

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

914 CRIMINAL WRIT PETITION NO.756 OF 2016

THE STATE OF MAHARASHTRA
VERSUS
DR DEELIP PRABHAKAR KHARWADKAR

...

Mr. P. K. Lakhotiya, APP for the petitioner State.

Mr. Abhishek G. Kulkarni, Advocate for the respondent

CORAM : A.S. GADKARI, J.

DATE : 20th January, 2022

ORDER:

1. The State of Maharashtra, through petitioner no.2, has questioned the correctness of Judgment and Order dated 11.09.2015 passed by learned Additional Sessions Judge, Beed in Criminal Revision No. 37 of 2015 allowing the said revision preferred by the respondent thereby setting aside the order dated 02.02.2015 passed below Exh.1 in R.C.C. No.39/2013 by the learned Chief Judicial Magistrate, Beed.

2. Heard Mr. P. K. Lakhotiya, learned APP for the petitioner State and Mr. Abhishek G. Kulkarni, learned counsel for the respondent. Perused the record.

3. Record indicates that, a surprise search was conducted at the hospital of the respondent and on 16.12.2011 and a case was registered under section 28 of the Pre-conception and Pre-natal

Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, 'the PCPNDT Act'). A Sonography machine of the respondent was sealed by the competent authority after the said raid. By Order dated 06.01.2003, the Chief Judicial Magistrate, Beed had directed to de-seal the said sonography machine of the respondent by further directing him to maintain the record of the same in future as contemplated under section 29 of the PCPNDT Act.

It further appears that on 13.01.2003, Dr. R. K. Jadhav, now retired District Surgeon Beed, returned the documents including the register which were seized by the competent authority to the respondent.

4. It is the contention of the State that, returning of the said documents by Dr. R. K. Jadhav was without Orders of the Court. Learned Chief Judicial Magistrate, Beed, therefore, by its order dated 10.05.2006, called explanation of Dr. R. K. Jadhav in that behalf. The case in question was subsequently converted as a warrant triable case by the Magistrate and was renumbered as R.C.C. No. 39/2013.

5. Learned Judicial Magistrate took cognizance of the fact that, the documents which were handed over by Dr. R. K. Jadhav to the respondent (Page Nos.173 to 200 and Page Nos. 221 to 233 of the Sonography Register) were subsequently either forged or tampered with by the respondent to suit is convenience. When the said

documents were inspected by the Magistrate, he found that offence as contemplated under section 465 and 467 of the Indian Penal Code (for short 'the IPC') has been committed by the respondent and therefore though he dismissed the complaint filed under section 29 of the PCPNDT Act against the respondent, directed the Assistant Superintendent of his Court to lodge a complaint against respondent under section 465 and 467 of the IPC for allegedly committing forgery of the documents i.e. registers which were handed over in the custody of Dr. Jadhav by his impugned Order dated 02.02.2015 passed below Exh.1 in RCC No.39/2013.

6. Feeling aggrieved by the said order dated 02.02.2015 passed below Exh. 1 by the learned Chief judicial Magistrate, respondent preferred Criminal Revision No. 37/2015 before the Sessions Court at Beed. Learned Additional Sessions Judge, Beed, by its impugned Order dated 11.09.2015 was pleased to allow the said Revision and quashed and set aside the order dated 02.02.2015 passed by the trial court.

7. At the outset it is to be noted here that, it is an admitted fact on record that no valuable security or a will, or an authority to transfer any valuable security, or to receive any money, has been forged or tampered with by the respondent in the present case and therefore application of section 467 of the IPC is unwarranted and/or preposterous.

8. As far as application of section 465 of the IPC to the present case is concerned, it is to be noted here that, the Revisional Court has recorded categorical findings that, the documents in question were handed over in possession of the respondent by Dr. Jadhav without there being orders of the Court. It further appears that photo copies of the same were maintained while returning the said documents to the respondent. The respondent has either over written certain words or effected interpolation in the record given to him by Dr. Jadhav, which was not to be produced before the Court.

9. It is worth to be noted here that, while passing order dated 06.01.2003 by the Chief Judicial Magistrate, Beed, while ordering de-sealing of the sonography machine of the respondent, had specifically directed him to maintain record as contemplated under section 29 of the PCPNDT Act, 1994 in future. It appears that, the documents which were handed over to the respondent by Dr. Jadhav were without any caveat or rider for maintaining the same in its original condition.

10. In view of the aforestated peculiar facts involved in the present case, this Court is of the considered opinion that, the learned Magistrate has committed an error while passing the impugned order dated 02.02.2015 directing lodgment of crime against the respondent under sections 465 and 467 of the IPC.

11. Perusal of record clearly indicates that the Revisional Court has taken into consideration all the relevant factors and has not committed any error either in law or on facts while passing the order dated 11.09.2015.

Writ petition being *de hors* of merits is accordingly dismissed.

(A.S. GADKARI, J.)

JPC