

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-30560 of 2015 (O&M)

Date of Decision: February 14, 2018

Dr. Kanwal Raj and another

.....Petitioner(s)

versus

State of Haryana (Through) District Appropriate Authority (PNDT)-cum-Civil
Surgeon, Jhajjar.

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Lovekirat Singh Chahal, Advocate
for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

Sudhir Mittal, J. (Oral)

The petitioner seeks quashing of Complaint No. 109 dated 19.07.2014/21.07.2014 (Annexure P-2) as well as the summoning order dated 11.05.2015 (Annexure P-5).

2. Undisputed facts are that a Diagnostic Centre in the name and style of M/s Parvesh Clinic is being run by its Proprietor, namely, Dr. Kamal Raj at Jhajjar. It is a technique clinic (Ultra sound Centre) and is duly registered under Sections 3 of the Pre-Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 ('hereinabove referred as PNDT Act').

3. After receiving secret information, a raid was conducted on M/s Parvesh Clinic on 23.01.2014 and many violations of the PNDT Act were found.

Consequently, FIR No.42 dated 23.01.2014 was registered at Police Station Jhajjar under Sections 23/24 of the PNDT Act, on a complaint made by Dr. Kumud Sharma, Deputy Civil Surgeon. The said FIR was cancelled by the order dated 27.11.2014 passed by the learned Judicial Magistrate, Jhajjar, pursuant to cancellation report dated 21.06.2014 prepared by the Police. Meanwhile, a complaint under Section 28 of the PNDT Act (Annexure P-2) was presented by Dr. Ramesh Dhankhar, as the District Appropriate Authority (PNDT)-cum-Civil Surgeon, Jhajjar. Pursuant to this complaint, summoning order dated 11.05.2015 (Annexure P-5) has been passed by the learned Judicial Magistrate, Jhajjar. The complaint (Annexure P-2) as well as the summoning order (Annexure P-5) are under challenge in this petition.

4. Learned counsel for the petitioner has submitted that there is violation of Section 28 of the PNDT Act inasmuch as the complaint has not been filed by the Appropriate Authority or an officer authorised by it. It is contended that the Appropriate Authority can only be a multi-member Committee comprising of three members according to Section 17 (3) of the PNDT Act and that in the present case, the complaint has been filed only by the Civil Surgeon. On the other hand, it is submitted on behalf of the State that a complaint has been filed by an authorised person and therefore, there is not violation of Section 28 of the PNDT Act. Relevant provisions of PNDT Act are reproduced below:-

17 Appropriate Authority and Advisory Committee

(2) x x x x x x x x x x x

(3) *“The officers appointed as Appropriate Authorities under sub-section (1) or sub-section (2) shall be ,-*
(a) when appointed for the whole of the State or the Union Territory, consisting of the following three members-

- (i) *an officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson;*
- (ii) *an eminent woman representing women's organisaiton; and*
- (iii) *an officer of Law Department of the State or the Union Territory concerned:*

Provided that it shall be the duty of the State or the Union Territory concerned to constitute multi-member State or Union territory level Appropriate Authority within three months of the coming into force of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002:

Provided further that any vacancy occurring therein shall be filled within three months of the occurrence.

- (b) *when appointed for any part of the State or the Union Territory, of such other rank as the State Government or the Central Government, as the case may be, may deem fit.*

(4) x x x x x x x x x x x x

(5) *The Central Government or the State Government, as the case may be, shall constitute an Advisory Committee for each Appropriate Authority to aid and advise the Appropriate Authority in the discharge of its functions, and shall appoint one of the members of the Advisory Committee to be its Chairman*

(6) x x x x x x x x x x x x

(7) x x x x x x x x x x x x

(8) *The Advisory Committee may meet as and when it thinks fit or on the request of the Appropriate Authority for consideration of any application for registration or any complaint for suspension or cancellation of registration and to give advise thereon:
Provided that the period intervening between any two meetings shall not exceed the prescribed period.*

5. The PNDT Act received the assent of the President of India on 18.05.2003 and was published in Gazette of India, extraordinary, Part-II, Section 1 dated 19.05.2003.

6. A Public Interest Litigation viz CWP-21565-2011 titled as ***Help Welfare Group Society Vs. State of Haryana*** was filed in this Court and was decided by the judgment dated 18.09.2013. Section 17(3)(b) was interpreted by the Division Bench and it was held that the Appropriate Authority, even for part of the State, has to be a multi-member Committee. Pursuant thereto, a three-member Appropriate Authority for each District of Haryana, was notified by the notification dated 07.11.2013.

Despite constituting the aforementioned Appropriate Authority, the complaint (Annexure P2) has been presented by “Dr. Ramesh Dhankhar, District Appropriate Authority (PNDT-cum-Civil Surgeon, Jhajjar)”. It is, thus, apparent that the learned trial Court was not competent to take cognizance of the said complaint. Learned State counsel however, relies upon the Minutes dated 08.01.2014 of the Advisory Committee constituted under Section 17(5) of the PNDT Act, to submit that Dr. Kumud Sharma, Deputy Civil Surgeon, Jhajjar, had been delegated the Authority to prosecute. This submission is patently without merit as Advisory Committee has been constituted for advising the Appropriate Authority and any delegation of power by it would not meet the requirements of Section 28 of the NDPT Act.

7. Thus, there is no compliance with the provisions of Section 28 of the PNDT Act and the learned Judicial Magistrate, Jhajjar could not have taken cognizance of the complaint (Annexure P2). Consequently, he could not have passed the summoning order (Annexure P5).

8. Accordingly, the said orders are quashed. It would, however, be open to the Appropriate Authority to proceed afresh with the case in accordance with law.

14.02.2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No