

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Fifteenth day of February Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE G.K. ILANTHIRAIYAN

WP No.4551 of 2019

and WMP.NO.5139/2019

DR.DHAMAYANTHI RAJKUMAR [PETITIONER IN BOTH THE PETITIONS]

Vs

1 THE STATE BY [RESPONDENTS IN BOTH THE PETITIONS]
INSPECTOR OF POLICE,
ATTUR POLICE STATION,
SALEM DISTRICT.

2 THE CHIEF CIVIL SURGEON,
MEDICAL OFFICER, GOVERNMENT HOSPITAL,
ATTUR, SALEM DISTRICT.

Writ Petitions under Article 226 of the Constitution of India praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a Writ of Mandamus

(i) Directing the 2nd respondent to de- seal the petitioner Hospital and her residence situated in the same premises namely Sree Mathura Hospital, Dr. Varadharajalu Street, Jothi Nagar, Attur Salem District. 636 102 forthwith. (in WP.4551/2019) and;

(ii) To grant an order of ad- interim direction, directing the 2nd respondent to de-seal the petitioner Hospital and her residence situated in the same premises namely Sree Mathura Hospital, Dr. Varadharajalu Street, Jothi Nagar, Attur Salem District. 636 102 forthwith (in WMP.5139/2019) pending disposal of the present WP.4551/2019 respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of MR.RAMESH KUMAR K.R., Advocate for the petitioner in both the petitions and of MR.M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the 1st Respondent the court made the following order:-

Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor takes notice on behalf of the first respondent. Notice to the 2nd respondent returnable by eight weeks. Private notice is also permitted.

2.The allegation made against the petitioner is that he has committed an offence under Section 23(1) of The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. This complaint has been given on the ground that the petitioner who is running a hospital, after scanning the pregnant lady, had shared the details about the sex of the child in the womb. This is an offence under Section 23(1) of the above said act.

3.However, the Cognizance of the offence can be taken only on a complaint made by the appropriate authority before the concerned Magistrate Court. The police cannot register an FIR and conduct an investigation in this regard. Even if investigation is conducted in this case, the police cannot file a final report and in turn it could not be taken cognizance by the concerned Magistrate Court, in view of the bar under Section 23 (1) (a) of the The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

4.The respondent police has proceeded to seal the hospital and therefore, the petitioner has filed a petition for a direction to the respondent police to de-seal the hospital. Since the very authority and jurisdiction of the respondent police is under question, this Court is of the considered view that the hospital must be directed to be de-sealed, pending disposal of the writ petition. The second respondent is directed to de-seal the hospital belonging to the petitioner immediately, pending disposal of this writ petition.

5. Post this writ petition after eight weeks.

-sd/-
15/02/2019
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE INSPECTOR OF POLICE,
STATE, ATTUR POLICE STATION,
SALEM DISTRICT.

2 THE CHIEF CIVIL SURGEON,
MEDICAL OFFICER, GOVERNMENT HOSPITAL,
ATTUR, SALEM DISTRICT.

C.C. to MR.RAMESH KUMAR K.R. Advocate Sr.No.2301

Order
in
WP.4551/2019

and WMP.5139/2019

Date :15/02/2019

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