

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 11007 of 2014

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.157 of 2007 on the file of the XII-Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad.

A complaint under Section 28 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as "the Act") read with Section 200 of Cr.P.C., was filed by the District Appropriate Authority, represented by the District Medical and Health Officer, Hyderabad, against the petitioners/A-1 and A-2 and another for the offences punishable under Sections 18 and 26 of the Act. It is stated in the complaint that the 1st petitioner/A-1 is a proprietary concern and the 2nd petitioner/A-2 is the Proprietor of the 1st petitioner/A-1. Accused No.3 is the manufacturer, who supplied Ultra Sound Scanning Machine to the 1st petitioner/A-1 company. It is stated that upon the instructions of the Collector and District Magistrate and Chairman for District Advisory Committee for the Act, Hyderabad District, the then District Medical and Health officer, with the assistance of team of officials and two mediators visited the hospital of the 1st petitioner/A-1 on 22.01.2005 and inspected the diagnostic premises. At that time the 2nd petitioner/A-2 was available in the

hospital premises. It was noticed that no records are made available and they stated that the same are not being maintained for the last two years. It is also stated that there is no display of registration certificate as required under Section 19 (4) of the Act and that the consent form register as required under Rule 10 of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Rules, 1996, was not available with the petitioners/A-1 and A-2. The petitioners/A-1 and A-2 are not having any of the required registrations. The addresses of the women in Form-F and the related records are not available and the signatures of the pregnant women on the declaration forms were not obtained prior to carrying out the diagnostic tests. Hence, the machinery namely Model No.SSA 220, Sl.No.9586776, supplied by accused No.3, was seized in the presence of team of officials and mediators. Thereafter, a show-cause notice, dated 04.02.2005 was issued to Accused No.3 asking him to explain the reason, but accused No.3 did not give any reply. It clearly established that Accused No.3 is having knowledge that petitioners/A-1 and A-2 did not get the registration under the Act, supplied the Ultra Sound Scanning Machine, which is an offence under the provisions of the Act. The learned Magistrate has taken cognizance of the said complaint and numbered as C.C.No.157 of 2007. Challenging the same, the present Criminal Petition is filed by the petitioners/A-1 and A-2.

Heard learned Counsel for the petitioners/A-1 and A-2 and learned Additional Public Prosecutor appearing for the respondents.

Learned counsel for the petitioners/A-1 and A-2 would submit that the learned Magistrate ought not to have taken cognizance of the complaint on the sole ground that the appropriate authority failed to issue any show-cause notice to the petitioners/A-1 and A-2 as mandated by the provisions of the Act before setting criminal law into motion. As on the date of inspection, the petitioners/A-1 and A-2 were having valid registration certificate. The learned Magistrate failed to note that the petitioners/A-1 and A-2 have obtained all necessary permissions as required by a hospital. The appropriate authority did not bother to verify the records and the certificate, which was valid up to 28.12.2006. The said certificate was renewed from time to time and the latest certificate being issued on 17.02.2010 with validity up to the year 2015. It is also submitted that for initiating any criminal proceedings under the Act, issuance of show-cause notice is mandatory.

On perusal of the impugned charge sheet and the material in support of the same, this Court does not find it to be a case which can be determined or gone into in an application under Section 482 Cr.P.C. This Court cannot hold a parallel trial in an application under Section 482 Cr.P.C. No such ground appears to be available to the petitioners/A-1 and A-2 on the basis of which the impugned charge sheet can be quashed going by the settled law in *R.P.Kapur*

*v. State of Punjab*¹; *State of Haryana v. Bhajan Lal*²; *State of Bihar v. P.P.Sharma*³ and *Zandu Pharmaceutical Works Limited v. Mohd. Saraful Haque and another*⁴. Accordingly, the prayer for quashing the charge sheet is refused.

In the result, the Criminal Petition is dismissed. However, since the C.C. pertains to the year 2007, the learned XII-Additional Chief Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad, is hereby directed to dispose of C.C.No.157 of 2007, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of the order.

Miscellaneous applications, if any, pending in this criminal petition, shall stand closed.

03.02.2020
gkv/Gsn

JUSTICE G. SRI DEVI

¹ AIR 1960 SC 866

² (1992) SCC (Cr.) 426

³ (1992) SCC (Cr.) 192

⁴ (2005) SCC (Cr.) 283



JUSTICE G. SRI DEVI

.12.2019
Gsn



