

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 871 of 2021

- Dr. Smt. Sushma Verma Partner, M/s Babyboon Fertility Centre, c/o Sarvodaya Hospital And Maternity Centre, Having Its Office At Dubey Colony, Near Police Station Mova, Raipur Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health, Mahanadi Bhawan, Atal Nagar, Nawa Raipur Chhattisgarh
2. Collector Raipur Chhattisgarh
3. State Appropriate Authority (PCPNDT) Through Director, Health Services, Mahanadi Bhawan, Naya Raipur Chhattisgarh
4. The Chief Medical And Health Officer Raipur Chhattisgarh
5. Chhattisgarh Medical Council Through The Registrar, 1st Floor, Azad Chowk Road, Near Nagar Nigam Ayurvedic Hospital, Kankalipara, Raipur Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri Vivek Chopda, Advocate
For Respondent/ State	:	Ms. Astha Shukla, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.02.2021

Heard.

1. Learned counsel for the petitioner would submit that the petitioner has registered an IVF Fertility centre namely Babyboon Fertility and Test-tube Baby Centre at Raipur and the said centre was registered under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short 'Act of 1994'). He would further submit that the other partners of the said firm all of a sudden in the year 2020 had taken away the machinery which were being used in

the fertility centre and are using the same at some other premises which is not registered as per Section 3 (3) of the Act of 1994. He further submits that the petitioner had made a complaint to the different authorities but cognizance of which has not been taken into, therefore the authorities may be directed to take cognizance of the complaint made by the petitioner.

2. Learned State counsel refers to Section 28 (1) (b) and submits that according to Section 28 (1) (b) the person has to first lodge a complaint with the appropriate authority with a disclosure of intention to make a complaint to the Court, unless the same is made no cause of action can be said to have accrued and the authorities cannot be directed to enquire into the matter.
3. Heard learned counsel for the parties, for sake of reference the relevant portion of Section 28 of the act of 1994 would be relevant which is reproduced hereinunder:-

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 authorised in this behalf by the Cen-tral Government or State Government, as the case may be, or the Appropriate Authority; or

(b) a 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 organisation.

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 subsection (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.

4. Reading of the aforesaid section would show that if a person wants to make a complaint then he have to comply with the requirements of the Section 28 (1) (b) and since the petitioner has not given any notice as per Section 28 (1) (b) to the appropriate authority any order to investigate the complaint would amount to override the statutory provisions of Section 28 of Act of 1994. This Court cannot therefore legislate the Act since the Act itself provides certain measures and procedures and it being penal in nature, strict compliance is requires to be adhered to. The petitioner therefore can avail the remedy available to her under the Act of 1994.

5. In view of this, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge