

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

CRIMINAL WRIT PETITION NO. 354 of 2017

Dr. Ashish s/o Arvind Bopalkar,
Age : 42 Years, Occ. : Medical Practitioner,
R/o : Arihant Diagnosis Centre, at Post
Barshi, District Solapur.

... **PETITIONER**
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Jamkhed,
Taluka Jamkhed,
District Ahmednagar.
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay Bench at Aurangabad)
2. Appropriate Authority/Tahsildar,
Jamkhed, Taluka Jamkhed,
District Ahmednagar,
(*Deleted as per order dtd. 9th October, 2017*)
3. Appropriate Authority, Jamkhed .. **RESPONDENTS.**
(Appropriate Authority appointed (Respondent No.3-
U/Sec.17(2) of P.C.P.N.D.T. Act, 1994) Original complainant)

...

Mr. V. D. Sapkal h/f. Mr. S.G. Chapalgaonkar, Advocate for petitioner.
Mr. A.A. Jagatkar, APP for respondent Nos. 1 and 2.
Respondent No. 3 served.

...

CORAM : PRAKASH D. NAIK, J.

Reserved on : 30th October, 2017

Pronounced on : 27th November, 2017.

JUDGMENT

The petitioner has approached this Court by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India challenging the order passed by the Judicial Magistrate First Class, Jamkhed, District Ahmednagar, dated 13th April, 2016, in RTC No. 182 of 2010. He is being impleaded as accused No.1 in the complaint filed by the respondents for an offence under section 23(1) read with Section 9(4) of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rules of 1996 (hereinafter referred to as P.C.P.N.D.T. Act and Rules). The petitioner has also challenged the Order passed by the Sessions Court in Criminal Revision Application No. 65 of 2016 rejecting the said application. The said order was passed on 8th February, 2017.

2. The petitioner is a Medical Practitioner. He is running a Diagnostic Centre named and styled as “Arihant Diagnostic Centre” at Barshi, District Solapur. The petitioner is a qualified Radiologist and has registered his own Centre at Barshi under the provisions of Section 9(1) of P.C.P.N.D.T. Act and Rules. The petitioner is also rendering his professional services as Radiologist at Shriram Hospital, Jamkhed.

3. The prosecution case as stated in the complaint is as follows :

The complaint is submitted by Dr. B.G.Thawal, Medical Superintendent, Rural Hospital, Jamkhed. He is appointed as Taluka Appropriate Authority. While discharging his duties, the complainant came to know that the petitioner - accused, Dr. Kalyan Kolhe and Mr. Mahendra Kolhe attached to Shriram Hospital, Jamkhed are indulging in illegal procedure of detection of sex in Foetus of some pregnant ladies. On 25th August, 2010, the member of Central Advisory Committee P.C.P.N.D.T. Act conducted sting operation at Shriram Hospital, Jamkhed with the help of Smt. Perna Bhilare, who was a pregnant lady along with others. It was decided to send a decoy with the help of Smt. Shaila Jadhav and Maya Pawar to ascertain the facts. They approached the petitioner-accused in the said Hospital on 25th August, 2010. At about 11.30 a.m. Smt. Perna Bhilare went to the Hospital and intimated that she wants to know the sex of the foetus and that the two persons accompanying her are her relatives. Dr. Kalyan Kolhe conducted Sonography and informed her that the foetus is male and demanded Rs. 3,500/-. He did not issue any receipt towards the fees received by him. He also gave prescription of medicines to pregnant woman Smt. Perna Bhilare. Smt. Shaila

Jadhav reported the said incident to Tahsildar, Jamkhed on the same day. The Tahsildar and the Medical Officers then visited Shriram Hospital on the same day between 3.30 a.m. to 4.00 p.m. and conducted inspection. The report of inspection was prepared by them. The statements of Smt. Prerna Bhilare, Shaila Jadhav and Maya Pawar were recorded. The Sonography Machine, Register and Registration Certificate were seized under the search panchanama on the same day. It was noted that the petitioner-accused were conducting sex determination of foetus of pregnant women, the copy of P.C.P.N.D.T. Act was not available, F-Form was not filled, on blank page of Form-F, there was signature of the petitioner-accused and unauthorized, unqualified person was conducting Sonography. The complaint was filed before the Court of learned Judicial Magistrate First Class, Jamkhed, District Ahmednagar on 20th September, 2010.

4. The learned Magistrate perused the complaint and the documents filed on record. Vide order dated 23rd September, 2010, the Court issued process against accused Nos. 1 to 3 under Sections 23, 25 and 26 of P.C.P.N.D.T. Act.

5. The petitioner preferred Revision Application No. 194 of 2010 before the Court of Sessions challenging the order of

issuing process. The Sessions Court vide order dated 14th August, 2013 rejected the said Revision Application. The petitioner then preferred Criminal Application No. 4678 of 2013 before this Court challenging the aforesaid orders. The said application was withdrawn with liberty to avail alternate remedy under the law. Vide order dated 25th September, 2014, the petitioner was allowed to withdraw the aforesaid application with liberty to move the concerned Court to avail the remedy, that may be available under the law.

6. The petitioner-accused had also preferred Criminal Writ Petition No. 1418 of 2014 before this Court challenging the proceedings before the Trial Court. Since by order dated 25th September, 2014 the application preferred by the petitioner was allowed to be withdrawn with liberty to avail all the alternate remedy available in law, the said petition was disposed of vide order dated 23rd January, 2015.

7. In pursuance to that, the Trial Court proceeded to record the evidence before charge in the said proceedings. The prosecution has examined complainant Dr. Thawal as witness No. 1, who was also cross-examined by the defence advocate. The prosecution also examined P. W. No. 2 Smt. Prerna Bhilare, P.W. No.3 Shri Vasant

Ahire and P.W. 4 Shri Gahininath Zagade, who were cross-examined by the advocate for the accused.

8. After the evidence of witnesses was recorded before framing of charge, the Trial Court proceeded to pass order dated 13th April, 2016. In the said order, it was observed that, from the evidence it appears that there is enough material to proceed further against accused persons. There is convincing material to hold trial against the accused. Even though the accused have raised certain defences, they are going to get enough opportunity to raise the defences during the hearing of the case. The Court, therefore, proceeded to pass an order that the charge can be framed against accused Nos. 1 to 3 under P.C.P.N.D.T. Act. Thereafter, vide order dated 18th April, 2016, the learned Judicial Magistrate, First Class, Jamkhed, District Ahmednagar framed the charge against accused. The charge was framed against the petitioner - accused under the provisions of Section 29 read with Rule 9(4) and Section 23(1) of the P.C.P.N.D.T. Act.

9. The order passed by the Trial Court framing charge was challenged by the petitioner by preferring Revision Application No. 65 of 2016. The Sessions Court vide order dated 17th October, 2017 dismissed the Criminal Revision Application No. 65 of 2016 and

directed the accused to cooperate for expeditious disposal of the criminal trial. The said order was passed on 8th February, 2017. Being aggrieved by the aforesaid orders, the petitioner has approached this Court and has prayed for quashing of the said orders as well as the proceedings initiated against him.

10. The learned advocate appearing for the petitioner submitted that the petitioner has been falsely implicated in this case, he is not concerned with the incident dated 25-08-2010. There is no evidence to prosecute the petitioner with the charges alleged by the prosecution. The statements of witnesses do not attribute any role to the petitioner. There is no violation of the provisions of P.C.P.N.D.T. Act and Rules at the instance of the petitioner. The evidence before charge recorded by the Court does not establish any case against the petitioner. It is further submitted that the Courts below have committed error while proceeding to frame charge against the petitioner when there is no evidence to bring home any charge against him. It is submitted that the contents of panchanama below Exh. 118 dated 25-08-2010 show that the record was seized at the centre alongwith Sonography Machine. The panchanama does not show that any blank 'F' Form was found with the signature of the petitioner. The list of documents annexed to the complaint also does not include 'F' Form. It is

submitted that P.W. 1 and P.W. 4 have admitted during cross-examination that there is no mention of seizure of any blank 'F' Form in the panchanama. It is further stated that no seal was put to the seized articles except Sonography Machine. Signature of panchas were not taken on the seized articles like register of 'F' Form. Therefore, there is nothing on record to show that the blank signed 'F' Form was seized at the Sonography Centre on 25-08-2010. It is further submitted that the complaint does not mention that during the inspection, authorities found any blank 'F' Form signed by the petitioner and that the same is seized by them. No particulars of such Form are mentioned in the complaint. It is further submitted that the evidence on record do not establish any offence against the petitioner even to frame charge. No role is attributed to the petitioner during the operation conducted by the authorities. The presence of the petitioner is also not shown at the time of raid. It is further submitted that, the Sonography Machine Room was found locked as stated in the panchanama regarding seizure of Sonography Machine. The Dean broke the lock and removed the seal after entering in the Sonography Room at the time of seizure panchnama. It is, therefore, submitted that the petitioner has followed the procedure meticulously to avoid misuse of machine in his absence. The show-cause notice dated 1st

September, 2010 does not refer to the record which was allegedly seized from the centre. It is submitted that the entire case of the prosecution against the petitioner is based on the alleged recovery of blank 'F' Form. It is submitted that there is nothing on record to show that 'F' Form was recovered at the Sonography Centre on 25-08-2010. The said document appears to have been subsequently inserted and the evidence is created against the petitioner. It is submitted that on account of framing of charge drastic action can be initiated against the petitioner vide under Section 23(2) of P.C.P.N.D.T. Act, and therefore, since there is no evidence to support the charge, the petitioner ought to have been discharged by the Courts below.

11. The learned counsel relied upon the decisions of this Court in the case of **Dr. Ranjeet Ghatge Vs. The State of Maharashtra and another delivered in Criminal Writ Petition No. 4194 of 2014** and in the case of **Dr. Dipak Jagtap Vs. The State of Maharashtra and others in Criminal Writ Petition No. 22 of 2014** as well as two decisions of the Supreme Court in the case of **State of Karnataka Vs. Muniswami and others, AIR 1977 Supreme Court 1489** and **Satish Mehra Vs. State of N.C.T., AIR 2013(3) 506**. It is submitted that there is no evidence to frame charge against the petitioner and therefore, the proceedings against the petitioner are required to be

quashed and set aside.

12. Learned A.P.P. submitted that on the basis of evidence before charge recorded by the Trial Court and the documentary evidence on record, case of framing charge is made out against the petitioner. The orders passed by the Courts below are not required to be interfered. Prima-facie case is made out against the petitioner to frame charge. The grounds raised by the petitioner cannot be appreciated at this stage and it would be opened to the petitioner-accused to raise the defences at the time of trial. Learned A.P.P. also filed affidavit opposing grant of relief to the petitioner.

13. Perused the evidence before charge recorded by the Trial Court. I have also gone through the documents on record as well as the orders passed by Courts below. The petitioner's case that he has been falsely implicated and that the evidence is fabricated against him cannot be considered at this stage. Reading the evidence of the witnesses, it will have to be held that prima facie case is made out for framing charge and the petitioner is not entitled to be discharged. The evidence on record indicates the involvement of the petitioner which is sufficient to frame charge and prosecute him for the offence for which is he charged. The co-accused Dr. Kalyan Kolhe who is the owner of

Shriram Hospital, Jamkhed, Taluka Jamkhed, District Ahmednagar and having the Sonography Cente registered under the said Act approached the petitioner for giving consent to work as Sonologist/Rediologist at the centre. The petitioner gave his declaration/undertaking showing his consent to work as Radiologist at the said Hospital on second Sunday of every month from 2.00 p.m. to 6.00 p.m. It is the case of the prosecution that on 25-08-2010 the officers visited Shriram Hospital. They collected several documents. According to the prosecution, the Officers found one blank Form signed by the petitioner as Radiologist. The petitioner is rendering professional or technical services to accused No. 2 and 3. The show-cause notice dated 1st September, 2010 was issued to the petitioner. The explanation tendered by him was not satisfactory. The permission of handling the Sonography Machine at Shriram Hospital was suspended. The evidence of P.W. 1 Dr. Baban Thawal, P.W. 3 Mr. Vasant Ahire, P.W. 4 Dr. Gahininath Zagade refers to the seizure of blank Form 'F' allegedly signed by petitioner. Therefore, prima-facie there is evidence to show involvement of the petitioner.

14. The prosecution has examined P.W. 1 Prerna Bhilare, P.W. 2 Vasant Ahire, P.W. 3 Tahsildar and P.W. 4 Shri Zagade. They were cross-examined by the defence. The Trial Court therefore, observed

that on the basis of evidence adduced by the complainant, it has to be held that there is sufficient material to proceed against the accused. The Trial Court thereafter framed the charge vide Exh. 128. It is the case of the complainant that accused Nos. 2 and 3 did not maintain the record and accused No. 1 has helped them by keeping blank Form 'F' with his signature in the dispensary. The complainant has stated that accused No. 1 has helped the other accused. The Sessions Court had observed that accused No. 1 by keeping blank Form with his signature facilitated the other accused to perform Sonography. There is evidence that accused Nos. 2 and 3 conducted Sonography. There is no explanation as to why the blank Form was found at the Centre. It was observed that there is enough evidence, that accused Nos. 2 and 3 in fact conducted Sonography. There is no explanation why blank form signed by accused No. 1 was found in the premises. The deficiencies found in evidence are in the nature of defences that can be considered during course of Trial. The Sessions Court, however, reframed the charge. Whether the 'F' Form was inserted subsequently to implicate petitioner accused would be considered by Trial Court. The probable defenses cannot be considered at this stage. I do not find any reason to interfere in orders passed by the Court. The Revisional Court therefore, observed that primarily accused Nos. 2 and 3 have

committed an offence in connivance with accused No.1. The Sessions Court, however, substituted the charge as per order dated 8th February, 2017.

15. In the case of Dr. Ranjeet Ghatge, this Court has observed that the details in Form 'F' are to be filled in by the staff members of the clinic. The Doctor conducting ultrasonography of a pregnant woman will keep complete record of the ultrasonography done by him and not the details of the Form 'F'. Harmonious reading of proviso to Sub-section 3 of Section 4 of the Act read with Rule 9(4) of the Rules leads one to the conclusion that the clerical work is to be done by the staff members. In the other decision, in the case of Dr. Jagtap, it was observed by Court that the Sonography Centre was conducted by another Doctor and the petitioner therein was visiting Doctor. He is not having any control over the activities of the Centre and therefore, he cannot be charged for not maintaining Form 'F'. The said decisions are based on the factual aspects in the said proceedings. In the present complaint, the petitioner is attributed the role of signing blank 'F' Form to facilitate the other accused in commission of crime. The infirmities pointed out by learned Advocate for petitioner can be considered in the Trial. In the case of State of Karnataka Vs. Muniswamy, the Supreme Court has observed that, accused can be discharged if there are no

sufficient grounds for proceeding against accused. Applying the principle laid down therein, the petitioner cannot be discharged. The Trial Court would look into all defenses of the petitioner. Since, the evidence before charge is already recorded, it is expected that, the Trial Court would decide the trial expeditiously.

16. Hence, I pass the following order :

O R D E R

1. Criminal Writ Petition No. 354 of 2017 stands dismissed.
2. The Trial Court shall not be influenced by any observations made in this order.

(**Prakash D. Naik, J.**)

shp