

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.413 of 2012**

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Dr. Maguni Charan Sahu & another ***Petitioners***

-versus-

State of Orissa ***Opposite Party***

For Petitioners : ***Mr.P.K.Mohapatra,***
Advocate

For Opposite Party : ***Mr. S.R. Roul, ASC***
[O.P.]

CORAM:
JUSTICE G. SATAPATHY

ORDER
23.11.2022

Order No.
07.

1. The petitioners by way of this application U/S.482 of Cr.P.C. prays to quash the order passed on 28.07.2011 by learned S.D.J.M., Angul in C.T. Case No. 4330 of 2011 taking cognizance of offences U/Ss. 23 and 25 of Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994(hereinafter referred to as ‘the PC&PNDT Act’).

2. In course of hearing of CRLMC, Mr.P.K.Mohapatra, learned counsel for the petitioners by relying upon the judgment passed by this Court on 19.09.2022 in CRLMC No. 4249 of 2009(Dr. Sudhir Kumar Brahma Vrs. State of Odisha) and a batch of cases, submits that since the complaint has not been lodged by Appropriate Authority in terms of Section 28 of the PC&PNDT Act, the criminal proceeding arising out of the impugned order against the petitioner for offence U/Ss. 23 and 25 of PC&PNDT Act is unsustainable in the eye of law and thereby, the same needs to be quashed.

3. Mr.S.R.Roul, learned counsel for the State, however, submits that the prayer for quashing of cognizance order limited to offences U/Ss. 23 and 25 of PC&PNDT Act is squarely covered by the judgment referred to above.

4. Admittedly, in this case the criminal law was set into motion by way of complaint instituted by Sub-Collector-cum-Sub-District Appropriate Authority(SDAA), PC&PNDT Act, Angul against the petitioners who are the owner and practicing doctor for running Kalyani Nursing Home at Angul by using Ultrasound unit without any registration. After observing necessary formalities and compliance the SDAA sealed the Ultrasound machine and kept in

the custody of ADMO(FW), Angul. On receipt of complaint, statements of witnesses and complainant together with seized connected documents, learned S.D.J.M., Angul after finding prima facie case took cognizance of offences 23 and 25 of PC&PNDT Act, but Section 28 of PC&PNDT Act postulates that 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 authorized in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority

(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 organization.*

5. The word "complaint" has not been explained or defined in PC&PNDT Act but it is meant in the context U/S. 2(d) of the Cr.P.C. that any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence but does not include a police report and the explanation appended to Sec 2(d) of the Cr.P.C. suggests that a report made by a police officer in a case which discloses, after investigation, the

commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

6. Further, the Office Memorandum of Government of Orissa, Health and Family Welfare Department No. 19077/H dated 27.07.2007 which was referred to by the complainant in the complaint made before the learned S.D.J.M. Besides, this Court while delivering the judgment in CRLMC No. 4249 of 2009(Dr. Sudhir Kumar Brahma Vrs. State of Odisha) has drawn up conclusion at paragraph-11 by referring the aforesaid notification, which makes it very clear as to who would be appointed as AA for the District and Sub-District(Sub-Division) for smooth enforcement of the provision of the PC&PNDT Act. The State Government, accordingly, by the aforesaid OM has appointed the District Magistrate of each district as District Appropriate Authority(DAA) for the District under the PC&PNDT Act, besides authorizing DAA to nominate an Executive Magistrate of the District as his/her nominee to assist him/her in monitoring the implementation of the PC&PNDT Act. It is never in dispute that SDM(Sub-Collector) is also appointed as AA for the Sub-District(Sub-Division) for smooth implementation of the provision

under this Act. Above being the requirement of smooth implementation of the PC&PNDT Act, the authority concerned cannot deviate violating the OM, but in this case, although when the DM, Angul is appointed as DAA for Angul, why the SDM, Angul being not the DAA of Angul has instituted the complaint which is clear infraction of the Government OM resulting in violation of Section 28 of the PC&PNDT Act. Law is very clear that when a statute requires a thing to be done in a particular way and manner, the same has to be accomplished in that manner and any deviation there from tantamount to violation of law which in the circumstance would render the proceeding vitiated/invalid in the eye of law. There is no dispute about availability of DM at Angul who is the DAA for Angul at the relevant time of instituting the complaint in the Court and, therefore, anyone other than DM cannot assume the power of DAA for Angul to institute complaint. No explanation has also been offered/given as to why the Sub-Collector describing him as SDAA has instituted the complaint in the Court and, thereby, anything done by him in this case under PC&PNDT Act cannot have the approval of law. It is, therefore, clear that allowing the criminal proceeding in this case being in

clear violation of provision of PC&PNDT Act is nothing but an abuse of process of Court and thereby needs to be quashed.

7. In view of the aforesaid facts and discussion made hereinabove together with taking into consideration the prayer made for the petitioners and regard being had to the observation made by this Court in CRLMC No. 4249 of 2009(Dr. Sudhir Kumar Brahma Vrs. State of Odisha), the impugned order taking cognizance of offences under PC&PNDT Act being unsustainable is hereby set aside and thereby, the further proceeding thereon is without any sanctity of law. Accordingly, the criminal proceeding in C.T. Case No. 4330 of 2011 stands terminated.

8. In the result, the CRLMC is allowed to the extent indicated above but in the circumstances without any costs.

(G. Satapathy)
Judge

kishore