

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8672 of 2016

Date of Decision: 14.09.2018

Sona Goel

....Petitioner

VERSUS

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.S. Shekhawat, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

None for respondent no.2.

SURINDER GUPTA, J.

Petitioner-Dr. Sona Goel in this petition filed under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') has sought quashing of Complaint Case No. COMA/0000135/2015 dated 12.08.2015 (Annexure P-1), titled “State of Haryana through Dr. Ramesh Kumar vs. Dr.Sona Goel and another” instituted for offence punishable under Section 28 of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'PNDT Act'), pending in Court of Judicial Magistrate Ist Class, Yamunanagar, in which she has been summoned vide order dated 12.08.2015 (Annexure P-2) to face trial for offences punishable under Sections 23/25 of PNDT Act.

Brief Facts of complaint:-

2. On receipt of complaint that sex determination tests were being conducted at S.P. Hospital, opposite Saraswati Vidya Mandir School, Chhachhrauli Road, Jagadhari, a decoy patient was sent to verify the

fact and it was found that clinic was ready to do sex selection/determination test. On 31.07.2015, Deputy Commissioner, Yamunanagar directed *Tehsildar*, Deputy Civil Surgeon, Yamunanagar, DCWO and one police officer to conduct raid on the hospital. The team took assistance of a decoy patient, namely, Asha by giving her 34 currency notes of the denomination of ₹500/- each (total ₹17,000/- having short signatures of Dr.Vijay Dahiya and DSP Madan Lal). She was directed to go to petitioner in the hospital and on paying ₹17,000/- ask petitioner to determine the sex of fetus in her body.

3. The decoy patient contacted accused no. 2-Usha, agent of accused no. 1. She (Usha) took her to clinic of petitioner situated within the premises of S.P. Hospital, Jagadhari, where petitioner received ₹17,000/- and returned ₹2000/- as concession. She filled a form and started doing tests for determination of sex of fetus in the body of decoy patient on her sonography machine. The raiding party entered and raided the clinic, where the sex determination test was going on. The team also recovered film of USG of decoy patient and ₹15,000/- from the petitioner. Remaining ₹2000/- were also collected from the decoy patient. On verification it was found that these were the same currency notes, which were having signatures of Dr. Vijay Dahiya and DSP Madan Lal. The raiding party took into possession Form-F of decoy patient, her incomplete ultrasound, OPD slip with carbon copy, ultrasound print recovered from USG machine of petitioner, ultrasound record register, PNDT inspection form. Spot memo was prepared, which the petitioner refused to sign and thereafter complaint was filed in Court.

4. Learned Magistrate on perusal of complaint found a *prima*

facie case to proceed against petitioner and her co-accused and both were ordered to be summoned to face trial for offence punishable under Section 23 of PNDT Act.

5. Learned counsel for the petitioner has submitted that complaint has not been filed by competent authority. He has referred to office order dated 07.08.2015, which shows that District Appropriate Authority-cum-Civil Surgeon, Yamunanagar, who was authorized to institute and conduct all proceedings in connection with complaint against petitioner and her co-accused. Civil Surgeon, Yamunanagar, had retired on 31.07.2015 and there was no order authorizing Dr. Ramesh Kumar, Senior Medical Officer, Civil Hospital, Yamunanagar to take charge of Civil Surgeon and act as District Appropriate Authority under the PNDT Act. The raid was conducted on the day Civil Surgeon Dr. V.P. Mann had retired. Complaint was filed by Dr. Ramesh Kumar in his capacity as Civil Surgeon on 12.08.2015. At that time he was neither Civil Surgeon nor District Appropriate Authority under the PNDT Act. This fact is clear from perusal of order passed by Principal Secretary to Government of Haryana, Health Department dated 09.09.2015 and information taken under the Right to Information Act (Annexure P-5). Conducting of raid and filing of complaint by Dr. Ramesh Kumar is the result of enmity between Dr. Ramesh Kumar on one hand and Dr. Anoop Goel, husband of petitioner, who was also posted in Civil Hospital, Yamunanagar, on other hand. Just to harass and humiliate Dr. Anoop Goel, Dr. Ramesh Kumar on the day of retirement of Civil Surgeon manipulated the raid and filing of complaint against petitioner. The facts as stated in complaint are also not correct as decoy customer Asha approached the petitioner as a normal patient. It was her 4th gravida and as per medical

science it was a high risk pregnancy. She was having 2½ – 3 months pregnancy and expected date of delivery was 17.02.2016. After preparing prescription slip, she was advised ultrasound to check fetal well being and mortality as she wanted the complete package of her check up and delivery in the hospital of petitioner. Second copy of prescription was also prepared to send the same to Civil Surgeon. Two copies of Form-F of decoy customer were prepared, as such, all the required formalities were completed in duplicate so that one copy may be sent for record of Civil Surgeon as per requirements of PNDT Act. Even at the stage of 10 to 12 weeks of pregnancy, the sex of child in the womb cannot be determined.

6. Learned State counsel has argued that State of Haryana vide notification as per provisions of Section 17 (2) of PNDT Act has constituted District Appropriate Authority, which consists of following persons:-

- (i) Civil Surgeon-cum-Chairman, District Appropriate Authority, Yamunanagar.
- (ii) District Attorney, District Appropriate Authority Member, Yamunanagar.
- (iii) POICDS, District Appropriate Authority, Yamunanagar.

7. On complaint that sex selection/determination is going on at S.P. Hospital of petitioner, a decoy patient was sent to verify the fact. It was found that clinic of petitioner was ready to do sex selection/determination tests. On 31.07.2015, Deputy Commissioner, Yamunanagar directed following officers to conduct raid on the said hospital:-

- (i) Sh. Darshan Kumar, Tehsildar, Jagadhari.
- (ii) Dr. Vijay Dahiya, Deputy Civil Surgeon, PNDT, Yamunanagar.

(iii) Smt. Manisha Khanna, DCWO, Yamunanagar.

(iv) One police officer as per direction of S.P. Yamunanagar.

8. On intimation from Deputy Commissioner, District Appropriate Authority authorized following officers to conduct the raid:-

(i) Sh. Darshan Kumar, Tehsildar, Jagadhari.

(ii) Dr. Vijay Dahiya, Deputy Civil Surgeon, PNDDT, Yamunanagar.

(iii) Smt. Manisha Khanna, DCWO, Yamunanagar.

(iv) Sh. Madan Lal, DSP, Yamunanagar.

9. As per allegation in complaint, petitioner received a sum of ₹17,000/- from decoy patient and returned ₹2000/- as concession. She filled a form and started ultrasound for determination of sex of fetus in the body of decoy patient through her sonography machine. When raiding party entered her OPD clinic, sex determination of fetus was going on. The team raised the film of USG of decoy patient and recovered ₹15,000/- from drawer of the table. The team also found Form-F of Asha incomplete, ultrasound report with carbon copy and OPD slip with carbon copy. As per office order (Annexure P-3) authorization was given to Chairman, District Appropriate Authority to file the complaint, which was filed on 12.08.2015. It has, however, been admitted in para 3 of the reply, that by 12.08.2015 there was no order appointing Dr. Ramesh Kumar as Civil Surgeon. Para 3 of the reply to this effect is reproduced as follows:-

“3. That the contents of para no. 3 of the petition are wrong, incorrect and hence denied. Due procedure was adopted while conducting the raid. The present complaint has been filed by the District Appropriate Authority as

explained in preliminary objections. It is correct that Dr. Ved Pal Mann was Civil Surgeon on 31.07.2015 and he was to retire on 31.07.2015 after duty hours. Dr. Ved Pal Mann handed over charge of post of Civil Surgeon to the next senior most officer, who was Dr. Ramesh Kumar as per general norms and practice though there was no government orders regarding that. Accordingly, Dr. Ramesh Kumar took over charge from Dr. Ved Pal Mann as Civil Surgeon as the post of Civil Surgeon cannot be kept in abeyance. The order dated 07.08.2015 (Annexure P-3) is self speaking and question of any fabrication of the order does not arise at all. It is absolutely wrong that on 07.08.2015, Dr. Ramesh Kumar was not Civil Surgeon. Dr. Ramesh Kumar worked or officiating Civil Surgeon upto 10.09.2015 and thereafter, Dr. Vijay Garg the present Civil Surgeon took over charge from Dr. Ramesh Kumar on dt. 10.09.2015.”

10. Learned State counsel has argued that order dated 03.09.2015 issued by Haryana Government was having retrospective effect as post of Civil Surgeon cannot be kept in abeyance and next medical officer took over the charge of Civil Surgeon in the event of retirement of a Civil Surgeon, as such, Dr. Ramesh Kumar was authorized to conduct raid and file the complaint.

11. A vital question, which arises for consideration in this petition, is as to whether complaint has been filed by competent person. Section 28

of PNDT Act reads as follows:-

“28. Cognizance of offences – (1) No court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government, as the case may be, or the Appropriate Authority; or

(b) xx xx xx xx”

12. It is admitted that Dr. V.P. Mann, Civil Surgeon, Yamunanagar had retired on 31.07.2015. It is also not disputed that Dr. Ramesh Kumar took the charge of Civil Surgeon on 10.09.2015. The present complaint was filed by him in his capacity as Chairman, District Appropriate Authority-cum-Civil Surgeon, Yamunanagar on 12.08.2015 i.e. much prior to the day he took charge of Civil Surgeon. As per notification issued by Haryana Government, as per power conferred under Section 17 (2) PNDT Act, the District Appropriate Authority comprise of Civil Surgeon-cum-Chairman, District Attorney and POICDS. On 31.07.2015, Dr. V.P. Mann was Civil Surgeon, as such, there was no question of Dr. Ramesh Kumar taking the charge of Civil Surgeon. He was authorized to look after the work of Civil Surgeon, Yamunanagar vide order dated 03.09.2015, copy of which has been placed on file as Annexure P-4, which reads as follow:-

“After retirement of Dr. Ved Pal Mann, Civil Surgeon, Yamunanagar on 31.07.2015, the work of Civil Surgeon, Yamunanagar will be looked after by Dr. Ramesh Kumar, Senior Medical Officer, Civil Hospital, Yamunanagar

including the work of PNDT Act with immediate effect.

*Dated, Chandigarh
the 3rd September, 2015*

*R.R. Jowel
Principal Secretary to Government
Haryana, Health Department.”*

13. It is not disputed that office of Civil Surgeon has provided following information (Annexure P-5) under the Right to Information Act:-

- “1. Point No. 1 – There was no order of Government of Dr. Ramesh to take over the charge of Civil Surgeon on 31st July, 2015. But Dr. V.P. Mann who retired as Civil Surgeon on dated 31st July, 2015 handed over the charge to Dr. Ramesh who was the senior most in the district.*
- 2. Point no. 2 – Yes, there was an order of Principal Secretary to Government, Haryana allowing Dr. Ramesh to join as Civil Surgeon including the work of PNDT Act which was issued on dated 09.09.2015 and received in this office on dated 15.09.2015.”*

14. Above documents show that Dr. Ramesh Kumar was neither Civil Surgeon nor Chairman, Appropriate Authority, as such, not competent to participate in the meeting of District Appropriate Authority or to take any decision on behalf of District Appropriate Authority, Yamunanagar. Vide office order dated 07.08.2015 (Annexure P-3), Chairman of District Appropriate Authority-cum-Civil Surgeon, Yamunanagar was authorized to institute and conduct all the relevant act in pursuance of complaint against Dr. Sona Goel. Office order issued by District Appropriate Authority, Yamunanagar, reads as follows:-

*“As per authorization given to the team by the
Chairman, D.A.A./Civil Surgeon, Yamunanagar, a raid was*

conducted on 31.07.2015 in the premises of S.P. Hospital, Jagadhri. Dr.Sona Goel was caught in the premises of S.P. Hospital, Jagadhri to conduct sex determination which is clear violation of provision of PC and PNDT Act, 1994. We (Chairman and members of D.A.A.) hereby authorizes Chairman of District Appropriate Authority-cum-Civil Surgeon, Yamunanagar to institute and conduct all relevant act in persuasion of the said complaint. S.P. Hospital, Jagadhri and Dr. Sona Goel, who was caught while conducting the sex determination test on the patient.”

15. A perusal of above order shows that firstly, Dr. Ramesh Kumar was not competent to pass such order as he was not Civil Surgeon or Chairman, District Appropriate Authority on 07.08.2015. Secondly, Chairman of District Appropriate Authority-cum-Civil Surgeon, Yamunanagar was authorized to institute complaint against Dr. Sona Goel and Dr. Ramesh Kumar, who had not been appointed as Civil Surgeon, was not competent to file complaint on 12.08.2015.

16. As per provisions of Section 28 of PNDT Act, learned Additional Chief Judicial Magistrate was not competent to take cognizance of the offence as the complaint had not been filed before the court by a competent person. Dr.Ramesh Kumar was not even authorized to look after the work of Civil Surgeon, Yamunanagar till State Government had passed order dated 03.09.2015 (Annexure P-4) authorizing him to look after the work of Civil Surgeon, Yamunanagar including the work of PNDT Act. This order was issued on 09.09.2015. A bare perusal of this order shows that it was not given any retrospective effect.

17. As a sequel of my above discussion, it is apparent and abundantly proved on file that Dr. Ramesh Kumar was not competent to file complaint dated 12.08.2015 and cognizance of the same taken by Additional Chief Judicial Magistrate is barred under Section 28 of PNDT Act.

18. In view of above, it is not required to look into other submissions of learned counsel for the petitioner. The complaint filed and cognizance of the same taken by learned Magistrate has resulted in abuse of process of law and same is liable to be quashed.

19. For the reasons as discussed above, the instant petition is allowed and Complaint Case No. COMA/0000135/2015 dated 12.08.2015 (Annexure P-1), titled "State of Haryana through Dr. Ramesh Kumar vs. Dr.Sona Goel and another" and summoning order dated 12.08.2015 (Annexure P-2) along with all consequential proceedings arising therefrom, qua petitioner, are quashed.

September 14, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No