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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.24324 of 2017

and

Crl.M.P.Nos.14142 & 14143 of 2017

Sujatha

... Petitioner

Vs.

Dr.E.Kalivaradhan, MD.,
Appropriate Authority,
Joint Director of Medical and Rural Health Service,
No.79, Veppamard Street,
Velapadi, Vellore - 632 001
Vellore District.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.59 of 2017 on the file of the Judicial Magistrate No.1, Tirupattur, Vellore District, and quash the same.

For Petitioner : Mr.V.Karthic
Senior Counsel
for M/s.K.V.Law Firm

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.59 of 2017 on the file of the Judicial Magistrate No.1, Tirupattur, Vellore District.

2.The complaint has been filed for violation of Rules 9 and 13 under Prevention Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("the Act" for brevity) and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Rules, 1996 ("the Rules" for brevity), which attracts punishment under Section 25 of the Act, which is



3.The case of the prosecution in a nutshell is that, on an inspection conducted on 18.02.2016 by the National Inspection Monitoring committee, they found that the accused has not maintained Form-F as per Rule 9 and they have not notified the change of equipments, as per Rule 13 of the Rules.

5. Heard the learned counsel on either side and perused the materials available on record.

"9. Maintenance and preservation of records.-

(2) The record to be maintained by every Genetic Counselling Centre, in respect of each woman counselled shall be as specified in Form D.

(4) The 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 as specified in Form F.

(5) The Appropriate Authority shall maintain a permanent record of applications for grant or renewal of certificate of registration as specified in Form H. Letters of intimation of every change of employee, place, address and equipment installed shall also be preserved as permanent records.

(6) All case related records, forms of consent, laboratory results, microscopic pictures, sonographic plates or slides, recommendations and letters shall be preserved by the Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre for a period of two years from the date of completion of counseling, prenatal diagnostic procedure or pre-natal diagnostic test, as the case may be. In the event of any legal proceedings, the records shall be preserved till the final disposal of legal proceedings, or till the expiry of the said period of two years, whichever is later.

(7) In case the Genetic Counselling Centre or Genetic Laboratory, Genetic Clinic, Ultrasound Clinic or Imaging Centre maintains records on computer or other electronic equipment, a printed copy of the record shall be taken and preserved after authentication by a person responsible for such record.

(8) Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall send a complete report in respect of all pre-conception or pregnancy related procedures/techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority."

7.Rule 13 of the Rules reads as follows :

"13. Intimation of changes in employees, place or equipment. - Every Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centre shall intimate every change of employee, place, address and equipment installed, to the Appropriate Authority within a period of thirty days of such change."



8.The above Rules make it clear that Rule 9 deals with maintenance of records and Rule 13 deals with intimation of change in employees, place or equipments. Though these Rules do not make it an offence, Section 25 of the Act is a penal provision for violation of the Rules. The punishment provided under the Act for such violation is three months imprisonment or a fine which may extend upto Rs.1,000/- or both.

9.It is not the case of the prosecution that there was a continuing contravention which attracts additional punishment. Such being the fact, the prosecution ought to have been initiated within a period of one year as per Section 468(2)(b) Cr.P.C. Further, the very complaint itself indicates that the complaint was filed on 22.06.2017, which is beyond the period of one year from the date of offence. It is not the case of the prosecution that there were sufficient reasons for such delay. For the no such reasons being assigned and no order specifically passed by the learned Magistrate to condone the delay in the interest of justice to continue the prosecution. Therefore, the Court ought not to have taken cognizance of the offence on the belated complaint. In such view of the matter, the very entertainability of the complaint itself is not in accordance with law and is barred by limitation. Therefore, this Court is inclined to quash the complaint.

10.Accordingly, this Criminal Original Petition is allowed and as a sequel, the proceedings in C.C.No.59 of 2017 on the file of the Judicial Magistrate No.1, Tirupattur, Vellore District, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

mkn

To

1.The Judicial Magistrate No.1,
Tirupattur,
Vellore District.



2.The Appropriate Authority,
Joint Director of Medical and Rural Health Service,
No.79, Veppamard Street,
Velapadi, Vellore - 632 001
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.V.Law Firm, Advocate SR.No.62508

Cr1.O.P.No.24324 of 2017

KG(CO)
CB(14/12/2021)