

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

CRIMINAL WRIT PETITION NO. 93 OF 2017

Dr. Sushila S. Latpate, Age
43 years, Occ. Medical
Practitioner, R/o. Latpate ... **Petitioner.**
Hospital, Jalna Road,
Bhokardan, District Jalna

VERSUS.

- 1 The State of Maharashtra,
Through Police Prosecutor,
High Court of Bombay, Bench
at Aurangabad.
- 2 Dr. Patil D.M.,
Age Major, Occ. Medical
Superintendent, Rural
Hospital, Bhokardan, Tq.
Bhokardan, Dist. Jalna. ... **Respondents.**

...
Advocate for Petitioner : Mr. S.V. Mundhe.
APP for Respondents : Mr. A.P. Basarkar

CORAM : K. L. WADANE, J.

Reserved on : 29th January, 2018

Pronounced on : 31th January, 2018

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. Heard Mr. Mundhe, learned counsel for the

petitioner and learned APP Mr. Basarkar for the respondents.

3. Brief facts of the case are stated as follows;

4. Respondent No. 2 herein filed a complaint in the Court of Judicial Magistrate First Class Bhokardan, District Jalna, against the petitioner for the offence punishable under section 23 of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred as 'the Act') for contravention of Rule 9(4) and 17(2) of The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred as 'the Rules').

5. It is alleged by the respondent No.2/ complainant that when he visited the hospital of the petitioner at that time he found that no book of the Act was kept in the Ultra Sonography Centre, 'F' form were not filled, referral slip was not kept and other record which is to be kept as per the law was not found. After filing of the complaint the learned Magistrate issued process against the petitioner by its order dated 23.01.2012. The petitioner challenged this order before the Sessions Court Jalna, by way of

revision application under section 397 of the Code of Criminal Procedure, which came to be rejected. Hence, this petition.

6. Mr. Mundhe, learned counsel for the petitioner submits that no opportunity was given to the petitioner to explain the irregularities alleged to have committed by the petitioner. Furthermore, from the contents of the panchnama dated 05.07.2011 it is seen that all the record is required under the provisions of the Act was kept however the learned Revisional Court has relied upon the report dated 06.07.2011. Mr. Mundhe, learned counsel further submitted that the petitioner is a registered owner of the Ultra Sonography Centre, but in fact, the work of sonography was done by one Dr. H.S. Kalamkar. Therefore, Dr. Kalamkar is supposed to fill the form 'F' and to maintain other records.

7. As against this, learned APP Mr. Basarkar, submitted that since the centre is registered in the name of present petitioner, therefore, it is for the petitioner to maintain all the records as required under 'the Act' and 'the Rules'.

8. The respondent No. 2/complainant alleged that the petitioner had not kept the copy of the book of

'the Act' in contravention of Rule 17(2) of 'the Rules'. As well as the petitioner had not filled the form 'F' and referral chit were also not found on the centre. Therefore, the petitioner has committed the offence punishable under section 23 of the Act.

9. There is specific allegations against the petitioner about the contravention of the Rules particularly Rules 9(4) and 17(2) punishable under section 23 of the Act. Furthermore, the respondent No. 2 in his affidavit, in para No. 4 has contended that he visited the Ultrasound Clinic of the petitioner on 05.07.2011. He found that no book of the Act was made available, 'F' form was not filled-in, no referral slip was available. Thus, the petitioner being owner of Ultrasound Clinic has violated the provisions of the Act.

10. The provision of Rule 9 sub rule 4 reads as follows :

"9. Maintenance and preservation of records-

[(1) Every genetic Counselling Centre, Genetic Laboratory, [Genetic Clinic including a Mobile Genetic Clinic], Ultrasound Clinic and Imaging Centres shall maintain a register showing, in

serial order, the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counselling, procedure or test.

“(4) : The record to be maintained by every [Genetic Clinic including a Mobile Genetic Clinic], in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.]”

11. Provision of Rule 17(2) reads as follows :

“17 **Public Information** – (1) Every [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres] shall prominently display on its premises a notice in English and in the local language or languages for the information of the public, to the effect that disclosure of the sex of the foetus is prohibited under law.

(2) At least one copy each of the Act and these rules shall be available on the premises of every [Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centres] and shall be made available to the clientele on demand for perusal."

12. On perusal of the aforesaid provisions, it is obligatory on the part of the centre holder to keep the record as referred under Rules 9(4) and 17(2) of the Rules in the center. In the present case, when the respondent No. 2 visited the Ultrasound Clinic at that time such record was not found on the Centre. Therefore, prima-facie, there is sufficient record against the applicant to proceed further in the matter.

13. Learned counsel for the petitioner relied upon the observations of this Court recorded in Criminal Writ Petition No. 4194/2014 & 4195/2014. On perusal of the facts of the case cited, it appears that, it was pertaining to the visiting Radiologist. Therefore, this Court has observed that they cannot be prosecuted for not maintaining particular record which is required to be maintained by the Genetic Clinic Centre.

14. The present case is not regarding the visiting of Radiologist. But in fact, admittedly, the petitioner is a registered owner of the Ultra Sonography Centre. Therefore, it is obligatory on her part to maintain all the records as required under the Act and the Rules.

15. In view of the above, there is no substance in the Criminal Writ Petition, therefore, it is liable to be dismissed and accordingly, it is dismissed.

16. Rule is discharged. No costs.

(K. L. WADANE, J.)

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