

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5520 OF 2012

Dr. Seema Rajesh Patil,
Age 41 years, Occu. Medical Practitioner,
R/o. "Vishwa Prabha" Hospital,
Akashwani Chowk, National
Highway No. 6, Jalgaon,
Tq. & District Jalgaon.

....Applicant.

Versus

1. The State of Maharashtra
Through its : Secretary,
Health Department,
Mantralaya, Mumbai-32.

2. Municipal Corporation, Jalgaon,
Through : Appropriate Authority,
Shri Sajid Khan Amanulla Khan Pathan,
Age 51 years, Occu. Service as
Municipal Commissioner, Municipal
Corporation, Administrative Building,
Neharu Chowk, Jalgaon,
Tq. & District Jalgaon.

....Respondents.

Mr. V.D. Sapkal, Advocate for applicant.

Mr. D.R. Kale, APP for respondent No. 1/State.

Mr. S.B. Munde h/f. Mr. V.D. Gunale, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 25/06/2019.

JUDGMENT :

1. The proceeding is filed for relief of quashing of the proceeding of Regular Criminal Case No. 417/2012 pending before the learned Chief Judicial Magistrate, Jalgaon. The case is filed by

respondent authority appointed under Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'PCPNDT Act' for short) for the offence punishable under section 23 of PCPNDT Act for breach of provision of the Act like Rule 9(4) of the Act. Both the sides are heard.

2. The applicant runs Vishwa Prabha Hospital at Jalgaon. She has a sonography center in this hospital which is permitted by the Local Body as per the Rules. In this area, some serious incidents of termination of female foetus were noticed and birth rate of female child had gone below 800 at the relevant time. In view of that circumstance, steps were taken by the competent authority to check ultrasonic clinics as only after the sex determination there is the termination of pregnancy.

3. On 6.6.2012 the competent authority visited the ultrasonic clinic of the applicant. During examination of record, the authority and it's team noticed that most of the F forms were incomplete. In those forms, there was no name of accused, there was no number of registration and many forms were not bearing signatures. On some forms, there were signatures of the doctor, but they were only in respect of medical termination of pregnancy cases. In view of these circumstances, the record like MTP register, C form

register and I form register starting from the period 3.3.2012 to 1.6.2012 were taken in custody. MTP register for the period starting from 21.5.2008 to 2.3.2012 was taken in custody. I form and C form register for the period starting from 14.5.2012 to 13.3.2012 was taken in custody and F form register starting from the period 10.11.2011 to 9.2.2012, 2.6.2011 to 16.8.2011, 9.2.2012 to 25.4.2012 etc. was taken in custody. Sonography machine was sealed after making panchanama as the authority formed opinion that there was contravention of the provisions of the PCPNDT Act. As the authority formed opinion that the irregularity was helping in sex determination and due to irregularity offence was committed, private complaint was filed and on the basis of aforesaid allegations and record, process has been issued for aforesaid offence. The order of issue process was not challenged.

4. The learned counsel for applicant submitted that contention of the authority that F form was not complete is not correct. He submitted that if at all signature was necessary, signature could have been made in column No. 9 and signature ought to have been made in column No. 21 only if there was medical termination of pregnancy.

5. The submissions made and the record show that in the

record during three months prior to the inspection, there was 32 termination cases of pregnancy and out of those cases, there were 31 cases of termination of pregnancy which were done before 12 weeks age of the foetus and one termination was of the foetus who had crossed the age of 12 weeks. In the record, it is mentioned that number of male abortions was 9, but number of female abortions is not mentioned. It was mentioned that there was the termination due to danger to the life of pregnant woman in 10 cases.

6. The record of F form shows that there was no signature of doctor under column No. 19 of the form. In that column itself, there is mention that this column should describe the name of radiologist or director of clinic or gynecologist and there should be signature and registration number of the doctor. Below that there should be declaration of the patient bearing her signature. As per the contentions, there were no signatures at all on the forms in which termination was not shown. It is already mentioned that there were only 32 cases shown as the medical termination of pregnancy cases. Total number of forms which are taken over were 276. Thus, in most of the cases the forms were incomplete.

7. The learned counsel for applicant submitted that in the case reported as **2013 (2) Bom.C.R. (Cri.) 183 [Uma Shankarrao**

Rachewad (Dr.) (Mrs.) Vs. Appropriate Authority] of this Court, it is laid down that the explanation needs to be obtained of the concerned and if the explanation is not satisfactory, then only complaint can be lodged. It is true that it is necessary to obtain explanation, but it is up to the authority to find out whether explanation is plausible and the irregularity can be ignored. In view of the object behind PCPNDT Act and rampant termination of female foetus noticed in this area, the irregularity of the present nature cannot be ignored. It is already observed that only due to the doctors working in this field the birth rate of female child had come down below 800 at the relevant time. This Court holds that even minor irregularities under this Act cannot be ignored. Form F is statutory form and there is specific intention behind it. The patient is supposed to make declaration that the examination is not for the purpose of determination of sex. When somebody asks a person to sign on form, the person thinks 10 times before signing it as he fears that such signature may make him liable to some action in law. Further, ordinarily huge amount is taken for sex determination and when the money is taken, doctor generally does not compel the patient to follow such formality. Such possibility needs to be kept in mind in such cases. The irregularities noticed in this case cannot be called as minor irregularities which could have been ignored. After perusal of the record, the J.M.F.C. made the order of issue process.

The order of issue process could have been challenged by filing revision. The applicant has directly come to this Court for relief of quashing the proceeding itself. Unfortunately, this Court granted stay to the proceeding on 6.5.2013. From that day virtually no progress was made in the present matter and only when this Court insisted, the matter was argued. It is noticed that in this Court many such cases are pending in which there is interim relief and delaying tactics are played and due to that, the cases filed against the accused are not making progress. This Court holds that it is not a fit case to grant relief claimed. In the result, the petition is dismissed. Rule is discharged.

[T.V. NALAWADE, J.]

ssc/