

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-48435 of 2017

.....

Date of decision:29.01.2019

Dr. Ashish Gulia and another

.....Petitioners

v.

State of Haryana

.....Respondent

....

Present: Mr. Sunil Panwar, Advocate for the petitioners.

Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana
for the respondent-State.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.526 dated 17.9.2016 (Annexure-P.1) registered for the offences under Sections 2, 3, 4 and 5 of Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as 'the MTP Act') at Police Station Mujesar, District Faridabad and all subsequent proceedings arising therefrom therein.

Notice of motion was issued in this case.

Mr. Sharad Kumar Yadav, learned Deputy Advocate General, Haryana has appeared on behalf of the respondent-State and contested this 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 has been registered on the basis of an application for taking action against Dr. Ashish Gulia and Ms.

Jyoti, Receptionist, City Hospital Gaunchi, Faridabad and another person, whose name was told by Jyoti, to be Sunil, PRO, City Hospital. It has been stated that on 16.9.2016, information was received in the office of Civil Surgeon that in City Hospital, Sohna Road, Faridabad, abortions are done illegally. On receiving this information, Civil Surgeon, Faridabad constituted an investigation team comprising of Dr. Sanjeev Bhagat, Nodal Officer, PNDT, Shri Rakesh Chhoker, Drug Control Officer, Faridabad and Dr. Bina Sharma, Dy. CMO, Faridabad. Smt. Babita, who was three months pregnant, was prepared as a decoy patient. Information was received that the aforementioned hospital charges ₹6,000/- for conducting MTP. Therefore, a list of six notes of the denomination of ₹1000/- each was prepared and after getting the notes signed by the Civil Surgeon, Faridabad, the same were given to Babita. The Civil Surgeon, Faridabad requested the Deputy Commissioner, Faridabad, to appoint a Duty Magistrate. The Deputy Commissioner appointed Mr. Brijendra Rana, Tehsildar, Ballabgarh as Duty Magistrate and sent him to the office of the Civil Surgeon. The complainant requested the ACP Mrs. Pooja Dabla to depute police personnel to join the raid. On his request, the ACP Faridabad sent one male Constable and two lady Constables to the office of the Civil Surgeon. On arrival of the Duty Magistrate Shri Brijendra Rana at Civil Surgeon's office, the team sent the decoy patient to City Hospital, Faridabad to fix a deal for getting MTP. Shri Surender LT, Sanjay Colony, CHC was also sent with Ms. Babita as her fake husband. They both, on reaching City Hospital, asked the receptionist Ms. Jyoti for getting conducted MTP. Ms. Jyoti got Ms. Babita checked up from Lady Dr. Neeraj. Dr. Neeraj informed that the child is three months

old and asked for the Ultrasound report. She agreed to conduct MTP for ₹19,000/-. On coming outside, Babita narrated the whole conversation to the raiding team, which was standing a far away. The team prepared a list of ₹13,000/- after getting signatures of the Duty Magistrate on 26 notes of ₹500/- each, again sent her inside, along with the Ultrasound report. Babita had already given ₹6,000/- to the receptionist. Thus, Babita gave the balance amount of ₹13,000/- to the receptionist – Jyoti. The receptionist took ₹13,000/- and kept it in the drawer, in the same way as she had kept the earlier ₹6,000/- and informed Dr. Neeraj on phone that the patient has deposited ₹19,000/-. On hearing this, Dr. Neeraj asked Jyoti to tell the patient that ₹25,000/- will be charged. Sh. Surender LT, who was posing as the fake husband of Babita, gave ₹5,000/- from his own pocket, which were already noted in the list prepared by the team, so that the same may be given at the spot, on demand being made. A total amount of ₹24,000/- was given to Jyoti, in this manner. Jyoti attempted to give this information to Dr. Neeraj on intercom, which was answered by Dr. Ashish-husband of Dr. Neeraj. Jyoti passed on this information. After this, Jyoti informed that the medicine to be kept in the body of the patient will be brought and kept by Dr. Neeraj herself. In the meantime, immediately on entering of the Health Department team in the premises, a person, whose name was told by Jyoti to be Sunil, ran away on a white coloured Scooty, which was told by Jyoti to be of Dr. Neeraj, whose RC was asked for and on seeing which, it was found to be in the name of Dr. Ashish Gulia. According to Jyoti, this scooty contained the instruments used for termination of pregnancy, which were taken out only at the time of abortion. The team, in the presence of the Duty

Magistrate, Jyoti, Dr. Neeraj and Dr. Ashish recovered ₹24,000/- from the drawer at the reception, which were already mentioned in the list. The team prepared a spot memo and recorded the statements of decoy patient Babita and the Receptionist, which were signed by all team members and the Duty Magistrate. Dr. Neeraj refused to give her statement by citing bad health. Hence, it has been requested that case under MTP Act be registered against the above mentioned persons and further proceedings be initiated.

Learned counsel for the petitioners mainly argued on one point that no offence is made out under MTP Act and he has shown me the provisions that this offence is not made out under the said Act as the FIR has been registered under Sections 2, 3, 4 and 5 of the MTP Act.

On the other hand, learned State counsel argued that, in no way, from the FIR, it can be held that no offence is made out. He argued that even if the Police registered the FIR or presented the challan under wrong sections and wrong Act, the FIR is not liable to be quashed. He argued that from the averments made in the FIR and the evidence collected regarding the same by the Investigating Officer, the offences under Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the PNDT Act') are clearly made out.

After going through the record and after hearing learned counsel for the petitioners and the learned State counsel, I find that the arguments of the learned State counsel are having merit.

In the present case, the team was headed by Dr. Sanjeev Bhagat, Nodal Officer, PNDT. Section 6 of the PNDT Act prohibits the determination of sex. It provides as under:-

“6. Determination of sex prohibited.- On and from the commencement of the Act,-

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

(b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus;

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.”

Section 4 of the PNDT Act also regulates the pre-natal diagnostic techniques. It has been stated that no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in the above Section. Section 22 of the PNDT Act specifically prohibits of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention. Section 23 of the PNDT Act also deals with the offences and penalties under the Act.

From the perusal of the provisions of the PNDT Act, I find that, in no way, it can be held that from the facts and circumstances of the case and the averments of the complaint no offence is made out. In no way, the registration of the FIR can be held as an abuse of the process of law and

amounts to miscarriage of justice. The mere mentioning of wrong sections or wrong Act itself will not be sufficient to quash the FIR. It is for the trial Court at the time of taking cognizance to see as to what offence has been committed and under what provisions and the Act and to see as to whether to frame charges or not and under which Section and under which Act.

Therefore, at this stage, finding no merit in this petition, the same is dismissed.

January 29, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No