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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

***CRIMINAL APPLICATION NO.73 OF 2014
(FOR LEAVE)***

Dr. Ramesh D.Nikam, Appropriate
Authority / Medical Officer of
Navi Mumbai Municipal Corporation ..Applicant.
V/s.

Dr.Sujeet Dange & Anr. ..Respondents.

Mr.Sandeep V.Marve for the applicant.

Mr.M.V.Thorat for respondent No.1.

Mr.R.M.Pethe, APP for the respondent-State.

CORAM : NITIN W.SAMBRE, J.

DATE : NOVEMBER 11, 2019

P.C. :-

This is an application for grant of leave to appeal by the complainant under the provisions of sections 23 and 25 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 ('the PCPNDT Act' for short).

2. The prosecution case is, Health Officer, Navi Mumbai Municipal Corporation, an appropriate authority under the PCPNDT Act in exercise of powers under section 12 carried out inspection of the clinic of respondent No.1, which is

registered under PCPNDT Act on June 21, 2011. During the inspection, he has noticed the following irregularities on the part of respondent No.1 in maintaining records pursuant to the PCPNDT Act and Rules framed thereunder:-

- (i) 'F' form register is not maintained in prescribed format;
- (ii) Information in Form F particularly clause (b) is not complied with as signatures of the radiologist and patients are absent.

3. Having *prima facie* noticed that the respondent-accused is involved in the offence punishable under the provisions of section 23 and 25 of the PCPNDT Act, suspended the registration of the respondent-accused pursuant to the provisions of sub-section (3) of section 23 of the PCPNDT Act.

4. The allegations as such are the respondent has conducted himself by running the Sonography Centre in contravention of the provisions of section 9(1), 9(4), 10(IA) and 9(6) of the PCPNDT Act.

5. Accordingly, a complaint claimed to be preferred pursuant to the provisions of sections 23 and 25 of the PCPNDT Act.

6. After the process was ordered against the respondent-accused, his statement came to be recorded

below Exhibit-31.

7. The Magistrate, after appreciating the evidence of the complainant has ordered the acquittal of the accused. As such, this application for grant of leave to appeal.

8. Submissions are, the Rules framed under the PCPNDT Act confer powers on the appropriate authority to carry out inspection of the Sonography Centre registered with the applicant. During such inspection, if it is found that the documents are not maintained in Form F so also register in Form-F, the offence is very much made out. A further submission is, learned Magistrate has exceeded his jurisdiction in recording a finding on the issue as to the exact nature of violation of the provisions of the PCPNDT Act and the Rules framed thereunder. It is also claimed that the learned Magistrate by recording a finding that the inspection of the clinic of the accused carried out by the complainant was without any authority, is also unjust and contrary to the provisions of section 12 of the Rules. As such, leave is sought.

9. Learned counsel for the respondent-accused justified the orders of the learned Magistrate.

10. Having appreciated the submissions of learned counsel for the applicant on the basis of record as aforesaid, it

can be gathered that the documents which were taken from the custody from the respondent-accused particularly the forms maintained by it and the register were not sealed by the complainant. A categorical admission to that effect is given by the complainant in his evidence. In the aforesaid backdrop, the documents which were allegedly seized were not proved to have been properly sealed in accordance with law. Apart from above, the provisions of section 30 of the PCPNDT Act prescribes the procedure and powers of search and seizure as required, is also not adhered. The panch witnesses to the alleged seizure were also not examined by the complainant.

11. Even if the procedure prescribed empowers the complainant to carry out such seizure in presence of two panch witnesses, there is no explanation coming forward as to why the independent witnesses were not examined.

12. In that view of the matter, once the very seizure is not established by the complainant, the presumption under section 24 of the PCPNDT Act will not be attracted against the accused.

13. As far as finding of the unauthorized inspection carried out by the applicant-complainant is concerned, the statute does not contemplate that there has to be a complaint

against the accused and then only the provisions can be invoked. The language of section 30 of the PCPNDT Act contemplates that if there is reason to believe that an offence is committed by the accused, the appropriate authority has every right to carry out search and seizure. That being so, the finding recorded by the learned Magistrate of unauthorized search and seizure are without any basis.

14. In the aforesaid backdrop having noticed that the appropriate authority has conducted itself contrary to the provisions of section 30 of the PCPNDT Act in the matter of search and seizure, the panch witnesses were not examined so as to establish the seizure, the charge is held to be not proved against the accused as that of non-maintaining of record in form F as prescribed under section 4 of the PCPNDT Act and Rules framed thereunder. That being so, in my opinion, leave as prayed is liable to be refused and accordingly refused.

(NITIN W.SAMBRE, J.)