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

CRIMINAL WRIT PETITION NO.1489 OF 2015

Dr. Vinita Jayesh Khadse,
Age: 43 years, Occ: Medical Practitioner,
R/o. Aradhana Hospital, Balaji Towers,
Nerinakya, Jalgaon, Dist. Jalgaon. ..PETITIONER

VERSUS

1. The State of Maharashtra
2. Shri. P.D. Sonwane,
Age: 57 years, Occ: Service
Serving with Jalgaon Municipal
Corporation, Jalgaon,
District Jalgaon. ..RESPONDENTS

Mr V.D. Hon, Senior Advocate i/b Mr V.B. Jadhav and
A.V. Hon, Advocates for petitioner;
Mr S.N. Morampalle, Addl. Public Prosecutor for
respondent No.1;
Mr V.D. Gunale, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 6th MARCH, 2017

ORAL JUDGMENT :

Leave to amend the prayer clause (B).
Amendment be carried out forthwith.

2. Rule. Rule made returnable forthwith. By

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consent, heard finally.

3. The petitioner is a registered medical practitioner and running genetic counselling centre defined under Section 2(c) of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (For short 'PCPNDT Act') by name Aradhana Hospital at Jalgaon. The said hospital is registered with respondent Municipal Corporation, Jalgaon, particularly Sonography Centre, being Registration No. MH/JL/001.

4. The District Collector, Jalgaon vide order dated 4th June, 2012 has constituted inspection committee consisting of Mr. P.D. Sonwane, Assistant Commissioner, Mr. Dr. Vikal Patil, Health Officer, Mr. D.H. Mahale, Assistant District Supply Officer and Mr. S.N. Suryawanshi, Police Sub Inspector, as a member of Inspection Squad, which will inspect the Sonography Centres.

5. Pursuant thereto, said Squad visited

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Sonography Centre of the petitioner, which was run and managed under Aradhana Hospital on 8th June, 2012 and seized 'F' form register, other papers etc., and sealed them.

6. Subsequently, the same seal was opened in the office of Municipal Corporation in absence of present petitioner and following shortfalls and discrepancies were noticed.

(i) In the seized register containing 'F' form register for the period from 4th January, 2010 to 15th June, 2011. Serial Numbers to the 'F' form register are absent.

(ii) Doctors have not certified 'F' form register of the following patients for the period from 4th January, 2010 to 15th June, 2011.

(1) Sou. Kalyani Sanjay Patil. Date of 'F' form register – 2nd February, 2010.

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(2) Sou. Bharati Dipak Sapkale. Date of 'F' form register – 20th November, 2010.

(3) Sou. Pratibha Govind Choudhari. Date of 'F' form register – 12th February, 2011.

(4) Sou. Rekha Santosh Donge.

(iii) General form register of patient Sou. Archana Sanjay Dhake dated 8th January, 2011 does not bear signature of said patient.

(iv) In the 'F' form register against Column No.10, instead of filling up blank, same is scratched.

(v) In the 'F' form register for the period from 4th January, 2010 to 15th June, 2011 in Column Nos. 15 and 17, without filling blanks, there are scratches against the said column numbers.

(vi) In Column Nos. 18 and 19 of 'F' form

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register, there are no material filled in and same are get blank.

(vii) In the M.T.P. register on 'I' form dated 23rd April, 2011 of patient Sou. Jotsna Nitin Patil, Doctor has not certified the same.

7. In view of above shortfalls, complaint came to be filed in the Court of Chief Judicial Magistrate at Jalgaon being Regular Criminal Case No. 666 of 2012 by Municipal Corporation, Jalgaon through its Assistant Commissioner, for offence punishable under Section 23 of the Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Rule 9 sub rule (4) of the Rules framed thereunder. Learned Chief Judicial Magistrate, Jalgaon, pursuant to the provisions of Section 212 of the Code of Criminal Procedure on 4th December, 2012 issued process against the petitioner, which order was subject matter of challenge before revisional Court in Criminal Revision Application No. 100 of 2013. Revisional

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Court, by judgment and order, dated 17th October, 2015, was pleased to dismiss the revision. Aggrieved thereby, petitioner-original accused preferred present writ petition.

8. Heard Mr. Hon, learned Senior Counsel for the petitioner, Mr. Gunale, learned Counsel for the respondent-complainant and learned Additional Public Prosecutor for respondent-State.

9. Mr. Hon, learned Senior Counsel for the petitioner would invite attention of this Court to the various grounds and amongst other, the important ground, according to him, is non-competency of the complainant to file complaint against the petitioner. According to him, provisions of Section 17 of the PCPNDT Act empowers the State Government to issue notification authorizing the officers to file complaint. He would then invite attention of this Court to the notification dated 17th June, 2011 stating that only Deputy Commissioner of Municipal Corporation

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is authorized as appropriate authority to file complaint pursuant to provisions of Section 23 of the PCPNDT Act. According to him, in the present case, though complaint is filed for and on behalf of Municipal Corporation, however, one Mr. P.D. Sonwane, Assistant Commissioner has filed said complaint, who in law, is not authorized to file complaint. He would also place on record the contentions that incomplete and rustic information is formed to be basis for initiation of prosecution against the petitioner for violating the provisions of PCPNDT Act and rules framed thereunder though such material is of hardly any consequences and not mandatory to be maintained.

10. The other submission of Mr. Hon, learned Senior Counsel for the petitioner is, even if what has been alleged in the complaint is taken to be true at its face value, still there are hardly chances of the petitioner getting conviction.

11. Per contra, Mr. Gunale, learned Counsel

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for the respondent-complainant would invite attention of this Court to the order of the District Collector, Jalgaon dated 4th June, 2012 passed in exercise of powers under the provisions of PCPNDT Act, wherein Squad was constituted headed by Mr. P.D. Sonwane, Assistant Commissioner to carry out inspection of various sonography centres and to initiate proceedings under PCPNDT Act. Another submission is made that Chief Medical Officer of Municipal Corporation has informed the constitution of committee and authorization in favour of respondent-complainant for initiating the complaint under PCPNDT Act, which was addressed to the Commissioner of Municipal Corporation. According to him, as the Assistant Commissioner was acting at the dictum and upon authorization to that effect by District Magistrate/Collector, it has to be inferred that there is proper delegation of power in favour of the respondent-Assistant Commissioner to file complaint. He would then place reliance upon the judgment of this Court in the matter of ***Suo Motu vs State of Gujrat*** reported

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in **2009 CRI.L.J. 721** and judgment of this Court in the matter of **Suhasini Umesh Karanjkar (Dr) vs Kolhapur Municipal Corporation and another** reported in **2011(4) Mh.L.J. 21**.

12. Having considered the categorical submissions of the respective parties, it is required to be noted that pursuant to the scheme framed under Section 17 of the PCPNDT Act, it is the State Government, who by notification in Official Gazette, can appoint one or more appropriate authorities in the State or in any part of the State. It is an admitted position on record that Mr. Sonwane, Assistant Commissioner of Municipal Corporation, Jalgaon, (as he was posted at the relevant time) was never appointed as appropriate authority pursuant to the provisions of Section 17 of the PCPNDT Act by the State Government under the Act. It is such authority, who is appointed under Section 17 of the PCPNDT Act, in law, is authorised and has every right to file complaint pursuant to source of power under the

provisions of PCPNDT Act.

13. In the case in hand, the complaint is styled to be one for and on behalf of Municipal Corporation, Jalgaon, where said Mr. Sonwane was posted as Assistant Commissioner. There is no authorization brought to the notice of this Court either in the form of pleadings or documentary evidence authorizing the said Assistant Commissioner to file complaint on behalf of the Municipal Corporation. Though reliance is sought to be placed upon the order issued by the District Magistrate/Collector, Jalgaon forming Squad to carry out inspection of sonography centres, however, I hardly see any provision under the PCPNDT Act, which authorize the District Magistrate/Collector, Jalgaon to file complaint against proprietor/person managing such sonography centre for violation of provisions of PCPNDT Act. The communication of Chief Medical Officer of Municipal Corporation though is sought to be relied upon by learned Counsel for respondent-complainant,

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as Commissioner never objected to the authority of Assistant Commissioner to file complaint, in my opinion, in absence of powers to delegate, the authority to file complaint for and on behalf of Municipal Corporation and in absence of notification under Section 17 of the PCPNDT Act by the State Government, authorizing the said Assistant Commissioner to file complaint under PCPNDT Act against the petitioner, complaint and proceedings taken out, in my opinion, are not sustainable being filed by the person, who is not competent and authorized to do so under the PCPNDT Act. As is rightly observed by this Court in the matter of ***Sukhada Dilip Mulay (Dr.)(Mrs.) vs State of Maharashtra and others*** reported in ***2013(1) Mh.L.J.638***, particularly in paragraph-12. It is required to be noted that the view expressed herein above could get support from the said observations. Additional reliance can also be placed on the judgment of this Court rendered in ***Writ Petition No.1637 of 2013 (Dr. Kalpana w/o Pundlik Jamdade vs. The Assistant Municipal Commissioner, Nanded***

Waghala City Municipal Corporation, Nanded & ors)
decided on 13th March, 2013, particularly paragraph
Nos.4, 8 and 9 thereof, which read thus :

"4. The learned senior counsel further submits that the action of suspension of registration is by the Assistant Municipal Commissioner who is not an Appropriate Authority under the statute. By notification the State has designated the Appropriate Authorities and the Assistant Municipal Commissioner is not designated as Appropriate Authority. As per Sec. 17 of the P.C.P.N.D.T Act, it is only the Government who by notification in official Gazette appoint the Appropriate Authorities. Even the order of suspension is passed without issuance of show cause notice. Sub Section 1 and 2 of Sec. 20 of the P.C.P.N.D.T Act have not been followed. There was no case made out to resort to Sub Sec. 3 of Sec. 20 of the P.C.P.N.D.T Act. Sub Sec. 3 of Sec. 20 of the P.C.P.N.D.T Act is an exception wherein the Appropriate Authority if finds it expedient in the public interest and for the reasons to be recorded can suspend the registration without issuance of notice. The case is not

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spelt out to invoke Sub Sec. 3 of Sec. 20 of the P.C.P.N.D.T Act. Only because some irregularities are found in maintenance of the forms, the action has been taken. Even the same are not the irregularities.

8. The Appropriate Authority is laid down U/Sec. 17 of the P.C.P.N.D.T Act. It is State Government who by notification in the official Gazette can appoint one or more Appropriate Authority for any part of the State or whole of State. The notification is produced on record and the persons designated as Appropriate Authorities are spelt out in the said notification. The Assistant Municipal Commissioner is not designated as Appropriate Authority under the said notification. No other notification is placed on record showing that the Assistant Municipal Commissioner is designated as an Appropriate Authority. The reliance is placed on the order dated 17.06.2011 issued by the Commissioner of Nanded Waghala Municipal Corporation, wherein it is said that the Assistant Commissioners as Ward Officers would be entitled to take action under the P.C.P.N.D.T Act. Sec. 17 of the P.C.P.N.D.T Act does not authorize the Commissioner of

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Municipal Corporation to appoint Appropriate Authorities. It is only the Appropriate Authorities designated under the Statute or appointed by the State Government in particular state would be entitled to act as Appropriate Authorities. When a statute lays down a particular thing to be done in particular manner, it has to be done in that manner only. The Assistant Municipal Commissioners are nowhere shown as Ward Officers. The order is also passed in the capacity of Assistant Municipal Commissioner, Nanded. In absence of any notification in that behalf by the State Government, the said Assistant Municipal Commissioner cannot be an Appropriate Authority. The action taken by him of suspending the registration would be without authority and deserves to be set aside. Even otherwise, the registration of petitioner's centre is suspended since 19.07.2011 i. e. for more than one and half year.

9. As far as sealing of the machine is concerned, the same is contemplated U/Sec. 30 of the P.C.P.N.D.T Act read with Rules 11 and 12 of the P.C.P.N.D.T Rules. The Appropriate Authority or any person

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authorized in that behalf can resort to action of sealing sonography machine, if the said authority has reason to believe that the said machine may furnish evidence of commission of offence under the P.C.P.N.D.T Act. In the present case, the order sealing the machine does not spell out this fact. The authority has to arrive at a conclusion upon subjective satisfaction based on objective assessment of the facts. Perusal of the order sealing the machine it is manifest that the said machine has been sealed as the record has not been properly maintained.”

14. In view of above observations, as the complaint by the unauthorized person is not maintainable, the Court is left with no option but to quash the complaint and prosecution initiated pursuant thereto against the petitioner. Once this Court has formed opinion that the complaint and proceedings are not sustainable, this Court need not to deal with other issues as are sought to be canvassed by learned Senior Counsel.

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15. In the backdrop of what has been observed herein above, it will be appropriate, in my opinion, to allow the writ petition. In view thereof, writ petition is allowed. Rule is made absolute in terms of prayer clause (B).

(N.W. SAMBRE, J.)

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