

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 174 OF 2018

Dr. Anita w/o Ravi Chauhan
(Before Marriage – Anita Rameshchandra
Ramavat) Age – 50 years, Occu – Doctor,
R/o Plot No. 27, Abhay Nagar,
Rameshwari Ring Road, Nagpur.

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.. Applicant

Versus

Appropriate Authority under PCPNDT
Act, Dr. Savita Ranjit Meshram, Health
Officer (Medicine), Aged – 53 years,
Occu – Service, Office at Nagar Municipal
Corporation, Civil Lines, Nagpur

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.. Respondent

Mr. A. M. Jaltare Advocate for applicant.

Mr. J. B. Kasat, Advocate for respondent.

CORAM : MANISH PITALE, J.

DATED : 12/08/2021

ORAL JUDGMENT

By this application, the applicant who is a Doctor by profession, has sought quashing of a criminal complaint case pending against her in the Court of Judicial Magistrate First Class at Nagpur.

(2) The criminal proceeding has been initiated under the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (hereinafter referred to as the '**PCPNDT Act**').

(3) The proceedings in the present case stood initiated against the applicant on the basis of an inspection allegedly conducted on 16/07/2012 of the center of diagnostics, run by the applicant. The inspection was carried out by assistant Appropriate Authority Dr.Heena Kureshi and Dr.Tarranum Khan on 16/07/2012 and it was alleged that in the center run by the applicant, the following deficiencies were found :-

(a) Bare Act of the PCPNDT Act was not available at the reception of the premises for being made available to the patients on demand.

(b) Form "F" was not filled properly as column 11 was left blank and purpose of sonography was not mentioned in some forms.

(c) In column 8, the weeks of pregnancy were not mentioned and that name and registration number of the doctor was also not mentioned on the MNC form.

(d) The registration certificate issued by the Corporation was not displayed on a conspicuous place in the clinic / center.

(e) Forms “F” and “G” under the PCPNDT Act were not properly filled, thereby showing violation of the provisions.

(4) On the basis of the said alleged deficiencies found at the center run by the applicant, pursuant to the said inspection on 17/07/2012, the respondent No.1 claiming to be the Appropriate Authority under the PCPNDT Act issued a show-cause notice to the applicant. On 24/07/2012, the applicant submitted her explanation.

(5) On 15/03/2013, the respondent as the Appropriate Authority under the PCPNDT Act filed a criminal complaint against the applicant under Section 28 of the Act bearing Criminal Complaint Case No.663 of 2013.

(6) The applicant filed the present application before this Court under Section 482 of the Cr.P.C. for quashing of the aforesaid criminal complaint case, on the ground that the respondent was not an Appropriate Authority appointed under Section 17(2) of the PCPNDT Act. This Court issued notice for final disposal and

granted interim stay in favour of the applicant. Thereafter, this application was admitted for final hearing. On the last few occasions when it was listed for hearing, adjournment was granted on the ground that according to the learned counsel appearing for the respondent a similar issue was pending before the Hon'ble Supreme Court.

(7) This Court has considered the said contention and since no details about pendency of the issue before the Hon'ble Supreme Court are forthcoming, this Court is of the opinion that the present application need not remain pending before this Court and it can be finally disposed of.

(8) Mr.Jaltare, learned counsel appearing for the applicant submitted that an Appropriate Authority under Section 17(2) of the PCPNDT Act, is such authority as is by Notification appointed in the Official Gazette by the State the Government. The learned counsel invited attention of this Court to a document received under the Right to Information Act from the State Government i.e. copy of Notification dated 16/10/2007, issued by the State Government under Section

17(2) of the PCPNDT Act. By inviting attention of this Court to the said Notification, it is submitted that amongst the officers identified as Appropriate Authority under Section 17(2) of the PCPNDT Act Health Officer of the Municipal Corporation is not one such officer. On this basis, it is submitted that since the criminal complaint case has been initiated under the PCPNDT Act by the respondent, who is admittedly the Health Officer of the respondent Corporation, the initiation of the complaint itself is without authority of law and that therefore, the complaint deserves to be quashed at this stage itself. Reliance is placed on judgment of Division Bench of this Court in the case of *Dr.Payal w/o Shreekant Chobe vs. State of Maharashtra and others* (Judgment and Order dated 16/10/2015, passed in Criminal Writ Petition No.250 of 2015).

(9) Mr. J. B. Kasat, learned counsel has appeared on behalf of respondent. He has not been able to deny the fact that the Notification dated 16/10/2007, issued under Section 17(2) of the PCPNDT Act, does not specify Health Officer of the Municipal Corporation as one of the Officers to function as the Appropriate Authority. He has also not been able to distinguish the aforesaid

Division Bench Judgment of this Court accepting an argument identical to the one being made on behalf of the applicant before this Court. It is merely submitted that the issue is said to be pending before the Hon'ble Supreme Court and that therefore, hearing of the present applicant can be deferred.

(10) Having heard learned counsel for the rival parties, this Court has perused the Notification dated 16/10/2007 issued by the State Government exercising power under Section 17(2) of the PCPNDT Act. The said Notification appoints only the following Officers as Appropriate Authority :

Additional Collector, Sub Divisional Officer, Tahasildar, Naib Tahasildar, Municipal Commissioner, Deputy Commissioner of Municipal Corporation, Ward Officer of Municipal Corporation and Chief Officer of Municipal Councils.

The said Notification does not appoint a Health Officer of the Municipal Corporation as an Appropriate Authority.

(11) In this context Section 28 of the PCPNDT Act is relevant and it reads as follows :-

Section 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 Central 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.

(12) The above quoted provision specifies that no Court can take cognizance of an offence under the PCPNDT Act, except on a complaint made by the Appropriate Authority. Since the respondent in the present case being Health Officer of the Municipal Corporation is not one of the Officers appointed as an Appropriate Authority, the Court obviously cannot take cognizance as the entire criminal proceeding has been initiated by a person not authorized to do so.

(13) In a similar situation, a Division Bench of this Court, while deciding Criminal Writ Petition No. 250 of 2015 ***Dr.Payal w/o Shreekant Chobe vs. State of Maharashtra and others*** (supra) accepted an identical contention, in identical set of circumstances. In the detailed judgment of the Division Bench of this Court, various Notifications issued from time to time by the State Government were taken into consideration. It was noted that while earlier, in the year 1997, Civil Surgeons or Deans of Medical Colleges were appointed as Authorized Officers, by the aforesaid Notification dated 16/10/2007, only the above stated Officers were specifically appointed as Appropriate Authority. In the said case also a Health Officer of Municipal Corporation had filed a Criminal Proceeding against the petitioner before the High Court and an identical prayer for quashing of the complaint was made on behalf of the applicant. After taking into consideration the aforesaid Notification dated 16/10/2007, the Division Bench of this Court in the said judgment held as follows :-

“37] The Honourable Supreme Court examined the extraordinary power of this Court under Article 226 of the Constitution of India, so also, inherent powers under Section 482 of the Code of Criminal Procedure, 1973 in the matter of State of Haryana and others vs. Bhajanlal and others (supra) and laid down certain guidelines where the Court will exercise jurisdiction under these provisions for quashing the criminal proceedings. It is held therein that the guidelines so given

cannot be inflexible or laying down rigid formula to be followed in facts and circumstance of each case. Guideline No.6 found in Para. 8.1 of the said judgment reads thus :-

“6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

38] *It is thus clear that the powers of this Court under Article 226, 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 can be exercised for quashing the criminal proceeding when there is an express legal bar engrafted in the provisions of the concerned Act under which a criminal proceeding is instituted, to the institution and continuance of such proceedings.*

39] *As discussed in the foregoing paragraphs, in the case in hand, there is express legal bar to entertain the complaint for the offence punishable under the provisions of the PCPNDT Act made by the Authority/Officer/Person other than those authorized under Section 28 thereof. We have already held that the criminal complaint bearing R.C.C.No. 541 of 2013 against the petitioner is not made by the Authority/Officer/person competent to lodge the same. As such, allowing continuation of the said criminal complaint would be abuse of the process of the Court apart from waste of time and public money. We are of the view that there is no possibility of conviction in such criminal complaint which cannot be validly entertained. Continuance of such prosecution would put the accused therein, i.e. present petitioner to great oppression and prejudice. Extreme injury would be caused to the petitioner if the proceedings in such untenable criminal complaint are not quashed.”*

(14) The Division Bench of this Court allowed the aforesaid writ petition and quashed the criminal complaint filed

against the petitioner therein. This Court is of the opinion that in the present application, the applicant is placed in identical circumstances and that therefore, the present application also deserves to be allowed. Accordingly, the application is allowed. The criminal complaint case No.663 of 2013 pending before the Court of Judicial Magistrate First Class and Corporation Court, Nagpur is quashed. No costs.

[MANISH PITALE J.]

KOLHE/P.A.