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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8816-2014 [O&M]

Date of Decision:- August 01, 2017

Amit alias Sonu

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Hemen Aggarwal, Advocate,
for the petitioner .

Mr. Satish Saini, D.A.G., Haryana.

Mr. P.P.Kaushik, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint dated 18.07.2013 (Annexure P/1) filed under Sections 3, 4, 5, 6, 18 and 23 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for short, "the Act"] and the impugned summoning order, dated 18.7.2013, Annexure P/2 passed by learned Chief Judicial Magistrate and the order dated 17.2.2014 (Annexure P/7), passed by learned Additional Sessions Judge, Kaithal whereby revision filed by the petitioner against order, Annexure P/2 has been dismissed.

2 Facts relevant for the decision of the present petition; that Dr.

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Neelam Kakkar, Deputy Civil Surgeon and District Nodal Officer, PNDD, Kaithal filed a complaint under Sections 3, 4, 5, 6, 18 and 23 of the Act against the present petitioner on the allegations that on 16.7.2013, at about 9.00 AM, a complaint was received that the present petitioner was indulging in activities of Pre-natal determination of sex against an amount of Rs.7,000/- per case at a private residence of Smt. Kailasho Devi w/o Ishwar Chand, situated at Mahadev Colony, Kaithal. On this, the District Appropriate Authority-cum-Civil Surgeon, Kaithal was also apprised of the fact, who formed a raiding party consisting of Dr. Neelam Kakkar, District Nodal Officer, PNDD; Dr. Shashi Tripathi, Dy. Civil Surgeon, Sh. P.P.Kaushik, Advocate, PNDD; Vikram Singh, ADA, Kaithal, Rajesh Kumar, Block Extension Educator; Satpal, class-IV employee and Rahul Kumar, Messenger office of Civil Surgeon, Kaithal. On finding the information reliable, the complainant arranged for a decoy customer and an amount of Rs.7,000/- was taken from the Cashier and the same was handed over to the decoy customer with the instructions to hand over the same to above named person on his demand and as per their planning. Accordingly, all the team members reached at the destination alongwith police officials, namely, Satbir Singh, Sub Inspector, Ramesh Kumar, Head Constable, Baljit Singh Head Constable and Badan Singh, EASI. Thereafter, the team members found the accused person conducting ultrasonography with his unregistered machine on the decoy customer for determining the sex. The complainant disclosed her identity to the accused. The accused tried to make an escape. However, the police officials apprehended him on the spot. The Laptop machine alongwith two

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towels were taken into possession and sealed on the spot.

3. On filing of the complaint, learned Magistrate passed the summoning order. The petitioner challenged the summoning order dated 18.7.2013 (Annexure P/2) before the Court of Sessions and the revision petition was dismissed vide order dated 17.2.2014 (Annexure P/7). Now, the present petition is for quashing of complaint, Annexure P/1 and the summoning order, Annexure P/2, passed by learned Magistrate and order dated 17.2.2014 (Annexure P/7).

4. Learned counsel for the petitioner contended that the present complaint is a misuse of the process of the law because the same is not in accordance with the provisions of the Act. The complaint filed against the present petitioner is false and the same has been filed merely because he was present in the house of Kailasho Devi and to save the real culprits. The petitioner has not committed any offence and no case is made out under Sections 3, 4, 5, 6, 18 and 23 of the Act.

5. Learned counsel for the petitioner also contended that State of Haryana has issued notification Annexure P/3 appointing Civil Surgeons as "Appropriate Authority" on 24.10.1997, but the same was not notified/published in the official gazette as per mandatory requirement of Section 17(2) of the Act. In para No. 2 of the notification dated 21.07.2009 (Annexure P/4), [Haryana Ordinance No. 6 of 2009], it was specifically mentioned that earlier notification dated 24.10.1997 was not notified. More so, Government of Haryana repealed the earlier notification dated 21.07.2009 vide notification dated 14.09.2009 (Annexure P/5) and the ordinance (Annexure P/4) stood superseded by Haryana Act No. 19 of

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2009 (Annexure P/5), published by notification in the Haryana Government gazette dated 14.09.2009.

6. Learned counsel for the petitioner also contended that on the basis of the above, there was no notified "Appropriate Authority" in the State of Haryana or in any district till 24.07.2009 and removal of such difficulty as faced by the Haryana Government falls only within the purview of the Central Government as per provisions of Section 31-A of the Act.

7. Another contention was also raised that provisions of the Act are against registered Medical Practitioner, who are registered under the Act, whereas the present petitioner was a mere driver and the complaint is not sustainable qua him. Since Civil Surgeon, Kaithal is not having any requisite authority under the Act to act as District Appropriate Authority as State of Haryana has issued gazette notification dated 28.05.2003 for constituting Multi Member District Appropriate Authority. Despite that, no such Authority has ever been constituted in the district and Civil Surgeon is neither authorised nor competent to initiate any proceedings under the Act. The present complaint as well as all the subsequent proceedings on the basis of such complaint are liable to be quashed.

8. Learned State counsel as well as learned counsel for respondent No.2 contended that all the Civil Surgeons in the State of Haryana were appointed as "Appropriate Authority" under the Act. Otherwise also, the petitioner is habitual offender as he is involved in more than one case and the present case is covered as per the decision of this Court in **Gagandeep Vs. District Appropriate Authority-cum-CMO Ambala and others**, Crl. Misc. No. M-27591 of 2013, decided on

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23.03.2015 and the present petition is liable to be dismissed. More so, the petitioner can take all the pleas at the time of trial and there are absolutely no grounds to quash the complaint or proceedings having been initiated on the basis of the complaint. He has also placed on record notification, published in the official gazette dated 7.11.2013 of the Haryana Government, appointing three member Appropriate Authority for the districts and learned counsel for the petitioner has not disputed the issuance of the said notification.

9. Contention was also raised by learned counsel for the petitioner that the matter was in controversy before Hon`ble Division Bench of this Court in **Help Welfare Group Society Vs. The State of Haryana and others, CWP-21565-2011, decided on 18.9.2013.**

“ We are of the view that once we have come to the conclusion that the Appropriate Authority has to be a three member body, to ensure compliance of Section 17(5) of the said Act, it is the State Government which would have to constitute the Advisory Committee to aid and advise each Appropriate Authority and in turn if only names have to be filled in by the Appropriate Authority of the designated persons who have to act as Members of the Advisory Committee, the same can be done.

At request of the learned Additional Advocate General, so as to ensure that the necessary action is taken by the respondents to cure the defect, we grant one month's time.”

10. As such, it is a case of non-compliance because on the date of filing of the complaint (Annexure P/1), dated 18.07.2013, there was no Multi Member body of three members and Civil Surgeon alone cannot be the “Appropriate Authority”.

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11. Having heard learned counsel for the parties and perusal of relevant records, this Court is of the considered view that the only point involved in this petition is – Whether compliance of Section 17(2) of the Act was made or not. The sequence of events in this case is as under :-

Notifications

Dated 24.10.97 (Annexure P/3)	Civil Surgeons were appointed as Appropriate Authority by Hy. Govt. [Health Department].
Dated 21.7.09 (Annexure P/4)	Notification, Annexure P/3 [though not published as per requirement of Section 17(2) of the Act], was notified to be deemed to have been validly made in accordance with the provisions of the Act.
Dated 14.09.09 (Annexure P/5)	Notification, Annexure P/4 was repealed .
Dated 7.11.13	Three member Appropriate Authority was notified.

12. This matter was examined in detail by this Court in **Gagandeep's case (supra)** and this Court observed that compliance of Section 17(2) of the Act was made as the “Appropriate Authority” had been notified to be Civil Surgeon by the State of Haryana. However, consequential gazette notification was not issued. The procedural defect came to the notice of the State Government in the year 2009 and at that time, notifications, Annexures P/4 and P/5 were issued. Needless to mention that such a flaw cannot be said to be fatal. At the best, the same could be termed as irregularity which has been set at rest. Similar were the observations made by Hon`ble Division Bench of this Court in **Help Welfare Group Society's case (supra)** and the relevant portion is being extracted here below again:-

“ At request of the learned Additional Advocate General, **so as to ensure that the necessary action is taken by the respondents to cure the defect, we grant one**

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month's time."

13. It is also not disputed that directions given by Hon`ble Division Bench of this Court in **Help Welfare Group Society's case (supra)** regarding setting of Multi Member body rather than Civil Surgeon alone, was duly taken care and necessary were taken. However, legal point in this case would be that this Court in **Gagandeep's case (supra)** observed that such a defect is a procedural and is not fatal to the prosecution at least for the purpose of quashing of FIR at this stage and the same observations were recorded by Hon`ble Division Bench in **Help Welfare Group Society's case (supra)**.

14. Another important aspect of the case is that the allegations in the present complaint are regarding indulging of the petitioner in illegal activities of sex determination, which is a social evil and is increasing in the society effecting the entire social set-up and needs to be checked. The petitioner being habitual offender is not entitled to any leniency.

15. It is well established principle of law that inherent power conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are initiated illegally, vexatiously or without jurisdiction and where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute the alleged offence and make out a case against the petitioner. Such a view was taken by Hon`ble Apex Court in **Union of**

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India Vs. Bajanlal, AIR 1992 SC 604. However, in the present case, if the contents of the complaint and the material available on the file and relevant provisions of law, referred to by learned counsel for the parties, are taken into consideration in the light of the above observations, it is not a case where *prima facie* case is made out or there is sufficient material available on the file to quash the present complaint.

16. Resultantly, the present petition seeking quashing of the complaint as well as summoning order, lacks merit and stands dismissed.

17. Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall have no bearing on trial.

August 01, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes