

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.2502 of 2019
Date of Decision: 06.01.2020

State of Haryana

.....Petitioner

Versus

Amit

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Surinder Singh, AAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. The present leave to appeal has been preferred by the appellant/State against the judgment dated 17.07.2019 passed by Additional Sessions Judge, Karnal, vide which criminal appeal filed by the respondent against the judgment of conviction dated 17.08.2015 and order of sentence dated 20.08.2015 was allowed.

[2]. A complaint under Sections 28, 3, 4, 5, 6, 18, 22, 23 and Rules 9(1), (4), 10(1A), punishable under Section 23 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'The Act') was filed by the State through District Appropriate Authority against Dr. Brij

Sharma, Amit and Smt. Neelam wife of Mahabir Singh on the ground that on 20.04.2011, a secret information was received by the Civil Surgeon, Karnal in the context of unauthorized sex determination being done at House No.182, Sector 8, Karnal. Thereafter, a team comprising of Dr. Vandana Bhatia, Civil Surgeon, Dr. Anita Aggarwal, Dy. Civil Surgeon, Dr. H.S. Saini, SMO, Indri and Naresh Lal, DFWEEO, Karnal was constituted. Raid was conducted. During the raid, respondent Amit Kumar and Dr. Brij Sharma were found present in the house. A pregnant lady namely Neelam was also apprehended, when she was trying to escape. Respondent was found carrying a bag containing ultrasound machine, towel, tubes etc.

[3]. FIR No.289 dated 20.04.2011 was also registered, whereupon chargesheet under Section 173(1) Cr.P.C was presented. Somehow, separate complaint was also filed. In due course, trial Court convicted and sentenced the respondent to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.50,000/- for commission of offence punishable under Section 23(3) of the Act along with default clauses.

[4]. Appeal filed by the respondent before Additional Sessions Judge, Karnal has been accepted and the respondent has been acquitted of the charges.

[5]. Perusal of the material on record would show that

ingredients of Section 23(3) of the Act have not been complied with. Similarly, there was no compliance of Sections 17, 28 and Rule 12 of the Act. No ownership proof of ultrasound machine has been established on record. Co-accused namely Neelam (who was also charged for getting conducted the test of pregnancy) has since been acquitted by the trial Court. The main accused Dr. Brij Sharma has already expired. The prosecution has not collected any material to connect the respondent with Dr. Brij Sharma. It was never projected by the prosecution that the respondent was an employee of Dr. Brij Sharma, nor any decoy patient was sent to the house, where the test was being allegedly conducted. No independent witness was joined in the raiding party, nor any independent witness has been examined before the trial Court.

[6]. Lower Appellate Court while taking cognizance of non-compliance of the Rules found that as per Section 12 of the Act, it was mandatory for the prosecution to join two or more independent witnesses at the time of arrest or search or seizure of the clinic as well as of the instrument which was allegedly taken into possession by the raiding party. The prosecution has not collected any proof of ownership of ultrasound machine or any other connectivity with the respondent, showing that respondent was the owner of said machine or he was related to

Dr. Brij Sharma in any manner. Prosecution has not established on record that the respondent was an employee of Dr. Brij Sharma (since deceased). Co-accused namely Neelam who allegedly intended to get conducted the pregnancy test has been acquitted by the trial Court on the ground that she might have been compelled by her husband or relative to undergo pre-natal diagnostic techniques and that is why, provisions in terms of Section 23(3) of the Act were not found attracted qua the aforesaid co-accused Neelam which ultimately created a dent in the prosecution case.

[7]. The possession over the ultrasound machine with the respondent has also not been proved to the hilt by which the test could have been conducted. The prosecution has not brought on record any report which may prove that some test on the person of co-accused Neelam was conducted at the instance of the respondent. No decoy patient was sent to the clinic and there was no complaint regarding illegal use of ultrasound machine for getting the pre-natal test conducted.

[8]. Lower Appellate Court found that there may be some professional jealousy for implicating the respondent. As regards recovery of carrying bag of ultrasound machine and other items, the same could not be proved viz-a-viz the belongingness of those articles with the respondent. The house in which alleged

activities were going on could not be proved to be owned by the respondent or deceased Dr. Brij Sharma. There is no material on record to establish that the respondent was residing in the said house or he was working there as an employee of deceased Dr. Brij Sharma. Prosecution has not collected any material to establish that there was any such laboratory existing in the said house. No independent witness has been joined to corroborate any plea of the prosecution viz-a-viz. the involvement of the accused respondent. The case property was not produced before Dr. Vandana Bhati, Deputy Director to establish that the same was ever sealed at the spot. There is no material to show that co-accused Neelam was ever abetted by the respondent for getting her pregnancy test conducted through accused persons.

[9]. The main accused Dr. Brij Sharma has already expired and co-accused Neelam has been acquitted. The prosecution could not prove that the respondent along with co-accused Dr. Brij Sharma was conducting any illegal sex determination (ultra-sonography) at an unregistered and unauthorized genetic centre in violation of provisions of Section 32(a) of the Act. The mandatory requirement of Rule 18 of the Act has not been complied with in the context of production of case property.

[10]. Owing to the non-compliance of mandatory provisions

of Section 17, 28 and Rule 12 of the Act, the indulgence granted by the Lower Appellate Court in acquitting the respondent cannot be faulted with. No interference is required in this case. The application for grant of leave is thus dismissed. As a consequence of dismissal of application under Section 378(3) Cr.P.C, the appeal also stands dismissed.

06.01.2020

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No