

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 13697 of 2018

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.1801 of 2017 on the file of the Additional Junior Civil Judge, Karimnagar.
2. A charge sheet came to be filed against the petitioners/A.3 and A.5 and others for the offences punishable under Sections 23 (1) and 25 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short "the Act").
3. The case of the prosecution is that A.1 and A.2, who are wife and husband, are practicing as Doctors and running a Nursing Home in their own building under the name and style as "Sai Venkateshwara Nursing Home" in H.No.7-2-302, Mankammathota Locality, Karimnagar. The 1st petitioner/A.3, who has completed B.Com., earlier worked in a Diagnostic Centre namely "Namratha", which was run by Dr.Balakrishna. After the death of Dr.Balakrishna, the 1st petitioner/A.3 acquired some diagnostic knowledge but did not possess any qualification to do diagnostics and joined in the nursing home of A.1 and A.2. A.4 and the 2nd petitioner/A.5 are known persons of A.1 to A.3, used to refer the sex determination cases to A.1 to A.3 and acquire commission. It is alleged in the charge sheet that as per the Act no person shall open

any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or centre having ultrasound or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus and sex selection, or render services to any of them, unless such centre, laboratory or clinic is duly registered under the Act. A.1 to A.5, well known about the existence of the Act, but for their illegal and easy earning, they started sex determination of foetus in the hospital of A.1 and A.2. A.4 and the 2nd petitioner/A.5 used to refer the needy people to the hospital of A.1 and A.2 and the 1st petitioner/A.3 used to assist in the diagnostic procedure and all of them did the acts by violating the provisions under the Act and A.1 and A.2 paid percentage of money, collected from the needy people to A.3 to A.5 and this was going on clandestinely. Since these types of illegal activities were increased, a Task Force Team was formed and they got information about the illegal activities of A.1 to A.5, secured two couples (L.Ws.9 to 12), explained them about the decoy operation planned to be conducted in the hospital of A.1 and A.2. Accordingly, on 26.07.2017 at about 3.00 p.m., both the couples went to the hospital of A.1 and A.2, and asked for sex determination of foetus, to which A.1 and A.2 readily agreed and called the 1st petitioner/A.3. A.4 and the 2nd petitioner/A.5 also accompanied with the 1st petitioner/A.3. A.1 and A.2 collected a sum of Rs.7,500/- from each couple (L.Ws.9 to 12) and conducted the sex determination of foetus with the assistance of the 1st petitioner/A.3 and disclosed the sex

determination of foetus. In the meantime, the required information was passed to the Task Force Party and they rounded up A.3 to A.5 and the concerned officials rushed to the spot, conducted panchanama and seized the ultrasound machine. Basing on the above allegations, a charge sheet came to be filed and the learned Additional Junior Civil Judge, Karimnagar, has taken cognizance of the same as C.C.No.1801 of 2017. The present Criminal Petition is filed by the petitioners/A.3 and A.5 to quash the proceedings against them in the above C.C.

4. Though notice was served on the 2nd respondent, none appeared on his behalf. Hence, heard learned Counsel for the petitioners and learned Additional Public Prosecutor appearing for the 1st respondent.

5. Learned counsel for the petitioners/A.3 and A.5 submits that the petitioners/A.3 and A.5 have been falsely implicated in the above case on a complaint lodged by the 2nd respondent, under Section 23 (1) and 25 of the Act, on 27.07.2017. Without conducting proper enquiry into the matter, the Station House Officer, Karimnagar II Town Police Station, filed charge sheet. It is also submitted that *prima facie* the above charge sheet is not at all maintainable either in law or on facts and deserves to be quashed. It is further submitted that on perusal of the entire contents of the complaint, it is clearly revealed that the entire allegations revolves against A.1 and A.2 and as far as the role of the petitioners/A.3 and

A.5 is concerned, the only allegation against them is that they alleged to have helped A.1 and A2 in committing the offence. It is also submitted that Sections 23 (1) and 25 of the Act are not at all applicable to the petitioners/A.3 and A5. It is further submitted that as per the notification issued by the Government of Telangana, under which the District Level Appropriate Authority was constituted, the designated persons and State officials are only entitled to lodge a complaint in the matter. The said procedure was totally overlooked in the above case and on this ground also the above case deserves to be quashed. It is also submitted that a perusal of the contents of the complaint, no case has been made out against the petitioners/A.3 and A.5. The trial Court totally overlooked the fact that the prosecution launched against the petitioners/A.3 and A.5 is not in accordance with Section 28 of the Act and also the Rules framed there under and erred in taking cognizance against the petitioners/A.3 and A.5. Since the provisions of the Act and the Rules made there under are not at all complied by the prosecution, the case against the petitioners/A.3 and A.5 are not at all maintainable.

6. All the contentions raised by the learned Counsel for the petitioners/A3 and A5 relate to disputed questions of fact. The Court has also been called upon to adjudge the testimonial worth of the prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon

by the learned Counsel for the petitioners/A3 and A5. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

7. The law regarding sufficiency of material which may justify the summoning of the accused and also the Court's decisions to proceed against him in a given case is well settled. The Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required.

8. A perusal of the F.I.R. and the material collected by the Investigating Officer, on the basis of which the charge sheet has been submitted makes out a *prima facie* case against the petitioners/A3 and A5 and that there appears to be sufficient ground to proceed against the petitioners/A3 and A5. I do not find any justification to quash the proceedings against the petitioners/A3 and A5. Thus, the prayer for quashing the proceedings in C.C.No.1801 of 2017 on the file of the Additional Junior Civil Judge, Karimnagar, is refused.

9. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE G. SRI DEVI

26.11.2019
Gkv/Gsn.

