

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.692 of 2017**

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

Ramesh Chandra Nayak @ Naik ***Petitioner***

-versus-

State of Orissa ***Opposite Party***

For Petitioner : ***Mr. B. Mishra, Advocate***

For Opposite Party : ***Mr. S.R. Roul, ASC***
[O.P. No.1]

CORAM:
JUSTICE G. SATAPATHY

ORDER
22.11.2022

Order No.
05.

1. The petitioner by this application U/S.482 of Cr.P.C. prays to quash the order taking cognizance passed on 21.09.2007 by learned S.D.J.M., Nayagarh in G.R. Case No. 449 of 2007.
2. In course of hearing of CRLMC, Mr.B.Mishra, learned counsel for the petitioner by relying upon the judgment passed by this Court on 19.09.2022 in CRLMC No. 682 of 2017(Dr.

Bhubaneswar Sukla and others 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 Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994(hereinafter referred to as 'the PC&PNDT Act') the criminal proceeding 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. On being asked, learned counsel for the petitioner submits that the petitioner only challenges the order taking cognizance to the extent of offences U/Ss. 23 and 25 of PC&PNDT Act.

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 an F.I.R. lodged by the C.D.M.O., Nayagarh and pursuant to such F.I.R., investigation ensued with culmination in submission of charge sheet resulting in taking cognizance of offences indicated in the impugned order 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 therein suggest 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. Section 155(2) of Cr.P.C. mandates that no police officer shall investigate a non-cognizable case without the

order of a Magistrate having power to try such case or commit the case for trial.

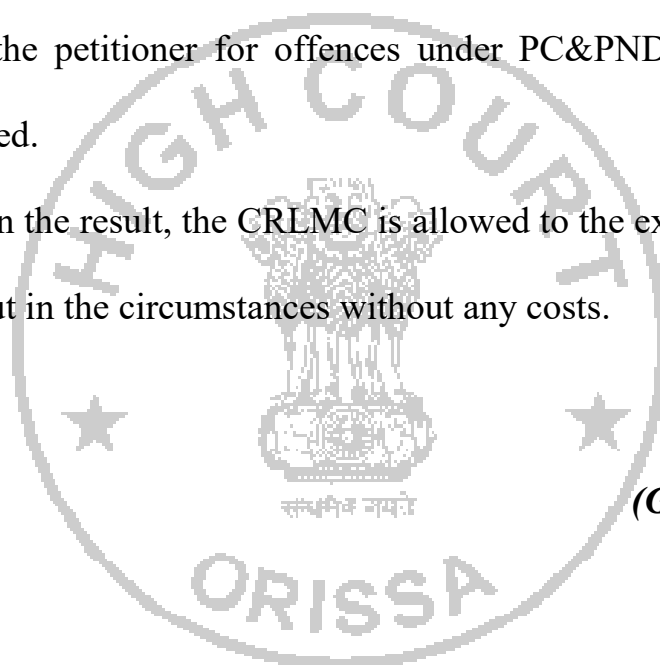
6. It is undoubtedly true that every offence under PC&PNDT Act is cognizable, non-bailable and non-compoundable. It is, therefore, clear that the case at hand was investigated into by police officer on the F.I.R. of C.D.M.O., Nayagarh and cognizance of offences under PC&PNDT Act was taken thereon notwithstanding to the provisions prescribed for taking cognizance of offence under PC&PNDT Act and in violation of such provisions thereof.

7. The Office Memorandum of Government of Orissa, Health and Family Welfare Department No. 19077/H dated 27.07.2007 which has been referred to by this Court in CRLMC No. 682 of 2017 (Dr. Bhubaneswar Sukla and others Vrs. State of Odisha) makes it clear that the notification of the Department vide No. 3058 dated 24.01.2002 appointing the CDMO of each district as the Appropriate Authority under the above Act has been superseded.

8. In view of the aforesaid facts and discussion made hereinabove together with taking into consideration the prayer made for the petitioner and regard being had to the observation

made by this Court in CRLMC No. 682 of 2017(Dr. Bhubaneswar Sukla and others Vrs. State of Odisha), the impugned order taking cognizance of offences to the extent of offence under PC&PNDT Act being unsustainable is hereby set aside but so far as other offences under the IPC and Special Acts remain unchallenged and the proceeding thereon shall continue and be decided in accordance with law. Needless to say that the criminal proceeding against the petitioner for offences under PC&PNDT Act stands terminated.

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



(G. Satapathy)
Judge

kishore