

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.M-34689 of 2016 (O&M)
Date of Decision: August 02, 2019**

Kamal Vasudeva and another

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurinder Pal Singh, Advocate
for the petitioners.

Mr.Tanuj Sharma, AAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The petitioners have filed this petition for quashing the FIR No.583 dated 17.08.2016 under Sections 4 and 5 of the Medical Termination of Pregnancy Act, 1971 and Sections 315 and 511 IPC, registered at Police Station City Hansi, District Hisar, along with all consequential proceedings.

Notice of motion was issued. Learned State counsel appeared, filed the reply and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that the FIR in the present case has been registered under the MTP Act on the basis of application/complaint of

Deputy Civil Surgeon, Hisar. As per the FIR, on 17.08.2016, on the basis of

secret information, as per directions of Dr.Tejpall Sharma, Deputy Civil Surgeon, Hisar, Mahabir Singh, decoy customer was given ₹2100/- and he was sent at Hind Medical Store, Tikona Park, Hansi, for purchasing MTP kit and team members kept standing near the shop waiting for signal of Mahabir Singh. As soon as the decoy customer got the MTP kit, he flashed signal by rounding white cloth around his head and the team, red-handedly caught Kamal Vasudeva and currency notes amounting to ₹600/- out of ₹2100/- given for MTP kit by Mahabir were recovered from the right pocket of pant of Kamal Vasudeva. Kamal Vasudeva could not produce any bill of purchase or sale of MTP kit at the spot. It is also in the complaint that this medicine is used for termination of pregnancy. It is crime under Section 3, 4, 5 of MTP Act and Sections 315/511 IPC to sell or purchase the same without prescription of any medical officer. It is also in the FIR that Atam Parkash was owner of Hind Medical Store, Tikona Park, Hansi.

Learned counsel for the petitioners argued that there is no provision in the Medical Termination of Pregnancy Act (MTP Act), by which the petitioner can be punished or selling of MTP kit amounts to an offence. I have gone through the provisions of the MTP Act. Section 3 deals with situation 'when pregnancies may be terminated by registered medical practitioners'; Section 4 deals with 'place where pregnancy may be terminated'; Section 5 deals with where 'Sections 3 and 4 when not to apply'; Section 6 provides 'power to make rules'; Section 7 provides 'Power to make regulations' and Section 8 deals with 'Protection of action taken in good faith'. There is no specific provision under the Act where selling of MTP kit amounts to an offence.

reply filed by the State, it is nowhere mentioned that selling of MTP kit amounts to an offence under any other Act also.

Learned counsel for the petitioner cited judgment passed by this Court in *CRM No.M-15860 of 2014 decided on 18.09.2014 titled as 'Dr.Vandana Malik vs. State of Haryana'*, in which, the FIR under the MTP Act was quashed on the similar facts and circumstances.

Keeping in view the above discussions and provisions of MTP Act, I find that no offence under the MTP Act is made out in this case.

Finding merit in the present petition, the same is allowed. FIR No.583 dated 17.08.2016 under Sections 4 and 5 of the Medical Termination of Pregnancy Act, 1971 and Sections 315 and 511 IPC, registered at Police Station City Hansi, District Hisar, along with all subsequent proceedings arising therefrom, is hereby quashed.

August 02, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No