

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1248 OF 2019

Amol s/o. Ambadasrao Jain .. Petitioner
Age. 62 years, Occ. Medical Practitioner,
R/o. Shraddha Diagnostic Center,
Near Kala Maruti Temple, Osmanabad,
Tq. & Dist. Osmanabad.

Versus

The State of Maharashtra .. Respondent
Through Dr.Dhananjay Keshavrao Patil,
Age.50 years, Occ. Class-I and
Appropriate Authority,
Civil Hospital, Osmanabad,
Tq. & Dist. Osmanabad.

Mr.V.J. Dixit, Sr. Counsel i/b. Mr.S.S. Dixit, Advocate
for the petitioner.
Ms.R.P. Gaur, APP for the respondent/State.

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 03.09.2021
PRONOUNCED ON : 22.09.2021

J U D G M E N T :-

01. The petitioner has challenged the order dated
12.04.2019 passed by the learned Additional Sessions
Judge, Osmanabad in Criminal Revision Application No.39

of 2016, thereby confirmed the order dated 13.04.2016 passed by the Chief Judicial Magistrate, Osmanabad in RCC No.130 of 2014, whereby refused to discharge the petitioner.

02. It is contended that the petitioner is a Medical Practitioner having qualification of MBBS, DMRD. The petitioner has obtained Sonography Registration in the year 1997 for running ultra-sound center. The petitioner was running his center as per rules and regulations given in the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [hereinafter referred as "the Act"].

03. It is contended that on 26.03.2014 the respondent along with his squad visited the Diagnostic Care Center of the petitioner and conducted inspection. During the inspection, the squad has found certain discrepancies such as Form "F" were not fully filled up. It is further found that consent of pregnant women were

not obtained etc. It is alleged against the petitioner that he had not maintained record as per the requirement of the Act. The respondent had issued notice to the petitioner, which was replied by him. The machine of the petitioner was sealed by the squad. It is contended that the respondent has not considered the reply of the petitioner in proper perspective and filed complaint before the Chief Judicial Magistrate, Osmanabad, which is registered as RCC No.130 of 2014.

04. It is contended that the petitioner had filed application for de-sealing of Sonography machine, but same was rejected. Said order was challenged by way of Criminal Revision Application No.10 of 2015, which was rejected by the Sessions Judge. The petitioner had also filed Writ Petition No.7330 of 2015 to challenge the order of the Sessions Judge, but subsequently said writ petition was withdrawn by the petitioner.

05. To prove the charge against the petitioner, the

prosecution has examined the respondent (the original complainant) and one witness namely Dr.Ashok Dhaktode. Said witnesses were cross-examined on behalf of the petitioner. It is contended that respondent No.1 was not authorized to file the complaint. Said fact was not properly considered by the Trial Court. It is contended that respondent No.1 admitted that the petitioner used to submit monthly report. Said reports were not having any discrepancies. It is admitted by PW-1 that on 26.03.2014 and 24.03.2014 he had inspected the clinic of the petitioner and did not find any discrepancy in the record maintained by the petitioner. It is contended that witness No.2 has categorically admitted that he had not delegated powers to respondent No.1 to file the complaint. It is contended that the complaint itself was bad in law. But said fact was not considered by the Trial Court. It is contended that the Trial Court has wrongly held that there was sufficient material against the petitioner to frame charge under the Act. Said order was challenged by the petitioner before the Additional

Sessions Judge, but the Additional Sessions Judge also did not consider the material placed before the Trial Court and wrongly rejected the Criminal Revision Application preferred by the petitioner. It is contended that there is no material against the petitioner to proceed against him under section 23,25 and 29 of the Act. The orders of the Trial Court and the Revisional Court are not proper and correct and hence the petitioner filed this petition for setting aside the order of framing of charge.

06. The respondent appeared and filed his affidavit, wherein it is admitted that the respondent had visited the Diagnostic Center of the petitioner and carried out inspection. It is contended that in the inspection it was found that Form "F" were not properly filled in. Therefore, notice was issued to the petitioner but the petitioner could not give proper explanation of the discrepancy found in the inspection. Therefore, he was prosecuted. It is contended that Rules 11 and 12 of the

Act empower the Appropriate Authority or the officer authorized by it to inspect, seal and seize, if there is violation of the provisions of the Act. It is denied that the petitioner was submitting monthly report correctly and properly. It is contended that Form "F" is crucial document and it has to be filled in by the medical practitioner. If such form is not properly filled, then concerned medical practitioner is subjected to prosecution. It is contended that there was material against the petitioner as he has not maintained Form "F" properly. Therefore, he was prosecuted. The evidence on record is sufficient to frame charge against him. Therefore, the order passed by the Trial Court as well as the Revisional Court is proper and correct.

07. Heard learned Sr. Counsel for the petitioner and learned APP on behalf of the State. The petitioner has challenged the complaint on the ground that it is not filed by the authorized person. On this point, learned APP has relied on the authority letter dated 25.03.2014,

whereby the Civil Surgeon, Civil Hospital, Osmanabad had authorized the respondent as authorized person to inspect the Diagnostic Center and to take action in furtherance thereof. Said authority letter was issued as per Section 28 r/w Rule 11 of the Act. As per the provisions of the Act, the Civil Surgeon was authorized to take action against the erring Diagnostic Center, but subsequently amendment was made in Section 17(3), whereby the Civil Surgeon was given authority to delegate his powers to any other surgeon to inspect the Diagnostic Center and to take action in pursuance thereof. So, the respondent has examined himself wherein he has categorically stated that the then Civil Surgeon had appointed him as authorized person to carry out inspection of Sonography Center. He has produced on record copy of authority letter. On going through the provisions of Section 28 r/w Rule 11, it can be said that the respondent was authorized to file complaint against the petitioner.

08. It is basic allegation against the petitioner

that during inspection the respondent and the members of squad found that many Form "F" were blank or not filled in properly. Therefore, notice was issued to the petitioner, but no proper explanation was given. Therefore, the petitioner is prosecuted. On the other hand, learned Sr. Counsel for the petitioner submits that the petitioner used to submit monthly report as per the provisions of the Act. Said reports were accepted by the authority. Therefore, the allegations made against the petitioner has no substance. It is true that it was incumbent upon the owner of the Diagnostic Center to submit monthly report of the procedure carried out by him to the authority, but said report is information in abstract. It was expected from the owner of Sonography Center to maintain Form "F" of every patient. It was expected from the medical practitioner to fill in Form "F" meticulously. In the present case it reveals from the complaint that the petitioner had not filled in the Form "F" properly. Many Form "F" were incomplete. The details of the same are given in the complaint.

Therefore, it can be said that the respondent and his squad found that the petitioner did not fill up Form "F" properly.

09. Learned APP submits that Form "F" is a crucial document. It has to be filled-in completely by the Medical Practitioner, who runs the Diagnostic Center. Form "F" is prescribed as per section 4(3) read with Rule 9(4) and Rule 10(1)(a) of the Act. The proforma of Form "F" is also given in the Act. Said form is required to be filled in by the Medical Practitioner by making enquiry with the patient. So, it is not a clerical job. To substantiate her point, learned APP relied on the ratio laid down in the case of Federation of Obstetrics and Gynecological Societies of India (FOGSI) Vs. Union of India & Ors., (2019) 6 SCC 283. Said writ petition was filed by the Federation of Obstetrics and Gynecological Societies of India highlighting the issues and problems affecting the practice of obstetricians and gynecologists across the country under the Pre-conception and Pre-natal

Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as 'the Act') and challenging the constitutional validity of Sections 23(1) and 23(2) of the Act and seeking direction in the nature of certiorari/mandamus for decriminalising anomalies in paperwork/record keeping/clerical errors in regard of the provisions of the Act for being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. The Society is the apex body of obstetricians and gynecologists of the country and is concerned for the welfare of its members.

10. It was observed by the Apex Court that Rule 9 makes it mandatory to maintain a register showing in serial order the names and addresses of the men or women given genetic counselling, subjected to pre-natal diagnostic procedures or pre-natal diagnostic tests, the name of their spouse or father and the date on which they first reported for such counselling. Rule 9(2) states that record to be maintained uniformly. Rule 9(4)

provides that record to be maintained by every Genetic Clinic in respect of each man or woman subjected to any pre-natal diagnostic procedure/technique/test, shall be specified in Form 'F'. Rule 10 deals with conditions for conducting pre-natal diagnostic procedures. Rule 10(1A) provides that it is mandatory for every person conducting ultrasonography to declare that he/she has neither detected nor disclosed the sex of foetus of the pregnant woman to anybody. The pregnant woman shall declare before undergoing the test that she does not want to know the sex of her foetus. Rule 19 provides for an appeal against the decision of Appropriate Authority.

11. It was further held that the Act and Rules are not the only regulatory framework which requires the medical fraternity to keep proper record. The medical profession has highly specialised nature and considering the nature of services rendered by medical professional, proper maintenance of records is an integral part of the medical services. It is contended on behalf of Medical

Council of India that the Medical Council of India (MCI) under Section 33 of the Indian Medical Council Act, 1956 has framed the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, which also placed a burden on physicians to observe the law of the country. By the said Regulations, it is mandatory for every doctor to maintain the records of the patients treated by him/her and non-maintaining of records is a misconduct.

12. It was further held that when we scrutinise the Form 'F' with the provisions of the Act/Rules and there cannot be any dispute with respect to serial Nos.1 and 2 wherein name and address of Genetic Laboratory and its registration number is required to be mentioned in the Form as it is necessary to have a registration under Section 18 of the Act. It cannot be said to be a clerical requirement. Patient's name and her age at serial No.3 is also absolutely necessary so as to identify a person who is undergoing the test and before the age of 35 years, it

cannot be conducted as provided under Section 4(3)(i). The same is as per the mandatory requirement of Section 4. Husband's/father's name is also necessary as per the statutory mandate for the purpose of identification of patient. Full address is also mandatory so as to ascertain the identity who is undergoing such test. In case these information are kept vague, the violation of the Act would be blatant and unchecked and offence can never be detected. Information at serial No.8 of the Form 'F' requires last menstrual period/weeks of pregnancy to be mentioned, same is also necessary to be mentioned as it has co-relation with the investigations and provisions of the Act and the rules framed thereunder. The column in Form at serial No.9 requires history of genetic/medical disease in the family to be specified which is as per the mandate of Section 4(3)(iv) of the Act. Form 'F' at serial No.10 requires indication for pre-natal diagnosis which is mandatory as per the provisions contained in Section 4(2) as except for the purposes as mentioned in Section 4(2) and 4(3) no such tests/procedures can be

performed. Thus, what is mandated by the Sections and in Rule 9 has been mentioned in the Form 'F'.

13. On going through the judgment cited supra, it can be said that Rule 9 is mandatory. Similarly, filling of Form "F" is not clerical job, but it has to be filled up by the medical practitioner. The Form "F" has to be prepared and signed by either Gynecologist/Medical Geneticist/Radiologist/Paediatrician/Director of the Clinic/Center/Laboratory. In-case the indications and the information are not furnished as provided in Form "F", it would amount that condition precedent to undertake the test/procedure is absent. There is no other barometer except Form "F" to find out why the diagnostic test/procedure was performed. In case such an important information besides others is kept vague or missing from the Form, it would defeat the very purpose of the Act and the safeguards provided thereunder and it would become impossible to check violation of provisions of the Act. Therefore, filling Form "F" is mandatory and breach

thereof, penal provisions are required to be invoked against the Diagnostic Center.

14. In the present case there are allegations against the petitioner that he has not filled up Form "F" properly. Therefore, prima facie, offence is made out against the petitioner. The Trial Court as well as the Revisional Court has rightly considered the material placed before it and rejected the prayer of discharge of the petitioner from the charges levelled against him. Therefore, I do not find any merit in the petition and hence, it is required to be dismissed. Hence, the petition is dismissed.

[SURENDRA P. TAVADE, J.]