

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

Civil Writ Petition No.21926 of 2017
Date of Decision: October 04, 2018

Indian Radiological and Imaging Association

...Petitioner

Versus

Union of India & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. S.S.Narula, Advocate &
Mr. Sidharth Grover, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

AMIT RAWAL, J.

Petitioner Association through the instant writ petition challenged the vires of provisions of Section 27 of the Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 1994 Act) being ultra vires to the Constitution of India and Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 and as well as setting-aside the instructions issued by respondent No.3- the Director General of Police, Haryana (Annexure P-2).

It was argued that the expression “cognizable and non-bailable” as provided under Section 27 of 1994 Act and being a special provision of law, does not support the definition of expression “cognizance” provided

under Section 2(c) of the Code of Criminal Procedure (for short, Code). The police and State authorities are misinterpreting the provisions, though they do not have any jurisdiction under 1994 Act to try and entertain the complaints, much less conduct enquiry, investigation, search or seizure. The provisions of Section 27 are in complete derogation of and diametrically opposite to Section 28 of 1994 Act.

Section 154 of the Code deals with the procedure of providing information in commission of cognizable offences, but that power cannot be exercised for alleged offences under 1994 Act. Power of appropriate authorities, as per Section 17-A, has been provided under 1994 Act. Being a complete Code, any action of the police to cause arrest of a person would be in violation of Article 21 of the Constitution of India. Powers of the police officers to arrest without warrant have also been specified under Section 41 of the Code. Appropriate authorities have been vested with the powers to investigate into the complaints and maintain transparency in the follow up action of the complaints during the investigation as per provisions of Rule 18A of the rules framed under 1994 Act. Thus, for all intents and purposes, all the powers have been vested with the appropriate authorities to deal with the complaints, search and seizure and, thus, police cannot be permitted to take action. The Director General of Police, Haryana erroneously issued instructions (Annexure P-2) considering the offences under the 1994 Act to be cognizable offence under the Code. The aforementioned instructions are not in tandem with instructions issued to all the Civil Surgeons by the appropriate authorities.

Upon notice, State of Haryana and Union of India opposed the maintainability of the writ petition on the premise that Single Bench of this

Court, vide order dated 05.08.2014 passed in CRM-M No.4211 of 2014 (Dr.Hardeep Singh & another Versus State of Haryana & another), while noticing the provisions aforementioned, particularly Sections 27 and 28 of 1994 Act by framing the questions, referred the matter for constitution of a larger bench. In lieu thereof, Division Bench of this Court, vide order dated 05.08.2014, answered the questions, thus, no cause of action arises for determination.

Arguments heard. Record perused.

Though the provisions of 1994 Act and various other rules have been extracted, but it would be appropriate to reproduce Sections 27 and 28 of 1994 Act. The same read thus:-

“Section 27- Offence to be cognizable, non-bailable and non-compoundable-Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Section 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 State Government, as the case may be, or the Appropriate Authority; or

(b) a person who has given notice of not less than thirty days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.--For the purpose of this clause, "person" includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of

subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.”

The questions raised with regard to the taking of the cognizance under 1994 Act framed by the Single Bench in the order dated 05.08.2014 and as well as the answers given by the Division Bench in the order dated 04.12.2014 read as under:-

“Questions:

- (1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?
- (2) Whether the report under Section 173 Cr.P.C. Along with the complaint of an Appropriate Authority can be filed to the Court?
- (3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?

Answers:

- “(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.
- (2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.
- (3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

In view of such circumstances, we are of the view that the points raised in the present writ petition have already been answered by the

coordinate bench of this Court prior to the institution of the present case.

No further orders are required for interpretation of the aforementioned provisions. We do not find any merit in the writ petition. The same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

October 04, 2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No