

**HONOURABLE JUSTICE G. SRI DEVI**

**CRIMINAL PETITION Nos. 239 and 266 of 2020**

**COMMON ORDER:**

Criminal Petition No.239 of 2010 is filed by A-1 and A-2 and Criminal Petition No.266 of 2020 is filed by A-5 to A-7 under Section 482 Cr.P.C. seeking to quash the proceedings initiated against them in C.C.No.20084 of 2019 on the file of the III-Additional Chief Metropolitan Magistrate, Hyderabad.

The brief facts of the case are that the 2<sup>nd</sup> respondent herein filed a complaint under Section 28 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and Rules, 1996 (hereinafter referred to as "the P.N.D.T. Act"). By an order, dated 11.12.2019, the learned III-Additional Chief Metropolitan Magistrate at Hyderabad, has taken cognizance of the offence against A-1 to A-7 and ordered for issuance of summons to A-1 to A-7. Challenging the order for taking cognizance and issuing summons, the present Criminal Petitions are filed by A-1, A-2 and A-5 to A-7.

Heard learned Counsel for the petitioners in both the Criminal Petitions, learned Additional Public Prosecutor for the respondents-State and perused the record.

The only contention raised by the learned counsel for the petitioners is that there is a bar in view of Section 28 of the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, which prohibits cognizance by any Court of an offence except on a complaint made by the concerned appropriate authority. It is also submitted that the 2<sup>nd</sup> respondent is not the appropriate authority and that he has no authorisation to file the complaint, therefore, the proceedings against the petitioners are liable to be quashed. He further submits that since the impugned order has been passed without jurisdiction, there would be no need for him to challenge the contents of the complaint. In support of his contentions he relied on the judgment of the Apex Court in *Dr. Mallannagouda v. The State of Karnataka* (W.P.No.200185 of 2018).

Learned Additional Public Prosecutor opposed the application.

Before proceeding further it would be useful to refer to Section 28 of the P.N.D.T. Act, which reads as under:

**"28. Cognizance of offences.**

1. No court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or State Government, as the case may be, or the GURPREET KAUR 2014.09.23 10:04 I attest to the accuracy and authenticity of this document High Court Chandigarh Appropriate Authority ; or

(b) person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.- For the purpose of this clause, "person" includes a social organization.

2. No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

3. Where a complaint has been made under clause (b) of sub section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person."

As per clause (a) of sub- section (1) of Section 28 of the P.N.D.T. Act, the complaint can be filed by an Officer, who is authorised in that behalf by the Central Government, the State Government or the Appropriate Authority.

The Supreme Court in the matter of *Dr.Mallannagouda v.*

*The State of Karnataka (supra)* held as under:

“10. In these cases the complaints are filed by the District Health Officer i.e., respondent No.2. In the complaints, it is stated that the Vigilance Squad, raided on authorization of Appropriate Authority under Government Notification mentioned therein and orders of Planning Director of Health and Social Family Welfare and the Deputy Director of PC&PNDT etc. The notification, orders or authorization are not produced along with the complaints.

11. Respondent No.2 in the complaints does not even state that he was authorized by 'Appropriate Authority' to file aforesaid complaints to prosecute the petitioners. Having regard to that, there was no compliance of Section 28 (1) (a) of PCPNDT Act, 1994. There is force in the contention that in the absence of production of such notification, the complaints are incompetent.

12. The complaints were filed through private advocate without any authorization of appropriate authority representing the complainant or Government Authorization. Since, the representation of the complainant before the court at inception was not under authorization of Appropriate Authority or Government, even that objections of the petitioners are sustainable.

13. In the similar matter before the High Court of Judicature at Bombay Bench at Aurangabad in Dr.Sai w/o Santosh Shiradkar v/s The State of Maharashtra and another in Criminal Writ Petition No.1381/2015, similar action was challenged on the ground of violation of principles of natural justice. It was contended that before filing of complaint, the Appropriate Authority

should have given opportunity to the alleged defaulters and taken their explanation, sought the compliance.

14. In that case court held that having regard to scheme of the Act, Sections 17(4), (a), 28, 29 and Rule- 9, whenever any omissions or commissions in compliance of Act and Rules are found, the appropriate authority has to seek explanation of the defaulters to find out, whether there is any criminal intention in such violation. It was further held that, if there is scope for correction, no criminal intention is found, compliance can be permitted. Over all it is stated that an opportunity shall be given to defaulters, before taking recourse to prosecution of the defaulters.

15. The learned counsel for the petitioners submits that judgment in Dr.Sai's case referred to supra, was confirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl) CRL.M.P.No.5636/2017 on 17.04.2017. He produces the copy of the said order.

16. For the reasons stated supra the trial Court has committed error in taking cognizance of the matter, thereby causing gross injustice to the petitioners. Therefore, petitions are allowed."

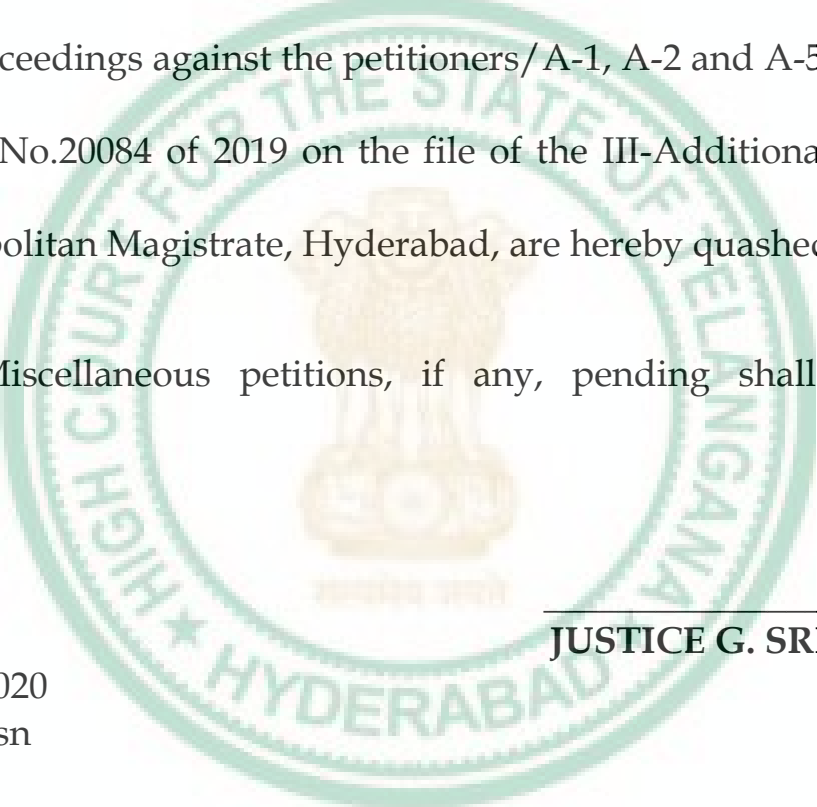
In the instant case also, it is nowhere stated in the private complaint that the 2<sup>nd</sup> respondent is an appropriate authority and that he was authorised by the 'appropriate authority' to file the said complaint and to prosecute the petitioners.

Keeping in mind the ambit and scope of Section 28 of the P.N.D.T. Act and following the principles of law laid down in *Dr.Mallannagouda v. The State of Karnataka (supra)*, this Court is of the considered view that further proceedings against the petitioners in both the Criminal Petitions would amount to an abuse of process of law.

Accordingly, both the Criminal Petitions are allowed and the proceedings against the petitioners/A-1, A-2 and A-5 to A-7 in C.C.No.20084 of 2019 on the file of the III-Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

06.05.2020  
gkv/Gsn

A large, faint, circular watermark seal of the High Court for the State of Telangana, Hyderabad, is centered in the background. It features the Ashoka Lion Capital in the center, surrounded by the text 'HIGH COURT FOR THE STATE OF TELANGANA' and 'HYDERABAD' at the bottom.  
\_\_\_\_\_  
JUSTICE G. SRI DEVI

