

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

CRIMINAL WRIT PETITION NO.375 of 2017

. Dr.Nitin Bankatlal Mandhane
Age: 44 years, Occu.: Medical-
Practitioner,
R/o.Mantha, Tq.Mantha,
District: Jalna. ..Petitioner

VERSUS

- 1) The Stage of Maharashtra
Through: Public Prosecutor.
- 2) Sudam S/o. Tulshiram Mehetre
Age: Major, Occu.: Service as
Medical Superintendent,
Rural Hospital, Mantha,
Tq.Mantha, Dist.Jalna. ..Respondents

Advocate for Petitioner : ...
APP for Respondents : Mr.S.G.Chapalgaonkar
: Mr.G.O.Wattamwar
...

CORAM : PRAKASH D.NAIK, J.

**RESERVED ON : 14th NOVEMBER, 2017
PRONOUNCED ON : 20th DECEMBER, 2017**

JUDGMENT:-

- 1) The petitioner has taken exception to the order dated 11.2.2015 passed by the Judicial Magistrate First

Class, Jalna in Regular Criminal Case No.173 of 2011 as well as the order dated 14.2.2017, passed by the Additional Sessions Judge-2, Jalna, in Criminal Revision No.32 of 2015, confirming the order dated 11.2.2015.

2) The petitioner is facing prosecution in the proceedings pending before the Court of Judicial Magistrate First Class, Jalna vide Regular Criminal Case no.173 of 2011. The complaint was filed by the respondent no.2 for offence under the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (for the sake of brevity, hereinafter referred to as 'PCPNDT Act').

3) The prosecution's case is that on 5.7.2011, the respondent No.2 and others being the members of the Inspection Team constituted under the PCPNDT Act visited the Sonography Center of the petitioner at Mantha, District Jalna. During the visit, the Panchanama was prepared in accordance with the provisions of the Act.

The Inspection Team noted deficiencies at the Center, which were recorded in the Panchanama. It is alleged that board required under the PCPNDT Act was not displayed at conspicuous part of Sonography room or waiting room. The copy of the PCPNDT Act was not available for the patients. The information regarding visiting of Radiologist and portable Sonography machine, used by petitioner, was not available. Complete Referral chits were not available. Abstract Sheet was not properly maintained. F-Forms were not filled-up and the record was not kept in order. Thereafter a complaint was filed on 19.9.2011 before the Court of Judicial Magistrate First Class, Mantha for the offences u/s 23, 25, 26 and 29 of the PCPNDT Act. The complaint was filed in the name of Dr.Sudam Tulshiram Mehetre, Medical Superintendent, Rural Hospital, Mantha. The Trial Court took cognizance of the complaint and issued the process against the accused.

4) The Trial Court thereafter proceeded to record the

evidence before charge. The complainant examined himself as PW-1. The prosecution also examined PW-2 in support of the complaint. After recording the said evidence, the petitioner preferred an application for discharge before the Trial Court. The learned Magistrate by order dated 11.2.2015 rejected the said application. The petitioner thereafter preferred Criminal Revision Petition No.32 of 2015 before the Court of Sessions. The said Revision Petition was also rejected by order dated 14.2.2017. Hence, the petitioner has preferred the present petition challenging the proceedings and the order passed by the Court.

5) The learned counsel for the petitioner submitted that there is no evidence to frame charge against the petitioner and the Trial Court ought to have discharged the petitioner from the said proceedings. It is submitted that the petitioner is a Medical Practitioner and conducting his own Clinic at Mantha, which has been registered under the provisions of Section 19 of the

PCPNDT Act. He has obtained the consent of Dr.Manoj Malpani, who is a Radiologist to render his services at the Center of the petitioner. The appropriate authority had granted the registration of the Center in the name of the petitioner. He is rendering services strictly in accordance with the provisions of the Act. He has maintained necessary records in the format described under the Act and the Rules. The report in respect of procedure carried by Radiologist at the Center is also maintained and forwarded to the appropriate authority. The Panchanama was recorded by the raiding party without following the provisions of Section 12 r/w Section 30 of the PCPNDT Act. There was no independent witness at the time of the inspection. The Panchanama was prepared, which do not show that any material was seized at the time of inspection. The complaint was filed in the name of Dr.Sudam Mehetre, Medical Superintendent (Rural) Hospital, Mantha, however, it was drafted by Dr.N.A.Talwadkar, who is not an appropriate authority within the meaning of Section 17 of the PCPNDT Act. In

view of Section 28 of the PCPNDT Act, the complaint presented by unauthorized person ought not to have been entertained and no cognizance could have been taken. It is further submitted that there are discrepancies in the evidence of the witnesses examined by the prosecution. The respondent no.2 had made an application to the Court and requested time to produce original Form, which was not produced along with the complaint. It is submitted that the evidence of witnesses does not support the prosecution's case and the discrepancies in their evidence does not warrant framing of charge. Both the Courts have rejected the application mechanically. The entire case of the prosecution is based on Panchanama dated 5.7.2011. Nothing was seized at the Center of the petitioner and there was no independent witness. The evidence of PW-1 shows that the copies of F-Form, which was submitted 4-5 months ago to the office of the Civil Surgeon were procured by the witness and produced before the Court. This document cannot be treated as evidence. No deficiency is found in the F-Form. There is

inconsistency in the evidence of PW-1 and PW-2. There was no evidence before the Court to frame charge and therefore the Court ought to have discharge the petitioner.

6) The learned counsel for the petitioner relied upon the decision in the case of *Dr.Sai w/o Santosh Shiradkar Vs. State of Maharashtra and Another [2016 SCC Online Bom., 8812]* and another decision of this Court in the case of *Dr.Payal w/o.Shreekant Chobe Vs. State of Maharashtra and others delivered in Criminal Writ Petition No.250 of 2015.*

7) Learned APP submits that the evidence before the Court prima-facie makes out a case for framing the charge. There is prima-facie evidence to proceed with the trial. The Trial Court cannot go into a roving enquiry at this stage. The alleged infirmities contended by the petitioner are not sufficient to discharge the petitioner from the case. Although the complaint was

present by another person, it was filed in the name of the appropriate authority and even the person, who has presented the complaint is a Medical Superintendent and the appropriate authority within the meaning of provisions of law. In support of this submission, learned APP placed reliance on the Circulars. It is submitted that the Trial Court has correctly exercised the powers while rejecting the application for discharge, which order has been confirmed by the Revisional Court. The affidavit affirmed by Dr.Sudam Mehatre, the complainant in the present proceedings is placed on record. In the said affidavit dated 10.11.2017, it is stated that the show cause notice was issued to the petitioner on 5.7.2011. The reply was submitted by the petitioner stating that he may be permitted to continue the Sonography Center as he has complied with all the conditions. Learned APP submitted that that the said reply to the show cause notice indicates that the petitioner had admitted the irregularities. The authority, who filed the complaint is an appropriate

authority. The deponent of the affidavit had prepared the complaint and signed on 11.8.2011. Since he was out of station, Dr.N.A.Talwadkar was a Incharge Medical Superintendent for a period of three months. Hence, he presented the complaint prepared by the deponent. Hence, he acted in the capacity of Incharge (Rural) Hospital, Mantha and there is no illegality in presenting the complaint by him. The copy of the Circular dated 12.2.2008 was annexed to the said reply. The accused has violated the provisions of PCPNDT Act and more particularly Rule 17(2) and Section 19 Rule 9(4), Rule 23, 25, 26 and 29. It is submitted that prima-facie case is made out against the petitioner and therefore he is not entitled for the discharge.

8) I have gone through the documents on record. In pursuant to filing of the complaint and issuance of process, the evidence of witnesses is recorded. The petitioner preferred an application for discharge, which is rejected and thereafter preferred revision

application, which is also rejected. While considering the application for discharge u/s 245 of Code of Criminal Procedure, the Court is required to see whether there is prima-facie evidence to frame charge. The Court cannot hold a roving enquiry at that stage. The complainant and the evidence of two witnesses prima-facie makes out a case for proceeding with the matter. Assuming that in the cross-examination of the said witnesses, whose evidence was recorded before framing charge some discrepancies have been brought on record that would not discard the evidence of said witnesses at the stage of framing charge. It would be open to the petitioner to agitate the grounds raised by him on the basis of the evidence, which is brought on record and which is likely to be brought on record at the time of conclusion of the trial. The submission about the discrepancies in the Panchanama, the infirmities, contradictions in the evidence of the witnesses can be looked into during the trial and not while considering the application for discharge. The primary issue raised by the petitioner

that the officer who tendered the complaint is not an appropriate authority and therefore, the Court ought not to have taken cognizance of the complaint is an issue which is debatable. The complaint was filed in the name of appropriate authority. The complaint was tendered by another person, which according to the prosecution is also an appropriate authority and therefore the aforesaid aspect forms a disputed question of fact, which cannot be considered for dropping the prosecution against the petitioner by discharging him.

9) In the case of *Dr.Sai Shiradkar* (supra), this Court has observed that the prosecution initiated against the accused was not sustainable in law. It was observed that the prosecution cannot be lodged in relation to minor mistakes, omissions or Lacunae on the part of the accused in maintaining the record. It was also observed that while High Ranking Officer from field of Medical have been notified as an Appropriate Authority to file complaint, Appropriate Authority has to act as

investigator to enquire into allegations of violation of Acts and Rules. Mere report or complaint or information received cannot be sole basis to prosecute a person. If complaint is enquired and investigated resulted into collection of evidence sufficient to prosecute a person for violation of provisions of the PCPNDT Act then only criminal proceeding should be initiated.

10) The factual matrix in the said case is different than which is involved in the present proceeding. It is pertinent to note that in the present case, after lodging the complaint, the prosecution has examined the witnesses before charge, documents are placed on record and their evidence prima-facie makes out a case to proceed with the matter. Hence, the observations made in the said decision are not applicable in this case. In another decision in the case of *Dr.Payal Chobe* (supra), it was observed that, as the post of District Civil Surgeon is very much available at Aurangabad, the complainant, who is Medical Officer, Health of Municipal

Corporation, cannot be held as an appropriate authority under the said Act. The complaint is neither made by complainant in the capacity of an Officer authorized in that behalf by the State Government or by appropriate authority. The facts of the present case are different than that considered by the Court in the said decision.

11) Section 245 of the Code of Criminal Procedure mentions that if upon taking all the evidence referred to in Section 244, the Magistrate considers for the reasons to be recorded that no case against the accused can be made out which if unreported would warrant his conviction, the Magistrate shall discharge him. Sub-section 2 states that nothing in this Section shall be deemed to prevent case to discharge the accused at any previous stage if the reasons to be recorded by the court, he considers the charge to be groundless.

12) In the light of the aforesaid provisions, the Trial Court has rightly rejected the application for discharge.

The other decision relied upon by the petitioner in the case of *Dr.Payal Chobe* (supra), this Court has observed that the process was issued mechanically without ascertaining and examining as to whether that complaint is made by authority/officer/person competent to make it as per the provisions of Section 28 of the PCPNDT Act.

13) In the present case, as stated above, the complaint was filed in the name of the appropriate authority and it was tendered by another person, who also claims to be an appropriate authority. It is difficult to give a finding in that regard while entertaining the application for discharge.

14) The Trial Court while rejecting the application for discharge has taken into consideration all the submissions advanced by the petitioner accused. The order assigns reasons for arriving at the conclusion therein. It was observed that the complainant in this case is Dr.Sudam Mehetre and as a matter of record, the

complaint was presented by Dr.N.A.Talwadkar. The complainant has examined Dr.Talwadkar as witness No.3, who has deposed that he presented the complaint as he was Incharge Superintendent of Mantha Civil Hospital and Dr.Mehetre, who was complainant, was at training therefore, as per directions of the Civil Surgeon, who is competent authority, Dr.Talwadkar filed the complaint. He also placed on record the documents filed at Exh.32 and 33. The Court therefore, observed prima-facie that the complaint has been presented properly. It was further observed that perusal of evidence of C.W.-1 Dr.Sudam Mehetre, who conducted the Panchanama in presence of C.W.2 reveals that Panchanama vide Exh.17 mentions violation. The complainant testified that at the relevant time, he was working as Medical Superintendent and he had formed squad comprising himself and other three members. The Trial Court therefore observed that there is nothing on record to show that the complainant was not competent to file the complaint. The Trial Court appreciated the evidence on record and also

stated that the delay prima-facie appears to be reasonable, which is explained. Similarly, the Sessions Court has also turned down the Revision Petition preferred by the petitioner by giving reasons. It was observed that the grounds for discharge agitated by the accused are not sufficient to discharge him.

15) In the aforesaid circumstances, there is no reason to interfere in the orders passed by the Courts below and the proceedings initiated against the petitioner cannot be quashed and set aside. Considering the material on record, prima-facie case is made out to proceed with the matter and no case for discharge is made out. No interference is warranted in the orders passed by the Courts below rejecting the application for discharge and confirming the order passed by the Trial Court. Hence, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.375 of
2017 is dismissed.

(II) It is clarified that the observations made in this order are for considering this petition and the Trial Court shall not be influenced by the same during the trial.

(III) The petition stands disposed of.

[PRAKASH D.NAIK, J.]