

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

CRIMINAL APPLICATION NO.2173 OF 2015

Dr. Deepesh s/o. Bhagwanrao Chemte,
Age : 40 years, Occ: Medical Practitioner,
R/o. Deogiri Sonography Kendra,
Bhavani Nagar, Paithan, Taluka Paithan,
District Aurangabad.

... APPLICANT
(Orig. Accused)

VERSUS

- 1] The State of Maharashtra,
through Police Station Officer,
Police Station, Paithan,
Taluka Paithan, District Aurangabad.

(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad)

- 2] Appropriate Authority,
Nayab Tehsildar,
Tehsil Office, Paithan,
District Aurangabad

(Alleged Appropriate Authority
appointed U/sec. 17 P.N.D.T. Act, 2003)

... RESPONDENTS
(Res. No.2-Orig. Complainant)

...

Advocate for Applicant : Mr. S.G. Chapalgaonkar
APP for the Respondent / State : Mr. S. B. Joshi

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 29.08.2019

Pronounced on : 18.09.2019

JUDGMENT :

The applicant who runs a Sonography Clinic duly registered under the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act and the Rules framed thereunder (hereinafter referred to as the Act and the Rules) is invoking the powers of this Court under Section 482 of the Code of Criminal Procedure and praying for quashment of the criminal case filed against him for violation of the provision of that Act.

2. The learned advocate for the applicant submitted that in fact the Medical Superintendent/Appropriate Authority Rural Hospital, Bidkin had visited his clinic on 18.02.2012. While the applicant was busy in examining patient and Form 'F' were being filled in, some incomplete forms of the patients which were yet to be filled in and completed since the patients were still being examined were seized without following any procedure. No panchanama was conducted for such seizure. Since thereafter, no steps were taken pursuant to such seizure. After lapse of more than 2 ½ years, another doctor running similar clinic lodged a complaint in the year 2014. The respondent

no.2 Appropriate Authority again effected inspection and seized and sealed the Sonography Machine. The applicant had to file Writ Petition No.10578/2014. When a notice was served in that proceeding, the respondent no. 2 immediately filed the present complaint against the applicant for the offences punishable under Sections 23 and 25 read with Section 4(A), 5, 6 and 29 of the Act. He would point out that while filing the complaint, the 'F' forms seized on 18.02.2012 were sought to be relied upon and no fresh 'F' forms were found to be deficient or were seized at all.

3. The learned advocate for the applicant would further point out that in respect of the three 'F' forms seized in the year 2012, one patient was not pregnant and therefore her 'F' form was cancelled. The other two patients were still undergoing examination and their forms were to be completed only after completion of the examination. Therefore when the process of filling the form was going on, those should not have been seized and even if those were seized, the applicant could not have been expected to fill in those while the process of examination of the patients was going on.

4. The learned advocate would further submit that in spite of the 'F' form register having been taken into the custody in the year 2012 no action was immediately initiated and the present complaint

relying upon the same register has been filed after two years and 8 months. The complaint has been lodged at the instant of a professional rival. In view of such state of affairs, the process ought not to have been issued and even if has been issued, the complaint is liable to be quashed and set aside in view of the observations of the Supreme Court in the Case of *State of Haryana V/s Bhajan Lal*; AIR 1992 Supreme Court 604.

5. The learned advocate would further point out that by virtue of Rule 9(8) of the Rules, the monthly report in respect of 'F' forms was to be submitted before 5th day of the following month. Therefore, when the register was taken into custody on 18.02.2012, there was still time with the applicant to complete it and submit the return by 5th of the next month. In similar set of facts, this Court in various matters has taken a view that when the rules require furnishing the return by 5th day of the next month, any deficiency in the 'F' forms to be filled in during the course of that month could have been rectified. He placed reliance on the following decisions:

1. **Sai Santosh Shiradkar (Dr.) Vs. State of Maharashtra and another; 2016 DGLS (Bom.) 1173.**
2. **Kalyani Ritesh Dixit (Dr.) Vs. State of Maharashtra; 2014 DGLS (Bom.) 328**
3. **Udaysingh Mansingh Patil (Dr.) Vs. State of Maharashtra and Anr; 2016 DGLS (Bom.) 1443.**

The learned advocate also submitted that whatever deficiencies were found in filling 'F' forms were only minor or clerical and the applicant cannot be said to be carrying necessary *mens rea* by keeping such incomplete forms.

6. Per contra, the learned APP submitted that though the complaint has been lodged relying upon the 'F' form register seized 2½ years prior to the complaint, it is important to note that the grievance was being made by the complainant, the fellow doctor that in spite of such sisure no action was being taken against the applicant, in spite of their being deficiencies. It is only after a complaint was made to the Collector that he had issued instructions and the respondent no.2 had once again inspected the record and the Machine was seized. In view of such peculiar state of affairs, no fault can be found in filing the complaint based on the record which is taken in possession in the year 2012. At least at this stage, this circumstance is not sufficient to quash the complaint. The question here is about maintaining the 'F' form register in accordance with the provisions of the Act and the Rules. If *prima facie*, there are some deficiencies, that is sufficient to direct the process to be issued. The burden is on the applicant to discharge which he can do so only during the course of the trial. Therefore no much emphasize can be laid on the aforementioned circumstances.

7. The very purpose and object of the Act and the Rules has now been interpreted and commented upon by the Supreme Court in the case of **Federation of Obstetrics and Gynecological Societies of India (FOGSI) Vs. Union of India and Ors; 2019 SCC Online SC 650**. Therefore, in view of the observations of the Supreme Court, any violation of the provisions of the Act and the Rules would invite prosecution and even some error in filing 'F' forms would be liable to be viewed seriously and cannot be brushed aside by saying that it is only clerical. Therefore, it would be just and proper to allow the trial to proceed and the applicant may discharge the burden cast upon him during the course of the trial.

8. I have carefully gone through the papers. With respect, the aim, object and the scope of various provisions of the Act and the Rules framed thereunder have been interpreted and examined by the Supreme Court in the case of FOGSI (supra). With respect, it leaves no scope as far as the violations of the provisions of the Act and the Rules are concerned. Even the constitutionality of the Act and the Rules has been upheld. Even the usual defence of absence of *mens rea* in the offences under this Act has been discarded. Violations in the form of errors in filling up 'F' forms have also been upheld to be attracting penal consequences. Following observations in para 92, 98 and 102 are important.

92. *In view of the aforesaid discussion and in our opinion, no case is made out to hold that deficiency in maintaining the record mandated by Sections 5, 6 and the proviso to Section 4(3) cannot be diluted as the aforesaid provisions have been incorporated in various columns of Form 'F' and as already held that it would not be a case of clerical mistake but absence of sine qua non for undertaking a diagnostic test/procedure. It cannot be said to be a case of clerical or technical lapse. Section 23 (1) need not have provided for gradation of offence once offence is of non-maintenance of the record, maintenance of which itself intends to prevent female foeticide. It need not have graded offence any further difference is so blurred that it would not be possible to prevent crime. There need not have been any gradation of offence on the basis of actual determination of sex and non-maintenance of record as undertaking the test without the prerequisites is totally prohibited under the Act. The non-maintenance of record is very foundation of offence. For first and second offences, gradation has been made which is quite reasonable.*
98. *Non maintenance of record is spring board for commission of offence of foeticide, not just a clerical error. In order to effectively implement the various provisions of the Act, the detailed forms in which records have to be maintained have been provided for by the Rules. These Rules are necessary for the implementation of the Act and improper maintenance of such record amounts to violation of provisions of Sections 5 and 6 of the Act, by virtue of proviso to Section 4(3) of the Act. In addition, any breach of the provisions of the Act or its Rules would attract cancellation or suspension of registration of Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, by the Appropriate Authority as provided under Section 20 of the Act.*
102. *In view of the above, no case is made out for striking down the proviso to Section 4(3), provisions of Sections 23(1), 23(2) or to read down Section 20 or 30 of the Act. Complete contents of Form 'F' are held to be mandatory. Thus, the writ petition is dismissed. No costs.*

9. In view of such legal position, at this juncture, one cannot indulge in the scrutiny of the 'F' forms seized when apparently, various columns therein in respect of patient Vimal Ramesh Pawar and Meera Ambilwad are empty. When and in what circumstances the applicant had failed to complete these forms is the matter to be gone into and examined during the course of the trial. At this juncture no inference can be drawn much less by relying upon the explanation which he is now seeking to come forward with.

10. It is also important to note that apart from the professional rival who lodged the complaint against the applicant with the Collector, one more person by name Mr. Thombre has submitted a complaint with the Divisional Committee and has annexed with his complaint couple of blank 'F' forms bearing applicant's signatures. How such blank 'F' forms bearing his signatures could see the light of the day is another factual dispute which can only be decided after a full fledged trial. At this juncture this is indeed an important circumstance which *prima facie* supports the allegations about the applicant having committed the offence under the Act.

11. Again, in what manner the 'F' form register was taken in custody on 18.02.2012, whether it was necessary to have any Panchanama to be conducted, whether based on that record the

complaint could have been filed after more than 2 ½ years are again the matters which should not weigh with this Court when the applicant is seeking quashment of the proceeding. All these matters can be addressed during the trial. It cannot be said by referring to such circumstances that a complaint can be dismissed at the threshold.

12. As far as the decisions rendered by this Court cited on behalf of the applicant, with respect, these decisions now will have to be looked into the light of the subsequent pronouncement of the Supreme Court in the case of FOGSI (supra). The trial judge would obviously have to address the issue and examine the efficacy of the judgments of this Court.

13. In the facts and circumstances, in my considered view there are no sufficient and cogent grounds, even if one examines the matter in hand in the light of the observations of the Supreme Court in the case of Bhajan Lal, to quash and set aside the criminal case.

14. The Criminal Application is liable to be dismissed and is accordingly dismissed. The Rule is discharged. The trial is expedited.

(MANGESH S. PATIL, J.)