

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.270 OF 2017

Vitthal s/o Digambar Dake,
Through Legal Advisor,
Aparna Krishnakumar Thete,
Age-39 years,
Occu:Service as Legal Advisor,
Aurangabad Municipal Corporation,
Aurangabad, Dist-Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Department of Health Service,
Mantralaya, Mumbai-32,
- 2) Dr. Prasanna Mishrikotkar,
Age-41 years, Occu:Medical Practice,
R/o-Shanti Imaging Centre,
Laxman Chawadi, Prabha Chamber,
Aurangabad,
- 3) Dr. Jyoti Jagamohan Roy,
Age-36 years, Occu:Medical Practice,
R/o-Shanti Imaging Centre,
Laxman Chawadi, Prabha Chamber,
Aurangabad.

...RESPONDENTS

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Mr.V.P. Latange Advocate for Petitioner.
Mr.A.A. Jagatkar, A.P.P. for Respondent No.1.
Mr.P.F. Patni Advocate for Respondent No.2.
Respondent No.3 served.

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CORAM: V.M. DESHPANDE, J.

DATE : 22TH MARCH, 2019

ORAL JUDGMENT :

1. By the present Petition, the Petitioner is challenging the Judgment and order passed by the learned revisional Court in Criminal Revision Petition No.89 of 2016 dated 3rd October, 2016, dismissing the Revision and thereby confirming the order passed below Exhibit-1 in R.C.C. No.1750 of 2014, by learned Chief Judicial Magistrate, Aurangabad, discharging Respondent Nos.2 and 3 from the proceedings.

2. I heard Shri V.P. Latange, the learned counsel for the Petitioner, Shri A.A. Jagatkar,

the learned Additional Public Prosecutor for Respondent No.1 – State and Shri P.F. Patni, the learned counsel for Respondent No.2.

3. Rule. Rule is made returnable forthwith by consent of the parties and the Petition is taken up for final hearing.

4. The Petitioner Vitthal Digambar Dake filed a complaint against Respondent Nos.2 and 3, who are the medical practitioners, for breach of Section 5, 6, 9(1), 29 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, punishable under Section 23 of the said Act.

5. The complaint was registered as R.C.C. No.1750 of 2014. Evidence before charge was recorded. Complainant Vitthal Digambarrao Dake entered into witness box and he claims to be

appropriate authority for filing the complaint. Panch witness, Kisan Pawar was also examined. Thereafter a purshis Exhibit-33 was filed.

6. The learned Magistrate, thereafter evaluated the complaint case and found that the complainant is not appropriate authority to launch and file the complaint. Consequently, on 7th April, 2016, the learned Chief Judicial Magistrate discharged the accused i.e. Respondent Nos.2 and 3 under Section 246(2) of the Code of Criminal Procedure. The complainant did not prefer any revision challenging the discharge. However, the police inspector of Kranti Chowk Police Station, Aurangabad, filed a revision and it was styled as

"The State of Maharashtra,
Through Police Inspector,
Police Station, Kranti Chowk,
Tq. & Dist-Aurangabad.

Versus

- 1) Dr. Prasanna Mishrikotkar
- 2) Dr. Jyoti Jagmohan Roy"

7. The said revision was registered as Criminal Revision Petition No.89 of 2016 and learned Additional Sessions Judge-5, Aurangabad rejected the revision on 3rd October, 2016.

8. It would be useful to refer the observations in the case of Dr. Sandhya Arun Kulkarni vs. the State of Maharashtra¹, wherein it is held that:

“The combined reading of Sections 17 and 28 of PNDT Act together with definition of the expression “Appropriate Authority” would make it clear that the complaint must be filed by the Appropriate Authority or the officer authorized by the Appropriate Authority in terms of the powers given under Section 28 of the Act. If the complaint has not been filed by such an authority or the officer, the Court would be

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precluded from taking cognizance of the complaint. Appropriate authority contemplated under Section 17 read with Section 28 is some officer or person occupying a certain post in the government or certain status in society."

9. It is admitted position on record that when complainant Vitthal Dake was cross-examined at the stage of evidence before charge, he made a categorical statement that, at the relevant time he was ward officer of Ward E. He also admitted that there are six wards in Aurangabad Municipal Corporation area. They are identified as Ward No.A to Ward No.F. He also admitted that in every ward, separate ward officer is appointed. It is also his admission that "Shanti Imaging Center" of the accused persons is situated in Ward No.D, and in the month of October, 2014, one Mr. Sampat Jarare was working as Ward Officer and was looking after the affairs of Ward No.D. In the aforesaid

admission, it would be useful to have a glance to the Government Notification dated 16th October, 2007, which is reproduced herein below:

"In exercise of the powers conferred by sub-section (2) of section 17 of Pre-Conception and Pre-Natal Diagnostic Techniques (Registration and Prevention of Misuse) Act, 1994 (57 of 1994) and of all other powers enabling it in that behalf, the Government of Maharashtra hereby appoints the Additional Collector, Sub-Divisional Officers, Tahsildars, Nayab Tahsildars, Commissioners, Deputy Commissioners and Ward Officers of Municipal Corporation and Chief Officers of Municipal Councils, to be the Appropriate Authorities for the purposes of the said Act, the areas within their jurisdiction."

10. From the aforesaid, and in the light of admission given by the complainant Shri Vitthal Dake, it is clear that he was not competent authority, and the said aspect was rightly considered by both the Courts below warranting no

interference in the limited writ jurisdiction of this Court. Hence the Writ Petition is required to be dismissed and accordingly it is dismissed. Rule is discharged.

[V.M. DESHPANDE, J.]

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