

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

(i) CRM No.M-43379 of 2014 (O&M)

Vijay Dandeva

...Petitioner

VERSUS

State of Haryana and another

...Respondents

(ii) CRM No.M-20123 of 2015 (O&M)

Vijay Dandeva

...Petitioner

VERSUS

State of Haryana and another

...Respondents

Date of Decision: March 12, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anurag Jain, Advocate
for the petitioner.

Mr.Navdeep Singh, AAG, Haryana
for the respondents.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as point
for determination in these cases is the same.

The petitioner has filed CRM No.M-43379 of 2014 under
Section 482 Cr.P.C. for quashing of FIR No.100 dated 21.02.2014 under
Sections 3, 3B, 23, 25, 26 of the Pre-Conception & Pre-Natal Diagnostic

Techniques (Regulation and Prevention of Misuse) Act [for brevity 'the

Act'] and Rule 3A of the Act, registered at Police Station City Bahadurgarh, District Jhajjar, challan dated 10.03.2014 and charge-sheet dated 14.07.2014 along with consequential proceedings arising therefrom.

CRM No.M-20123 of 2015 has been filed by the petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C. for quashing of criminal proceedings initiated under Sections 3, 38, 23, 35, Rule 3(a) of the Act and Rules 1996, by SDJM on the criminal complaint No.22 of 2015 filed by District Appropriate Authority Civil Surgeon, Jhajjar, on the basis of FIR No.100 of 2014 etc. along with all consequential proceedings arising therefrom.

Notice of motion was issued. Learned State counsel appeared and contested the petitions.

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

From the record, I find that FIR has been registered against the petitioner, which is reproduced as under:-

“Today on 21.02.2014 secret information was received by Dr.Ramesh Dhankar, Civil Surgeon that one person Sh.Vijay Dandeva, from the aforesaid address is selling portable ultrasound machine in an illegal manner without bill and without asking for registration certificate under PC&PNDT Act. Dr.Ramesh Dhankar for this enquiry constituted a team. Dr.H.R.Passi, Deputy Civil Surgeon, other members of the team Dr.Urender Singh, RMO, Civil Hospital, Bahadurgarh. Sh.Manmohan Taneja, SDCO, Rohtak, Sh.Rakesh Dahiya, DCO Jhajjar, Sh.Amandeep Chauhan, DCO Rewari, and Decoy customer Sh.Neeraj Tyagi son of Tapraj Singh r/o House No.12, New Enclave, Najabgarh, New Delhi-43 reached

MIE Bahadurgarh for the aforesaid spot for enquiry. After standing at some gap from that factor I gave Rs.1,50,000/- comprising 1000x100=Rs.1 lac, 500x100=Rs.50,000/- to Decoy customer and scribe my initials on 5 notes of 1000 rupees and 5 notes of 500 rupees whose serial number of 1000 currency notes are 2DT 647922, 9DA 173592, 4BA 041802, 8AW 601660, 1FV 821387 and Sr. No. of 5 notes of Rs.500 currency are 1LF 914579, 0BP 328616, 0NT 469713, 0KA 358489, 9KP 368043 and sent the decoy customer Sh.Neeraj Tyagi for purchasing the machine from the aforesaid person and Sh.Amandeep Chauhan was made as a shadow witness, both of them were sent to that person. Around 3 pm both the two persons entered the said factory. After about half hour on receipt of indication from shadow witness (whose indication by waiving his hand), the other members of the team also entered into the premises of the factory. The decoy customer told that Sh.Vijay Dandeva has sold one portable USG machine (on which sticker of blue colour was affixed mentioning thereon HOSPY-CARE systems and laptop ultrasound) for Rs.1,50,000/- without bill and without the name of any person carrying registration under PC & PNDT Act. Then the aforesaid team obtained Rs.1,50,000/- from the hands of Sh.Vijay Dandeva, which carry the same initials, which were scribed by me before coming to the factory and also portable USG machine were also recovered from the table. I immediately inform City Thana Bahadurgarh on landline telephone. Aforesaid Sh.Vijay Dandeva told that these type of portable USG machine are being brought from China and is also getting their parts. From this part he is making his own portable USG machine. Then the sticker of his firm are affixed. He is also purchasing old machines and is selling them after their repair in Haryana and other States and is providing repair service. He is selling these machines in Haryana and other States, to people who are not registered under PNDT Act

and without bill. He also informed that till today he has sold these type of 12 machine in Haryana and other States in an illegal manner and has never informed District Appropriate Authority, Jhajjar and State Authority with respect to the sale and purchase of these machines. Two bills bearing No.155 dated 18.01.2013 pertaining to M/s Switz Meditech System, Bihar for Rs.1,02,000/- and two machine vide bill No.174 dated 26.02.2013 in favour of Bijoy Tumorday, Gaya, Bihar for Rs.2,63,125/-. No intimation has been given to the aforesaid authority for the sale of these machines. Then the team made a seizure memo under Rule 12 of PC & PNDT Act, 1994 on which the members of the team and aforesaid Sh.Vijay scribed their signatures and the portable USG machine probe and electric connector wire and jolly were packed in different packets as mentioned in the seizure memo, on which, I scribed my signatures. Apart from this, one sale book was also got recovered whose number were 151 dated 10.08.2012 to 2000, whose last bill No.174 dated 26.02.2013 has been shown to be issued. In the meanwhile, police reached at the spot. Then all the aforesaid packets and seizure memo, aforesaid bill books and aforesaid sale bill were handed over to the police. In this manner aforesaid Sh.Vijay Dandeva by selling portable USG machine illegally and without giving intimation to the authority and by selling it to the unregistered person has committed an offence. Hence, case be registered under Section 3, 3B, 23, 25, 26 and Rule 3-A under PC & PNDT Act against the aforesaid person Sh.Vijay Dandeva and further proceedings be done and from his possession remaining portable machines, probe, sale record prior to 10.08.2012, laptop ACER (which may contain details of sale) be taken into possession and interrogation be got done of Sh.Vijay Dandewa regarding how many portable USG machines and other ultrasound machines from China or other countries after importing and till today how many of the same have been sold

in Haryana and other States and to which person. All the aforesaid portable machines illegally sold be got recovered and the persons from whom these machines are recovered, against those persons also case under PC & PNDT Act be registered and on the import licence of the aforesaid firm how many machines were purchased from China and of which company and which brand, these details be also taken. Aforesaid Sh.Vijay Dandeva informed his import licence No.0509009140 dated 05.05.2000. All the aforesaid offences are non-bailable cognizable and non-compoundable. From the aforesaid complaint offence under Section 3, 3B, 23, 25, 26 and Rule 3A PC & PNDT Act, 1994 and Rules 1996 have found to be committed and the case has been got registered.”

Learned counsel for the petitioner mainly argued that as per Section 28 of the Act, the Court is to take cognizance only on the basis of complaint of the appropriate authority and FIR cannot be registered. He further argued that the petitioner is a trader and selling the ultrasound machines by repairing/assembling the same, therefore, he cannot be held liable under the Act. It is also argued that procedure has not been followed by the competent authority. Learned counsel for the petitioner next argued that after registration of the FIR, after issuing notice, a complaint was filed by the competent authority against the accused-petitioner on the similar facts.

On the other hand, learned State counsel relied upon the law laid down by Hon'ble Division Bench of this Court in ***CRM No.M-4211 of 2014 titled as 'Hardeep Singh and another vs. State of Haryana and others', decided on 04.12.2014*** and argued that FIR can be registered as the offence is cognizable. He further argued that the petitioner has committed

the offence under Section 3B of the Act. Proper procedure has been followed. He next argued that even if the complaint is filed by the competent authority, even after registration of the FIR, then it is for the trial Court to see whether complaint can be clubbed together with the FIR or these to be decided together or not.

First of all, I find that the Hon'ble Division Bench of this Court has laid down the law in ***Hardeep Singh's case*** (supra) as under:-

- “(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.*
- (2) A report under Section 173 CrPC along with complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.*
- (3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”*

Admittedly, the offence under the Act is cognizable and FIR can be registered, as is also held in the above-cited judgment. In no way, it can be held that FIR cannot be registered for the offence under this Act. Section 3B of the Act provides as under:-

3B. Prohibition on sale of ultrasound machines, etc., to persons, laboratories, clinics, etc. not registered under the Act.- No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

In view of these provisions, in no way, it can be held that no offence is made out against the present petitioner.

Learned counsel for the petitioner contended that procedure has not been followed whereas learned State counsel has contended that procedure has been followed. From the evidence, learned trial Court will look into this fact and this finding of fact, at this stage, cannot be given by this Court.

As regarding the complaint filed by competent authority, I find that it is for the trial Court to look into this as to whether complaint is to be clubbed with the main case or to be decided together or not or to pass any other appropriate order qua the complaint. The parties are at liberty to file appropriate application before the trial Court.

The perusal of the record nowhere shows that registration of the FIR and filing of complaint are abuse of process of law or amounts to miscarriage of justice.

Therefore, finding no merit in both the petitions, the same are dismissed.

March 12, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No