

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.488 OF 2013

(For Leave to Appeal - Private)

Navi Mumbai Municipal Corporation ... **Applicant**
V/s.

M/s.Manjushree Diagnostic Center & Ors. ... Respondents

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Mr.Sandeep V. Marne, Advocate for the Applicant.

Mr.C.K.Pendse i/b. Mr.Santosh D. Thakur, Advocate for the Respondent Nos.1 and 2.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 25th OCTOBER 2018.

P.C. :

1 This is an application for leave to appeal by the original complainant in order to challenge acquittal of the respondents of offences punishable under Sections 23 and 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'PCPNDT Act' for the sake of brevity)

2 Heard the learned Counsel appearing for the applicant/original complainant at sufficient length of time. He took me to the evidence of the appropriate authority who was examined as P.W.No.1 and argued that evidence of the appropriate authority goes to show that there is complete breach of provisions of Rule 9 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (hereinafter referred to as 'PCPNDT Rules' for the sake of brevity) The learned Counsel further argued that it was found that the accused persons has conducted 43 sonography tests from 15/10/2010 to 21/10/2010 and thereafter 26 sonography tests for the period from 01/11/2010 to 7/11/2010. They had failed to maintain the record as per the provisions of PCPNDT Rules. Hence, acquittal of the respondents recorded on merely technical reason needs to be revisited by this Court by granting leave as prayed.

3 The learned Counsel appearing for the respondents/accused persons opposed the application by contending that the search and seizure was not as per the provisions of law. Even the constable, who can be construed as independent witness, was kept outside the Center during the course of effecting search and seizure. The learned Counsel further argued that the person, who has taken printouts of the reports of sonography from the computer at the Center is not

examined nor certificate under Section 65-B of the Indian Evidence Act was produced during the course of the trial. As the learned trial Court has taken plausible view of the matter, the application deserves to be rejected.

4 I have carefully considered the rival submissions and also perused the record made available. It is trite that when a statute enjoins a particular thing to be done in a particular manner, then such thing should be done in that way or it should not be done at all. Section 30 of the PCPNDT Act deals with powers to search and seize record by the appropriate authority. This section provides that provisions of the Code of Criminal Procedure relating the search and seizure shall apply to every search and seizure effected under the PCPNDT Act. Section 100(4) of the Code of Criminal Procedure mandates that before making a search, services of two or more independent and respectable inhabitants of the locality should be availed. In the case in hand, the prosecuting agency had availed services of public witnesses as panch. However, it is seen from the evidence of public panch Dilip Bhoir that he was kept away while effecting search and seizure of the record from the Diagnostic Center. Even the police personnel, who accompanied the appropriate authority, were kept outside the Center at the time of effecting search and seizure. That is how without following the due process of law, the appropriate authority/P.W.No.1 seized record from the Diagnostic Center.

5 It is alleged by the prosecuting agency that record is not maintained and preserved as per Rule 9 of the PCPNDT Rules. However, once it is seen that search and seizure of the record itself was not according to the provisions of law, no penal liability can be fastened to the accused by holding that the record is not maintained as per the provisions of PCPNDT Rules.

6 Though, it is averred that some sonography tests were conducted prior to raiding the Center, the printouts of such sonography tests cannot be made admissible in evidence for want of certificate under Section 65-B of the Indian Evidence Act. The person, who has taken out the printouts from the computer, was not even examined by the prosecuting agency.

7 The case sought to be made out against the accused persons was that of employing Pre-natal Diagnostic Techniques for determining the sex of the foetus. For that purpose, a decoy patient was employed, but that trap failed. Consequently, the Center was searched and seizure of documents was effected, which is not according to the provisions of law.

8 Careful perusal of the impugned Judgment and Order of acquittal *viz-a-viz* the evidence adduced by the prosecuting agency on record does not allow me to hold that the learned trial

Court has not taken plausible view of the matter in acquittal of the respondents. In this view of the matter, no case for grant of leave is made out.

9 The application is, therefore, rejected.

(A.M.BADAR J.)