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

CRIMINAL APPLICATION NO.4496 OF 2013

Dr. Smita w/o Sandip Patil,
Age: 47 years, Occu: Medical Practitioner,
R/o Sharadchandrika Akka Maternity
and Surgical Hospital,
Chopda, Dist. Jalgaon

..APPLICANT

VERSUS

1. The appropriate Authority,
Dr. Kiran M. Patil, Age: 39 years,
Medical Superintendent,
Sub District Hospital, Chopda,
Tq. Chopda, Dist. Jalgaon

2. The State of Maharashtra,
Through the Principal Secretary,
Health Department, Mantralaya,
Mumbai-32

..RESPONDENTS

Mr B. R. Waramaa, Advocate for applicant;
Mrs P. V. Diggikar, A.P.P. for respondents

CORAM : PRASANNA B. VARALE, J

DATE : 22th March, 2019

ORAL JUDGMENT :

Heard Mr Waramaa, learned Counsel appearing on behalf of the applicant and learned Addl. Public Prosecutor for the respondents.

2. By the present application, the applicant prays for quashing and setting aside the judgment and order dated 27th August, 2013, passed by learned Additional Sessions Judge, Amalner, in Criminal Revision No.33 of

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2012, thereby confirming the order of issuance of process, dated 12th March, 2012, passed by learned Judicial Magistrate First Class, Chopda, in R.C.C. No.16 of 2012 and also for quashing and setting aside the proceedings i.e. R.C.C. No.16 of 2012.

3. The brief facts giving rise to the present application are stated as follows:

The applicant is a resident of Town Chopda, District Jalgaon and by occupation she is a medical professional and practicing in Medicine since 1992 with her father-in-law. She is running a hospital, named and styled as "Sharadchandrika Akka Maternity and Surgical Hospital" at Chopda. She has secured registration certificate under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as 'PCPNDT Act', for the sake of brevity) to run sonography centre for non-invasive test in her hospital. The applicant possesses registration of centre and the same is renewed off-late for the period from 31st August, 2007 to 30th August, 2012.

4. Dr. Pankaj Patil, Medical Officer attached to the Cottage Hospital, Chopda, along with Smt. Vasanti Dighe, attached to one N.G.O., Jalgaon and Shri Chandrajeet R. Rajput, Naib Tahsildar, Chopda visited the hospital of the applicant on 8th November, 2011. A panchnama was drawn on very day i.e. on 8th November, 2011 at 2.00 p.m. by recording certain

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deficiencies. On inspection, the ultrasonography machine was sealed and also record was seized. A copy of panchnama dated 8th November, 2011 is placed on record at Exh.'B'.

5. On 26th December, 2011, a notice was issued to the applicant referring to the deficiencies and it is stated in the said notice that the authority formed an opinion that the applicant committed breach of provisions of PCPNDT Act. The notice also states that an offence is registered against the applicant. The said notice was duly replied by the applicant immediately on 29th December, 2011.

6. Respondent No.1 – Dr. Kiran M. Patil, Medical Superintendent, Appropriate Authority attached to the Special District Hospital, Chopda, Tq. Chopda, Dist. Jalgaon presented a complaint in the Court of learned Judicial Magistrate First Class, Chopda under Section 4(3), 5, 6, 20 read with Section 28 of PCPNDT Act, 2003. Learned Magistrate was pleased to issue process order on 12th March, 2012.

7. Being aggrieved by the order dated 12th March, 2012, passed by learned Magistrate, the applicant initially approached this Court but then withdrew the application with liberty to avail the alternate remedy of filing revision. The applicant then filed revision before learned Additional District and Sessions Judge, Amalner, under Section 397 of the Code of Criminal

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Procedure. Learned Additional Sessions Judge, Amalner, by judgment and order dated 27th August, 2013, rejected the revision application affirming the order passed by learned Magistrate. Being aggrieved by initiation of proceedings as well as the order passed by learned Magistrate and learned Revisional Court, the present application is filed under Section 482 of the Code of Criminal Procedure.

8. Mr Waramaa, learned Counsel for the applicant vehemently submitted that initiation of proceedings against the applicant itself is unsustainable on more than one grounds and both the Courts below have committed a grave error in not appreciating the facts and material in proper perspective and only on mechanical application of mind, both the Courts below passed the orders. He then submitted that learned Magistrate was apprised about the serious lapse and lacuna committed by the respondents and on the very ground learned Magistrate ought not to have passed the order of issuance of process, but the order is passed only on mechanical application of mind. Mr Waramaa also relied on the judgment of this Court in support of his submission that the Courts below, without there being any supporting material, accepted the words of the complainant and committed a grave error in treating procedural irregularity as a basis for registration of an offence against the applicant.

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9. Per contra, learned Addl. Public Prosecutor appearing for the respondents supported initiation of proceedings as well as the orders passed by learned Courts below.

10. On perusal of the material placed on record, I find considerable merits in the submissions of Mr Waramaa. In the following part of the order of this Court, this Court would refer to the material and the submissions of learned Counsel.

The applicant has placed on record a copy of the certificate issued by the competent authority of the State of Maharashtra and perusal of the said certificate shows that the Registration Number is allotted to the applicant and the same is MH/JL/CHO-117. The period of certificate is renewed and the validity of registration is renewed from 31st August, 2007 to 30th August, 2012. Thus, there cannot be any dispute on the factual aspect that when the respondents authority initiated an action against the applicant, the applicant was possessing a valid registration and was permitted to run the centre attached to her hospital.

11. On 8th November, 2011, the hospital of the applicant was visited. Though in the panchnama, it is stated that machinery in the hospital and the record was inspected through the competent authority and though it refers to record seized by the authority, the signatories to the panchnama is Dr.

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Pankaj Patil, who is admittedly not the appropriate authority. The other signatories are Smt. Vasanti Dighe, who is attached to one N.G.O. and Shri. Chandrajeet R. Rajput, Naib Tahsildar, Chopda. A copy of Panchnama also reveals that the Ultrasonography Machine is sealed.

12. On 26th December, 2011, a notice is issued to the applicant stating that on 8th November 2011, the hospital was visited by the competent authority Dr. Pankaj Patil, Dr. V. S. Alure, Resident Medical Officer, Civil Hospital, Jalgaon, Smt. Vasanti Dighe and Shri. Chandrajeet Rajput, Naib Tahsildar, Chopda. It is interesting to note that in the said notice, Dr. Pankaj Patil is referred to as the appropriate authority and also it is stated that Dr. V. S. Alure, Resident Medical Officer was member of the squad, who visited the hospital on 8th November, 2011, whereas in the panchnama, there is no reference of Dr. V. S. Alure. Certain deficiencies referred to in the notice are as follows :

(i) Firstly, it is stated that one patient, namely, Smt. Manisha Pankaj Dhangar, who was carrying her first pregnancy was subjected to sonography on 27th June, 2011 and 'F' form was filled in, but in the follow up visits dated 2nd August 2011, in September, 2011 [date is not mentioned] and on 13th October, 2011, though patient was subjected to sonography but on those dates form 'F' of the patient were not filled in.

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(ii) On inspection of the register for July, 2010 in respect of 'F' form, total 13 forms were missing LMP dates [Last Menstrual Period] and these forms were filled in by referring to an approximate pregnancy in weeks. It is also stated in the notice that out of these 13 patients, 12 patients were literate and as such, these patients could have stated the date of LMP.

(iii) It is then stated that in July 2011, though there were 29 reports of sonography, in the monthly report only 25 sonography were referred to. As such, there is variance.

(iv) On perusal of 'F' forms, it found that all the reports of ultrasonography test were normal and the reports further referred to as "foetal well being". It is stated in the notice that the reports, thus, are not convincing.

(v) The patients were not informed about findings in ultrasonography.

(vi) On inspection of the record from October 2010 to February, 2011, none of the patients was subjected to sonography prior to termination of pregnancy and this record is not convincing.

13. In the reply to the notice, the applicant, with protest objections submitted her explanation. Insofar as the first deficiency is concerned, it was replied that many a times, the patients failed to bring the record of earlier treatment from the examinations and for the failure of such information to be provided by the patient, inadvertently the patient may be

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subjected to the exercise of ultrasonography on the next visit and to avoid the repetition of ultrasonography and for convenience of the applicant as a doctor, the words USG are marked in the form and this remark was only in the interest of patients. The next deficiency was replied by submitting that as per the information provided by the patient, the pregnancy in weeks is referred to and the patient failed to provide LMP date and for such failure of the patient, the applicant is not responsible. Insofar as the other deficiencies are concerned, it was replied that the applicant has maintained due record and as the record itself is seized by the authorities, the applicant was not in a position to provide detailed explanation. It was also submitted in the reply that after receiving reports of sonography, the patients were well informed and there was no reason for the applicant to mark dash (-) in the forms/record. It was also stated in the reply that only on approval/consent of the patient, the patient is subjected to sonography and if the patient denies to give consent, then the doctor cannot thrust his/her opinion on the patient to undertake the exercise of sonography.

14. As the reply is in response to notice dated 26th December, 2011 and in the notice, it is stated that an offence is already registered against the applicant, it can be stated briefly that the complaint is reiteration of the deficiencies reflected in the notice. In the complaint, it is also stated that the applicant submitted a reply on 29th December, 2011 but the reply submitted by the applicant was not found satisfactory.

15. Perusal of the copy of the complaint shows that complainant Dr. Kiran M. Patil is an appropriate authority and in the list of witnesses Dr. Pankaj R. Patil is referred as witness No.1 and Dr. V. S. Alure, Resident Medical Officer is witness No.2, whereas Smt. Vasanti Dighe, N.G.O., Jalgaon and Shri. Chandrajeet R. Rajput are witnesses Nos.3 and 4, respectively.

16. Perusal of the order dated 12th March, 2012, passed by learned Magistrate, Chopda shows that learned Magistrate, though observed that there is a prima facie case against the accused (applicant herein), in para No.5 of the said order, learned Magistrate himself specifically stated that complainant has not yet filed seized original registers mentioned at Sr. No.9 of list of the documents, however, during the course of the argument, learned Addl. Public Prosecutor showed those original registers to the learned Magistrate and the learned Magistrate gave directions to submit those registers in an envelope signed by the complainant and his Counsel. Learned Magistrate further stated that relevant xerox copies of those registers are already filed on record.

17. Interestingly enough, the documents placed on record show that an application was filed through one of the practicing lawyers of Chopda in the Court of learned Magistrate, apprising him that on 5th March, 2012, the

complaint is submitted and on 7th March, 2012, the applicant i.e. the Counsel himself was present in the Court and found that along with the complaint, an attempt was made to submit the documents to the Court which were loose documents. As the documents were not sealed properly, learned Court itself objected for tendering the documents in such loose form. The applicant also stated in his application that as per the provisions of the PCPNDT Act, it is the requirement of sealing documents on the spot itself and submitting loose documents before the Court would lose the sanctity of the documents and this would certainly leave a scope for doubt about the evidentiary value of the documents. It is also stated in the application that as a vigilant citizen and officer of the Court, these facts are brought to the notice of learned Court. The application was submitted along with the affidavit of learned lawyer, dated 9th March, 2012. Learned Magistrate, initially passed the order and the same states that "Applicant to show legal provision about his locus standi" and then on 21st March, 2012, learned Magistrate passed the order which states that "Applicant failed to show his locus standi. Applicant has no locus standi to move such application. Hence application rejected".

18. Mr Waramaa, learned Counsel for the applicant is justified in making the submission before this Court that when the Appropriate Authority, firstly, as per the case of the prosecution was Dr. Kiran M. Patil, who had submitted the complaint in the Court of the Magistrate, then there was no reason for Dr. Pankaj Patil to inspect the record and carry out panchnama.

Subsequently, if it was Dr. Kiran Patil, who was the Appropriate Authority as stated in the complaint, then the notice dated 26th December, 2011 referring to Dr. Pankaj Patil as the Appropriate Authority, who visited the hospital of the applicant on 8th November, 2011, goes contrary to the record. As such, initiation of proceedings itself is full of doubt and lacking a seriousness.

19. Mr Waramaa was also justified in submitting before this Court that when the notice was duly replied by the applicant with a justifiable explanation and also stating that as the record was in the custody of the authorities, the applicant could only provide her explanation on the basis of either her memory or the other record available with her and the record itself was not properly sealed and seized by the authority, giving a scope for an arbitrary exercise by the authorities. He was also justified in raising a serious objection in the approach of the authority. Mr Waramaa then submitted that while in the notice dated 26th December, 2011, it is stated that Dr. Pankaj Patil was the Appropriate Authority on the visit dated 8th November, 2011, in the complaint it is stated that Dr. Pankaj Patil was the Appropriate Authority, who was in-charge Medical Superintendent and along with the team members visited hospital of the accused for inspection of the record of the hospital. Thus, Mr Waramaa submitted that the authority was in undue haste only to initiate proceedings against the applicant with a vague material. He further submitted that in the notice

dated 26th December, 2011 as well as in the complaint itself it is stated that the accused did not make mention the last menstrual period but only mentioned the weeks instead of LMP and it is stated that most of the patients appear to be literate but accused intentionally not mentioned the LMP. Mr Waramaa, by inviting attention of this Court to the reply submitted that insofar as this allegation is concerned, the applicant, in the reply, clearly stated that as per the information given by the patient, reference is made to the pregnancy in weeks and the patient did not provide the information of the date of LMP. Mr Waramaa then submitted that though it is stated in the notice as well as in the complaint that out of 13 patients, 12 patients were literate, there is absolutely no supporting material in the complaint so as to state that out of 13 patients, 12 patients were literate and then in the reply filed by the State, a statement which runs in juxtaposition of the notice and the complaint, is made. It would be useful to refer to the statement in the affidavit-in-reply, which reads thus:

"6. Dr. Mr. Kiran Murlidhar Patil further noticed during inquiry & investigation that in the month of July 2010 accused did not make mention the LMP of pregnant woman. However, petitioner only mentioned the weeks instead of LMP. It was further revealed that most of the patients were illiterate, but petitioner did not mention LMP of each patient intentionally."

20. Mr Waramaa was justified in making the submission and this Court also finds that the statement in the affidavit-in-reply is least to say a somersault to the statement in the notice and the complaint. Mr Waramaa then submitted that other deficiency of variances in the reports, the same is only due to human error and the monthly reports are submitted after close of the month. As such, the human error of 2 or 3 reports cannot be treated as an intentional act of committing an offence.

21. Mr Waramaa was also justified in submitting before this Court that the Revisional Court was expected to assess the order of the Magistrate on merits and on the backdrop of the material, but learned Revisional Court proceeded only with a mechanical approach to the matter and by assigning the reasons that the complaint is filed by the appropriate authority declared under the orders of Government of Maharashtra in official Gazette and as such, he is a public servant and the learned Magistrate has considered the material on record and the Revisional Court could not find any error in the order of the Magistrate and yet charge is to be framed and the applicant at that stage can bring all these facts to the notice of the Court. Thus, by assigning these reasons, the Revisional Court rejected the application by attaching hyper technical approach, is the submission of Mr Waramaa. I find considerable merit in the submissions of Mr Waramaa.

22. Mr Waramaa then referred to an interim order of learned Single Judge of this Court, dated 3rd February, 2015 only to submit that though it was stated in the notice and the complaint that one patient Smt. Manisha Dhangar was subjected to sonography on one occasion and failure to fill up the forms on the next visit was an intentional act, soon after the panchnama which was drawn on 8th November, 2011 and before the notice was issued on 26th December, 2011, she delivered a female child on 1st December, 2011. Considering this very fact, learned Single Judge of this Court granted Rule in the application and the interim order was continued. Thus, the submission of Mr Waramaa, learned Counsel for the applicant is, this fact itself shows that the applicant, at no point of time was carrying any ill intention and the patient delivered a female child and this fact only supports the bona fide intention of the applicant.

23. Then Mr Waramaa was also justified in placing reliance on the judgment and order of the Division Bench of this Court, dated 27th September, 2016, in the matter of **Sai Santosh Shiradkar (Dr.) Vs. State of Maharashtra and anr.** The Division Bench of this Court dealt with the provisions of the Act in detail. The Division Bench also referred to the judgment of learned Single Judge of this Court in the matter of **Dr. Uma Shankarrao Rachewad Vs. Appropriate Authority**, reported in **2012 Cri. L.J. 2634** and the observations of learned Single Judge are reproduced in the judgment and order. It would be useful for our purpose to reproduce these observations, which read thus :-

"14. In view of the discussion above, the case filed against the petitioner does not disclose prima facie case and therefore should fail. Before I conclude this judgment, I think I must also hold that when the Competent Authority visits a clinic for inspection, after inspection he should record statement of the person against whom he intends to file the case. In such statement, such person would get ample opportunity to put-forward his or her explanation. The Competent Authority under this Act, in my view, should consider each case on its merits, examine it meticulously, preferably with the help of a Legal Advisor and then file complaint in the Court. At least in this case, it appears that the necessary care was not taken and the case was filed hurriedly, without examining its strength."

24. Considering the aforesaid fact situation, I am of the opinion that learned counsel for the applicant has made out a case for allowing the application. Though Learned Addl. Public Prosecutor opposed the application and supported initiation of proceedings and the orders impugned in the application, for the reasons elaborately stated above, I am not inclined to accept the submission of learned Addl. Public Prosecutor. Resultantly, the application is allowed in terms of prayer clauses (A) and (B).

(PRASANNA B. VARALE, J.)