

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

W.P.No.18904 of 2018

ORDER

This writ petition is filed under Article 226 of the Constitution of India to declare the action of respondents in initiating proceedings in Cr.No.303 of 2018 on the file of Banjara Hills Police Station, as illegal, arbitrary and violation of Standard Operating Guidelines issued by the Ministry of Health and Family Welfare, Union of India pursuant to the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (for short 'the Act').

2. The first petitioner is a scanning centre and the second petitioner is its doctor. Whereas the third respondent, who is another doctor, lodged a complaint with the police alleging that the second petitioner has violated the provisions of the Act.

3. The only ground raised by petitioners before this Court is that as per the guidelines issued by the concerned authorities in exercise of powers conferred under Section 32 of the Act and as per the Code of Conduct for Appropriate Authorities under the PCPNDT Act, in guideline No.3 i.e., as far as possible, not to involve police for investigating cases under the Act as the cases under the Act are tried as complaint cases under the Code of Criminal Procedure, 1973 (2 of 1974), continuation of proceedings against the petitioners is illegal. Similarly, guideline No.9 deals with procedure for filing criminal complaint. Guideline No.9(D) deals with general instructions. According to sub-clause (d) of guideline No.9(D), the authorities have to ensure that stipulated time is given to the owner

of the centre or facility for providing explanation and order of cancellation or suspension should not be passed during this stipulated time. According to guideline No.8, procedure should be completed as per the law and a case should be filed in the Court of Judicial Magistrate of First Class/Metropolitan Magistrate (Section 28(2)) and FIR should be avoided under the PC & PNDT Act, as there is no direct role of police in the Act (Rule 18A(3)(iv)). Thus, taking advantage of these guidelines, the petitioners sought to quash the proceedings against them.

4. During hearing, learned counsel for the petitioners while reiterating the contentions would draw the attention of this Court to Section 28 of the Act that the offence is cognizable, non-bailable and non-compoundable, procedure should be followed as prescribed under the guidelines framed under the Act by exercising power under Section 32 of the Act. Therefore, the guidelines are having force of law and requested this Court to quash the proceedings.

5. Whereas the Government Pleader for Home placed reliance on the judgment of Allahabad High Court in **Dr. Rahul Malik v. State of UP and others** in W.P.No.2085 of 2017, wherein it was held that as per the provision of Section 27 of the Act, every offence under this Act shall be cognizable, non-bailable and non-compoundable. He has drawn the attention of this Court to Section 28 of the Act and that in **Dr. Rahul Malik's** case, Allahabad High Court had an occasion to deal with the provision of Section 28 of the Act and concluded that at the stage of investigation, the proceedings cannot be quashed as the offence is cognizable, non-bailable and non-

compoundable. He contended that as per the said judgment, the proceedings against the petitioners cannot be quashed at this stage and that too, the guidelines were framed inconsistent with the provisions of the Act and therefore, the guidelines will not prevail over the judgment and consequently, FIR cannot be quashed.

6. Undoubtedly, Cr.No.303 of 2018 of Banjara Hills Police Station, Hyderabad District, was registered for the offences under Sections 23 and 25 of the Act. In view of the objection raised by the counsel for petitioners, procedure to be followed against the persons, who violated the provisions of the Act, is only to file a private complaint and in fact, the Government issued those guidelines, exercising power under Section 32 of the Act. Section 34 of the Act says that every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

7. Thus, these rules and regulations have passed only in exercise of power under Section 34 of the Act and in view of these guidelines referred above, any complaint against the person, who violated the provisions of the Act, compliant case alone is to be filed but not otherwise, as per guideline No.3 of the Code of Conduct for Appropriate Authorities under the PCPNDT Act that as far as possible, not to involve the police for investigating cases under the Act as the cases under the Act are tried as complaint cases, that means, the police are not competent to investigate into the offences under the Act since it depends upon the scientific investigation by the person having knowledge in the specific field i.e., doctors. The police cannot investigate into and collect any evidence in such cases. Similarly, in the guidelines for responding to complaint, it is made clear that FIR should be avoided under the PC & PNDT Act as there is no direct role of police in the Act. This is in consonance with the rule 18A(3)(iv) of the Act. Therefore, unless those guidelines or regulations are placed before the Parliament in exercise of power under Section 34 of the Act, they will have no statutory force like any other enactment.

8. It is the contention of the counsel for the petitioners that the rule is framed contrary to the power conferred on the Government under Section 32 of the Act. But this Court cannot decide the validity of the rule or guidelines while exercising power under Article 226 of the Constitution of India to quash the crime registered against the petitioners. The judgment of the Allahabad High Court relied upon by the respondent has no application to the present facts of the

case for the reason that the Allahabad High Court did not consider these guidelines referred above. Therefore, registration of crime and investigation by the police is illegal since they are not competent and they have no role to play in the investigation. Consequently, the proceedings in C.C.No.303 of 2018 of Banjara Hills Police Station, Hyderabad, are liable to be quashed.

9. Accordingly, the Writ Petition is allowed quashing the proceedings in Cr.No.303 of 2018 on the file of Banjara Hills Police Station, against the petitioners. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

2nd July, 2018

sj

M. SATYANARAYANA MURTHY, J

