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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.2378 of 2019

Dr. Amritlal Rohledar, S/o Late Balveer @ Kari Rohledar, aged about 56 years, R/o Kutela Chowck, Kutela, Saraypali, District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Health & Family Welfare Department, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station Raipur, Head Post Office Raipur, Civil & Revenue District Raipur (C.G.)
2. State of Chhattisgarh, through its Secretary, Home Department, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station Raipur, Head Post Office Raipur, Civil & Revenue District Raipur (C.G.)
3. Superintendent of Police, Mahasamund, Civil & Revenue District Mahasamund (C.G.)
4. Station House Officer, Police Station Saraypali, Civil & Revenue District Mahasamund (C.G.)
5. The Sub Divisional Magistrate (Revenue), Tahsil Saraypali, District Mahasamund (C.G.)
6. Naib Tahsildar, Saraypali, District Mahasamund (C.G.)
7. Jafar Ulla Khan, District President Youth INTUC, Mahasamund, District Mahasamund (C.G.)

---- Respondents

For Petitioner: Mr. Prafull N. Bharat, Advocate.

For Respondents No.1 to 6 / State: -

Mr. Mateen Siddiqui, Deputy Advocate General and
Mrs. Astha Shukla, Panel Lawyer.

For Respondent No.7: -

None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/12/2019

1. The short question that pronouncedly emanates for consideration in this petition under Section 482 of the CrPC is, whether the offence punishable under Section 23(1) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'the PCPNDT Act') can be investigated by the jurisdictional police and the said police is competent to file charge-sheet before the jurisdictional criminal Court for punishing the medical practitioner / accused of the said offence(s) i.e. the petitioner herein in the present case?
2. The petitioner herein is a qualified medical practitioner and being on Government roll, he was posted as Block Medical Officer at Community Health Centre, Saraipali, District Mahasamund, on the date of lodging first information report against him. Respondent No.7 herein filed a complaint to the Sub-Divisional Officer (Revenue), Saraipali that the petitioner is having a sonography machine installed in his residence and is engaged in sex determination which is in contravention of Section 6 of the PCPNDT Act. The said complaint was taken cognizance of by the Sub-Divisional Officer (Revenue) and a show cause notice was issued to the petitioner on 14-1-2019 to which he replied stating inter alia that his wife Dr. Chandrakiran Rohledar, who is a gynaecologist, is having a clinic in the name and style of Divya Pragati Clinic at Kutela, Saraipali, and she is duly registered in the office of the Chief Medical & Health Officer (CMHO) and she is running the sonography machine and condition of license granted to her is not being violated and sex determination is not done therein. But the Sub-Divisional Officer (Revenue) did not find favour with the

said reply to show cause notice so issued and ultimately, the Collector directed the CMHO for making enquiry on the said complaint. The CMHO conducted enquiry but nothing was found against the petitioner and accordingly, he submitted report to the Collector finding no merit in the complaint. But thereafter, the Sub-Divisional Officer (Revenue) made enquiry and found that in the residence of the petitioner herein, sonography machine is being run and he is not maintaining register in Form F and other discrepancies were also noticed which is an offence punishable under the provisions of the PCPNDT Act and accordingly, directed the Naib Tahsildar to register first information report (FIR) against the petitioner on 1-10-2019, and accordingly, FIR was registered against the petitioner on 1-10-2019 itself for commission of offence under Section 23(1) of the PCPNDT Act.

3. The petitioner herein seeks quashment of FIR so registered against him under Crime No.308/2019 at Police Station Saraipali, District Mahasamund for the offence punishable under Section 23(1) of the PCPNDT Act, principally on the ground that though the offence punishable under Section 23(1) of the PCPNDT Act is cognizable and non-compoundable offence under Section 27 of the said Act, but cognizance of the offence can be taken by the Court only on the complaint made by 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; and the Naib Tahsildar is not the appropriate authority within the meaning of Section 17(2) of the PCPNDT Act read with notification dated 3-10-2007 issued by the State Government and further, that no FIR can be

registered even by the authorised officer and only the complaint can be filed under Section 28(1) by the appropriate authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, and in this case, it is the District Magistrate or the Block Medical Officer. As such, registration of FIR and consequent investigation is entirely without jurisdiction and without authority of law.

4. Return has been filed on behalf of the State / respondents No.1 to 6 stating inter alia that on the complaint filed by respondent No.7, the Sub-Divisional Officer (Revenue), Saraipali, investigated the matter and found the petitioner operating the sonography machine in violation of the operative conditions pursuant to which the competent authority directed the Naib Tahsildar to register FIR against the petitioner and accordingly, FIR was registered against the petitioner. Report of the Sub-Divisional Officer (Revenue) has been filed as Annexure R-1 with the return. It has further been pleaded that since the offence is cognizable offence, the Sub-Divisional Officer (Revenue) is absolutely justified in directing the Naib Tahsildar to register FIR against the petitioner under Section 23(1) of the PCPNDT Act, as offences under the PCPNDT Act can be investigated by the jurisdictional police and no exception can be taken of that investigation by the petitioner, as such, the petition under Section 482 of the CrPC deserves to be dismissed.
5. Mr. Prafull N. Bharat, learned counsel appearing for the petitioner, would submit that the offence registered against the petitioner under Section 23(1) of the PCPNDT Act and further investigation of the said

offence undertaken by the jurisdictional police is entirely without jurisdiction and without authority of law. Though the offence is cognizable under Section 27 of the PCPNDT Act, but, yet, in view of the bar created in Section 28(1)(a) of the said Act read with Rule 18A(3)(iv) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 (for short, 'the Rules of 1996'), no FIR can be registered against the petitioner and only the jurisdictional criminal Court can take cognizance of the offence on the complaint filed by 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, in this case, the Block Medical Officer by notification issued on 3-10-2007, and the Station House Officer is not authorised even to investigate the offence in view of Section 28(1)(a) of the PCPNDT Act. Therefore, registration of FIR and further investigation pursuant to the said FIR is without jurisdiction and without authority of law. Mr. Bharat, learned counsel for the petitioner, would further submit that the petitioner is a medical officer and his wife, who is a duly qualified gynaecologist, is running Sonography machine in her clinic in the name and style of Divya Pragati Clinic at Kutela, Saraipali. Therefore, the petitioner has unnecessarily been implicated in the offence by the State Government and he was also placed under suspension, but the order of suspension has been stayed by this Court in the writ petition filed by the petitioner and as such, taking the contents of the FIR as it is, no offence is made out against the petitioner and the entire FIR deserves to be quashed in the light of the decision rendered by the Supreme Court in the matter

of **State of Haryana and others v. Bhajan Lal and others**¹.

6. Mr. Mateen Siddiqui, learned Deputy Advocate General appearing for the State/respondents No.1 to 6, would oppose the submissions of learned counsel for the petitioner and submit that though cognizance of the offence under the PCPNDT Act has to be taken on the complaint of the appropriate authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, under Section 28(1)(a) of the PCPNDT Act, but since the said offence is cognizable offence by virtue of Section 27 of the PCPNDT Act, therefore, the police is authorised to investigate the offence and ultimately, charge-sheet has to be filed by the officer authorised by the State Government under Section 28(1) of the said Act. Mr. Siddiqui, learned State counsel, would further submit that since the petitioner himself is the authorised officer within the meaning of Section 28(1)(a) read with Section 17(2) of the PCPNDT Act, the matter was got investigated by the Sub-Divisional Officer (Revenue) who made enquiry pursuant to the direction issued by the Collector and at the instance of the Sub-Divisional Office (Revenue), FIR was registered against the petitioner which cannot be taken exception to by the petitioner. As such, registration of offence against the petitioner and investigation by the jurisdictional police are strictly in accordance with law and the petition deserves to be dismissed.
7. None present for respondent No.7, though served with the notice of petition under Section 482 of the CrPC.
8. I have heard learned counsel for the parties and considered their rival

¹ 1992 Supp (1) SCC 335

submissions made herein-above and went through the record with utmost circumspection.

9. The PCPNDT Act has been enacted to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto. Chapter I of the PCPNDT Act contains Section 2 also which is definition clause. Section 2(a) defines 'appropriate authority' which states as under: -

“(a) “Appropriate Authority” means the Appropriate Authority appointed under section 17;”

10. Likewise, clause (j) of Section 2 of the PCPNDT Act defines 'pre-natal diagnostic techniques' and clause (k) defines 'pre-natal diagnostic test' which are as follows: -

“(j) “pre-natal diagnostic techniques” includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

(k) “pre-natal diagnostic test” means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;”

11. Section 3A of the PCPNDT Act provides for prohibition of sex-selection which reads as follows: -

“3A. Prohibition of sex-selection.—No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a

woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.”

12. Section 6 of the PCPNDT Act provides for determination of sex prohibited which states as under: -

“6. Determination of sex prohibited.—On and from the commencement of this Act,—

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.”

13. Section 17 of the PCPNDT Act provides for appropriate authority and advisory committee and sub-section (2) of Section 17 provides for notification by the State Government appointing appropriate authority for the purpose of this Act. Sub-sections (1) and (2) of Section 17 state as follows: -

“17. Appropriate Authority and Advisory Committee.—

(1) The Central Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide.”

14. The State of Chhattisgarh in exercise of the powers conferred under Section 17(2) of the PCPNDT Act issued notification dated 1-10-2007 which states as under: -

“Raipur, the 1st October 2007

Notification

No. F21-03/2007/IX/55.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 17 read with sub-section (2) of Section 17 of the “Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (No. 57 of 1994)” and in supersession of Department Notification No. 977/4169/2001/H, dated 30-10-2001, the State Government, hereby, appoints, the District Magistrate for the District and the Block Medical Officer for the Block as “Appropriate Authority” within their respective jurisdiction.

By order and in the name of the
Governor of Chhattisgarh,

P. RAMESH KUMAR, Secretary.”

15. By the aforesaid notification, the State Government has appointed the District Magistrate for the District and the Block Medical Officer for the Block as Appropriate Authority within their respective jurisdiction under Section 17(1) of the PCPNDT Act and for the purposes of the Act.
16. Section 23 of the PCPNDT Act provides for offences and penalties for any person or any registered medical practitioner who contravenes any of the provisions of this Act or rules made thereunder. Sub-section (1) of Section 23 states as under: -

“23. Offences and penalties.—(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.”

17. Section 27 of the PCPNDT Act provides the offence to be cognizable, non-bailable and non-compoundable which states as under: -

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

18. Section 28 of the PCPNDT Act provides for cognizance of offences which states as under: -

“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 fifteen 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 sub-section (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.”

19. Section 29 of the PCPNDT Act provides for maintenance of records and Section 30 provides power to search and seize records, etc.. Sub-section (2) of Section 30 provides that the provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act. Section 32 provides for power to make rules.

20. In exercise of the powers conferred by Section 32 of the PCPNDT Act,

the Central Government has framed rules known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996. Rule 12 of the Rules of 1996 provides for the procedure for search and seizure. Rule 18A provides the Code of Conduct to be observed by Appropriate Authorities including the State. Sub-rule (3) of Rule 18A provides that all the Appropriate Authorities including the State, District and Sub-district notified under the Act shall observe the following conduct for processing of complaint and investigation, namely:—

- (i) maintain appropriate diaries in support of registration of each of the complaint or case under the Act;
- (ii) attend to all complaints and maintain transparency in the follow-up action of the complaints;
- (iii) investigate all the complaints within twenty-four hours of receipt of the complaint and complete the investigation within forty-eight hours of receipt of such complaint;
- (iv) as far as possible, not 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).

21. Thus, a focused perusal of the aforesaid provisions would show that a complete legislative scheme has been enacted for ensuring strict compliance of the stringent provisions of the PCPNDT Act directed against female foeticide and to stop the misuse of pre-natal diagnostic techniques and offence(s) under the Act has to be investigated only by the appropriate authority named in the Act read with the notification

issued in that behalf and no power and jurisdiction has been conferred to the Station House Officer to investigate the offences under the Act though the offences under the Act have been made cognizable.

22. The appropriate authority under Section 17 of the PCPNDT Act has been conferred with the power to take legal action against the use of any sex determination leading to female foeticide. Section 28 clearly provides for taking cognizance only upon a complaint made by any of the following four classes of the complainants: -

- (1) the appropriate authority concerned; or
- (2) any officer authorised in this behalf by the Central Government or State Government, as the case may be; or
- (3) any officer authorised in this behalf by the appropriate authority; or
- (4) any person, who includes a social organisation, and who has been given notice as prescribed under Section 28(1)(b).

23. As such, complaint can be made by virtue of Section 28(1) of the PCPNDT Act by an officer who is authorised in that behalf by the Central Government or the State Government, as the case may be, besides the appropriate authority himself and therefore Court can take cognizance of the offence on the complaint made by 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. (See Dr. Smt. Kiran Agrawal v. State of Chhattisgarh and others².)

² ILR 2018 Chh 2064

24. Section 28 of the PCPNDT Act starts with negative words, “No court shall take cognizance of an offence under this Act except on a complaint made by the Appropriate Authority ...”. Justice G.P. Singh in his **Principles of Statutory Interpretation**, 12th Edition 2010 (page 404), held that “Use of negative words” is another mode of showing a clear intention that the provision enacted to mandatory, is by clothing the command in a negative form.
25. Crawford in his **Statutory Construction** (p. 523) stated: “Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience.”
26. In the matter of **M. Pentiah v. Muddala Veeramallappa**³, Subbarao, J. observed that “negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative”. (See further **Nasiruddin v. Sita Ram Agarwal**⁴.)
27. The Supreme Court in the matter of **A.K. Roy and another v. State of Punjab and others**⁵ relating to institution of complaint under Section 20(1) of the Prevention of Food Adulteration Act, 1954, has held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting Section 20(1) was to confer a power on the authorities specified therein by which power has to be exercised in the manner provided and not otherwise.
28. Following the principles of law laid down in the aforesaid decisions

3 AIR 1961 SC 1107

4 (2003) 2 SCC 577

5 AIR 1986 SC 2160

(supra), in the present case, it is quite vivid that the procedure prescribed for taking cognizance of the offence only on the complaint in writing by the appropriate authority concerned, or any officer authorised in this behalf, as enumerated in Section 28(1)(a) of the PCPNDT Act, is mandatory, as specific procedure in the Act has been provided for lodging FIR for the commission of an offence under the provisions of the Act and for investigation of the offences under the Act and the Rules made thereunder and as such, the second provision contained in Section 28(1)(a) being mandatory, cognizance of offence under the PCPNDT Act can be taken only on the complaint filed by the appropriate authority duly notified under Section 17 of the Act.

29. The question for consideration would be, whether Section 4(1) of the Code of Criminal Procedure, 1973 (CrPC) can be availed for investigating, inquiring or trying the offences under any law other than the Indian Penal Code including the PCPNDT Act?
30. Section 4 of the CrPC provides for trial of offences under the Indian Penal Code and other laws, which reads as follows: -

“4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

Sub-section (1) of Section 4 of the CrPC provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried,

and otherwise dealt with according to the provisions hereinafter contained, whereas sub-section (2) of Section 4 provides that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

31. In the matter of Vishwa Mitter v. O.P. Poddar and others⁶, their Lordships of the Supreme Court highlighted the import of Section 4(2) of the CrPC by observing as under: -

“4. ... Section 190 thus confers power on any Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. It does not speak of any particular qualification for the complainant. Generally speaking, anyone can put the criminal law in motion unless there is a specific provision to the contrary. This is specifically indicated by the provision of sub-section (2) of Section 4 which provides that all offences under any other law – meaning thereby law other than the Indian Penal Code – shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure. ...”

32. The Constitution Bench of the Supreme Court in the matter of A.R. Antulay v. Ramdas Srinivas Nayak and another⁷ examined similar

6 AIR 1984 SC 5

7 AIR 1984 SC 718

question with regard to applicability of Section 4 of the CrPC with reference to provisions of the Prevention of Corruption Act and held that it is a well recognised principle of criminal jurisprudence that any one can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. It was further held as under: -

“16. ... In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Criminal P.C. In other words, Criminal P.C. is the parent statute which provides for investigation, inquiring into and trial of cases by criminal Courts of various designations.”

33. In the matter of **Directorate of Enforcement v. Deepak Mahajan and another**⁸, their Lordships of the Supreme Court examined similar issue with regard to applicability of Section 4 of the CrPC with reference to Section 35(1)(2) of the Foreign Exchange Regulation Act, 1973, particularly, the jurisdiction of a Magistrate to authorise detention of a person arrested under Section 167(2) of the CrPC, and following the principles of law laid down in **Vishwa Mitter of Vijay Bharat Cigarette Stores** (supra) and **A.R. Antulay** (supra) held as under: -

“128. To sum up, Section 4 is comprehensive and that Section 5 is not in derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the Code reading, “... but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

8 (1994) 3 SCC 440

132. For the aforementioned reasons, we hold that the operation of Section 4(2) of the Code is straightaway attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of Section 167.”

34. The Kerala High Court (Division Bench) in the matter of **D.B. Binu and another v. State of Kerala and others**⁹ has held that Section 4 of the CrPC is enacted so as to accommodate a deviant procedure under “any other law” and, if there be one, to declare that offences under other laws shall be investigated, inquired into, tried or otherwise dealt with according to the provisions of the Code of Criminal Procedure, but subject to any enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Kerala Essential Services Maintenance Act, is obviously “other law” as referred to in Section 4 of the CrPC.

35. Section 5 of the CrPC provides as under: -

“**5. Saving.**—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

36. The above-stated provision saves the operation of special or local laws which would remain unaffected by the Code unless there is anything to the contrary in the Code insofar as the local or special law is concerned.

37. In the matter of **Rohtas v. State of Haryana**¹⁰, the Supreme Court held

⁹ 2002 Cri.L.J. 4374

¹⁰ (1979) 4 SCC 229

that Section 5 of the CrPC carves out a clear exception to the provisions of trial of an offence under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force.

38. In the matter of Maru Ram v. Union of India and others¹¹, the Supreme Court (Constitution Bench) with reference to Section 5 of the CrPC held as under: -

“33. The anatomy of this saving section is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Procedure Code generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, this latter law will be saved and will prevail. ...”

39. The PCPNDT Act is certainly and obviously “other law” within the meaning of Section 4 of the CrPC, as the PCPNDT Act and the rules made thereunder prescribe the manner or regulate the manner or place of investigating, inquiring into and trying of the offence alleged to have been committed under the Act.

40. For this, reference may be made to Rule 12 of the Rules of 1996 in which the entire mechanism for search and seizure has been prescribed. Rule 12 of the Rules of 1996 states as under: -

“12. Procedure for search and seizure.—(1) The Appropriate authority or any officer authorised in this behalf may enter and search at all reasonable times any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Imaging Centre or Ultrasound Clinic in the presence of two or more independent witnesses for the purposes of search and examination of any record, register, document, book, pamphlet, advertisement, or any other material object found therein and seal and seize the same if there is reason to believe that it may furnish evidence of commission of an

11 AIR 1980 SC 2147

offence punishable under the Act.

Explanation.—In these Rules—

(1) 'Genetic Laboratory/Genetic Clinic/Genetic Counselling Centre' would include an Ultrasound Centre/Imaging Centre/nursing home/hospital/institute or any other place, by whatever name called, where any of the machines or equipments capable of selection of sex before or after conception or performing any procedure technique or test for pre-natal detection of sex of foetus, is used;

(2) 'material object' would include records, machines and equipments; and

(3) 'seize' and 'seizure' would include 'seal' and 'sealing' respectively.

(2) A list of any document, record, register, book, pamphlet, advertisement or any other material object found in the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre and seized shall be prepared in duplicate at the place of effecting the seizure. Both copies of such list shall be signed on every page by the Appropriate Authority or the officer authorised in this behalf and by the witnesses to the seizure:

Provided that the list may be prepared, in the presence of the witnesses, at a place other than the place of seizure if, for reasons to be recorded in writing, it is not practicable to make the list at the place of effecting the seizure.

(3) One copy of the list referred to in sub-rule (2) shall be handed over, under acknowledgement, to the person from whose custody the document, record, register, book, pamphlet advertisement or any other material object have been seized:

Provided that a copy of the list of such document, record, register, book, pamphlet, advertisement or other material object seized may be delivered under acknowledgement, or sent by registered post to the owner or manager of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre, if no person acknowledging custody of the document, record, register, book, pamphlet, advertisement or other material object seized is available at the place of effecting the seizure.

(4) If any material object seized is perishable in nature, the Appropriate Authority, or the officer authorised in this behalf shall make arrangements promptly for sealing,

identification and preservation of the material object and also convey it to a facility for analysis or test, if analysis or test be required:

Provided that the refrigerator or other equipment used by the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre for preserving such perishable material object may be sealed until such time as arrangements can be made for safe removal of such perishable material object and in such eventuality, mention of keeping the material object seized, on the premises of the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be made in the list of seizure.

(5) In the case of non-completion of search and seizure operation, the Appropriate Authority or the officer authorized in this behalf may make arrangements, by way of mounting a guard or sealing of the premises of the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre, for safe keeping, listing and removal of documents, records, book or any other material object to be seized, and to prevent any tampering with such documents, records, books or any other material object.”

41. A careful perusal of the aforesaid Rule would show that the entire procedure for search and seizure and for making scientific investigation of the offence said to have been committed under the Act has been provided and upon completion of search and seizure and other formalities, the complaint has to be filed by the appropriate authority enumerated under Section 28(1)(a) of the PCPNDT Act duly notified by the State Government under Section 17(1) of the Act, in the jurisdictional criminal Court. For the purpose of search and seizure, the provisions relating to search and seizure in the CrPC have been made applicable by virtue of Section 30(2) of the PCPNDT Act. Therefore, once the detailed procedure for scientific investigation, enquiry and trial has been provided in the PCPNDT Act, that too by an appropriate authority duly notified under the Act, the resort to CrPC cannot be adopted to, as it is expressly excluded by virtue of Section

4(2) of the CrPC and on the basis of the principles of law laid down by their Lordships in the above noticed judgments (supra). The intention of the Legislature in saying so is quite more obvious under the above-stated rules framed by exercising the rule making power by the Rules of 1996 in Rule 18A(3)(iv). The rule vividly and expressly states that the appropriate authorities are entitled to conduct for processing of complaint and investigation, 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 CrPC which manifests the intention of the Legislature that it is only the Appropriate Authority concerned as enumerated in Section 28(1)(a) and notified under Section 17(1) of the PCPNDT Act to investigate the offence and to file complaint under Section 28(1)(a) and as such, police officers including Station House Officers are not empowered under the PCPNDT Act to investigate the offences alleged to have been committed under the Act which is in consonance with Section 5 of the CrPC.

42. The Bombay High Court (Division Bench) in the matter of **Dr. Sai v. The State of Maharashtra and another**¹² has examined the matter and held that the provision in the PCPNDT Act has been engrafted with an object that the provisions of the said Act may not be misused and police have been deliberately kept out of the purview of initiating prosecution though the offences are made cognizable, non-bailable and non-compoundable by virtue of Section 27 of the said Act. It was further held that the entire process of taking legal action against the person violating the provisions of the PCPNDT Act which includes

12 2016 SCC OnLine Bom 8812

investigation of complaint has been entrusted to Appropriate Authority. It was also held that in order to empower the Appropriate Authority, the powers to summon any person who is in possession of any information relating to violation of the provisions of the Act and the Rules made thereunder, production of any document or material object relating to possession of information relating to such violation including the powers of issuance of search warrant etc. are entrusted and conferred upon the Appropriate Authority. In general, the high ranking officer from the field of Medical have been notified as an Appropriate Authority to file such complaint. It has been observed by their Lordships as under: -

“18. ... The Appropriate Authority has to act as an investigator to inquire into the allegations of violation of the PCPNDT Act and Rules thereunder either on the basis of complaint received as well as to act *suo motu*. The role of the Appropriate Authority is not just to receive the complaint and file the proceeding in the Court of law. Section 17(4)(c) specifically provides that, one of the function of the Appropriate Authority is to investigate the complaints of breach of provisions of the act and the rules made thereunder and take legal action. Section 17(4)(e) provides that, the Appropriate Authority to take legal action against the use of any sex selection technique by any person at any place, *suo motu* or brought to its notice or also to initiate independent investigation in such matter. Thus, to investigate the complaints received against the persons violating the provisions of PCPNDT Act is the job of Appropriate Authority. Outcome of such investigation provides basis either to drop the proceeding or to initiate appropriate proceeding which includes initiation of criminal prosecution by filing complaint u/s 28 of PCPNDT Act. Mere report or complaint or information received cannot be sole basis to prosecute the person. If the complaint is inquired and investigated results into collection of evidence sufficient to prosecute the person for violation of the provisions of PCPNDT Act, then only criminal proceeding is expected to be filed u/s 28 of the PCPNDT Act. There appears to be specific legislative intent behind introducing Section 17-A in the PCPNDT Act (incorporated by amended act of 2003) to vest full-fledged powers of inquiry and Appropriate Authority to investigate the matter. Thus, the

role of the Appropriate Authority is much more than the authority to file complaint.

19. In the light of role of the Appropriate Authority discussed as above, it was expected on the part of the Appropriate Authority to have investigated the information received in the form of inspection report from the Vigilance Squad to find out there was any violation of provisions of PCPNDT Act on the part of the petitioner. It was expected on the part of Appropriate Authority to have summoned the persons referred in the inspection report to verify as to whether the petitioner had complied with the requirement of obtaining written consent as contemplated under Section 5 r/w Rule 9 of the PCPNDT Act and there was any violation in observing the mandatory conditions. Simply certain lacunae, omission detected in the consent form could not be the basis to prosecute the person. By exercising the powers u/s 17-A, certainly the Appropriate Authority could have summoned those persons, recorded their statement and conducted further investigation as deemed fit and proper to collect the evidence to sustain the prosecution in the Court of law. However, in the instant case, it appears that Appropriate Authority has failed to discharge its statutory obligations as contemplated u/s 17(4) of PCPNDT Act i.e. to investigate the report of inspection received from Vigilance Squad which restricts to noting of certain lacunae, omission and certain mistakes in maintenance of record. The report of inspection itself could not be the basis to arrive at the conclusion that such lacunae, omission and mistake were deliberate and acts of omission and commission committed on the part of the petitioner with an intention to violate the provisions of PCPNDT Act. It was also expected on the part of Appropriate Authority to look into explanation given by the petitioner vide reply dt. 09.03.2015 and opportunity of personal hearing and then to arrive at just decision. The communication dt. 15.04.2015 which, in fact is an order communicated to the petitioner as to suspension of sonography centre finds no reasons for taking such action. The expected role of Appropriate Authority u/s 17(4) of PCPNDT Act is to probe the matter and then to arrive at a proper decision as to whether *prima facie* case of violation of the provisions of the PCPNDT Act and Rules framed thereunder is made out or not. ...”

43. The Orissa High Court in the matter of **Ramesh Chandra Naik and others v. State of Orissa**¹³, while dealing with similar issue and while quashing the investigation made by the police and the charge-sheet

filed by the police under Sections 23 and 25 of the PCPNDT Act, held as under: -

“Therefore, the Appropriate Authority has been given enormous power in the matter of investigation and also in taking appropriate legal action against the violators of provisions of the Act. PCPNDT Act is a special enactment. Section 5 of the Cr.P.C. provides that where a special or local law provides an exclusive procedure for dealing with the offence under that law, the provisions of the Cr.P.C. to that extent so provided in the special law stands excluded. If a provision is clearly expressed in any special law or local law that would be called 'specific provisions'. In other words, if the special Act does not indicate the specific provisions for enquiry into, trial or otherwise dealing with such offences then the procedure of the Code of Criminal Procedure would be applicable. Section 4 of Cr.P.C. also makes it clear that if an offence is committed under a special law then the provisions of that law would govern the investigation and trial of such offence and a police officer is not empowered either to submit charge-sheet or otherwise proceed under Chapter-XII of the Cr.P.C. The powers under the Cr.P.C. are thus subject to any special provisions that might be made with regard to the exercise or regulation of those powers by any special Act.”

The Orissa High Court further held as under: -

“In spite of the right conferred on the police officer in the Code in registering the first information report and also investigating a case which relates to cognizable offence, in view of the special provision in the special Act, lodging of first information report for the commission of an offence under PCPNDT Act and submission of charge sheet for such offence is not permissible. Cognizance of any offence under the PCPNDT Act can be taken by a Court basing only on a complaint petition and that too being filed by the authorities mentioned in clause (a) of sub-section (1) of section 28 or by any person as mentioned in clause (b) of sub-section (1) of section 28. If a complaint petition as envisaged under section 28 of the PCPNDT Act is presented before a Court, the procedure laid down in Chapter-XV of Cr.P.C. is to be followed before issuance of process against the accused.”

44. The Full Bench of the Gujarat High Court in the matter of **Suo Motu v.**

State of Gujarat¹⁴ considered the following questions with regard to

Section 28 of the PCPNDT Act: -

“(i) Whether under the provisions of section 28 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in this behalf by the Appropriate Authority?

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx”

The Full Bench answered the issue and held as under: -

“6. The provisions of section 28 clearly provide for taking cognizance of an offence under the Act only upon a complaint being made by any of the four categories of the complainants, viz:

(1) the Appropriate authority concerned;

(2) any officer authorised in that behalf by the Central Government or State Government;

(3) any officer authorised in that behalf by the Appropriate Authority; and

(4) a person, which includes a social organisation, who has given notice as prescribed in section 28 (1) (b).

Use of the words “Appropriate Authority’ twice, at the beginning and end of clause (a) of sub-section (1) of section 28, clearly conveys that complaint could be made by an officer who is authorised in that behalf by the Central Government, the State Government or the Appropriate Authority, besides the Appropriate Authority itself. The power to delegate and authorise an officer to make a complaint is clearly conferred upon all the three authorities under the provisions of section 28, and, therefore, a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority. The first issue is answered accordingly.

9. Upon above analysis and appreciation of the scheme and provisions of the Act and Rules made thereunder, opinion on issues referred to the larger bench is as under :

(i) Under the provisions of section 28 of the Pre-

conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (“the PNDT Act”), a Court can take cognizance of an offence under the Act on a complaint made by any officer authorised in that behalf by the Appropriate Authority.

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) xxx xxx xxx”

45. Similarly, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the matter of **Sujatha Scan Centre and another v. State of Telangana**¹⁵ while quashing the investigation made pursuant to the first information report lodged under the PCPNDT Act and while highlighting the scientific investigation to be made by the appropriate authority having knowledge and experience in the field, held as under: -

“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.”

46. As such, I am in full agreement with the view so expressed by the

Orissa High Court in Ramesh Chandra Naik (supra), the Gujarat High Court in Suo Motu (supra), the Bombay High Court in Dr. Sai (supra) and the High Court of Judicature at Hyderabad in Sujatha Scan Centre (supra) and respectfully follow them.

47. However, in the matter of Hardeep Singh and another v. State of Haryana and others¹⁶, heavily relied upon by the learned State counsel, it has been held by the High Court of Punjab and Haryana as under: -

“In the circumstances, the questions as formulated in the reference are answered in the following manner, that: -

- (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.”

With great respect and all humility at my command, I am unable to agree with the above view taken by the Punjab and Haryana High Court and differ with it respectfully.

48. Reverting finally to the facts of the present case, it is quite vivid that in the present case, offence under Section 23(1) of the PCPNDT Act is cognizable and non-compoundable offence, but complaint can be filed in the manner provided under Section 28 of the Act and the entire

¹⁶ CRM No.M-4211/2014, decided on 4-12-2014

procedure for scientific investigation and filing of complaint has been prescribed under Sections 29 and 30 of the PCPNDT Act and the Rules of 1996. As such, by virtue of the provisions of Section 4 read with Section 5 of the CrPC, the provisions of the CrPC shall stand excluded to the extent indicated herein-above and the offence under the PCPNDT Act has to be investigated only by the appropriate authority appointed under Section 17(2) and therefore offence under the PCPNDT Act cannot be investigated under the provisions of the CrPC by registering FIR by the Station House Officer of Police Station concerned. Therefore, no first information report can be lodged against the medical practitioner including the petitioner herein under Section 23 of the PCPNDT Act for the alleged offence said to have been committed under the PCPNDT Act.

49. Accordingly, the FIR (Annexure P-1) registered against the petitioner for the offence punishable under Section 23(1) of the PCPNDT Act under Crime No.308/2019 at Police Station Saraipali, District Mahasamund, and further investigation (if any) cannot continue for a moment and is hereby quashed being in violation of the provisions contained in Section 28(1)(a) of the PCPNDT Act read with Sections 4 & 5 of the CrPC and following the binding principles of law enunciated by their Lordships of the Supreme Court in **Bhajan Lal** (supra) {para 102 (6)}. However, liberty is reserved in favour of the appropriate authority to proceed against the petitioner in accordance with the PCPNDT Act and the Rules made thereunder and if complaint as provided in Section 28 of the PCPNDT Act is filed before the jurisdictional criminal Court, the procedure laid down in Chapter XV of

the CrPC has to be followed before issuance of process against the person concerned.

50. It is made clear that this Court has not expressed any opinion on the merits of the matter.

51. The petition is allowed to the extent indicated herein-above.

52. A copy of this order be sent to the Director General of Police for information and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.2378 of 2019

Dr. Amritlal Rohledar

Versus

State of Chhattisgarh and others

Head Note

First information report by police cannot be lodged/registered against a medical practitioner for commission of offence under the provisions of Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, only complaint can be filed under Section 28 of the said Act before the jurisdictional criminal Court.

गर्भधारण पूर्व और निदान-तकनीक (लिंग चयन प्रतिबंध) अधिनियम, 1994 की धारा 23 के प्रावधानों के अंतर्गत किये गये अपराध के लिये पुलिस, चिकित्सा व्यवसायी के विरुद्ध प्रथम सूचना प्रतिवेदन दर्ज/पंजीकृत नहीं कर सकती, वह केवल उक्त अधिनियम की धारा 28 के अधीन क्षेत्राधिकार वाले दाण्डिक न्यायालय में परिवाद प्रस्तुत कर सकती है।