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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1664 of 2021 & 1997 of 2021

CRLMC No.1664 of 2021

Subhransu Mohan Dash and Another Petitioners
Mr. A. Mishra, Advocate

-Versus-

State of Odisha and Another Opposite Parties
Mr. S.K. Mishra, ASC

AND

CRLMC No.1997 of 2021

Dr. Uttam Charan Sahu Petitioner
Mr. A.Mishra, Advocate

-Versus-

State of Odisha Opposite Party
Mr. S.K. Mishra, ASC

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT : 03.11.2022

1. Both the petitions have been clubbed together for disposal by a common order since question of law involved therein is similar.
2. In the aforesaid cases, the complaints have been filed against the petitioners for having committed offences punishable under Sections 23 and 25 of the Pre-Conception and Pre-Natal

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Dr. Uttam Charan Sahoo Vrs. State of Odisha

Diagnostic Techniques Act, 1994 (hereinafter referred to as 'the PC&PNDT Act) with the allegations as to the non-compliance of the relevant provisions of the said Act and rules made thereunder as well as improper and incomplete maintenance and preservation of records which is a statutory mandate. In fact, the clinics were inspected by a team on 20th October, 2019 and 16th November, 2012 in respective cases and found series of irregularities, consequent upon which, complaints were filed by the designated Authority registered as 2(c)CC Nos.327 of 2021 and 901 of 2013 against the petitioners. The details of the lapses noticed during the inspection of the clinics on the alleged dates have been described in the complaints.

3. In 2(c)CC No327 of 2021, apart from other grounds, the petitioners challenged the maintainability of the criminal action with the contention that the complaints have not been instituted by the Appropriate Authority (AA) as stipulated in Section 17(3) of PC& PNDT Act. Mr. Mishra, learned counsel for the petitioners submits that since it is not in accordance with the statutory provisions as the complaints were to be filed by the AAs in accordance with Section 28(1)(a) of PC&PNDT Act and with reference to the Office Memorandum dated 12th February, 2007 of the Health and Family Welfare Department, Govt. of Orissa, the proceedings cannot be maintained before the courts below, the fact which was lost sight of while entertaining the same. While contending so, Mr. Mishra, learned counsel for the petitioners submits that this Court in CRLMC No.4249 of 2009 and batch of cases held that the complaints cannot be maintained if filed by the authorities other than AAs in accordance with the Office

Memorandum of the year 2007 which notified the District Magistrate and SDM as the AAs in that regard. Mr. Mishra, learned ASC justified the filing of complaints for various irregularities and illegalities committed at the respective clinics so detected by the teams at the time of its inspection.

4. As per the Office Memorandum dated 12th February, 2017 District Magistrate of each district has been appointed as the AA with an authority to nominate an Executing Magistrate to assist him in monitoring the implementation of the PC&PNDT Act and at the sub-division level, it shall be Sub-Divisional Magistrate (Sub-Collector). As per Section 28 of the PC&PNDT Act, a complaint shall have to be filed by the AA in respect of the offences punishable under the said Act and for the districts and sub-divisions in the State of Odisha, it shall have to be at the instance of the District Magistrate and Sub-Divisional Magistrate (Sub-Collector) according to the Office Memorandum of 2007

5. In CRLMC No.4249 of 2009 and batch of cases disposed of by this Court on 19th September, 2022 summed up the conclusion in the following words:

“(i) AA is the authority who is to file the complaint as per Section 17(4)(e) read with Section 28 of the PC&PNDT Act read with the OM of the State Government dated 27th July, 2007 and no other official;

(ii) In view of the OM, DM is the AA in respect of a district and SDM (Sub-Collector) shall be the authority vis-à-vis SubDistrict (Sub-Division) who shall file the complaint under the PC&PNDT Act;

(iii) For the purpose of rendering assistance, an EM may be nominated by the DM for monitoring the

implementation of the PC&PNDT Act which is by virtue of the OM of 2007;

(iv) The authority to file the complaint cannot be shifted by the AA, inasmuch as, there is no such provision in the PC&PNDT Act for delegation of power for the said purpose;

(v) A complaint cannot be filed by any other official as a substitute of the AA or in the guise of or on behalf of the AA in derogation to the OM;

(vi) For the purpose of inspection, investigation etc. any other officer may be engaged by the orders of the DM in accordance with the OM which is for assisting the authority in due implementation of the PC&PNDT Act and not beyond;

(vii) Any such complaint filed other than by the AA cannot be held as a valid prosecution in accordance with law; (viii) The OM is issued by the State Government whereby the DM/SDM is to file the complaint and not the CDMO anymore after supersession of the notification of 2002 and if at all, he is treated as an EM, he can only be said to render help and assistance to the DM and not to usurp the jurisdiction of the AA.”

The aforesaid decision was with reference to a similar case related to PC&PNDT Act and such a conclusion was drawn after referring to the judgment of the Apex Court in **Federation of Obstetrics and Gynaecological Societies of India (FOGSI) Vrs. Union of India (2019) 6 SCC 283** besides **Dipak Babaria and Another Vrs. State of Gujarat and Another (2014) 3 SCC 502** which laid down the ratio that a procedure contemplated under the Special Act shall have to be followed in the manner specified and not otherwise.

6. In the instant case, there is no denial to the fact that the complaints have been filed in 2(c)CC No.327 of 2021 by the Chief District Medical and Public Health Officer (CDMO) and the other in 2(c)CC No.901 of 2013 by the Executive Magistrate-cum-

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Authorized Officer which means not by the AA as by virtue of the Office Memorandum of 2007, the District Magistrate has become the AA replacing the notification (No.3058, dated 24th January, 2002) whereby the CDMO of each district was the authority under the PC&PNDT Act. Having regard to the above facts and in view of the decisions in CRLMC No.4249 of 2009 and batch of cases, the inescapable conclusion is that since the complaints have not been filed by the respective AAs and not being in accordance with the statutory requirement and Office Memorandum of 2007, the same cannot be entertained and sustained in law. Since the prosecution in respect of 2(c)CC No.901 of 2013 is pending since long and in the light of the decision in CRLMC No.4249 of 2009, the Court is not inclined to grant any such liberty for filing of a fresh complaint by the AA in compliance of the provisions of the PC&PNDT Act. However, such liberty shall have to be granted in respect of the proceeding vis-à-vis 2(c)CC No.327 of 2021 which is of recent origin. Such a view providing the liberty to the AA to initiate a fresh criminal action is in agreement with the Court's earlier decision in **Ramesh Chandra Nayak and others Vrs. State of Orissa** disposed of on 3rd April, 2018 in **CRLMC No.2082 of 2010**.

7. Accordingly, it is ordered.

8. In the result, the petitions stand disposed of. Consequently, the criminal proceedings with regard to 2(c)CC No.901 of 2013 & 2(c)CC No.327 of 2021 are hereby quashed with the directions and observations made herein above.

U.K. Sahoo

(R.K. Pattanaik)
Judge

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