

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1605 OF 2021**

Ranbir Mukhtiar Singh And Anr. ...Petitioners

Versus

The State Of Maharashtra And Anr. ...Respondents

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Mr. Jude S. Fernandes, Advocate for the Petitioners.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Teja Katdare a/w Mr. Kunal Waghmare, Advocate for Respondent No.2(BMC).

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**CORAM : PRAKASH D. NAIK, J.**

**DATE : 29<sup>th</sup> SEPTEMBER, 2022**

**PC :**

1. The Petitioners are aggrieved by order dated 9<sup>th</sup> May 2017 passed by learned Metropolitan Magistrate, 41<sup>st</sup> Court, Shindewadi, Dadar, Mumbai in C.C. No. 4100004/SW/2016 and order dated 25<sup>th</sup> February 2021 passed by learned Additional Sessions Judge, City Civil and Sessions Court at Greater Bombay in Criminal Revision Application No. 711 of 2019.

2. Private complaint was filed by Respondent No.2 in the Court of Metropolitan Magistrate, 41<sup>st</sup> Court, Shindewadi, Dadar, Mumbai for offences under Sections 19(4), 29 of Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

(hereinafter referred to as PCPNDT Act), Rule 9, 17(1)(2) and (2) of PCPNDT Rules, 1996 r/w Section 23 of PCPNDT Act, 1994.

3. The allegations in the complaint are as follows:-

(i) The complainant is the medical officer and appropriate authority under PCPNDT Act.

(ii) On 28<sup>th</sup> March 2016 the complainant visited RND Diagnostic Centre alongwith Dr. Thosar, Mr. Sawant, Mr. Talekar and Mr. Chowdhary.

(iii) During inspection on 28<sup>th</sup> March 2016, the complainant found that original PNDT Certificate and MRC Certificate not displayed near waiting room and near Sonography Machine, PNDT Guideline Circular was not maintained and kept as required by law, five point register was not maintained properly IEC material for save 'girl child' not displayed near waiting area, record monthly summary report of patients of last three months not maintained properly, revised edition PNDT Act not available.

(iv) The complainant prepared inspection report and intimation letter in the name of Special Officer.

(v) The complainant sealed sonography machine. The accused No.1 gave reply on behalf of centre. The complainant forwarded papers to Advisory Committee for further advice. The committee advised action under the PCPNDT Act.

(vi) The complainant suspended Registration Certificate. The complainant again visited the RND diagnostic centre on 20<sup>th</sup> July 2016. The complainant took search at at centre. Original register was seized. Inspection report was prepared.

(vii) Accused No.1 is the owner of centre and accused No.2 is sonologist working at the centre. Both are responsible for the day to day work of centre and contravention of PCPNDT Act. Complaint was filed on 27<sup>th</sup> July 2016.

4. The accused filed application for discharge. The learned Magistrate, 41<sup>st</sup> Court, Shidnewadi, Dadar, Mumbai vide order dated 9<sup>th</sup> May 2017 rejected the said application.

5. Examination-in-chief of PW-1 Dr. Chetna Nitil K. (Medical Officer, Health 'A' ward) was recorded on 14<sup>th</sup> July 2017, 20<sup>th</sup> July 2017 and 22<sup>nd</sup> September 2017. Evidence of PW-2 Bhagwan S. Talekar (Peon 'A' ward, Health Department) was recorded on 6<sup>th</sup> July 2018 and 1<sup>st</sup> September 2018. PW-3 was examined on 14<sup>th</sup> September 2018.

6. Vide order dated 13<sup>th</sup> June 2019 passed by learned Metropolitan Magistrate, 41<sup>st</sup> Court, Shindewadi, Dadar, Mumbai. It was directed that, charge for offence under Sections 19(4), 29 and 17 punishable under Section 23 of the PCPNDT Act against accused.

7. The order dated 13<sup>th</sup> June 2019 was challenged before the Sessions Court by preferring Criminal Revision Application No. 711 of 2019. The Revision Application was rejected by learned Additional Sessions Judge vide order dated 25<sup>th</sup> February 2021.

8. Learned Advocate for the Petitioners submitted that, there is no evidence to frame charge against the Petitioners for the alleged offences. The Petitioner No.1 is the owner of RND Diagnostic Center situated at Ballard Pier, Mumbai. He is not a gynecologist. He is medical practitioner. Petitioner No.2 is a Visiting Sonologist. Petitioner No.1 is providing health care services to seafarers of national and international shipping companies under auspices of Director General Shipping, Ministry of shipping and surface transport, Government of India. No case is made out against petitioners from the evidence whereby charges can be framed against them. The Respondent No.2 has not adduced any concrete evidence to frame charge against the petitioners. Sonography Machine and register of the patients was seized by Respondent No.2. The evidence discloses that there was no incriminating material in the register and Sonography machine which would attract Section 23 of the PCPNDT Act. complainant has not followed the legal procedure for drawing panchnama as per section 30 of PCPNDT Act. Provisions of Cr.P.C. are applicable to every search and seizure under the Act.

The Courts below failed to appreciate that the petitioners have in no manner committed any violations or contraventions. No incriminating material was found from register or sonography machine to attract Section 23 of Act. The respondent No.2 has deposed that, she had prepared panchnama, whereas in cross-examination, she deposed that inspection report is actually the panchnama. The intimation report and seizure panchnama are two different aspects. No show cause notice was issued by appropriate authority. In the registration certificate it is mentioned that sonography of pregnant woman is not done at RND diagnostic centre. Respondent No.2 has admitted that on going through inspection of record and register, she did not find that any pregnant woman has been examined by RND diagnostic centre. According to respondent No.2 during her second visit on 20<sup>th</sup> July 2016, she did not find any irregularities at RND centre. Respondent No.2 has deposed that from 3<sup>rd</sup> June 2015 to 31<sup>st</sup> March 2016, the accused has submitted report of sonography which shows that no obstetric USG is performed. She has not issued show cause notice to accused and Advisory Committee has reason to believe for initiating prosecution against the accused. However, there is no evidence to that effect. There is nothing on record to show that Advisory Committee have recorded reasons in writing for suspension of registration. Complaint

was filed after 120 days. The first inspection was carried out on 28<sup>th</sup> March 2016 and second inspection was carried out on 20<sup>th</sup> July 2016.

9. Learned Advocate for Respondent No.2 submitted that, prima facie case is made for framing charge against the Petitioners. At this stage, Court is not required to conduct roving enquiry. There was violation of provision of PCPNDT Act. Proper register was not maintained. PCPNDT book was not available. The learned Sessions Judge has rejected the Revision Application by assigning reasons. C.C. No.4100004/SW/2016 is filed by complainant Dr.Chetna Nitil K. Medical Officer, A Ward of Mumbai Municipal Corporation and authorized Officer under the provision of PCPNDT Act. The complainant along with Dr.Thosar, Mr. Sawant, Mr.Talekar, Mr.Chaudhari and other staff visited the Respondent's premises, who were found present. The premises is owned by accused No.1 and accused No.2 was conducting sonography centre. During the inspection several violations have been noticed. On preparing the Inspection Report of the violations, respondent No.2 issued the intimation letter to Special Officer and one copy of the letter is handed over to the accused. After receipt of the reply from the accused, she had forwarded the action papers to the Advisory Committee, who in turn recommended legal action. Eventually the

complaint was filed on 27<sup>th</sup> July 2016 before the learned Metropolitan Magistrate alleging commission of offence punishable under Sections 19(IV), 29 under Section 9, 17 (I) and (II) read with Section 23 of PCPNDT Act. The complainant had authority to file complaint. The complainant was appropriate authority in the provisions of Act. The evidence disclosed that the accused had not maintained the register. It was incumbent upon them to maintain record.

10. During the pendency of this petition, the sonography machine seized by respondent was directed to be returned to petitioner NO.1, vide order dated 29<sup>th</sup> March 2022, considering the fact that there is no material/evidence to show that the said machine was used for sex determination.

11. Section 19(4) of the Act provides that the certificate of registration shall be displayed by the registered genetic counselling centre, genetic laboratory or genetic clinic in a conspicuous place at its place of business. Section 23 relates to offences and penalties. Section 29 of the Act requires that all records required to be maintained under the Act to be preserved for two years or for such period as may be prescribed and be made available for inspection to appropriate Authority or authorised person. Rule 9 of PCPNDT Rules 1996 relates to maintenance and preservation of records. Rule 17

relates to Public information to be displayed in clinic to the effect that disclosure of sex of foetus is prohibited under law and availability of copy of rules in the premises.

12. The documents on record refers to submission of monthly report of sonography by accused No.1 to appropriate authority for March 2015, May 2015, June 2015, August 2015, September 2015 and October 2015.

13. PW No.1 Dr. Chetna Nitil K. (complainant) has stated that on 28<sup>th</sup> March 2016, she alongwith others visited RND Diagnostic centre. During inspection, she did not find PCPNDT certificate and MRC certificate near waiting room and machine. Information Education communication (IEC) for save 'girl child' was not displayed in the waiting room. PCPNDT book was not available. PCPNDT guidelines circular five point register, records of patient were not maintained. She prepared Inspection Report, sonography machine was sealed. Report was placed before Advisory committee. She again visited the RND Diagnostic Centre on 20<sup>th</sup> July 2016. She prepared inspection report. The Government has authority to appoint appropriate authority. In the past she had visited RND Diagnostic Centre. She had also sent her delegated person to RND diagnostic centre. From 2013 the complainant and her delegates had visited RND centre, prior to 28<sup>th</sup> March 2016 but no irregularity was

found. Sonography registration certificate was admitted by her. From March 2016 to July 2016 she had gone through records and registers and did not find that any female pregnant women has been examined at RND centre. From 3<sup>rd</sup> June 2015 to 31<sup>st</sup> March 2016 accused has submitted report of sonography, which shows that no obstetric USG is performed. She had not issued show cause notice to accused No.1 and 2. Before initiating proceedings it is incumbent upon appropriate authority to get explanation from accused. After dissatisfaction of explanation, appropriate authority can initiate prosecution against the accused. On second inspection on 20<sup>th</sup> July 2016, she did not find any irregularities and deficiency. No irregularity was found on 15<sup>th</sup> March 2016.

14. PW No.2 Bhagwan Talekar has stated that he is working as peon in BMC. He went to RND centre on 28<sup>th</sup> March 2016. complainant verified the register. Machine and register were sealed. Report was prepared. He don't know contents of reports exh.17 and 18.

15. PW No.3 Amena Siddhiqui has stated that she was working as Assistant Medical Officer at BMC. She went to RND Centre. Report was prepared. She do not recollect whether certificates of RND centre were displayed on wall. She do not recollect whether IEC material was displayed or not. She do not recollect whether PCPNDT

guideline circular was maintained. In the five point register there were no columns of date, name, phone number and signature, but it was written without columns. Five point register was shown to this witness. It is stated that as per register on 15<sup>th</sup> March 2016 the Officer had made inspection of RND centre. The endorsement bears her signature. She directed to maintain the register by making columns. Except absence of maintaining register in columns there is no other deficiency.

16. The certificates of registration of RND diagnostic centre issued by appropriate authority under section 19(1) of PCPNDT Act is annexed to the petition. Sonography machine registration certificate issued to petitioner No.1 is also part of this petition.

17. The evidence before charge discloses that there are discrepancies in compliance of procedural safeguards by respondent. Show cause notice was not issued for suspension of registration. The respondent No.2 has stated that on going through the inspection of record and register, she did not find that any pregnant women were examined at centre. The respondent No.2 has admitted that before 28<sup>th</sup> March 2016, she never found any irregularities at centre. On 20<sup>th</sup> July 2016 she did not find any irregularities. Surprisingly, complaint was filed on 27<sup>th</sup> July 2016.

18. The respondent No.2 has admitted that copy of sonography registration certificate shown to her was issued by their department. In the said registration certificate it is specifically mentioned that sonography of pregnant women is not performed at RND diagnostic centre of petitioner No.1. The centre have been submitting report and maintaining register in the same form and there was no objection by respondent No.2 about the entries in the register.

19. Monthly reports were submitted to respondent No.2. The evidence discloses that the centre had been previously regularly visited and inspected by respondent. Few days before 28<sup>th</sup> March 2016, there was visit by respondents staff and inspection of centre. There was no reporting of any instance of non compliance of provisions of the Act and Rules. The complainant has admitted that from 3<sup>rd</sup> June 2015 to 31<sup>st</sup> March 2016, the accused had submitted report of sonography which shows that no obstetric USG is performed.

20. The complainant had stated that the Advisory Committee has reason to believe that prosecution should be initiated against the accused. Nothing is on record to substantiate the said deposition. Although no incriminating material was found about sonography machine. Same was sealed.

21. The learned Magistrate had observed that there is sufficient material to frame charge. However, the evidence before charge does not make out case for framing charge. The revision application has been rejected by observing that considering prima facie case against accused and scope of section 245 of Cr.P.C. there is no illegality in order passed by learned Magistrate. However, in the light of documents and evidence before charge, no case was made out to frame charge. Section 245(1) of Cr.P.C. empowers the court to discharge the accused. The facts of this case satisfies the requirement of said provision to discharge the accused.

### **ORDER**

- (i) Criminal Writ Petition No. 1605 of 2021 is allowed.
- (ii) Impugned order dated 13.06.2019 passed by learned Metropolitan Magistrate, 41<sup>st</sup> Court, Shindewadi, Dadar, Mumbai directing that charge for the offence committed under Sections 19(4), 29 and 17 punishable under Section 23 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (for short "PCPNDT") Act and order dated 25.02.2021 passed by Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay rejecting Criminal Revision Application No. 711 of 2019 are quashed and set aside.
- (iii) Petitioners are discharged in C.C. No.4/SW/2016 pending in

the Court of Metropolitan Magistrate, 41<sup>st</sup> Court, Shindewadi, Dadar, Mumbai.

(iv) Writ Petition stands disposed of.

**(PRAKASH D. NAIK, J.)**