

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 310 OF 2022

Dr. Rahul S/o Dattatraya Patil  
Age : 47 years, Occ: Medical Practitioner,  
R/o Vansh Hospital, Omkar Nagar,  
Near Civil Hospital, Jalgaon,  
Dist. Jalgaon ...Petitioner

Versus

1. The State of Maharashtra
2. Appropriate Authority,  
PCNDT, Jalgaon Municipal  
Corporation, Jalgaon, Dist. Jalgaon ...Respondents

Mr. R.N. Dhorde, Senior Counsel i/By Mr V.R. Dhorde,  
Advocate for Petitioner  
Mr G.O. Wattamwar, APP for Respondent No.1/State  
Mr M.V. Navandar, Advocate for Respondent No. 2

**CORAM : SHRIKANT D. KULKARNI, J.**

**RESERVED ON : 26<sup>th</sup> JULY, 2022**  
**DELIVERED ON : 6<sup>th</sup> OCTOBER, 2022**

**JUDGMENT :**

1. Heard finally with consent of both the sides at admission stage.
2. The petitioner by invoking the writ jurisdiction under Article 227 of the Constitution of India and Section 482 of the Criminal Procedure Code, has sought following reliefs :-

29. (B) Quash and set aside Regular Criminal case No. 107/2012 under sections 4 (3), 5, 6, 29 r/w 28 of the Act of 1994 and Rule 9(1)(4), 10(1-A) of the Rules, 1996 r/w Sections 23 and 25 of the Act of 1994 pending on the file of learned Judicial Magistrate, First Class, Jalgaon and for that purpose issue necessary orders;

(C) Quash and set aside the impugned order dated 11.10.2019 passed by the learned Judicial Magistrate, First Class, Jalgaon rejecting the application below Exhibit-66 in Regular Criminal Case No. 107/2012 for examining the witness and further confirmed by order dated 22.12.2021 passed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 5/2020 and grant application Exhibit-66 for examining the said witness namely Unnati Mahajan before framing of charge and for that purpose issue necessary orders;

3. Heard Mr R.N. Dhorde, learned senior counsel instructed by Mr V.R. Dhorde, learned counsel for the petitioner, Mr G.O. Wattamwar, learned APP for respondent No.1/State and Mr Mehul Navandar, learned counsel for respondent No.2/appropriate authority, PCPNDT, Jalgaon.

4. Mr Dhorde, learned senior counsel submitted that the petitioner is a medical practitioner and running his hospital under name and style as "Vansh Hospital", Omkar Nagar, Jalgaon. He is a Gynecologist. In the month of September, 2011, inspection was conducted in the Hospital of the petitioner by the appropriate authority and it is alleged that certain irregularities were found in the documentation. The criminal case came to be filed against the petitioner by the appropriate authority. He submitted that it is a third round to approach the High Court. Only allegation against the present petitioner is to the extent of not mentioning full address of the patients in 23 forms "Article B". It is a minor irregularity. The petitioner is unnecessarily slapped with this criminal prosecution. He is facing this litigation since the year 2011 in view of evidence of three witnesses on

record. The prosecution may not get any positive result. As such, there is no propriety in continuing the prosecution. The proceedings of Regular Criminal Case No. 107/2012 pending on the file of J.M.F.C., Jalgaon is liable to be quashed.

5. Mr R.N. Dhorde, learned senior counsel has placed his reliance on following stock of citations :-

- (i) *Dr Radhakrishna and Anothar Vs. State of Maharashtra and others reported in (2020) 20 SCC 391*
- (ii) *Kapil Agarwal and others Vs. Sanjay Sharma and others reported in (2021) 5 SCC 524*
- (iii) *Decision in Criminal Writ Petition No. 407 of 2011 (Dr Mrs Uma Shankarrao Rachewad Vs. Appropriate Authority, Nanded dated 19.04.2012*
- (iv) *Decision in Criminal Writ Petition No.1381 of 2015 (Dr Sai W/o Santosh Shiradkar Vs. The State of Maharashtra dated 27.09.2016)*
- (v) *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel reported in (2017) 4 SCC 177*

6. Mr G.O. Wattamwar, learned APP for the State/respondent No.1 vehemently submitted that the object of The Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred to as 'the PCPNDT Act' for the sake of convenience) need to be considered. The petitioner is running a hospital. He has not followed mandatory provisions of the PCPNDT Act and Rules. As a result, criminal case came to be filed against the petitioner. The charge has been framed against the petitioner after examining three witnesses. At this stage, the proceedings cannot be quashed.

7. Mr Navandar, learned counsel for respondent No. 2 submitted that section 482 of Cr.PC cannot be invoked after framing of charge. He submitted that the learned Magistrate has framed the charge against the petitioner after examining three witnesses. Now, the trial is in process. As such, it is not permissible at this stage to consider the application for quashing under section 482 of Cr.PC. He has placed his reliance on the following citations :-

- (i) *Saranya Vs. Bharathi and Another reported in (2022) AIR (SC) Cri 79*
- (ii) *State of Rajashtan Vs. Ashok Kumar Kashyap reported in (2021) 2 MLJ (Cri.) 471*
- (iii) *State of Delhi Vs. Gyan Devi and Ors. (Appeal (cri.) 888 of 2000 decided on 18.10.2000)*

8. I have considered the submissions of both the sides. Perused the record and the impugned order passed by the learned Judicial Magistrate First Class in Regular Criminal Case No. 107/2012 below Exh.66 and confirmed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision Application No. 5/2020.

9. It is a third round of litigation at the instance of present petitioner. The question is whether this Court can exercise inherent powers vested under section 482 of Cr.PC to quash the proceedings vide R.C.C. No. 107/2012 initiated by the appropriate authority/respondent No.2 under the provisions of the PCPNDT Act, when charges are framed.

10. It is rightly pointed out by Mr Navandar, learned counsel for respondent No.2 that the prosecution Agency has examined in all three

witnesses before the trial court before framing of charge. Accordingly, the charge has been framed in view of the order passed by the learned Additional Sessions Judge in Criminal Revision Application No. 78/2014. The petitioner has challenged the order of framing of charge and the order passed by the learned Additional Sessions Judge in above said revision vide Criminal Writ Petition No. 903/2019. This Court after hearing the learned counsel for the petitioner expressed disinclination to grant any relief when learned counsel for the petitioner on instructions has withdrawn that petition and the order of framing charge reached finality. At this stage, it may not be appropriate to quash the proceeding when the trial is in progress after framing of charge.

11. There cannot be debate that this Court can quash the criminal proceedings by invoking section 482 of Cr.PC in order to prevent abuse of process of law or to meet the ends of justice.

12. Mr R.N. Dhorde, learned senior counsel has referred number of citations on the point of quashing of proceedings in change of circumstances. There is no dispute about that legal position which is canvassed by Mr Dhorde, learned senior counsel.

13. The point is whether the proceedings can be quashed after framing of charge and when trial is in progress. The answer to that effect finds in ***Saranya Vs. Bharathi and Another (supra)*** wherein the Hon'ble Supreme Court has made it clear that the High Court cannot enter into exercise of appreciation of evidence and consider whether on the basis of that evidence, the accused is likely to be convicted or not. It is not

permissible at this stage. The High Court cannot exercise jurisdiction as an appellate court against the order of conviction or acquittal.

14. In ***Rajasthan Vs. Ashok Kumar Kashyap (supra)***, the Hon'ble Supreme Court has held that the High Court cannot exceed by holding a mini trial at the stage of discharge application.

15. The learned Magistrate has framed the charge against the petitioner for violation of mandatory provisions of the PCPNDT Act and Rules after recording evidence of three witnesses. The trial is in progress. At this stage, it is not permissible to appreciate the evidence of those three witnesses and quash the entire proceedings. Said mini trial is not permissible as per the decision of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Ashok Kumar Kashyap (supra)***.

16. The object of the PCPNDT Act, 1994 also to be borne in mind. It is a legislature to protect weaker sections of the society. It is a measure for social justice. The provisions of PCPNDT Act and the Rules made thereunder need to be followed strictly. The trial is in midway, it is not proper and legal to quash the proceedings by appreciating the evidence on record. In the result, the following order is passed :-

#### **ORDER**

- (I) The Criminal Writ Petition stands dismissed.
- (II) No order as to costs.

**[ SHRIKANT D. KULKARNI, J. ]**

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