Criminal Writ Petition No.88 of 2017 is dismissed;
- (ii) It is clarified that the the observations made in this order are only for considering the present petition and the Trial Court shall not be influenced by the same while conducting the trial, and the Trial Court shall decide the proceedings in accordance with law.

(PRAKASH D. NAIK, J.)

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