

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.646 OF 2016**

Dr. Anup Abhimanyu Bharsakade Applicant

Vs.

Dr. Anandrao Dattajirao Jagdale Respondents
& Anr.

Mr. S.V. Kotwal i/by Manoj S. Mohite, Advocate for the
Applicant.

Mr. Vaibhav V. Ugle, Advocate for Respondent no.1.
Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 9th February, 2017

P.C.

1 Considering the nature of the impugned order, by consent of the learned advocates, the petition is taken up for final hearing at the stage of admission. Heard the Advocates.

2 The petitioner has been convicted of the offence of committing breach of Rule 9(4) of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Rules 1996 punishable under Section 23 of the Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and sentenced to suffer simple imprisonment of one

year and to pay fine of Rs.5,000/-. The breaches on the part of the petitioner found were:

- “(i) Form “F” maintained was incomplete,
- (ii) PCPNDT booklet was not available and
- (iii) Board displayed was not as per prescribed format of PCPNDT Act and was not displayed at six sonography machines.

Being aggrieved by the conviction, the petitioner preferred appeal to the Sessions Court being Criminal Appeal No. 179 of 2015. After the arguments in the appeal were heard and the appeal was fixed for judgment, on 28th October, 2015, the learned advocate appearing for respondent no.1 preferred the application at Exhibit “27” under Section 391 Code of Criminal Procedure (“Cr.P.C.) for production of two documents. The order on this application is the subject matter of the present application filed under Section 482 Cr.P.C.

3 During the course of the trial, the petitioner had challenged the authority of respondent no.1 to prosecute for the offence under the PCPNDT Act. According to him, respondent no.1 was not an appropriate authority under the PCPNDT Act. Also the Commissioner of Pimpri-Chinchwad Municipal Corporation was not appropriate authority as per Section 17 of PCPNDT Act. During trial, respondent no.1 had produced three documents to establish the authority of respondent no.1, which

were exhibited at Exhibit 60, Exhibit 61 and Exhibit 80. The document at Exhibit 60 is Notification dtd. 4th May, 2006 issued by the Government of Maharashtra whereby the Medical Director, Pimpri-Chinchwad Municipal Corporation was appointed as Competent Authority under the PCPNDT Act. Exhibit 80 is the order dtd. 29th May, 2012 of the Municipal Commissioner to give respondent no.1 additional charge of Medical Officer, Health. At the relevant time, respondent no.1 was working as Medical Superintendent, Y.C.M. Hospital. The document at Exhibit 61 is the order issued by Commissioner of Pimpri-Chinchwad Municipal Corporation for handing over the charge of respondent no.1 to Dr. Salve. It had been contended by the applicant that the three documents produced do not give the requisite authority to respondent no.1. The trial Court has rejected the contention to hold that respondent no.1 is the competent authority under the PCPNDT Act. This finding of the trial Court is under challenge in the Appeal preferred by the applicant.

4 After the submissions on the appeal were heard and it was posted for judgment on 28th October, 2015, the learned advocate for respondent no.1 filed the application at Exhibit 27 under Section 391 Cr.P.C. for production of two additional documents. They are i) Maharashtra Government Resolution No. TECH/47-303/MBI/20003-2005 dtd. 3rd February, 2006 and ii) Maharashtra Government Resolution No. MH/MR/

SOUTH 229/2006-2008. In the application, respondent no.1 merely contended that both the documents being Government Resolutions published in the Government Gazette are public documents within the meaning of Section 74 of Indian Evidence Act and that the documents are necessary to decide the appeal finally on merits. He claimed that no prejudice would be caused to the petitioner, if production of documents is permitted.

5 The petitioner strongly opposed the application contending that the application was nothing but an attempt on the part of respondent no.1 to fill up the lacunae in the evidence, at the stage of appeal. He also contended that grant of the application would cause serious prejudice to him. Further that there was no explanation offered by respondent no.1 for filing the application belatedly. According to the petitioner, respondent no.1 was well aware of the existence of the two documents. Also the documents cannot be said to be beyond the reach of respondent no.1 at the time of trial. Hence, in the absence of explanation offered for non-production of the documents during the course of the trial, the production at the appellate stage cannot be allowed. The Sessions Court allowed the application by its order dtd. 29th December, 2015, which is under challenge in the present application.

6 Perusal of the impugned order shows that it does not even consider the objections of the petitioner as regards the

absence of explanation in the application for non-production of the relevant documents, at the stage of trial. The Sessions Court has merely held that the documents are of utmost importance to decide the matter. According to it, though the application was filed at the fag end of the appeal i.e. at the stage of the judgment, it was the duty of the court to do justice between the parties. Further they are the certified copies of the public documents within the meaning of Section 74 read with Section 78 of the Indian Evidence Act. The Sessions Court observes that the documents being the Government Resolutions brought into effect by the Government of Maharashtra, after publication in the official gazette same are in the nature of delegated legislation and there can be no estoppel against the law. In its opinion even if the documents are taken on record, the same would cause no prejudice to the appellant.

7 One fails to understand as to how production of the documents, which go to the root of the matter, for the first time at the appellate stage would not cause prejudice to the applicant. The production may negate one of the grounds of challenge in the appeal. Perusal of the application of respondent no.1, at Exhibit 27 shows that it offers no explanation whatsoever for non-production at the stage of trial despite specific challenge by the applicant to the authority of respondent no.1 in filing the complaint. During the course of the trial, respondent no.1 did produce three documents as the

documents granting authority to him to file the complaint against the petitioner. If the new documents are permitted to be produced on record, it would amount to giving up of the evidence produced earlier since it is either insufficient or not proper and filling up the lacunae in evidence. Therefore, the objection by the petitioner to production of new documents at this stage is justified. Hence, the application is allowed in terms of prayer clause (b) and the application at Exhibit 27 in Criminal Appeal No. 179 of 2015 is dismissed.

(Smt. R.P. SondurBaldota, J.)