

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1279 OF 2019

Dr. Uttam s/o. Bhivaji More,
Age : 66 years,
Occ. Medical Practitioner,
r/o. More Nursing Home,
Gokunda Road, Kinwat,
Tq. Kinwat, Dist. Nanded ..Applicant

Vs.

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Kinwat,
Taluka Kinwat, Dist. Nanded
2. Dr. J.V.Pawade,
Age : 58 Year, Occ. Service,
(Medical Superintendent, Loha)
r/o. Bhalchandra Nagar,
Near Kabde Hospital, Nanded ..Respondents

Mr. S.G.Chapalgaonkar, Advocate for applicant
Mrs.G.L.Deshpande, APP for respondent no.1

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 19, 2019
PRONOUNCED ON : OCTOBER 04, 2019**

JUDGMENT :-

Rule. Rule made returnable forthwith. With
the consent of learned Counsel for the parties, the
application is heard finally.

2. This is an application under Section 482 of the Code of Criminal Procedure. The applicant, a medical practitioner, hereby seeks direction to quash and set aside the proceedings in a Criminal case, being Regular Criminal Case No.5 of 2019 filed before learned Judicial Magistrate, First Class, Kinwat, for the offences punishable under Sections 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("PCPNDT Act", for short) (for alleged violation of Section 18(1), 19(3) of the PCPNDT Act read with Rules 7, 8(v) of the PCPNDT Rules, 1996).

3. Since the applicant seeks quashing of the proceedings in a criminal case, it is necessary to reproduce the averments/allegations made in the complaint.

4. The criminal case has been instituted on a complaint made by Dr. J.V.Pawade (complainant). The complainant is a Medical Superintendent, Rural

Hospital, Loha, Dist. Nanded. The Civil Surgeon, Civil Hospital, Dist. Nanded is the appropriate authority under Section 17 of the PCPNDT Act. The appropriate authority has authorised the complainant to lodge the complaint, the allegations wherein, are as under :-

- (a) The applicant/accused runs an ultrasound clinic and hospital at Kinwat, Dist. Nanded. He had registered his Sonography center/ultrasound clinic under the PCPNDT Act and was conducting sonography of pregnant women. He possesses the requisite qualification to conduct the Sonography.
- (b) The appropriate authority-Civil Surgeon, Nanded, after due enquiry, issued the applicant/accused the certificate of registration. The validity period whereof was from 22.08.2013 to 21.08.2018 (for about five years). As such, registration certificate was valid upto 21.08.2018.

(c) On 16.11.2018, the applicant/accused filed a proposal for renewal of his sonography center, which was received by the appropriate authority on 19.11.2018. On 13.12.2018, the proposal was kept before the Advisory Committee. On 13.12.2018, Advisory Committee scrutinised the document enclosed with application/proposal of accused and it was disclosed that the validity period of sonography center bearing Registration No.:IND/MH/NND/08/41 was expired on 21.08.2018. As per Rule 8 of PCPNDT Act it was obligatory on the part of accused to submit the proposal for renewal of registration certificate before appropriate authority, prior to about one month of the date of its expiry.

It was revealed that the applicant/accused had submitted the application after the lapse of three months from the date of

its expiry. The applicant/accused was fully aware of validity period of registration certificate. The applicant/accused conducted sonography on pregnant women for period of three months from the date of expiry of validity period of registration certificate. It was also disclosed that the applicant/accused had submitted on-line "F" Forms. The applicant/accused was asked to submit his explanation, if any. The applicant/accused replied that he forgot to renew the registration certificate. The applicant/accused being owner and handler of Ultrasound machine of More Hospital, Kinwat, was found conducting sonography on pregnant women and his explanation was not found satisfactory. As there was violation of the PCPNDT Act, his proposal for renewal of registration of sonography center was rejected by the Advisory Committee and

advised to take legal action against him.

Therefore, appropriate authority, on 13.12.2018, issued notice to the applicant/accused under Section 20(1) of the PCPNDT Act contending as to why registration of sonography center should not be cancelled and sought explanation from him within 7 days from the date of receipt of said notice. Notice was duly served on him on 13.12.2018. On 14.12.2018, the applicant/accused submitted his explanation and admitted that he was duty bound to submit the proposal for renewal of his sonography center prior to about one month before its expiry date and apologies for his mistake and requested to renew registration certificate of his sonography center.

- (d) There was contravention of Rules 7 and 8 of PCPNDT Act and the Appropriate Authority had

reason to believe that an offence under this Act has been committed in sonography center of the accused. The appropriate authority on 17.12.2018 authorised the complainant to seize the record and seal the sonography machine of the applicant. The complainant was also authorised to launch prosecution against the applicant. Authority letter was issued on 17.12.2018 by District Appropriate Authority cum Civil Surgeon, Nanded.

- (e) In short, provisions of Sections 18, 19 and Rules 7, 8 and 18(V) of PCPNDT Act are contravened by the accused which is punishable under Section 23 of PCPNDT Act.

5. Learned Judicial Magistrate, First Class, took cognizance and issued process for the offences punishable under Section 23 of the PCPNDT Act (for alleged violation of Section 18(1), 19(3) of the

PCPNDT Act read with Rule 7, 8(v) of the PCPNDT Rules, 1996).

6. Mr.Chapalgaonkar, learned Counsel for the applicant, would submit that the applicant is a medical practitioner of repute. The applicant started his clinic after having retired as a Medical Officer, on superannuation. On his application, the applicant was granted registration of his sonography center way back in August, 2008. The applicant renewed the registration certificate in the year 2013, which was to be valid upto 21.08.2018. The applicant had gone abroad during the relevant time. He just forgot to get registration certificate renewed. No sooner the applicant realised that the validity of the registration certificate is over, he applied the appropriate authority for its renewal. During the interregnum, i.e. from the date on which the registration was over till the date the applicant applied for renewal, he has complied with the provisions of the PCPNDT Act and Rules thereunder.

The same would indicate that the inaction on the part of the applicant to seek renewal of registration, was unintentional and innocent as well. According to learned Counsel, if in the given circumstances, the prosecution is allowed to proceed against the applicant, the same would amount to abuse of process of law. It would, therefore, be in the interest of justice, to quash the proceedings in Regular Criminal Case No.5 of 2019, urged learned Counsel.

7. Learned APP would, on the other hand, submit that breach of the provisions of the PCPNDT Act and Rules thereunder, is obvious. Whatever the contentions made by the applicant are in the nature of his defence, to be looked into during the trial of the case. For constituting an offence under the PCPNDT Act, *mens-rea* is not a condition precedent. Learned APP has relied on the judgment of Gujarat High Court in the case of **Hasmukh Mohanbhai Goswami Vs. State of Gujarat and anr.**, 2018 Cri. L.J. 2847.

8. The relevant provisions of the PCPNDT Act and Rules thereunder need to be referred to, before appreciating the case of the applicant. Sections 18, 19 and 23 of PCPNDT Act reads thus :-

18. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics.-

(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, after the commencement of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act.

(2) Every application for registration under sub-section (1), shall be made to the Appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) Every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques for any of the purposes mentioned in section 4, immediately before the commencement of this Act, shall

apply for registration within sixty days from the date of such commencement.

(4) ..

(5) ..

19. Certificate of registration.-

(1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) ..

(3) ..

(4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic in a conspicuous place and its place of business.

9. Rule 8 of the Pre-Conception and Pre-Natal, Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 reads thus :-

8. Renewal of registration.- (1) An application for renewal of certificate of registration shall be made in duplicate in Form A, to the Appropriate Authority thirty

days before the date of expiry of the certificate of registration. Acknowledgement of receipt of such application shall be issued by the Appropriate Authority in the manner specified in sub-rule (2) of rule 4.

(2) The Appropriate Authority shall, after holding an enquiry and after satisfying itself that the applicant has complied with all the requirements of the Act and these rules and having regard to the advice of the Advisory Committee in this behalf, renew the certificate of registration, as specified in Form B, for a further period of five years from the date of expiry of the certificate of registration earlier granted.

(3) ..

(4) ..

(5) On receipt of the renewed certificate of registration in duplicate or on receipt of communication or rejection of application for renewal, both copies of the earlier certificate of registration shall be surrendered immediately to the Appropriate Authority by the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic.

(6) ..

9. Maintenance and preservation of records.-

(1) Every Genetic Counselling Centre, Genetic Laboratory, [Genetic Clinic including a Mobile Genetic Clinic], Ultrasound Clinic] and Imaging Centres shall maintain a register showing, in serial order, the names and addresses of the men or

women given genetic counseling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the names of their spouse or father and the date on which they first reported for such counseling, procedure or test.

(2) ..

(3) ..

(4) The record to be maintained by every [Genetic Clinic including a Mobile Genetic Clinic], in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be as specified in Form F.

10. Admittedly, the applicant had been granted registration of sonography center w.e.f. 12.07.2008. Said registration was for the period of five years. The applicant renewed the registration in the year 2013 for further five years. Renewal of registration was valid upto 21.08.2018. The applicant was expected to make an application for renewal one month before the validity of registration was to over. The applicant, however, applied for renewal of registration certificate on 16.01.2018. The same indicates the applicant to have run sonography center

for a period of about three months without there being registration of it. The State of Maharashtra in Public Health Department issued guidelines dated 30.11.2019 for implementation of the provisions of the PCPNDT Act. A copy of those guidelines is on record. Guideline no.16 therein mandates the appropriate authority to remind the concerned center regarding date of renewal, at least two months before renewal falls due. True, the guidelines may not have a statutory force, the fact, however, remains that the Public Health Department took upon itself the responsibility to remind the concerned center regarding the date of renewal at least two months before the period of registration is to over. Admittedly, in the present case, the appropriate authority had not complied with the item no.16 of the Guidelines dated 30.11.2019. Had there been compliance of the Guidelines, there would not have been an occasion for the applicant to face the prosecution. I am observing so, since the record

indicates that the applicant run sonography center with all the compliance of the provisions of the PCPNDT Act and relevant Rules thereunder. Rule 9 mandates maintenance and preservation of record. The record is expected to be maintained in the prescribed forms. Record to be kept in Form "F" pertains to each man or woman subjected to any prenatal diagnostic procedure/technique/test. Admittedly, the applicant has maintained and preserved such record. He has also submitted all such record to the appropriate authority, even during the period in between the validity of registration certificate was over and the date of filing the application for its renewal. The same indicates that the applicant's failure to make an application for renewal of registration certificate within time, was unintentional. It appears that the applicant did not have knowledge of the fact that the validity of the certificate was over. True, none of the penal provisions under the PCPNDT Act suggest *mens-rea* to

be an ingredient of offence punishable under the said Act. It appears that for being prosecuted for the offence punishable under Section 23 of the P.C.P.N.D.T. Act, omission or commission of the act to be visited with penal consequence, at least to be with knowledge. To draw such inference, one needs to refer to Section 26 of the PCPNDT Act, which speaks of the offences by companies.

26. Offences by companies.- (1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Proviso to Section 26, undoubtedly, suggest that a person shall not be liable to any punishment, if he

proves that the offence was committed without his knowledge or that he had exercised all due diligence for non-commission of the offence.

11. The facts of the present case, undoubtedly, indicate that the applicant had got renewal of the registration of his sonography center when the validity of the certificate was first time to over in the year 2013. The validity period of the renewed certificate was upto 21.08.2018. The applicant was supposed to make an application for renewal of registration certificate at least one month before 21.08.2018. The appropriate authority did not issue the applicant a reminder regarding the date of renewal. The applicant continued to run the sonography center post expiry of registration certificate. He, on his own i.e. without any reminder from the appropriate authority, applied for renewal of the certificate of registration about three months after validity of the registration certificate was over. During the intermediate period,

he was running the sonography center. He has maintained all the record, as has been expected of him to maintain. The applicant has submitted such record in Form "F". All these facts, undoubtedly, indicate that it was a lapse of memory of the applicant to seek/apply for renewal of the registration certificate well in advance. There is also nothing to indicate as to what benefit was derived by running the sonography center without there being registration certificate, more so, when the applicant was found running the center observing the mandatory provisions of the PCTNDT Act and the Rules thereunder.

The decision relied upon by learned Counsel for the applicant is not helpful in any manner, as it is distinguishable on facts. In the case in hand, the authority was under obligation to remind the applicant of the date of renewal of registration certificate.

12. It, thus, appears that the lapse on the part of the applicant was unintentional or even without his knowledge. There is nothing to attribute to him with any malafides. Considering the entire conspectus of the matter, I am of the view that allowing the applicant to be proceeded against, would be an exercise in futility. Interest of justice demands that the proceedings in Regular Criminal Case No.5 of 2019, pending before learned Judicial Magistrate, First Class, Kinwat, be discontinued by quashing the same.

13. The application, therefore, succeeds. The application is allowed in terms of prayer clause (C). Rule made absolute accordingly.

[R.G. AVACHAT, J.]