

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-2475-2009(O&M)

Date of decision:-20.3.2018

Dr.J.S. Sodhi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.S. Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 21.5.2008 passed by Sub Divisional Judicial Magistrate, Mobile Court at Ferozepur Jhirka vide which he had convicted accused Dr.J.S. Sodhi for contravention of Sections 4(1), 4(2), 4(3), 5(1), 5(2), 6(a) and Section 29 read with Rule 9 and 10 punishable under Section 23 of Pre-conception

and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as '*the Act*') and vide order dated 24.5.2008, the accused was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- for the commission of offence under Section 23 of the Act and Amendment 2002 & Rules made thereunder, as well as judgment dated 12.9.2009 passed by Additional Sessions Judge, Fast Track Court, Nuh vide which the said judgment was affirmed and appeal filed by the accused – convict was dismissed.

The accused-convict – Dr.J.S. Sodhi, who is petitioner before this Court prays that the revision be accepted, the impugned judgment of his conviction and order of sentence by Sub Divisional Judicial Magistrate, Mobile Court at Ferozepur Jhirka and judgment in appeal by Additional Sessions Judge, Fast Track Court, Nuh be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that on 17.9.2007, a team comprising Dr.Satish Yadav, SMO, Ferozepur Jhirka and Sh.N.K. Ahuja, Drug Inspector was constituted by the Appropriate Authority, Mewat in terms of Section 30(1) of the Act for the purpose of investigation of complaint; that the team conducted a raid at hospital of Dr.J.S. Sodhi after sending a decoy customer Smt.Omwati; that decoy customer was given currency notes, the distinctive numbers of which had been noted down and spot memo was prepared; that the decoy customer had deposited that amount with the hospital for getting sonography conducted; that accused had issued a report of ultrasound besides giving printed ultra sonography to Omwati; that on getting a pre

fixed signal, the team had conducted raid; that the accused could not produce any registration certificate as required under the Act; that during the investigation Rs.500/- currency note so handed over to decoy customer by the Investigating Officer was recovered. The complaint was filed in the Court.

On presentation of complaint, notice was issued to the accused, who appeared and was admitted to bail.

Thereafter, the complainant led evidence both oral and documentary. The oral evidence being as under:

CW1 Dr.Satish Yadav, SMO/Incharge of raiding party, who had filed a complaint in the Court of Magistrate. CW2 Omwati, Staff Nurse in Mandi Khera Hospital, who had acted as decoy customer. CW3 Pawan Kumar, having a medical store at Punhana, an independent witness of proceedings which took place on 17.9.2007. CW4 Ravinder Kumar, having a medical store at Punhana alleged to be an independent witness of the raid proceedings on 17.9.2007. CW5 Narender Ahuja, Senior Drug Inspector, Faridabad having additional charge of Mewat i.e. one of the official authorized by Civil Surgeon, Mewat for conducting raid along with Dr.Satish Yadav and Smt.Omwati. CW6 Khurshid Ahmed, driver in the office of Civil Surgeon, Mewat, who had accompanied Omwati, Staff Nurse, to the hospital of accused. CW7 Shri Kishan, Private Driver of N.K. Ahuja, SDI, Faridabad. CW8 Dr.D.V. Saharan, Director ESI Health Care, Haryana, Chandigarh, who proved various documents.

The documents proved in evidence were as follows:

1. Ex.CW1/A - an office order dated 17.9.2007 issued by

Dr.D.V. Saharan for conducting raid by authorizing Dr.Satish Yadav, SMO, Ferozepur Zhirkha, Mr.Narender Kumar Ahuja, Drug Inspector, Faridabad Mewat, Smt.Omwati, Staff Nurse/decoy patient.

2. Ex.CW1/B - spot memo dated 17.9.2007 at 11:45 a.m. prepared by Dr.Satish Yadav before proceeding for conducting raid along with list of currency notes.
3. Ex.CW1/D - referral slip dated 17.9.2007.
4. Ex.CW1/D - seizure form prepared by Dr.Satish Yadav on 17.9.2007.
5. Ex.CW1/E - spot memo containing five pages prepared by Dr.Satish yadav on 17.9.2007.
6. Ex.CW1/F - a letter dated 20.9.2007 issued by Dr.Satish Yadav.
7. Ex.CW2/A - an OPD card issued by Dr.J.S. Sodhi in the name of Omwati on 17.9.2007.
8. Ex.CW2/B - report of Ultrasound issued by the accused.
9. Ex.CW2/C - diagram of ultrasound of Smt.Omwati.
- 10.Ex.CW2/D - receipt of a sum of Rs.250/-.
- 11.Ex.CW2/E - a currency note of Rs.500/- recovered from Dr.J.S. Sodhi at the time of raid.
- 12.Ex.CW2/F - statement of Omwati recorded by Dr.Satish Yadav.
- 13.Ex.CW8/A - currency notes.

14.Ex.CW8/B - notice.

15.Ex.CW8/C to Ex.CW8/E - postal receipts of notice.

16.Ex.CW8/F - notice.

17.Ex.CW8/H - complainant.

18.x.CW8/G - reply to notice.

Learned Sub Divisional Judicial Magistrate, Ferozepur Zhirka charge-sheeted the accused for the contravention of Sections 4(1), 4(2), 4(3), 5(1), 5(2), 6(a) and Section 29 read with Rule 9 and 10 punishable under Section 23 of the Act, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

After framing of charge, accused was given another opportunity to cross-examine the witnesses examined by the complainant.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to such accused but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Sub Divisional Judicial Magistrate, Mobile Court at Ferozepur Zhirka convicted and sentenced the accused as mentioned supra, the appeal preferred against the judgment of conviction and order of sentence passed by the Sub Divisional Judicial Magistrate, Mobile Court at Ferozepur Jhirka was also decided against the accused by learned Additional Sessions Judge, Fast Track Court, Nuh, which left petitioner – accused aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record.

Here it is relevant to mention the concluding para of the judgment passed by Sub Divisional Judicial Magistrate, Mobile Court at Ferozepur Jhirka, which is as under:

Thus, clearly the accused has committed an offence by not only conducting sonography without proper prior permission of the District Appropriate Authority, but also by shifting the machines of genetic laboratory and genetic clinic for sex determination, which is not an offence not against the girl child, but also against the humanity as these kinds of acts has led to disparity in sex ratio in the State of Haryana and has also caused an indelible mark on the face of our society. Thus, I am of the considered view that the prosecution has proved its case against the accused for the contravention of Section 4(1), 4(2), 4(3), 5(1), 5(2), 6(a) 6(b) and Section 29 read with Rule 9) 10 punishable under Section 23 of PC and PNDT Act. Therefore, the accused is held guilty for the commission of the aforesaid offence and is convicted thereunder. Let the accused be heard on quantum of sentence on 24.5.2008.

However, while observing so, the trial Court seems to have lost sight of several aspects. Firstly, it was not proved on the record that sonography was conducted for the purpose of determination of sex of the

foetus. As a matter of fact the decoy was not even pregnant. If it was so then how could the test be conducted to determine the sex of the foetus. This fact seems to have missed attention of the trial Court as well as the Appellate Court. If we see the statement of objects and reasons for the enactment of the Act, then it comes out that it was to prohibit Pre-Natal diagnostic Techniques for determination of sex of the foetus leading to female foeticide. Section 5 of the Act provides that no person referred to in clause (2) of Section 3 shall conduct the pre-natal diagnostic procedures unless he has explained all known side and after effects of such procedures to the pregnant woman concerned; he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and a copy of her written consent obtained under clause (b) is given to the pregnant woman. Sub-Section 2 provides that no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.

Section 6 of the Act prohibits determination of sex before or after conception.

Again the important thing is that there should be a pregnant woman undergoing a pre-natal diagnostic test. But here the decoy customer sent was not pregnant. A perusal of the testimony of such witness PW2 Omwati is very crucial. In the very opening lines, she stated that she had gone to Sodhi Nursing Home since she was having pain in the abdomen and she had been sent there by Civil Surgeon, that really

takes the wind out of case of complainant since she stated that she had gone there for ultrasound on account of having pain in abdomen and she nowhere stated that she had gone there asking for ultrasound to determine the sex of the foetus being carried by her. As a matter of fact, if she was not in the family-way, there could not be any occasion for approaching the nursing home for ultrasound for the purpose of determination of sex of the foetus. Since she had not supported the case of the complainant in that regard, no attempt was made to get her declared as a hostile witness and to confront her with her previous statement, which means the prosecution/complainant admitted her testimony as such. In the concluding lines of her examination-in-chief, she stated that she was not in family-way and had not gone there as a decoy customer, that also gives a jolt to the case of prosecution. In her cross-examination to many material questions, she could not give any proper reply. She was unable to give the date of raid, she stated that no order was passed by CMO directing her to act as a decoy customer, she stated that she does not recollect as to when the raid proceedings got started and when got concluded. Therefore, no violation of Section 5 or 6 of the Act is shown to have been committed by the accused, which might have called for his being punished under Section 23 of the said Act.

As regards shifting of machines of genetic laboratory and genetic clinic, Section 18 of the Act deals with Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics. Admittedly, such centre of the accused is registered in State of Haryana. The petitioner- accused is registered with Appropriate Authority,

Faridabad having registration No.405 dated 16.9.2004 valid up to 15.9.2009, in terms of document Ex.D1 and according to him on 11.9.2007, he had sent information to Civil Surgeon, Mewat along with other documents including the degree and registration certificate depositing requisite fee of Rs.3,000/- under the impression that Civil Surgeon, Mewat is Appropriate Authority, which fact has been admitted by Civil Surgeon, Dr.D.V. Saharan as well as Dr.Satish Yadav, in that way necessary compliance of Rule 13 of the Act had been made. Rule 13 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 provides that every Genetic Counselling Centre, Genetic Laboratory (Genetic Clinic, Ultrasound Clinic or Imaging Centre) shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority at least thirty days in advance of the expected date of such change, and seek re-issuance of certificate of registration from the Appropriate Authority, with the changes duly incorporated.

Therefore, I find that judgments passed by the Courts below are not sustainable suffering from illegalities and infirmities pointed out above and are bound to be set aside by way of acceptance of the revision petition.

Thus, the revision petition stands accepted and the impugned judgments of conviction and order of sentence are set aside and the petitioner/accused is acquitted of the charge for which he has been held guilty and convicted vide the impugned judgments. The petitioner is on bail and as such he and his surety also stand discharged from their

liability of bail bonds and surety bonds.

Necessary intimation be sent to the quarter concerned.

20.3.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No