

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APPA) NO.515 OF 2018

(Dr. Seema w/o Namdeorao Naitam ..vs.. Dr. Rajesh s/o Bhimrao Uttane)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R. Bhishikar, Counsel for the applicant,
Shri S.K. Bhoyar, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 24-06-2019

By judgment dated 15-12-2017 in Regular Criminal Case 258/2013, the learned Magistrate acquitted the respondent-accused of offence punishable under Sections 23(1) and 25 of the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act)

2. This application seeks leave to appeal.

3. The learned Magistrate noted the provisions of Section 28 of the PCPNDT Act which mandate that the Court shall not take cognizance of offence under the PCPNDT Act except on a complaint made by the appropriate authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the appropriate authority, or the complaint is instituted by person who has given notice of not less than 15 days in the manner

prescribed to the appropriate authority, of the alleged offence and of his intention to make a complaint to the Court.

4. In the present case, the complaint is filed by the Health Officer of the Corporation. The learned Magistrate considers the notification dated 09-12-1997 and holds that the Civil Surgeon of the concerned department is notified as the appropriate authority and only where there is no post of the District Civil Surgeon, other officers are notified to perform functions and duties of the appropriate authority.

5. The learned Counsel fairly agrees that the issue is not *res integra* and is *inter alia* covered by the Division Bench judgment of this Court in Criminal Writ Petition 250/2015 (Dr. Paayal w/o Shreekant Chobe vs. State of Maharashtra and others). It is further stated that the Hon'ble Apex Court dismissed the Special Leave to Appeal seeking leave to appeal.

6. In view of the settled position of law, I do not see any reason to grant leave.

7. The application seeking leave to appeal is dismissed.

JUDGE