

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

CRIMINAL APPLICATION NO. 4176 OF 2012

Dr. Sangita w/o. Nitin Dhakne	.. Applicant
Age.45 years, Occ. Medical Practitioner,	[original
R/o. Ganesh Par, Parli Vaijnath,	accused]
Tq. Parli Vaijnath, Dist. Beed.	

Versus

- | | |
|-------------------------------------|----------------|
| 1. The State of Maharashtra | .. Respondents |
| Through Police Station Officer, | [Resp. No.2 |
| City Police Station, Parli-Vaijnath | original |
| Taluka Parli-Vaijnath, Dist. Beed. | complainant] |
| | |
| 2. Shrirang Maruti Mundhe, | |
| Age.55 years, Occ. Service, | |
| Servicing as a Naib-Tahsildar, | |
| Parli-Vaijnath, C/o. Office of the | |
| Tahsildar, Parli-Vaijnath, | |
| Taluka Parli-Vaijnath, Dist. Beed. | |

Mr.S.G. Chapalgaonkar, Advocate for the applicant.
Ms.R.P. Gaur, APP for the respondent/State.

CORAM :	SURENDRA P. TAVADE, J.
RESERVED ON :	01.09.2021
PRONOUNCED ON :	28.09.2021

J U D G M E N T :-

01. The applicant has filed this application for quashing the order of issue process passed against her by the Judicial Magistrate, First Class, Parli-Vaijnath, Dist. Beed in RCC No.270 of 2011. The applicant has completed MBBS, DGO. She is running a hospital along with Sonography Diagnostic Center. Her center is registered under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [for short "PCPNDT Act"] and Rules framed thereunder. The applicant was running her center in accordance with the provisions of law. Respondent No.2 i.e. original complainant visited Sonography Center/Hospital of the applicant. He carried out inspection of the Center. The entire record was made available to him. However, he seized 8 "F" forms. It is alleged that the said forms were not filled up completely. Respondent No.2 seized Sonography machine and issued show-cause notice to the applicant. The applicant replied the same. It is

contended that respondent No.2 filed complaint before the Court of Judicial Magistrate, First Class, Parli-Vaijnath, wherein the Trial Court issued process against the applicant. It is contended that the seized Form "F" were not annexed to the complaint. Similarly, other documents were also not given for the perusal of the Magistrate. It is contended that on the basis of averments, the Trial Court issued process under sections 23(1), 25 and 29 of the PCPNDT Act r/w Rules 9(4), 10(1), 10(1-A) and 13 of the PNPNDT Rules, which is not proper and legal. It is contended that if there is change in the Sonography machine, said fact is required to be communicated within 30 days, but the Sonography machine of the applicant was having fault and it was not working for two days. Therefore, said information was not given to the authority. Hence, no offence was committed by the applicant. It is contended that respondent No.2 had no authority file complaint, but said fact is also not properly considered by the Trial Court. It is also contended that the Trial Court has passed order

mechanically. Therefore, it requires to be set aside.

02. Notice of this Criminal Application was issued to the respondents. Respondent No.2 filed affidavit-in-reply, wherein he admitted that he had visited the hospital of the applicant on 16.06.2011. He found Form "F" were not filled in completely. It is contended that as per the provisions of Rule 9 of the Act, it is mandatory for the hospital to maintain and preserve record of each patient subject to any Pre-Natal Diagnostic Techniques in the specified Form "F". Such record is to be maintained for a period of two years from the date of application of Pre-Natal Diagnostic procedure. Section 4(3) of the Act itself shows that deficiencies or inaccuracy found therein shall amount to contravention of the provisions of sections 4 and 3 of the Act. It is contended that the applicant had not maintained record properly, particularly Form "F". Similarly, non-working of Sonography machine was not informed to the authority under the Act. No sufficient

cause was shown. Therefore, she is prosecuted. The Trial Court perused the record and issued process. The order of the Trial Court is correct and proper. There is no need to interfere with the same.

03. Heard learned Counsel for the applicant and learned APP on behalf of the State. Admittedly, respondent No.2 had visited hospital of the applicant on 16.06.2011. The entire Diagnostic Center was inspected by respondent No.2. He seized eight Form "F" from the custody of the applicant under panchanama. After the inspection, respondent No.2 found that Form "F" were not completely filled in by the applicant and Sonography machine was not in working condition. Therefore, notice was issued to the applicant on 16.06.2011. Said notice was replied, wherein the applicant admitted that Sonography machine was not working and there were minor errors in the Form "F". Therefore, she prayed for release of Sonography machine and no action be taken against her.

04. It appears that on the basis of inspection and the contents of reply of notice, respondent No.2 filed complaint before the Judicial Magistrate, First Class, Parali-Vaijnath, wherein he has mentioned the flaws found in the record maintained by the applicant. Similarly, it is mentioned that Form "F" were incomplete and crucial information was not filled-in in the said forms.

05. On perusal of the impugned order, it appears that the learned Magistrate has considered the averments made in the complaint and issued process. It is contended that seized Form "F" were not produced before the Magistrate. But on reading the impugned order, it appears that the Trial Court had gone through the complaint and the documents. Therefore, it cannot be said that the crucial material was not placed before the learned Magistrate for issuance of process. Similarly, it can be said that the applicant herself has admitted in reply that there were some errors in the Form "F". The

nature of said errors is required to be considered by the Magistrate during trial. It is to be seen whether prima facie offence is made out against the applicant or not. There are allegations against the applicant that she had not filled in Form "F" properly.

06. It is basic allegation against the applicant that during inspection the respondent and the members of squad found that eight Form "F" were blank or not filled in properly. Therefore, notice was issued to the applicant, but no proper explanation was given. Therefore, the applicant is prosecuted. On the other hand, learned Counsel for the applicant submits that the applicant 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 applicant 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 applicant had not filled in the Form "F" properly. Eight "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 applicant did not fill up Form "F" properly.

07. 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.

08. 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.

09. 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.

10. 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'.

11. 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 information is 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.

12. The applicant has challenged the complaint on the ground that it is not filed by the authorized person. As per the provisions of Section 28, the complaint is required to be filed by the concerned appropriate authority or any other officer authorized in this behalf by the Central Government or the State Government as the case may be or the appropriate authority. There is amendment to the said section. The Civil Surgeon is appropriate authority. Now, as per the amendment, Civil Surgeon can authorize any surgeon to carry out inspection

and to file complaint. The prosecution can lead evidence to prove charge levelled against the applicant. Therefore, the Trial Court has not considered the said aspect. Admittedly, the prosecution is required to lead evidence before the charge. If it is found that respondent No.2 had no authority to initiate action, then the applicant can be discharged. Said aspect is dependent upon the evidence to be led on record. Therefore, I do not find any merit in the contentions that the complaint was not filed by the authorized person.

13. In the present case, there are allegations against the applicant that she has not filled-up Form "F" properly. It appears from the impugned order that the Trial Court has considered the averments made in the complaint and the documents produced on record. Therefore, it can be said that the Trial Court had applied its mind before issuance of process. Said order is legal, valid and proper. There is no need to

interfere with the same. Hence, I pass following order :-

O R D E R

- i) Application is dismissed.
- ii) Rule discharged.

[SURENDRA P. TAVADE,J.]

. After pronouncement of this order, the learned Counsel for the applicant submits that applicant wishes to challenge the order. The interim relief was granted during the pendency of this application. Therefore, learned Counsel prayed that the interim relief may be continued.

. In view of interim relief granted during the pendency of this application, same is continued for four weeks from today i.e. till 26.10.2021.

[SURENDRA P. TAVADE,J.]