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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.25387 of 2017

&

Crl.M.P.Nos.14614 and 14615 of 2017

1. Dr.A.Saravanan

2. Aadhi Scan Center

12/4, Pennagaram Main Road,

Kumarasamy Gate,

Dharmapuri - 636 701

... Petitioner / Accused 1&2

Versus

The Appropriate Authority,

Pre-Conception and Per-natal

Diagnostic Techniques (Prohibition

of Sex Selection) Act Regulation and

Prevention of Misuse Act Central Act)

No.57 of 1994 &

Dr.Nedumaran

Joint Director of Health Services

Dharmapuri District

... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.34 of 2017 on the file of the learned Judicial Magistrate No.1, Dharmapuri and quash the same by allowing this petition.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

O R D E R

By way of this present Criminal Original Petition, a challenge has been made to the order of the learned Judicial Magistrate No.1, Dharmapuri in taking cognizance for the offence under Section 23 of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 [in short referred to as 'Act'] in C.C.No.34 of 2017.



2. The brief facts of the case is as follows:-

The appropriate authority of the Act had conducted inspection in the scan centre, namely, Aadhi Center, Dharmapuri on 13.01.2017 and found that certain registers are not properly maintained, particularly, Nominal Register, Form 'F' Register, Patient Entry Register, Form 'B' Certificate, accordingly, prosecution has been launched on the private complaint for offences under Section 29(1) of the Act. Though in the said private complaint, except the fact that petitioner / A.1 was present during inspection, no other allegations whatsoever has been made against the petitioner, particularly, in rendering any service or technical service in the lab. However, the learned Judicial Magistrate No.I, Dharmapuri took cognizance for offence not only under Section 25, but also under Section 23 of the Act, 1994, which has been challenged before this Court.

3. Heard Mr.N.Manokaran, learned counsel for the petitioners as well as Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) for the respondent and perused the documents placed on record.

4. At this juncture, it is relevant to extract the penal provisions under Section 29 of the Act, which reads as follows:-

29. Maintenance of records - (1) All records, charts, forms, reports, consent letters and all other documents required to be maintained under this Act and the rules shall be preserved for a period of two years or for such period as may be prescribed:

Provided that, if any criminal or other proceedings are instituted against any Genetic Counselling Centre, Genetic Laboratory or Genetic clinic, the records and all other documents of such centre, Laboratory or clinic shall be preserved till the final disposal of such proceedings.

(2) All such records shall, at all reasonable times, be made available for inspection to the Appropriate Authority or to any other person authorised by the Appropriate Authority in this behalf.

The above Section makes it clear that all the records to be maintained properly and at all reasonable times should be made available for inspection to the appropriate authority. Any violation in maintenance of records will be punishable under Section 25 of the Act with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand



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rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

5. It is to be noted that the prosecution has been launched for violation of Section 29 of the Act, which attracts punishment under Section 25 of the Act, whereas, the learned Judicial Magistrate No.1, Dharmapuri without even perusing the materials produced by the prosecution, straightaway took cognizance for the offence under Section 23 of the Act, as against the present petitioner. It is relevant to extract Section 23 of the Act, which reads as follows:-

23. Offences and penalties.—

(1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

²⁹ [(2) The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of any Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant woman for the purposes other than those specified in sub-section



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(2) of section 4, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.

(4) For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.]

6. A bare perusal of the above Section makes it clear that only when the medical practitioner renders his professional or technical services in such a Lab, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules, he can be punishable under Section 23 of the Act. It is not the case of the prosecution in their private complaint that A.1 / present petitioner rendered his professional or technical service either honorary basis or otherwise, in such a scan center, therefore, taking cognizance of the said case by the Judicial Magistrate No.1, Dharmapuri is without any material.

7. Accordingly, the order of the Judicial Magistrate No.1, Dharmapuri in taking cognizance under Section 23 of the Act alone is set aside and the Judicial Magistrate No.1, Dharmapuri shall proceed trial in respect of an offence under Section 25 of the Act alone. With the said direction, the present Criminal Original Petition is partly allowed and the Judicial Magistrate No.1, Dharmapuri is directed dispose of the case in C.C.No.34 of 2017 as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Judicial Magistrate No.1,
Dharmapuri.



2. -do through- The Chief Judicial Magistrate,
Dharmapuri.

3. The Appropriate Authority,
Pre-Conception and Per-natal
Diagnostic Techniques (Prohibition
of Sex Selection) Act Regulation and
Prevention of Misuse Act Central Act)
No.57 of 1994 &Dr.Nedumaran
Joint Director of Health Services
Dharmapuri District

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.64229

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NSK 06/01/2022